

Law Report

NOW, MORE THAN EVER, IT IS IMPORTANT TO HIRE AN ATTORNEY TO CONTEST YOUR TAXES

by Joanne P. Elliott



Joanne Elliott

“The case for hiring a lawyer is even more compelling when you consider the opportunities for obtaining tax refunds after the tax bill has been paid.”

Note: This is a re-print of an article that appeared in our 2000 newsletter. This article received the attention of the Illinois State Bar Association (ISBA) which published it in their newspaper with our permission. The ISBA then asked Joanne Elliott to testify before the Illinois Senate Finance Committee which was considering a bill that would have allowed non-lawyers to represent taxpayers in tax appeal cases. Joanne appeared before that committee to testify and answered a number of questions from members of that committee, including Senator Barrack Obama. The bill that Joanne testified against did not pass out of committee. We believe this article remains relevant today.

Aside from mortgage payments, real estate taxes are generally the single-largest expense of owning commercial property. Experienced property owners know this. And, they realize the importance of contesting taxes to the fullest extent possible.

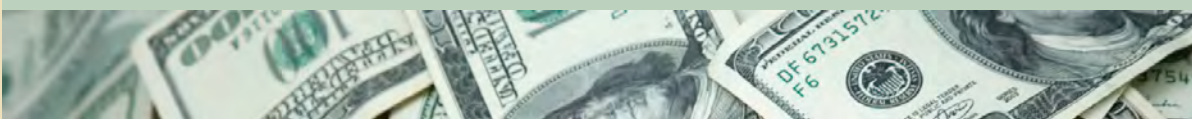
In the Chicago Metropolitan area, there is an abundant supply of competent lawyers who represent taxpayers in this area. In recent years, we have also seen a surge in non-lawyer “tax consultants”. Given the dollars involved and the inherent limitations in using non-lawyer tax consultants, we strongly believe that taxpayers are well advised to hire an attorney – whether it is an attorney from this firm or one of many competent others.

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Relief before the tax bill is issued

The law allows taxpayers two opportunities to contest the assessment before the tax bill is issued. The first is before the County Assessor and the second is before the County Board of Review. Non-lawyers are allowed to represent taxpayers before the Assessor but they are prohibited from representing taxpayers before the Board.

Our firm routinely obtains substantial assessment reductions for our clients from Assessors and Boards of Review. And, it is common practice in the Chicago area to routinely appeal assessments to both the Assessor and the Board.



But what happens when the taxpayer hires a non-lawyer tax consultant? Will the tax consultant recommend that an appeal be filed to the Board if he is prohibited from filing that appeal? And, if an appeal is recommended, who will actually file it if the consultant cannot?

It appears that many consultants associate with lawyers in order to file Board appeals. Sometimes these lawyers operate as “fronts” for the consultant. The complaint is filed under the lawyer’s name but the lawyer does little if any substantive work on the case. Sometimes, the consultant files the complaint in the taxpayer’s name thereby skirting the Board’s rules (but in this case, the opportunity to argue in person before the Board is lost unless the taxpayer intends to appear and argue the case himself). It should be noted that if the Board learns that its rules regarding non-lawyer representation have been violated, they may dismiss the case.

In other cases, the consultant will hire a lawyer to legitimately represent the client before the Board for a fee. In that case, it will be the lawyer who gets the job done for the client.

But does this make sense? Why hire a tax consultant to represent you if the consultant will need to hire a lawyer to complete the job? Why not hire a competent lawyer in the first place? And if a lawyer is going to be hired to represent you, do you want to leave the hiring decision to someone else?

Relief After The Tax Bill Is Issued

The case for hiring a lawyer is even more compelling when you consider the opportunities for obtaining tax refunds after the tax bill has been paid.

The law allows taxpayers to appeal Board decisions to either the State Property Tax Appeal Board (PTAB) or the Circuit Court of Cook County. Many of these cases are settled. Others go to trial. But most are settled in favor of the taxpayer and result in substantial tax refunds.

As is the case with the Board, non-lawyers are prohibited from representing taxpayers before PTAB or in Court. Moreover, the timing for filing complaints before PTAB is very limited (PTAB complaints must be filed within 30 days following the Board’s decision). Therefore, a lawyer must get involved immediately after the Board renders its decision.

