

## **Our High Property Taxes – Do Our Assessors Make up the Rules?**

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Approximately two years ago our lower Hudson Valley market was impacted by negative publicity indicating that Westchester and Rockland County property tax assessments were amongst the five highest in the nation. The publicity was based upon census data used by the Tax Foundation and was reported in the New York Times. It reflected real estate taxes paid from 2006-2008 and showed that the median property tax bill of Westchester County residents was \$8,404.00, the highest in the nation.

### **Tax Grievance and Tax Certiorari Proceedings**

The terms “tax grievance” and “tax certiorari proceeding” refer to proceedings used to review and contest a real property tax assessment on a particular parcel of real property. There are two levels of formal review: (1) administrative review; and (2) judicial review. The administrative review process must be initiated first. A homeowner must file a form (RP-524) with the municipality’s Board of Assessment Review (“B.A.R.” or “Board of Assessment Review”). Most municipalities in the Hudson Valley have a B.A.R. with which a tax grievance is filed. Municipalities that do not have their own assessment roll, do not have their own Board of Assessment Review. A property owner can nevertheless file a tax grievance. The parcel will be covered under the greater municipality’s assessment roll and that municipality’s B.A.R. So for example, the Village of Port Chester does not have its own assessment roll nor a Board of Assessment Review. Properties in Port Chester fall under the Town of Rye’s (not the City of Rye’s) assessment roll and B.A.R. The B.A.R. then makes a determination as to the validity of the tax grievance application for properties in the Town of Rye including the Village of Port Chester.

If the B.A.R. denies the homeowner’s application and refuses to reduce the taxes on a certain property, the homeowner must file a tax certiorari proceeding, appealing the determination of the B.A.R. The tax certiorari proceeding is a judicial (court) proceeding. The objective of these proceedings is to reduce the tax assessment amount, thereby lowering a person’s overall real property tax burden. If a B.A.R. rejects a tax grievance, then a property owner has two options: (a) Small Claims Assessment Review (“SCAR”) (a low cost option available to aggrieved parties which need not involve an attorney and which is primarily used for owner-occupied, 1 to 3 family residential properties); or (2) a Tax Certiorari Proceeding filed with the State Supreme Court (which usually involves hiring an attorney).

### **Can Tenants or Purchasers Grieve Their Taxes?**

In certain circumstances a tenant can file a tax grievance provided the tenant is responsible for paying the taxes under a lease agreement and has the consent of the landlord. Alternatively, the tenant can do so if the lease provides the tenant with such

authorization. Similarly, a contract-vendee (i.e., a purchaser who is in contract to purchase the subject property and is authorized by the terms of the contract and/or has the current owner's consent) may also have standing to file a SCAR or Tax Certiorari application. In New York State, a SCAR or Tax Certiorari proceeding can only be used to possibly reduce a tax assessment. It can never be used to increase a tax assessment.

### **Who Sets the Standards for Real Property Tax Assessments?**

Municipalities hire tax assessors. Tax Assessors, either by experience or training, learn to establish the valuation of property within their municipality. According to the Bureau of Labor Statistics, in 2010, a Tax Assessor, based upon a national average, earned a median pay of \$48,500.00 per annum. (See Bureau of Labor Statistics, U.S. Department of Labor, Occupational Outlook Handbook, 2012-2013 Edition, Appraisers and Assessors of Real Estate).

In New York State, assessors are required to adhere to the same standards that a real estate appraiser must follow. These guidelines are referred to as the Uniform Standards of Professional Appraisal Practice ("USPAP"). These standards establish the requirements for the development of an appraisal procedure and the reporting of the results. The factors which are applicable to the valuation standards for all assessors in New York State are published on the website of the New York State Department of Taxation and Finance under "Valuation Standards". (See [www.tax.ny.gov/research/property/assess/valuation/index.htm](http://www.tax.ny.gov/research/property/assess/valuation/index.htm)).

### **What Happens When an Assessor Does Not Follow the USPAP Standards?**

Citing Westchester County as an example, we are seeing an inordinately high number of tax grievances filed. The extreme increase in grievances is mainly for residential properties (i.e. SCAR filings). In 2011, the number of SCAR applications filed was over 12,000, which was more than triple the amount filed only five to six years earlier. The increase in filings is directly related to difficult economic times combined with living in the Hudson Valley where real property taxes are among the highest in the nation. When an assessor does not follow the applicable standards, the determinations made by Tax Assessors may be challenged by utilizing tax grievance and tax certiorari proceedings. There are four (4) different bases upon which a tax assessment can be challenged. They are: (1) Unequal Assessment; (2) Excessive Assessment; (3) Unlawful Assessment; and (4) Misclassification.

