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Property Tax Update

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PROPERTY TAX UPDATE

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Penalty Assessment

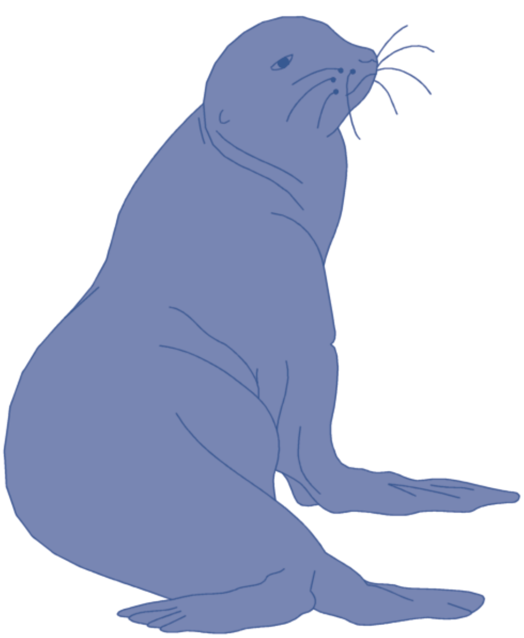
Gilbert Arciba, Tax Consultant

The filing deadline for the 2006 Business Property Statement (BPS) is behind us, and the Assessor's Office is working to close the tax roll for 2006. Those companies who failed to file timely will be receiving a penalty added to the tax bill. Pursuant to Revenue & Taxation Code Section 441, the property statement shall be declared to be true under penalty of perjury and filed annually with the assessor between the lien date and 5 p.m. on April 1. The penalty provided by Section 463 applies for property statements not filed by May 7th and is 10% of the assessed value. As prescribed in section 441, taxpayers receive an additional month to submit their BPS without incurring a penalty assessment.

Property taxes are "ad valorem," meaning that they are based on the value of the property. Let us consider a hypothetical scenario. A Los Angeles County taxpayer has an assessed value of $50 million. In the course of the last year, this taxpayer underwent some consolidations, and filing duties were transferred to their corporate headquarters. All prior years had been filed timely, and, as result of the consolidation and transition of tasks, the taxpayer failed to timely file the BPS for the current year.

Based on this scenario, the penalty assessment would be $5 million, which represents 10% of the assessed value of $50 million. This would amount to a tax penalty of $50,000 (assuming a 1% tax rate). Per Section 463, if no BPS is received by May 7th, the penalty must be added to the assessment.

Taxpayers will typically complain to the assessor with no avail because the assessor does not have the authority to waive or abate the 10% penalty. However, there is an avenue of contesting this penalty. The taxpayer or their agent must file an assessment appeal application with the county in a timely manner and check the box titled "Penalty Assessment." By doing so, taxpayers preserve their right to state the reasons for filing the BPS untimely before the Assessment Appeals Board, which has the final ruling on abating this penalty.



Countless times I have represented taxpayers before the Assessment Appeals Board on this very issue. With proper preparation, arguing key points of the above mentioned code sections, and testimony from the taxpayer, I have had a high success rate of having the penalty abated. In addition, although Section 463 gives the Board discretion by stating that it "may" abate the penalty, a recent court decision stated it is not discretionary where there is a showing of reasonable cause and no willful neglect (People ex rel. Strumpfer v. Westoaks Inv. #27, California Court of Appeal, 2nd District, No. B178628, opinion filed May 23, 2006).

Furthermore, filing the initial appeal provides an excellent opportunity to review the overall assessment. Property Tax Assistance Co., Inc. is a seasoned tax firm that can assist in resolving and addressing tax penalties, in addition to any other property tax issues.

State Tax Credits for Manufacturers…
… Time is Running Out.

Teri Larsen

In 1993, California implemented a tax credit program in an effort to make the Golden State a more attractive place for business. This piece of legislation was adopted during a period of significant economic uncertainty in the state which included a particularly severe downturn in the manufacturing sector. Many industries were moving outside the California borders to lower their cost to do business. By reducing the tax burden, policymakers endeavored to offer an incentive which would encourage growth in local industries and keep them from moving out-of-state.

Basically, the program allows businesses engaged in most manufacturing activities to reduce their corporation tax liabilities when they have purchased qualified manufacturing equipment. The tax savings comes in the form of a tax credit which can be used for offsetting current year or future tax liabilities. Although the credit itself is not refundable, it may be carried forward for up to ten years for most businesses. Fortunately for the taxpayer, these particular tax benefits are available on all qualified investments, even those that would have been undertaken without the credit. This credit cannot be used to offset the corporate minimum tax nor reduce the alternative minimum tax.

Although this tax program expired in 2004, the statute of limitations provides a small window to retrieve some unclaimed credits. Depending on their fiscal year ending date, businesses can still recover applicable credits from the last couple years of the program which were not claimed earlier.

