

CLIENT UPDATE



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Andrew's practice involves a variety of commercial real estate matters, including acquisitions and dispositions, zoning, permitting and development, leasing, financing, section 1031 tax deferred exchanges, condominium creation and real estate tax abatements and appeals. He regularly represents parking garage owners, retailers, financial institutions, borrowers, landlords, tenants, owners, developers and pension fund advisors on these matters. Andrew has considerable experience and expertise in Boston zoning, permitting and development matters as well as negotiating real estate tax abatements and appeals with local assessors and the Commonwealth of Massachusetts Appellate Tax Board.

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MASSACHUSETTS REAL ESTATE TAX ABATEMENTS IN 2010 - NUTS AND BOLTS

The fiscal year for local real estate taxes in Massachusetts begins on July 1 and ends on June 30 of the following calendar year. For each fiscal year, real property is assessed as of January 1 of the preceding calendar year. For Fiscal Year 2010 (July 1, 2009 - June 30, 2010), January 1, 2009 is the date on which real estate values are established. The assessed values for January 1, 2009 are derived from market data for calendar year 2008.

This is significant for real estate owners, developers and investors. Calendar year 2008 marked the beginning of the real estate market's current downturn; (i) lending standards tightened, (ii) the unemployment rate skyrocketed, (iii) leasing rates for all property classes dropped, (iv) property vacancies increased and (v) capitalization of income rates meaningfully increased. All of these factors caused property values to drop significantly. Real estate owners should have persuasive arguments to make in the event their properties are assessed above their "fair market value" which is the assessing standard in Massachusetts and the price at which a willing seller would sell the property to a willing buyer in an arm's-length sale if neither party

was under compulsion and each was aware of all relevant facts. See *Boston Gas Co. v. Assessors of Boston*, 334 Mass. 549 (1956).

A real estate tax abatement application must be filed with the local board of assessors on or before the due date for the payment of the first installment of the actual tax bill. The face of the tax bill should indicate the due date for payment and for the filing of an application for abatement. For municipalities that use a quarterly billing system, the final date for filing a tax abatement application for Fiscal Year 2010 will most likely be February 1, 2010. In communities that use a semi-annual billing system, the due date is generally thirty (30) days from the mailing of the actual tax bill. A tax abatement application that is not received by the local board of assessors on or before the applicable deadline will be denied by operation of law.

Taxpayers must pay their actual real estate tax bill on time in order to preserve their right of appeal to the Commonwealth of Massachusetts Appellate Tax Board ("ATB"). A tax abatement application must be filed on a form approved by the

Massachusetts Department of Revenue which should be made available by the local board of assessors. After the tax abatement application is filed, the local board of assessors may request information reasonably required to determine the fair market value of the property, including information relating to income generated at the property and operating expenses at the property. A taxpayer may lose its right to appeal an abatement decision to the ATB if it does not comply with the information request within the applicable time period.

Once a tax abatement application is received, the local board of assessors have three (3) months in which to grant, deny, or take no action on the abatement application. The application is deemed denied if the local board of assessors does not act within the three (3) month time period. If the taxpayer is dissatisfied with the decision or non-action of the local board of assessors, an appeal may be filed with the ATB. A petition to the ATB must be filed within three (3) months of the date of the board of assessors' decision or failure to act together with a filing fee based upon the assessed value of the property. Because an assessment is presumed valid by operation of law, taxpayers bear the burden of proving that their property is overvalued at the ATB.

By obtaining real estate tax abatements for Fiscal Year 2010, owners, developers and investors should have an opportunity to achieve substantial savings. In this challenging real estate market where tenant vacancies are common, owners, developers and investors can no longer pass all real estate taxes through to tenants. Given the potential savings, parties should prepare their tax abatement applications now.

If you have any additional questions regarding this Update or have any other Real Estate needs, please contact any member of the Real Estate Law Group.

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