### **Unequal Assessment: What is Selective Reassessment?**

The most common basis for appealing one's tax assessment is "unequal assessment". The single most common mistake made by assessors appears to be the use of "selective reassessment".

In municipal environments such as Nassau County and New York City, selective reassessment claims are rare. That is because certain taxing authorities, such as the City of New York and Nassau County, annually reassess all of their parcels. It is difficult, therefore, for an individual property owner to assert that similarly situated property owners were not affected by a reassessment.

The same is not true in Westchester, Putnam, Rockland, Dutchess and Orange Counties. There are many proceedings in these counties involving selective reassessment because most of the municipalities do not participate in an annual reassessment of all parcels.

“Selective reassessment” has been found by the United State Supreme Court and the courts of the State of New York to be a violation of the United States Constitution and the New York State Constitution. It violates the Equal Protection Clause. It involves discrimination because the Equal Protection Clause does not permit taxation which bears unequally on persons or property of the same class. The application of the Equal Protection Clause to tax assessments does not require that a tax assessor adjust all properties immediately on the basis of current market developments. Rather, it is a standard that must be applied in a reasonable fashion over time to apply to similarly situated property owners.

### **Reassessment Upon Sale**

Typically, selective reassessment comes about when an assessor decides to use the recent sale of a property to change the assessed valuation of the property without changing the assessment of all similarly situated properties in the jurisdiction. In the Matter of Stern v. City of Rye, the court determined that the assessor’s treatment of new property owners on the one hand, and long term property owners on the other, resulted in new buyers paying a disproportionately higher share of the burden for public amenities than property owners who had been in the City of Rye for an extended period of time. When an assessor adopts such a practice, gross disparities occur in the tax assessments. These are usually found to be illegal by courts and are sometimes referred to as “welcome stranger” assessments.

### **New Construction and Condominium Conversions**

It is not uncommon for assessors to assess new construction or condo conversions differently than comparable properties in the jurisdiction. When the assessor does so, the assessments become subject to challenge on the grounds of “selective reassessment”. Similarly, many homeowners have lived in fear of making minor improvements to their properties because of concerns that they may be disproportionately increasing their property tax assessments after making what are deemed to be “minor” improvements. In the Matter of Carter v. City of Mount Vernon, a real property tax assessment was increased 48.9% after the sale of a property allegedly because of “certain improvements” which the assessor discovered were made without proper permits by a prior owner. In this case, the assessor could not even identify the specific renovations

or improvements that were made. Accordingly, the court determined that the assessment was invalid.

### **What Does “Reassessment” Mean?**

“Reassessment” means the systematic review of all assessments in a specific municipal jurisdiction. When a reassessment occurs, it occurs as of a specific “valuation date” and such reassessments are governed by Section 305 of the Real Property Tax Law of the State of New York.

The assessed value of a property is not necessarily the same as the market value of the property. Assessed value is defined as either the market value or a percentage of the market value as determined by the assessor as of a specific date.

### **How Does a Homeowner Contest His or Her Tax Assessment?**

Each municipality has its own procedures and grievance periods for grieving tax assessments. A formal application (RP-524) must be made by the homeowner (or a purchaser or tenant as discussed above). The application must set forth the specific basis (i.e., unequal assessment, excessive assessment, unlawful assessment or misclassification) for the grievance. The Board of Assessment Review then makes a determination as to whether or not the assessment should be maintained or modified and provides the homeowner with its decision.

The property owner (or applicable party) has the right to appeal the B.A.R.’s determination by using one of the two methods mentioned earlier (i.e., by filing a SCAR or a Tax Certiorari proceeding).

Citizens in the Hudson Valley are experiencing a difficult time. Residents and local governments are encountering tough economic times. High real property taxes and insufficient tax revenue are among the main issues. The public perceives taxes on their residences to be much too high. Elected officials have difficulty meeting budget requirements and finding the revenue to fulfill basic commitments. Municipalities are financially strapped because property values are dropping, tax grievances are increasing and the municipalities (through their assessors) must deal with each and every case. This causes a huge strain on municipal resources. Most of the municipalities do not have the funds needed to hire assistants. Even outsourcing has become too costly. We can anticipate that challenges in the form of tax grievances and tax certiorari proceedings will continue to rise and remain commonplace for the foreseeable future.

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