

Fiscal Year 2009 Real Estate Tax Abatements by Daniel C. Sacco

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In December 2008 and early January 2009, property owners and managers throughout Massachusetts will receive 3rd quarter real estate tax bills payable on February 2, 2009. They will have a short window of time to decide whether or not to file abatement applications for fiscal year 2009 by the due date of February 2, 2009. Although fiscal year 2009 covers the period from July 1, 2008 through June 30, 2009, its valuation date is January 1, 2008. Accordingly, property owners and managers should look at real estate market conditions existing on January 1, 2008 and the particular circumstances relating to their property on that date in evaluating whether an abatement application filing is appropriate.

The Facts

During calendar year 2007, Greater Boston office rents increased and vacancy percentages generally decreased. Based on these solid fundamentals, it is expected the Boston assessors will increase office assessed values for fiscal year 2009. As of January 1, 2008, retail rents were strong with significant rental increases in 2006 and 2007. During calendar year 2007, downtown Boston hotels experienced on average stable occupancy percentages with increases in annualized ADR (average daily rate) and RevPar (revenue per available room). The Greater Boston suburban hotel market experienced increases in occupancy, ADR and RevPar during 2007. The Greater Boston apartment market also saw improved fundamentals in 2007 with increased rents and higher occupancy.

The major negative factor facing commercial real estate on January 1, 2008 was the subprime mortgage crisis

which began in August 2007 and quickly spread to the capital markets for commercial real estate. Investment sales of commercial real estate which were at a record setting pace for the first three quarters of calendar year 2007 abruptly and precipitously declined, a trend which has continued through the first three quarters of calendar 2008. Lending for commercial real estate through CMBS (Commercial Mortgage Backed Securities) virtually disappeared and traditional lenders such as banks and insurance companies tightened underwriting standards with loan to value ratios changing from 90% to 65% or less. As a result of the credit market turmoil, a bid-ask pricing gap developed between sellers and buyers which continues to limit sales transactions and the paucity of sales has created uncertainty as to what are appropriate capitalization rates.

If rental income or occupancy levels in a property decline, the property owner or manager may wish to proactively contact local assessors in order to effectuate a lower assessed value for the next fiscal year without the necessity of filing for an abatement.

Looking Ahead

As the end of calendar year 2008 approaches, we are faced with reports of a deep recession, massive layoff notices in the financial services sector, downturn in consumer retail spending and ever increasing residential foreclosures. For fiscal year 2010 with a valuation date of

January 1, 2009 in Massachusetts, assessors tend to base assessed values on the operating results of properties in calendar year 2008 which generally were favorable for office, industrial, retail and hotel properties. Also, office, industrial and retail properties may be protected by the existence of long-term leases until lease rollover, when landlords may experience the effects of declines in rents and demand for space. Anecdotally, it appears that some retail landlords are receiving demands by struggling tenants for lower rents and early calendar 2009 will likely see an increase in retail store bankruptcies.

In Massachusetts and many other jurisdictions, assessors should assess values based on market rental rates on the valuation date and not contract lease rates. Thus, if market rents are lower on the valuation date than the contract rental rates of a property, the taxpayer may have a valid property tax abatement case. If rental income or occupancy levels in a property decline, the property owner or manager may wish to proactively contact local assessors in order to effectuate a lower assessed value for the next fiscal year without the necessity of filing for an abatement.

Conclusion

Given the valuation date of January 1, 2008 for fiscal year 2009, it may be premature for many Massachusetts property owners and managers to seek an abatement but they should be vigilant to protect their interests going forward against adverse changes in the real estate market or in conditions directly relating to their properties.

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