PROPERTY TAX UPDATE

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SPRING 2012

Recovering a Late Filing Penalty

Patrick Laake, Tax Consultant

What happens if you forget to file your Business Property Statement before May 7th? The short answer is you will incur a 10% penalty to the assessed value determined by the assessor. For example if your fixed assets have an assessed value of $10,000,000 an additional $1,000,000 will be added to the assessed value equating to a total assessed value of $11,000,000. Assuming a 1% tax rate, your tax liability will be $110,000 if you filed late compared to $100,000 if you filed on or before May 7th.

According to California Revenue and Taxation Code Section 463:

If any person who is required by law or is requested by the assessor to make an annual property statement fails to file annual property statement within the time limit specified in 441 or make and subscribe the affidavit respecting his or her name and place of residence, a penalty of 10% of the assessed value of the unreported taxable tangible property of that person placed on the current roll shall be added to the assessment made on the current roll.

So what can you do to remove the 10% penalty? Well unfortunately the only way to do this is to file an appeal and present your case to the County Assessment Appeals Board. In order to have this penalty abated you must present evidence that the late filling was due to reasonable cause and not due to willful negligence.

Reasonable cause is defined as an event or the exercise of ordinary care or prudence that excuses or justifies failure to file the statement on time. Examples include having documentation that the Assessor's Office gave you wrong information of when to file or that the business property statement was sent to the wrong address and therefore was never filed. Willful neglect, on the other hand, is defined as conscious or intentional failure to perform a duty. Some examples of willful neglect would be consciously ignoring the deadline to file or having a long reported history of forgetting to file in a timely manner.

The best course of action to avoid any risk of being assessed a penalty is to make sure that the Business Property statement 571L is filed on or before May 7th.

Springtime in Paris

Property Tax Basics

Arthur E. Bennett, CMI, Vice President-National Property Tax Services

Most of you reading this article would probably be surprised to know that I am convinced you already know more about property taxes than I did when I started in the property tax department of Santa Fe Railway…..41 years ago. Of course I've picked up a little knowledge along the way since then, but at the time I was hired as a Tax Agent, my only exposure to property taxes was that I had just bought our first home and I had to pay my first property tax bill. I did not know the first thing about market value, assessment ratios or tax rates and much less about who determined all those things.

For those of you whose primary jobs are not property taxes, I would like to walk you through a high level review of the property tax process and point out along the way real and personal property tax issues that the property tax professional must deal with on a daily basis. You all probably know that taxes on property (real & personal) have been levied and collected since ancient times and were almost always based upon some standard of their value, hence the term ad valorem (according to value). However, to better understand and explore how some of the issues that affect your property tax assessments, we must start with a basic foundation of common terminology that exists within property tax.

Basic Terminology 101

Assessment Date: The designated date that the personal or real property is valued for tax purposes. Most states have an assessment date of January 1 for real and personal property; however, as in all areas of tax, there are exceptions

Assessed Value: The value placed on the personal or real property by the local assessor after the application of the appropriate assessment ratio (this varies from state to state and can vary from residential to industrial, to commercial). The assessed value may or may not be the tax value, if the jurisdiction has a 100% assessment ratio, then the assessed value will be the same as the market/full cash/taxable value, which is to name just a few of the standards of value.

Market/Full Cash/Taxable Value: The value that is used to determine the property tax due is calculated using this base value. Many jurisdictions calculate the tax due on the assessed value; however, jurisdictions may calculate tax due on a portion of the assessed value.

Lien Date: This is another name for the date that taxing jurisdictions value property "as of", similar to what is described above as Assessment Date. Some jurisdictions may consider this the date on which a county or state government may record a claim against a property with unpaid or delinquent property tax. Property tax that remains unpaid for the statutorily defined period may be seized and sold by the county or state government to satisfy the debt.

Payment Date: Date on which real or personal property tax is due. Most states require payments of unsecured personal property taxes in a single annual installment, but again, there are exceptions where local jurisdictions require semi-annual payments (New Mexico) and quarterly payments (New Jersey). Additionally, some taxing jurisdictions offer cash discounts to tax payments if they are paid in full at the time the first installment is due, again this varies extensively by state.

