It's Not Too Late to Appeal Your Commercial or Industrial Property Taxes for 2011

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You may think that you're out of luck if you failed to appeal your company's 2011 real property tax valuation to the Board of Review in March.

Not necessarily so. If the real estate in question is classified as "commercial," "industrial" or "developmental" (look at the top of your 2011 Notice of Assessment for the classification), you can skip the Board of Review and appeal directly to the State Tax Tribunal in Lansing. The deadline to appeal is May 31, 2011.

So, now that you know it is not necessarily too late to appeal, it might be worth reacquainting yourself with how property tax values are calculated in Michigan.

Michigan imposes an ad valorem (meaning "according to value") tax on all real property in the state, exception for property that is expressly exempt from taxation. Since value is the basis for the tax, assessors must accurately and uniformly determine the true cash value of real property. The valuation date, also known as tax day, is December 31 of the prior year. So, tax day for 2011 is December 31, 2010.

The assessed value (AV) is 50 percent of the true cash value, as determined by the assessor. The state equalized value (SEV) is 50 percent of the true cash value, as determined by the State Tax Commission once all properties throughout the state have been uniformly assessed. If the local assessor has done his or her job properly, the AV will ultimately be adopted as the SEV.

Up until 1994, property taxes were based on a property's SEV. That's when voters approved Proposal A, which created the concept of taxable value. In the year immediately following a transfer of ownership, the taxable value of the property is the same as the SEV (i.e., 50 percent of the true cash value of the property on December 31 of the prior year).

Thereafter, until ownership in the property is transferred again, the taxable value of the property is the lower of either the SEV for that year or the taxable value for the prior year increased by the lesser of 5 percent or the rate of inflation. In this way, a taxpayer enjoys some tax protection in a rising real estate market and still receives a tax break in a falling market.

Generally, true cash value means the usual selling price or fair market value of property as determined by any method recognized as accurate and reasonably related to market value. The assessor usually uses the cost approach, modified by the application of an economic condition factor, and processed through a computerized mass appraisal.

Under the cost approach the assessor values the land based on the sales comparison approach of comparable vacant lots in the area. The assessor then values the reproduction cost of the improvements based on current local prices of labor and materials. Physical deterioration, functional obsolescence and economic obsolescence are then deducted.

The assessor then adjusts the value by an economic condition factor to try to bring the cost value in line with what properties are selling for in a particular area. While ideally each property would be individually evaluated each year, such an effort would require significant effort and resources.

To streamline the assessment process, assessors use mass appraisal to value properties. This means that once all of the relevant data in the initial assessment has been taken into consideration, the assessor generally relies on market studies for several years thereafter to adjust the true cash value (and thus the AV) of the property from year-to-year.

Private appraisers, on the other hand, usually use the sales comparison approach and/or the income approach to valuing commercial or industrial property. The cost approach might be used simply as a check on accuracy. This means that sometimes the appraisal that a company might have in its files (say, from a recent refinancing) reaches a very different valuation result from the assessment.

The good news is that the Tax Tribunal usually adopts the sales comparison approach, the income approach or a combination of the two. For this reason, once the assessment is appealed to the Tax Tribunal the assessor will often retain a private appraiser to complete a sales and/or income-based appraisal.

So, if you have a recent appraisal that reaches a valuation conclusion that is substantially different from your assessment, you might want to give serious thought to making an appeal. An appeal is not inexpensive. The filing fee can be $600 and you will probably have to pay for a lawyer and a new appraisal (since the Tax Tribunal typically does not accept the "summary" form of appraisal done for lenders).

But, since Proposal A provides a cap on taxable value, reducing your 2011 SEV to a level below the current taxable value could reduce your company's property taxes for many years to come. You could look at it as an annuity.

Finally, you may have heard that the Tax Tribunal is backlogged and that cases may take years to go to trial. At present, that is true. However, Governor Snyder recently signed an executive order to streamline procedures and add more personnel to the Tribunal, which should mean that the backlog will slowly recede.