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Real estate tax statutes say that an "aggrieved taxpayer" may file an appeal but the burden of proof is placed squarely on the shoulders of the "aggrieved." Any property owner, tenant under a net lease who pays the taxes, mortgagee or holder of tax sale certificate on the property in question who believes the tax assessment is unfair has the right to appeal.

With the deadline for 1998 real estate tax appeals approaching, taxpayers are reminded that their appeals must actually be in the clerk's office on April 1 to be considered validly filed. Appeals may be filed at the County Board of Taxation for all properties assessed at \$750,000 or less. Properties assessed at more than \$750,000 may file either with the county board or directly to the Tax Court of New Jersey. A taxpayer filing with the county will have a hearing within 90 days of April 1.

To win a reduction in a 1998 real estate tax assessment, the taxpayer must prove that the assessment is incorrect by proving the fair market value of the property in question on October 1, 1997 was lower.

Three Ways to Determine Value

There are three approaches to determine the value of a property:

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the *cost* approach, the *market sales* approach and the *income* approach.

If the property is income-producing, the experts will typically rely on the income approach to value. In this approach, the expert capitalizes the net income from the property to arrive at a market value. The tax court will only utilize a one-year direct capitalization of the income to arrive at value. The court will not accept a discounted cash flow for tax assessment purposes. However, if a property sells in an arms length transaction, this will typically be the best indication of value.

In one case, the Tax Court judge had ignored the sale of the property under appeal within three months of the Oct. 1 assessing date. The taxpayer had purchased the property in December of the pre-tax year. The assessing date was the previous October. At trial, the taxpayer presented an appraisal report utilizing the income approach to value and the sales price of the property. The Tax Court judge and the Appellate Division had refused to accept the sale price of the property as market value for valuing the property since the sale occurred after Oct. 1. In a reported decision, the state Supreme Court held that the sale of the property was the best indication of value

for tax assessment purposes.

Taxpayers may file an appeal each year as each year's assessment stands on its own. After the appeal is filed to the county board of taxation, a hearing will be

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scheduled. At the time of the hearing all first quarter taxes and municipal charges must be paid. The case can be settled with the tax assessor or tried before the tax board. Remember, the municipality need not attempt to justify its assessment. The taxpayer must overcome a presumption of correctness of the assessment. If it so chooses, the municipality may present expert testimony of its own of the fair market value of the property. In this situation, the town will hire a licensed real estate appraiser whose report must be given to the taxpayer 7 to 10 days before the hearing.

A judgement entered by the

County Tax Board after a trial may be appealed to the Tax Court of New Jersey by either the taxpayer or the municipality.

An interesting set of circumstances surrounds an appeal of a decision of the county tax board to the Tax Court. The taxpayer must have all taxes and municipal charges paid in full at the time the appeal is filed with the Tax Court. This requirement means that if the county tax board renders its decision on Aug. 1, the taxes and charges for the first three quarters of the current year must be paid in full at the time of the filing with the Tax Court. If the taxes and charges are not paid in full, the court *does not* have jurisdiction to hear the matter and the case *must* be dismissed. The taxpayer cannot remedy the situation by paying the taxes later.

Typically, when an appeal is filed to the Tax Court from the county tax board and the taxes are not paid, the town will make a motion to dismiss the appeal. The taxpayer will not be afforded the opportunity to pay retroactively since the court has no discretion in this case and is mandated by law to dismiss the appeal. These rules were challenged unsuccessfully before the state Supreme Court and the U.S. Supreme Court would not hear the case.

Taxpayers who wish to appeal their real estate tax assessments are well advised to seek the counsel of a qualified firm to determine the proper course of action. If it is determined that an appeal is warranted, the firm will generally file the action with the fee contingent upon the outcome of the appeal. Filing a successful real estate tax appeal could result in significant bottom line tax savings.