Rendition: An annual report filed by the taxpayer that identifies and classifies general business property (which generally is based upon the company's fixed asset listing and G/L) into assessor defined categories. These are also known as Business Personal Property Statements in many states. These categories are generally broken down into, Machinery & Equipment, Office Equipment, Tools, Dies & Jigs & Computers, then the assessor applies associated depreciation schedules based upon the life assigned by the assessor and are used in determining the personal property's market value. This is a major source of disagreement between taxpayers and the assessment jurisdictions, due to the fact that the implied depreciation contained within the tables does not always reflect the actual obsolescence that may exist i.e. physical, functional & economic.

Tax Year: The annual increment or period of time for which property is assessed. The most common tax year is the calendar year (January 1 - December 31) although there are plenty of examples of tax years that do not correlate to the calendar year. Many jurisdictions determine the taxable value based upon a January 1, lien date, but the resulting taxes are based upon a fiscal year July 1, to June 30.

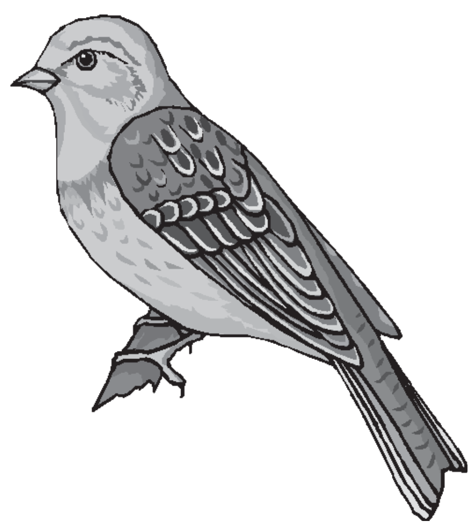
While discussing basic terminology, we need to discuss briefly the valuation methods that are utilized to determine the value of real & personal property for "ad valorem" tax purposes. First, as mentioned briefly before, property taxes are based upon a value. The Latin term "ad valorem" literally means….according to value; used in taxation to designate an assessment of taxes against property at a certain rate upon its value. An ad valorem tax is thus a tax assessed according to the value of the property. For purposes of determining the value for property tax purposes (as say compared to an insurance value, loan value, etc.) the mostly widely and commonly accepted valuation methods are: 1) the Cost Approach, 2) the Income Approach and 3) the Sales Comparison Approach. The following are brief definitions of these three approaches to value.

Continued

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 a few examples of the refunds that our clients have received from the county, due to our work.

Personal Property	
Aircraft Sales	*$92,801*
Audio Visual Equipment Rental	*$48,803*
Campgrounds	*$198,523*
Card Club	*$72,545*
Cement Mfg.	*$60,840*
Commercial Printing	*$409,106*
Data Center	*$1,851,715*
Electronics Mfg	*$30,926*
Entertainment Service	*$777,160*
Food Mfg.	*$166,837*
Internet/Mail Order Retail	*$39,078*
Paperboard Container Mfg	*$103,544*
Ocean Port	*$279,914*
Radio & Television Broadcast	*$173,017*
Search & Navagation Equip.	*$115,137*
Real Property	
Multifamily San Mateo County	$58,228
Office Property-LA County	$39,098
Multifamily-Santa Clara County	$284,931
Industrial-San Diego County	$100,519
Retail-LA County	$49,666
Multifamily-So. CA	$215,506
Single Family Res.-Riverside	$24,689
Flex-San Diego County	$182,812
Industrial-San Diego County	$100,519
Multifamily-Orange County	$237,996
Industrial-Los Angeles County	$37,001
Out-of-State	
Multifamily-King County, WA	$64,890



TaxTidbits

Taxpayers Still Winning Big in Assessment Appeals.

In assessment appeals heard in the 2010-11 fiscal year, taxpayers had their assessments reduced an astounding 81.2 percent of the time, according to a report released in February by the State Board of Equalization. Los Angeles County 84.7 percent had an assessment reduced. Orange County Taxpayers received an assessment reduction in 92.3 percent of their appeals. San Francisco County, with 91.7 percent of 899 appeals heard getting reduced assessments. A few of the counties that did not fare so well are, Plumas, Nevada, Tehama and San Benito.

Seniors in California May Be Able to Transfer Property Tax Rate to New Home.