So, what happens when a taxpayer hires a non-lawyer tax consultant? First, it is possible that the assessment may never be contested with the Board in the first place. And, if that happens, the taxpayer will be precluded from filing to PTAB or Court. Second, if the tax consultant files a complaint in the taxpayer’s name or if a lawyer “front” is used, will a legitimate lawyer be hired fast enough so that a PTAB complaint can be filed within the 30 day filing period? And third, if an appeal to Circuit Court is the preferred route, will the consultant ensure that all filing requirements are met and that an attorney is hired to file the Court appeal on a timely basis? Or, will the right to appeal in Court be lost as well?

Whatever the case, I reach the same conclusion. The job can be started by a tax consultant. But, if you want to pursue all available appeal routes, you will eventually need to hire a lawyer.

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EXPANDED TAX INCENTIVES FOR COOK COUNTY

Cook County offers several tax incentives to owners of commercial and industrial property. The incentives are valuable, reducing property taxes by 55% over a 12-year period. They apply when a new building is built, an existing building is substantially renovated and enlarged, or when “abandoned property” (a building vacant long enough) is re-occupied. The incentives apply to industrial property anywhere in Cook County and to commercial property in economically disadvantaged areas.

Cook County has expanded these incentives over recent years. Under prior law, the incentive for re-occupancy of



abandoned property only applied to bona-fide purchasers for value; however, recent changes allow existing owners to qualify if their buildings were vacant for at least one-year and approval is obtained from both the municipality and County. Another recent change (called the SER program) allows long-term owners of industrial buildings to qualify if they can demonstrate their business suffers an economic hardship due to factors related to the building they own or lease (such as deferred maintenance, blight, vacancy, etc.).

In 2014, the County adopted a new incentive that applies to commercial projects that would not otherwise be economically feasible without assistance. This is known as Class 7c or the CURE program.

The CURE program offers a 60% reduction in assessment for three years, a 40% reduction in year 4 and a 20% reduction in year 5 and can be renewed for an additional 5-year term. The basic eligibility requirements are as follows:

- The property’s assessed value, equalized assessed value or real estate taxes for three of the last six years must have declined or remained stagnant due to the depressed condition of the property.
- There must be a reasonable expectation that the project is viable, will likely go forward if CURE is granted and that CURE will result in the economic enhancement of the property
- The project must satisfy “but for” and “condition subsequent” tests. Essentially, this requires that the commercial development project will not go forward without the CURE incentive and the commercial development will remain feasible after the incentive expires.

- The taxpayer must convince applicable governmental authorities that the commercial development will ultimately result in an increase in real property tax revenue and employment opportunities.

To apply for the CURE incentive, a completed application, supporting documentation and a resolution/ordinance from the municipality where the real estate is located must be submitted to the Cook County Assessor and the Bureau of Economic Development prior to the commencement of construction, rehabilitation or reoccupation of the property. If the CURE designation is granted, the recipient must file an annual affidavit attesting to the property’s use and employment.

The requirements for these tax incentives are complicated and technical and we have only briefly outlined the requirements. If you think your property may qualify for a tax incentive, please feel free to contact us.

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...HIRE AN ATTORNEY

Other Considerations

When you hire a lawyer, you can be sure that he or she has a college degree, a law degree, has passed a bar examination, has (in most cases) insurance to cover malpractice, is personally responsible (in all cases) for his or her malpractice and is governed by strict ethical rules and regulation developed and enforced by the Illinois Supreme Court.

But what about a non-lawyer tax consultant. These individuals are neither licensed nor regulated Will he have a college degree? Perhaps. A law degree? Probably not. Malpractice Insurance? Not likely. Personal liability for malpractice? Not likely. Regulated by the State of Illinois? No.

In today's world, consumers demand value and convenience. There is an abundant supply of trained, experienced, competent lawyers who practice in the tax assessment area. Fees are negotiable and competitive. And, one lawyer can represent you throughout the entire appeal process. To my way of thinking, a competent lawyer provides both value and convenience. Hiring a non-lawyer could be a costly mistake.

