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Trials & TRIBULATIONS

Challenging property tax assessments

It's property tax season again, and while the deadlines to contest real property tax assessments before local Boards of Assessment Review have passed, it is still useful to review the procedures involved in challenging assessments.

Commercial and residential property owners generally receive notice when assessments are increased. The Real Property Tax Law mandates that assessors inform the owners of real property of an increase. RPTL §510(1).

Municipalities set a date to hear complaints regarding property tax assessments — frequently referred to as “grievance days.” The RPTL requires an assessor to notify property owners of an increase no later than 10 days prior to the municipality’s grievance day. Unfortunately for taxpayers, the failure to mail such notices does not prevent the collection of taxes. *Id.*

The first formal opportunity for a taxpayer to seek review of his or her real property’s assessment involves the filing of a complaint before the Board of Assessment Review of the applicable municipality. Knowing the dates when the relevant municipality’s tentative roll will be filed and, more importantly, the dates scheduled by the relevant BAR to hear complaints, are crucial to ensuring that a grievance will be considered timely.

Although the information sometimes can be obtained from a municipality’s Web site, in some instances the sites can be difficult to navigate. The Web site for the New York Office of Real Property Tax Services provides a useful reference table that lists dates for municipalities in our area (see www.orps.state.ny.us/MuniPro).

In the City of Rochester, the tentative roll is filed on March 1, and grievance day falls on the third Tuesday of that month. This year, the city’s grievance day was held on March 17. In contrast, most towns and villages in Monroe County file tentative rolls on May 1 and schedule grievance day for the fourth Tuesday of that month. The Village of Pittsford files its tentative roll on Feb. 1, and hears grievances on the third Tuesday of the month.

The complaint challenging an assessment should be in the form created by ORPS specifically for that purpose. The form (RP-524) generally is available from a municipality’s Web site or from the ORPS Web site (www.orps.state.ny.us). A taxpayer can contest an assessment on the grounds that it is “excessive, unequal or unlawful, or that the real property is misclassified.” See RPTL §524(2).

The complaint must be filed with the assessor no later than the day on which the BAR is scheduled to hear such complaints. See

RPTL §524(1). Failing to properly file a complaint can be fatal to a taxpayer’s claim. For example, the complaint must be filed with the assessor, or a person designated by an assessor or the BAR to accept service.

In *Frei v. Town of Livingston*, 50 AD3d 1381 (Third Dept. 2008), counsel transmitted the complaint via overnight carrier five days before the designated grievance day. Unfortunately for the property owners, and their counsel, the package could not be delivered to the assessor’s office and ultimately was left with an employee at the highway garage. The package eventually made its way to the assessor, some 10 days after the deadline passed. The Third Department ruled that filing a complaint “with anyone else, even a different municipal employee, does not meet the technical requirements of the statute and deprives the court of jurisdiction.” *Id.* at 1382. The assessor’s rejection of the complaint as untimely was proper.

The BAR may request additional information in order to evaluate the appropriateness of the assessed value placed on a property. See RPTL §525(2)(a). Many BARs set forth a list of items that must be submitted with a property owner’s complaint. Although the failure to submit all of the items should not result automatically in a rejection of the property owner’s claim, it is advisable to cooperate with the BAR. See *Fifth Ave. Office Center Co. v. City of Mount Vernon*, 89 NY2d 735, 741-742 (1997) (noting that section 525(2) prohibits the reduction in an assessment only when a failure to disclose information to the BAR is willful, and holding that courts will dismiss a subsequent judicial proceeding only upon “proof that noncompliance was occasioned by a desire to frustrate administrative review”).

If a property owner is unsuccessful before the BAR, the next step is to file a verified petition pursuant to RPTL Article 7. The procedural requirements for filing Article 7 petitions are rigorous, and should be reviewed before such a proceeding is initiated. Importantly, an Article 7 proceeding must begin within 30 days after the filing of the final assessment roll. See RPTL §702(2).

In the City of Rochester, the final roll is filed on May 1, while most other towns and villages file final rolls on July 1. In the Village of Pittsford, the roll is filed on April 1.

The commencement procedures in section 703 incorporate the

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procedures outlined in CPLR §304. Petitioners also must comply with CPLR §403 and RPTL §704(1) (requiring service of notice and petition not less than 20 nor more than 90 days before return date).

Section 708 of the RPTL requires service of three copies of the petition and notice either to the clerk, the assessor or other officials listed in RPTL §708(1). With certain exceptions (see RPTL 708[3]), a copy of the petition and notice must be mailed within 10 days from the date of service to the superintendent of schools of any district in which the property is located, and to the county treasurer. Proof of mailing must be filed with the court within 10 days, and failure to comply with the section will result in the petition's dismissal, absent a showing of good cause. See RPTL §708(3).

When the property at issue has a combined value of more than \$1 million, a practitioner also should review the Seventh Judicial District's guidelines for the assignment of such cases to the Commercial Division. A signed certification indicating that the attorney has read and is in compliance with the guidelines must be filed and served with a Request for Judicial Intervention. A copy of the form can be obtained on the Seventh Judicial District Commercial Division's Web site at www.nycourts.gov/courts/comdiv/7thdistrict.shtml.

Article 7 also provides a procedure for small claims assessment review. See RPTL §§729-739. In order to use the small claims assessment procedure, a property must be residential, or unimproved and too small to contain certain residential struc-

tures. The equalized value of the property cannot exceed \$450,000 or the reduction requested cannot exceed 25 percent of the assessed value. The small claims procedures are set forth in 22 NYCRR 202.58, and copies of the relevant forms can be obtained at the Monroe County Clerk's Office.

In addition to the filing of a petition pursuant to Article 7, in some instances a practitioner may consider instituting litigation pursuant to Article 78 of the CPLR. In *Estrellita LLC v. Town Board of Town of Alexandria*, 2009 NY Slip Op. 02094, 875 NYS2d 402 (Fourth Dept. March 20), the Fourth Department affirmed that an Article 7 petition is not the only vehicle through which a property tax assessment can be challenged: Although "[a] challenge to an individual property tax assessment on the ground that the assessment was illegal, excessive or unequal should be brought in a *certiorari* proceeding under RPTL Article 7," a challenge to "the method employed in the assessment of several properties rather than the overvaluation or undervaluation of a specific property" can be raised in an Article 78 proceeding. *Id.* (alterations omitted).

While tax grievance day has passed, property owners and their counsel can take the opportunity to discuss their assessments informally with their assessor, and begin the process of addressing next year's assessments. If next year's tentative roll does not comport with your understanding of the value of the property, your best alternative is to prepare to file a grievance.

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