People age 55 and older are allowed to transfer their current home's property tax liability to their replacement property. This is provided under Assembly Bill 60 (AB60) and allows seniors to keep their current property tax assessed value when they sell their home in California and buy another. Please see the website below for further information.

www.boe.ca.gov/proptaxes/faqs

New Construction

Albert Zamarripa, Vice President

Issue: Do replacement parts for fixtures (equipment) qualify for the assessment exclusion per Section 70 and State Board of Equalization- Rule 463.

Rule 122.5- Definition- (1) A fixture is an item of tangible property, the nature of which was originally personalty (emphasis added), but which is classified as realty for property tax purposes because it is physically or constructively annexed to realty with the intent that in remain annexed indefinitely. (2) The manner of annexation, the adaptability of the item to the purpose for which the realty is used, and the intent with which the annexation is made are important elements in deciding whether an item has become a fixture or remains personal property. Proper classification, as a fixture or as personal property, results from a determination made by applying criteria of this rule to the facts of the case.

Often, equipment located at manufacturing plants are fixtures due to their annexation to the realty (bolted down) in addition to their primary purpose. Per Rule 122.5, personal property that meets the 3 primary criterion of becoming a fixture may become real property, due to Physical Annexation, Constructive Annexation and Intent being the primary measure since the fixed equipment was intended by the user to remain annexed indefinitely.

Assessor Handbook 504- Fixed Machinery and Equipment

Assessor handbook 504 clarifies the matter concerning Fixed Machinery & Equipment (FME) - is defined as equipment which is physically or constructively annexed and intended to remain indefinitely with the realty.

The SBE states that M&E may be erroneously categorized as M&E, when in fact it should be reported as a fixture. The Board also states that "In addressing the question of annexation, we initially observe that the common law test of technical affixation of the article to the realty is no longer an absolute prerequisite to "fixture status" ". The clarification of affixation has long been argued but the SBE has clarified that even equipment which is not physically bolted down can be considered fixtures, solely by the intent of the item.

Rule 463

New construction applies to "real property" or a portion thereof whether it is an addition or alteration. Item b(4) indicates that "excluded from alterations that qualify as "newly constructed" is construction or reconstruction performed for the purpose of normal maintenance and repair and includes replacement of worn machine parts.

What is economic/external obsolescence?

JP Patel, Senior Tax Consultant

The American Society of Appraisers, defines Economic Obsolescence as "…the loss in value of a property caused by factors external to the property."

Specific examples may help you evaluate whether equipment value in your facility may be affected by economic obsolescence.

A medical device company product was selling very well and it did not have an adequate facility. This company built a new facility. As soon as the facility came on line, the Food and Drug Administration (FDA) determined that the product made by this company needed further testing. The equipment is new and capable of doing what they were intended for, but due to FDA decision, the value of this equipment is affected.

A food processing facility was built for bulk package retailers and warehouse clubs. Consumer preferences changes over time and they started demanding individual convenience packs or single serving items. This company sales declined in their bulk product and sales increased in individual packs. The value of equipment that made bulk product is affected due to factors unrelated to the functioning of the equipment.

Several cities have banned or phased out the use of plastic bags in the grocery stores. The value of the equipment used to manufacture these bags is affected irrespective of equipment capability.

Some industries are in decline due to economic factors in general such as construction, mining, etc. Others are being transformed due to internet, such as printing, pre-press, fax machine, CD/DVD manufacturing, camera, post-production video, etc. The value of this manufacturing equipment is affected due to factors beyond the control of the individual equipment owner.

Quotes

Inaction breeds doubt and fear. Action breeds confidence and courage. If you want to conquer fear, do not sit home and think about it. Go out and get busy.
—Dale Carnegie

A mother's love for her child is like nothing else in the world. It knows no awe, no pity; it dares all things and crushes down remorselessly all that stands in its path.
—Agatha Christie

Love is... Being able to tolerate emotional pain for the growth of another person.
—Unknown

Success seems to be connected with action. Successful people keep moving. They make mistakes, but they never quit.
—Conrad Hilton

The first half of our lives is ruined by our parents, and the second half by our children.
—Clarence Darrow

