



May 2006

ENVIRONMENTAL CONTAMINATION CAN RESULT IN TAX SAVINGS

Over the past two decades, property owners and buyers have become increasingly aware of the financial burdens associated with environmentally contaminated property. The cost of remediating environmental contamination may far exceed the value of the property. As a result, conducting an environmental study has become a standard procedure in commercial real estate transactions, regardless of the past use of the property.

Owners of contaminated property are often faced with high property taxes, based on the fact that the property was valued as if it was not contaminated. Recently, New York State has begun to recognize the burden created by contaminated properties, which has led to potential tax benefits for owners of such properties. In the landmark case of *Commerce Holding Corp. v. Board of Assessors of the Town of Babylon*, the Court of Appeals ruled that environmental contamination must be considered in assessing real property taxes, paving the way for an owner of contaminated property to seek to reduce the assessment through a tax certiorari proceeding.

The Court in *Commerce Holding* did not specify the exact method for assessing the economic effect of contamination on the assessed value of property, but it did provide several factors to be considered: (1) the extent of the contamination; (2) whether or not the property is a Superfund site; (3) the estimated cleanup costs; (4) the present use of the property; (5) the ability to obtain financing; and (6) the stigma remaining after cleanup. In that case, the Court upheld a property valuation which took cleanup costs into account, thereby allowing the property owner to realize a significant tax savings.

Property tax savings may also be available if a contaminated property is part of the Brownfield Cleanup Program, ("BCP"). The BCP was created to encourage voluntary remediation of contaminated "brownfield" sites. An applicant who executes a Brownfield Cleanup Agreement commits to undertaking certain remediation

activities with oversight by the New York State Department of Environmental Conservation. Once the remediation of a BCP site is completed and the State has issued a certificate of completion for the site, a taxpayer may be eligible for tax credits. If you own or are considering purchasing contaminated property, you should consider a legal consultation. Valuable tax benefits may be available to you.

REDUCED ASSESSMENT FROM TAX CERTIORARI PROCEEDING PROVIDES A THREE YEAR BENEFIT

Real Property Tax Law §727 provides that once a property tax assessment is lowered as a result of a certiorari proceeding, it cannot be raised for three years. The purpose of the statute is to prevent tax assessing entities from forcing a taxpayer to go to court year after year and to ensure that the expenses related to a tax grievance don't negate the benefit. Often, tax certiorari proceedings culminate in a negotiated settlement rather than a judgment after trial. In such cases, Hancock & Estabrook can make sure that the benefits of §727 are incorporated into a settlement agreement.

The deadline for filing tax grievance petitions in most towns in New York State is the fourth Tuesday in May. If you own property which you believe may be overassessed, the real property valuation attorneys at Hancock & Estabrook can advise you, explaining the grievance process and potentially challenging the assessment on your behalf.

ESCALATING PROPERTY VALUES LEAD TO REVOLT AGAINST “VIEW TAX”

Low interest rates and a strong economy have led to soaring real estate values in many parts of the country. While these escalating values bring some obvious benefits to property owners, they often come with a dark side — a higher property tax burden. In extreme situations, the increased property tax bill can force long-time land owners to reluctantly consider selling their property.

Recently, taxpayers have become increasingly vocal in their opposition to rising tax bills. Taxpayers in Orford, New Hampshire have been particularly vocal in challenging what they call the “view tax.” The high number of Boston residents seeking second homes with desirable views of the New Hampshire and Vermont countryside, and the limited number of such properties, have caused values of rural properties in those states to skyrocket. Properties with a scenic view have been assessed for much higher values than similar properties without a view. Many taxpayers see this as an unfair tax on something they do not own and have no control over. In one extreme case, a one room cabin with no electricity, running water, phone service or driveway was assessed at \$200,000, primarily because of its desirable view of the surrounding hills. Angered at what they perceive to be an improper tax, local property owners have started a movement to “ax the view tax.” The dispute arose after some New Hampshire municipalities began listing the “view factor” as a separate line item on assessment forms, allowing property owners to see for the first time exactly how much of their assessment is attributable to their view.

State officials counter that there is no such thing as a “view tax.” Rather, they maintain, the quality of a property’s view, like its proximity to a lake or river, is simply a factor to consider in assessing real property. They claim that rather than assessing a view, the assessment reflects the increased value of the property resulting from numerous buyers seeking a limited number of view-enhanced properties.

While most would agree that a property’s assessment should increase with its market value, the rapid increases in property values in many parts of the country are leading to taxpayer movements to limit tax burdens. As long as land values continue to appreciate faster than the incomes of

property owners, more efforts to limit the tax burden from rapidly increasing real property values are likely. Absent new legislation in New York, vistas will continue to be a factor in properly assessing property values.

RULES FOR COMMENCING TAX ASSESSMENT PROCEEDINGS REQUIRE STRICT COMPLIANCE

An important but often overlooked aspect of tax assessment review proceedings is the need to comply with sometimes confusing service procedures set forth in the Real Property Tax Law. A taxpayer failing to comply with those procedures risks having the proceeding dismissed. The Appellate Division, Third Department, so held in a recent appeal where the municipality was successfully represented by Hancock & Estabrook, LLP.

In *Wyeth Ayerst Pharmaceuticals, Inc. v. Town of Champ-lain*, Wyeth sought a substantial reduction in its tax assessment for 2002/2003, serving its petition upon the Town by certified mail rather than by personal service, as required by the statute. The Town did not seek dismissal of the proceeding based on improper service. The next year, Wyeth brought a second proceeding to challenge its assessment for 2003/2004, again serving its petition by certified mail. This time, the Town objected to the improper service and moved to dismiss the petition. The lower court denied the motion, holding that the Town had waived its right to challenge service in this proceeding by failing to raise the issue in the earlier proceeding.

The Appellate Division disagreed, reversing the lower court’s ruling and dismissing Wyeth’s 2003/2004 petition. The Court expressly rejected Wyeth’s argument that the municipality had waived its right to require personal service by accepting the petition the first year it was improperly served. By so doing, the Appellate Division not only affirmed the exacting nature of the rule requiring strict compliance with the service and filing provisions of the Real Property Tax Law, but also affirmed the rule that each tax year is a new proceeding which stands — or falls — on its own merits. The lesson for property owners to take from *Wyeth* is that the rules governing tax assessment proceedings, while perhaps overly technical, are crucial and must be followed exactly. The failure to do so may have serious financial consequences.



Real Property Valuation Practice Group Attorneys:

David G. Linger, John R. Varney and James S. Skloda

“Real Property Valuation News” is published periodically and is the sole property of Hancock & Estabrook, LLP, with all rights reserved. The articles contained herein are for informational purposes only and are not intended as legal advice.

Copyright Hancock & Estabrook, LLP 2006