Taming Your Property Taxes

TAMING YOUR TAXES

Scott Beattie
Beattie & Aghazarian, LLP

From the real estate recovery beginning in the latter half of the '90s, to the market peak in late 2005 (residential) or 2006 (commercial), to the current deep recession, real estate owners and investors have been on a roller coaster ride. If your hands are in the air, it's not to enhance the thrill of the ride, but a sign you have given up. But even though the "thrill is gone," property owners can improve their bottom lines by obtaining temporary or in some cases more permanent reductions to their property taxes.

Property owners who will benefit most are those who still own property acquired in the high value era (from about year 2002 through mid 2007). I recommend that all property owners review their property tax bills to determine whether they are now paying too much. In particular, real estate owners need to understand the difference between a temporary and a permanent reduction in property taxes so they can take advantage of the situation and obtain long term reductions to their property taxes where warranted. Otherwise they may find that their property taxes rapidly increasing again to high value levels when the market recovers.

If the assessed or "factored value" of your property as of January 1, 2009 is higher than its market value as of that date, then you can seek a reduction in your property taxes for the coming (2010-2011) assessment year. You can do so either by (1) making an informal request to the County Assessor's Office for a "Proposition 8 Decline in Value" review, (2) making a formal appeal ("Request for Changed Assessment") to the Board of Supervisors (if your informal request isn't granted), or by (3) changing ownership in a manner that results in a more permanent reassessment.

Property Tax Valuation

First let's looks at three property tax valuation concepts. The first concept is known as the "Base Year Value". Under Proposition 13, the Base Year Value serves as the starting point for measuring the maximum Prop 13 assessment value. The Base Year Value generally the market value of the property as of the assessment year in which the property is acquired or the year in which a

"change in ownership" occurs.

The Base Year Value may be adjusted if the property is renovated or new construction occurs, but a new Base Year Value will not be established unless there is a change in ownership. This is known as the "factored base year value" or "factored value" which is generally published by the local assessor before the value is formally enrolled on the local tax roll which occurs on July 1 of each year. This is capped under Prop 13 at no more than 2% year over year increase.

The last valuation concept relevant to this discussion is "Market Value". Market Value is defined under Revenue and Taxation Code (Section 110) using a willing buyer, willing seller approach. So it is the price at which a property, properly marketed, would transfer for cash or its equivalent under prevailing market conditions using a January 1 valuation date. Market Value may be above or below Factored Base Value. Market Value is relevant whenever a change in ownership occurs to establish the new base year value, and is also relevant whenever the market value declines below the factored value.

Until recently, the factored adjustments have generally been increased at a 2% rate because cost of living factors have generally exceeded the 2% maximum amount allowed under Prop. 13.

Proposition 8 allows temporary reduction

Proposition 8, passed by the voters in 1978, allows taxpayers to claim a temporary reduction in value whenever a property suffers a "decline in value." In such cases as now exist for many property owners, taxpayers can file a Proposition 8 "Decline in Value" request to have the assessed value of the property reviewed and temporarily

See Taming Your Taxes *Page 32*

Taming Your Taxes Continued from Page 22

reduced to the market value as of the most recent January 1 assessment lien date.

Alternatively, property owners can file a formal Assessment Appeal using an Application for Changed Assessment.

Because adjustments under Prop. 8 or a formal appeal are temporary reductions which do not change your Base Year Value, your factored value can be increased on a year over year basis by much more than 2% in future years if you have had periods of recovery after a lengthy decline. At some point we will see year over year increases of 10% or 20%, resulting in much higher property tax costs for owners.

Many people have received temporary reductions through their local assessor resulting in lower property tax bills. The Assessor's voluntary reductions often have generally not kept pace with the market (no surprise since they have a vested interest in receiving property tax revenue).

But without a change in ownership the reduction in assessed values is only temporary. Very few Assessors are helping find the best long term solution which may require a determination of whether you can make a "change in ownership" to obtain a new "Base Year Value" at today's lower values.

I recommend that property owners obtain an independent review of their property values by looking at comparable sales that occurred in neighborhood and, if warranted, obtaining an appraisal. You can use this information to prepare your own "Proposition 8 Decline in Value Statement" or to file a formal Application for Changed Assessment. A lot of helpful information, including forms, is available on the State Board of Equalization website (http://www.boe.ca.gov/ proptaxes/proptax.htm). A Decline in Value request must be filed with the Assessor before July 1, 2008 and you must file an "Application for Change of Assessment" with the Board of Supervisors by September 15th (or in some cases November 30th) if it is to apply to the 2010-2011 tax year.

More permanent reduction is complex

If you want to go obtain a more permanent reduction, there are additional complexities involved. There are several ways to change ownership, such as transferring title to a partnership in which a new person owns some small percentage (e.g., owners can transfer ownership of a property to a limited partnership or LLC with a child or key employee added on as a limited partner as to some small percentage.

Alternatively a transfer to certain types of irrevocable trusts will trigger a change in ownership.

There are a number of legal and tax issues to consider when changing ownership. To list a few: how to vest title (form of title), selection of the right type of entity (if any), navigating the complex tax rules applicable to irrevocable trusts, whether the transfer is approved by a lender or will cause an acceleration of a loan, whether the transfer will have income or estate and gift tax consequences. Property owners should consult with their tax and legal advisors before a change of ownership is attempted.

The full details about how to prepare and substantiate a Proposition 8 Decline in Value request or an Application for Change of Assessment are beyond the scope of this article.

"I recommend that property owners obtain an independent review of their property values by looking at comparable sales that occurred in neighborhood and, if warranted, obtaining an appraisal."

Scott G. Beattie, JD, LLM (Tax)

If you wish to obtain more information on Property Tax Reductions, write to "Property Tax Reduction" in care of Scott G. Beattie at Beattie & Aghazarian, LLP; 3031 W. March Lane, Suite 211W, Stockton, 95219 or e-mail me at Scott@Legacy-Law-Group.com.

Scott Beattie is a partner at Beattie & Aghazarian, LLP. He specializes in estate planning, business planning, and tax and real estate law. He is certified as a specialist in estate planning, trust and probate law by the California State Board of Legal Specialization.