Consult not your fears but your hopes and your dreams. Think not about your frustrations, but about your unfulfilled potential. Concern yourself not with what you tried and failed in, but with what it is still possible for you to do.
—Pope John XXIII

Far away there in the sunshine are my highest aspirations. I may not reach them, but I can look up and see their beauty, believe in them, and try to follow where they lead.
—Louisa May Alcott

Property Tax Update

Continued from: **Property Tax Basics**

1) The Cost Approach - The reproduction or replacement cost approach to value is used in conjunction with other value approaches and is preferred when neither reliable sales data nor reliable income data are available and when the income from the property is not so regulated as to make such cost irrelevant. It is particularly appropriate for construction work in progress and for other property that has experienced relatively little physical deterioration, is not misplaced, is neither over- nor underimproved, and is not affected by other forms of depreciation or obsolescence. In the Cost Approach, four basic steps are involved: 1) The land is valued as if vacant, 2) The cost of the building is reproduced or replaced at current prices, 3) Physical depreciation and functional and economic obsolescence are subtracted, and 4) Land value is added to this figure.

2) The Income Approach - The income approach to value is used in conjunction with other approaches when the property under appraisal is typically purchased in anticipation of a money income and either has an established income stream or can be attributed to a real or hypothetical income stream by comparison with other properties. It is the preferred approach for the appraisal of land when reliable sales data for comparable properties are not available. It is the preferred approach for the appraisal of improved real properties and personal properties when reliable sales data are not available and the cost approaches are unreliable because the reproducible property has suffered considerable physical depreciation, functional obsolescence or economic obsolescence, is a substantial over- or underimprovement, is misplaced, or is subject to legal restrictions on income that are unrelated to cost. In the Income Approach, the value of the property is based upon its ability to produce a net rental income. A capitalization rate is then divided into this net income stream to convert it into the property's current value.

3) The Sales Comparison/Market Approach - When reliable market data are available with respect to a given real property, the preferred method of valuation is by reference to sales price. In using sales price of the appraisal subject or of comparable properties to value a property, the assessor shall, among other things convert a sale to the valuation date of the subject property by adjusting it for any change in price level of this type of property that has occurred between the time the sale price was negotiated and the valuation date of the subject property. Additional adjustments be may be required, to take into account, location, superior or inferior property characteristics, etc. In the Sales Comparison Approach, sales of similar properties are analyzed and a value is arrived at for the subject by comparison.

Summary-Conclusion:

By design this article was intended to present a high level review of the property tax basics to assist in dealing with some of the real estate and personal property tax issues that confront the non-Property Tax Professional. Look for future articles dealing with Compliance & Reporting, and Audits & Appeals. Because these areas of taxation can become extremely complicated, PTA specializes in this area of taxation and since we have over 250 years of accumulated experience, we have the requisite experience to handle the various complexities that face our clients.

When I was your age . . .

Josh loved golf. One day he arrived at a golf course hoping for a tee time, and the starter asked if he'd mind making up a twosome with another golfer, an elderly man who had a grizzled gray beard. Josh couldn't say no, and they both teed off and started down the fairway.

To Josh's pleasant surprise, his partner was a very good golfer, and they played a close game. When they got to the 18th tee, Josh saw a tall pine tree standing directly between him and the green.

"You know," said the old man, "when I was your age, I'd just tee up and hit my ball right over the top of that tree."

Josh took it as a challenge. He selected his club, teed up, and slammed his ball hard and high. The ball rose into the air, then hit a branch, ricocheted off the trunk, and flew right back to land not three feet from where Josh had teed off.

"Of course," said the old man, "when I was your age, that tree was only 12 feet tall."

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Property Tax Update

It's too bad for the middle income person. They earn too much to avoid paying taxes and make too little to afford paying them.

It's strange how a person with no sense of humor can come up with such funny answers on his/her tax return.

When making out your tax return, it's better to give than to deceive.

I hate junk mail . . .and that includes the tax forms they send me.

When it comes to income tax, most of us would be willing to pay as we go if we could only catch up on where we've been.

An income tax return is like a girdle. If you put the wrong figure in it your are likely to get pinched.

Income tax is Uncle Sam's version of "Truth or Consequences."

After a man pays his income tax, he knows how a cow feels after she's been milked.