In 2001, 2002 or 2003, if your company was engaged in a manufacturing process and purchased equipment, then you may qualify for these state incentives. Additionally, if you showed a profit in those years and paid income tax above the minimum tax, you can claim appropriate credits immediately. Of course, there are eligibility requirements for the benefits which include qualification of the taxpayer, qualification of the personal property acquired and qualification of the purchase costs.

But Time is Short! Make sure you have taken advantage of the state tax incentives available to you before the statute of limitations runs out.

Questions or comments, please e-mail TLarsen@property-taxes.com or call (562) 920-1864

Affirmations can have powerful effect

When you are struggling with issues in your mind, it is often helpful to practice affirmations. This can be done in different ways, either internally and silently or externally out loud or through the written word.

Practicing affirmations on a daily basis can have a powerful effect in moving your life in the direction you would like to go. For instance, to practice written affirmations, find a quiet comfortable place where you can have some privacy. Take along a pen and pad of paper. Spend a few minutes thinking about some things that you wish you had or wish were true in your life. These things can be material items in life, like a computer or non-material, such as a concept (you want to have more confidence when you are making a presentation, for instance.) Make a list of a few things that you want to work on or toward in your life. And then every morning first thing, write these things down like they are already true. For example, if you want a new computer, but you don't have a way of getting one right now, write: "I own the computer of my dreams." If you want to develop confidence as a presenter, write, "I am a confident presenter."

When these thoughts are focused on, it can often set your mind in motion and you might find yourself taking actions or finding ways to make your desires become realities.

Quotes

On fate

Fate is determined by what one does and what one doesn't do.
—Ralph Ellison

On intellectual growth

Intellectual growth should commence at birth and cease only at death.
—Albert Einstein

On growing up

Every human being on this Earth is born with a tragedy, and it isn't original sin. He's born with the tragedy that he has to grow up. That he has to leave the nest, the security, and go out to do battle. He has to lose everything that is lovely and fight for a new loveliness of his own making, and it's a tragedy. A lot of people don't have the courage to do it.

On talk

A gossip is someone who talks to you about others, a bore is someone who talks to you about himself, and a brilliant conversationalist is one who talks to you about yourself.
—Lisa Kirk

On ego

The nice thing about egotists is that they don't talk about other people.
—Lucille S. Harper

On fathers

A father carries pictures where his money used to be.
—anonymous

BUDGETING FOR PROPERTY TAXES: FEE SIMPLE VALUE AND LONG TERMS LEASES

Michael Barton, VP Real Estate Tax Services

As most of my co-workers will tell you, diplomacy has never been a specialty of mine. Nevertheless, I believe (even at my age) that I should keep trying. I will do so below. Briefly.

Psssst: I was driving around Southern California last Sunday, in a heavily and relatively newly developed area, and saw numerous vacancy signs. I nearly wrapped my 1988 Ford Escort (yeah, it has been a little slow in the Real Property Tax Appeal arena lately) around a tree from counting all the signs.

That prior paragraph is intentionally vague so as to avoid getting hate mail from brokers and so forth who are not amused by even a hint of a softening of the market (and that will conclude the diplomatic part).

At the risk of getting more ugly contact from the various Assessors around the State, it is probably a good time to discuss the concept of Fee Simple Value and how assessors play "do as I say, not as I do" (note that I'm not wasting any more of your time or mine being subtle here; if I had a relapse of diplomacy, I would say instead "how fee simple value impacts assessments in California …and most property taxing jurisdictions throughout the United States and greater Oklahoma").

Fee simple value is largely described as the price at which the unencumbered, unrestricted interest in a property subject only to legally enforceable governmental restrictions, would transfer for cash or its equivalent and meeting the additional conditions of cash value (willing buyer, willing seller, arm's length, knowledgeable parties, etc.)

One of the areas where this concept comes into play for assessment purposes is when a property typically large retail or industrial properties, sells with existing long-term leases in place. If the start date of the lease(s) is old and the rents have changed dramatically in the interim, the "value" of the property to the seller will be affected by the gap between market and contract rents (assuming the remaining term of the "old" lease(s) is significant). This value is the Leased-Fee value.

During the recent surge in demand for real estate in California, rents for many property types have been very much on the rise. Consequently, for many ownership transfers, the Leased Fee values have most often been less than the fee simple values would have been had the property been available on a fee simple basis (i.e. absent a long term, below market, lease). According to the tax codes, the Assessor is entitled to impute additional value to your base year assessment to reflect the price at which the property would have sold in this imaginary, fee simple transaction. (Example: 60,000 square foot industrial building leased for another 10 years @ $.40 foot per month for which market rent is $.60 psf. If the purchase price today is $3.5 million, the Assessor might place a value of as much as $5 million on the base year). And it is my experience that most Deputy Assessor's around the State are able to grasp this concept quite well, thank you.

