

FIVE THINGS EVERY COMMERCIAL PROPERTY OWNER SHOULD KNOW ABOUT PROPERTY TAX APPEALS

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WHAT IS A PROPERTY TAX APPEAL?

All taxpayers in Minnesota are legally entitled to a fair and uniform level of property taxation, which must be based on a property's fair market value. While assessors are charged with setting assessment valuations in accordance with the law, those assessments are generally established through a mass appraisal process, and therefore, can be wrong.

A property tax appeal is a legal process authorized under Minnesota law whereby taxpayers can contest the level of their property taxation through the filing of a tax appeal with the Minnesota Tax Court. Any person or entity having a legal right or title in property in the state of Minnesota has the statutory right to file a tax appeal. That includes rights one might have in property through ownership or a lease. Individuals may represent themselves in the proceedings. Most entities, however, with some limited exceptions, must retain an attorney to represent them before the Minnesota Tax Court.

WHY SHOULD I CARE?

Because property taxes can and often are one of the single largest fixed expenses that a commercial property owner has, it is imperative that they not pay more than they are legally required to pay. The applicable tax rates themselves are established by the Minnesota Legislature, and cannot be modified through a property tax appeal. However, a taxpayer can contest the property's assessed value, which in turn has a direct impact on the taxes that the property owner is required to pay.

Sometimes the assessed value is simply estimated by the assessor at a number that is too high. And in some cases, the assessed value inappropriately includes the value of personal property or other intangible assets associated with the property, which must be removed from the assessment, because those are not taxable under Minnesota law.

In some other limited cases, for example in the case of some properties owned and operated by institutions of purely public charity, the property might be wholly or partially exempt of property taxation all together. However, once the assessed value is established and incorporated into the assessment roll after the close of the local boards of view, the only remedy available to

obtain relief is to file a tax appeal with the Minnesota Tax Court.

WHY IS THIS YEAR DIFFERENT THAN OTHERS?

In Minnesota, properties are assessed each year as of January 2, but the taxes due on that assessment are not owed until the following year. Accordingly, the taxes due and payable in 2022 will be based on the assessed value as of January 2, 2021. This is therefore, the first assessment cycle that is fully post-COVID.

The Impact of the COVID-19 pandemic on commercial properties is significant and still not fully known. Some property types have been impacted more than others.

- **Retail:** Bricks and mortar retailers, for example, which were already feeling the pinch from the growth of online sales, were significantly and negatively impacted when their stores were shuttered for many months. The impact of the pandemic on changing shopping habits and patterns and the continuing shift to online buying is still not fully known.
- **Office:** Similarly, the pandemic completely changed the way many of us work, with many office workers moving to partial or even full-time remote work schedules. Most companies are still developing their return-to-office workplans, which in turn has significantly impacted office leasing. Again, the final impact of the pandemic and its impact on the continued need and desire for office space is not fully known.
- **Hotels:** Hotels are another property type that were significantly negatively affected with both leisure and business travel coming to a near standstill for many months. While some reports indicate that leisure travel is starting to return, the outlook for business travel, with many businesses turning to virtual meetings and conferences during the pandemic, is also still a significant unknown.
- **Industrial:** By most accounts, industrial properties fared better than many other property types during the pandemic. However, even here, the outlook is mixed. While modern large warehouse spaces with high clear heights, large column spacing and many loading docks have seen increased demand in the wake of the continued growth of online retailing, many smaller, older and more functionally obsolete industrial properties continue to struggle.

The one commonality across commercial property types, however, is the continued uncertainty regarding exactly how the pandemic is going to impact the property type in the long term. While commercial property owners understand that uncertainty increases investment risk and therefore, places downward pressure on commercial property values, assessors may not agree.

Instead, many assessors may review this uncertainty as the basis to make smaller-than-appropriate assessment adjustments as a hedge against the possibility that things will improve quickly in the future. Because subsequent assessments are likely to build on the January 2, 2021 assessment through application of the mass appraisal process, it is therefore, even more important that the January 2, 2021 post-Covid point be accurate.

IS THERE A DEADLINE I NEED TO BE AWARE OF?

Properties are assessed and taxed based on a yearly cycle. The assessments are based on market values as they existed as of January 2 of each year. The initial assessment-setting process generally takes several months with the assessing jurisdictions sending property owners a notice of the initially assessed value by roughly the end of March. The informal appeal process to the local boards of review then follows, with local city review and county equalization board hearings being concluded by the end of June.

However, a property owner does not need to file an appeal to the local board of review first in order to appeal to the Minnesota Tax Court. Instead, they are free to file an appeal directly to the Minnesota Tax Court, which they may do at any time up and through April 30 in the year following the assessment, which is also the taxes-payable year. Accordingly, in practice, this means the deadline to file an appeal in connection with the January 2, 2021 assessment associated with the taxes that will be due and payable in 2022 is April 30, 2022.

Because April 30, 2022 is a Saturday, some counties might accept appeals filed on Monday, May 2, the better practice based on the statutory language and to assure the appeal is considered timely is to file it no later than Friday, April 29, 2022. The statutorily required process for doing so is also quite complicated. The tax petition must include the correct information and the process itself requires the service of multiple copies on multiple county officials before electric filing with the district court. For that reason, waiting until just before the deadline to file is strongly discouraged.

ARE THERE RISKS IN FILING A PROPERTY TAX APPEAL?

There are few risks involved in filing a property tax appeal with the Minnesota Tax Court. Most lawyers will agree to represent a property owner on a contingency-fee basis, whereby their fee is based on a percentage of the tax savings realized as a result of the appeal. Additionally, a taxpayer is authorized to withdraw their appeal at any time prior to the actual commencement of trial.

Accordingly, other than the costs involved, such as filing fees and appraisal costs, there is little risk to a taxpayer up and until the commencement of trial. Once the trial commences, however, it is possible the Tax Court could raise the assessed value. Additionally, in most cases, the taxpayer is required to produce for the assessor a number of financial documents relating to the property in issue, including but not limited to income statements, budgets and rent rolls, either through a statutory obligation that applies to all income-producing properties, or otherwise through informal or formal discovery.

While these financial documents are classified as nonpublic by statute and should be kept confidential by the assessors upon receipt, there are some recent examples of assessors inappropriately disseminating this information. Accordingly, it is important that you and your lawyer take all appropriate measures to keep your proprietary information as confidential and protected as possible when making these mandatory disclosures as part of a property tax appeal.



Judy S. Engel is a shareholder at Fredrikson & Byron, P.A., where she serves as the Chair of the Property Tax Department and focuses her practice exclusively on property tax cases, which utilize her knowledge and skills in the areas of negotiation, valuation and trial advocacy. If you are

interested in learning more about whether your assessment might warrant a property tax appeal, feel free to contact Judy for a free consultation and case review at jengel@fredlaw.com or (612) 492-7118.