Oh, but their understanding of this concept seems (shock!!) to take flight when the market rent is below contract rent. And this situation lends itself not only to a base year value issues, but also a Prop 8/decline in value appeal. Imagine a formal hearing situation where a taxpayer's representative imputes a market rent of $.40 to a property actually rented at $.80 psf. So, on a property where annual rent collected is $576,000, the taxpayer would capitalize only $288,000 for a value conclusion. This is a valid methodology but I can almost guarantee an uproar from the Assessor's Office.

Now getting back to my Sunday drive: If, and some would say when, demand for real estate in your neck of the woods turns around and rents/occupancy/prices begin to actually soften, the fact that your particular property isn't directly affected doesn't mean you don't deserve tax relief. Opportunities for tax relief can be very subtle, and often require the services of a competent property tax professional.

And I can recommend one.

TOOTING OUR HORN!

Although this is an informational newsletter, we would like to take the opportunity to brag about a sampling of our successes, from various industries, in the last quarter. These are the amounts of the refunds that our clients have received from the county, due to our work.

Aerospace	*$81,779.76*
Clothing Manufacturer	*$26,814.88*
Computer Products	*$1,096,411.75*
Food Manufacturing	*$143,053.46*
Healthcare	*$37,813.80*
Office Supplies Mfg.	*$22,767.58*
Printing	*$83,484.31*
Semi-Conductor	*$1,076,425.50*

Tax Tidbits

Support AB 2218

Creates a state sales and use tax (SUT) exemption (5.25%) for purchases of manufacturing equipment for calendar years beginning on or after January 1, 2007.

What Does the Assessor Do?

The Office of the Assessor has the following four primary responsibilities:

1. To locate all taxable property in the County and identify ownership.
2. To establish a taxable value for all property subject to property taxation.
3. To complete an assessment roll showing the assessed values of all property.
4. To apply all legal exemptions.

Dates to Remember

July 1 - First day of the property tax year (fiscal year).
July 2 - First day to file an Assessment Appeals application for equalization of assessment.

DEPRECIATION METHODS

Depreciation is a loss in value from all causes, including factors of physical deterioration, functional obsolescence, and economic obsolescence

Physical Deterioration

This is simply wear and tear or the using up of an asset by its use. In accounting for physical deterioration, it is important to look past the outward appearance of the equipment. Questions need to be asked as to whether the machine has been rebuilt, or has had parts replaced in order to determine true physical deterioration. Further, talking with the maintenance supervisor is a good way to accurately assess the true wear and tear on a machine in order to determine physical deterioration.

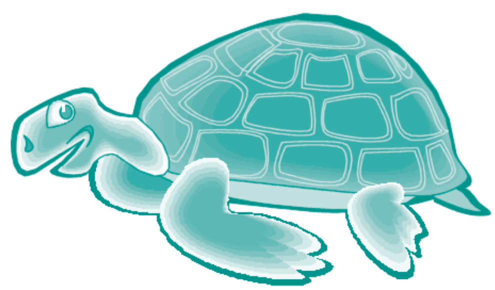
Functional Obsolescence

This is loss brought about by factors of over-capacity, inadequacies and changes in the state of the art that effect the property item itself or its relation to other items. Functional obsolescence is caused by lack of utility, excess capacity, change in design, inefficiency, or technological changes. When trying to account for functional obsolescence, it is important to keep the factors that contribute to it in mind when looking at equipment. In other words, when looking at equipment, it is important to take note as to whether the machine is still technologically on par with the industry standard and whether the machine is producing at full capacity or not.

Economic Obsolescence

This is the loss in value or reduced desirability of ownership arising from forces external to the property. The amount of economic obsolescence may be measured by the impairment of desirability, or useful life of an asset due to external forces. These forces include legislative enactment, changes in use, social change and change in supply and demand.

These three forms of obsolescence may exist independently or in conjunction with each other. However, each type of obsolescence must be accounted for separately and then that amount may be subtracted for the assessed value.



If you can't beat 'em—start your own company

Mary Kay Ash, who would later found the $2-billion-a year company Mary Kay Cosmetics, once worked for Stanley Home Products. There she learned the direct marketing scheme that would bring her fortune and fame. According to Anecdotage.com, she once received an incentive reward: a flounder light. The company had given her a light that she could clip onto waders when she went fishing. Mary Kay did not appreciate the gift.

Later, at the same company, she found out that she had been passed over for a promotion that was given to a man that she had trained. She learned that men were making $50,000 a year and she was only pulling in $25,000. That was all the incentive she needed. She took a month off, gathered up $5,000 and started her own company.

Her rewards for employees: pink Caddies.