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CLIENT ADVISORY

Rhode Island Real Estate Tax Appeals for Non-Profit Organizations

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It is clear that the municipalities in Rhode Island are facing tough financial times. Municipalities are eagerly searching for new sources of tax revenue to meet budgetary shortfalls. Unfortunately, this search has led to the assessment of real estate taxes on non-profit organizations, which provide critical and indispensable services to their communities. In 2012, the City of East Providence assessed taxes against approximately 39 non-profit organizations. Some of these organizations, which have existed for over 100 years, received their first tax bill without any prior notice or warning. Predictably, many of these organizations could not afford this assessment. This trend has progressed to the City of Providence, which is currently undergoing a similar process to identify and assess taxes against non-profit organizations. It is likely only a matter of time before other municipalities across Rhode Island follow this example.

Fortunate non-profit organizations find themselves with either a statutory exemption from taxation or legislatively granted charter exemption, which typically helps to offset tax liability. However, non-profit organizations are finding that municipalities are reluctant to grant organizations use of these exemptions. Less fortunate organizations have neither a statutory exemption nor charter exemption. Even organizations which lease space are finding, pursuant to their lease agreement, that they may be liable to their landlord for future taxes assessed against their property.

In order to ensure survival, non-profit organizations and those who serve on their boards have a fiduciary duty to analyze their potential tax liability and create a plan to either mitigate any potential assessment or budget for this inevitability. This duty includes consulting with the appropriate professionals to ensure the appropriate steps are taken. This article outlines the process and procedure of a tax appeal to help non-profit organizations understand these important issues. It is vital to ensure that any tax assessment is appropriate and proportionate to ensure non-profit organizations can continue to provide essential services to their communities.

General Grounds to Appeal an Assessment of Taxes

- 1. Assessment in Excess of Full and Fair Cash Value.** The property has been overvalued or, put differently, the assessed value placed on the property by the assessor exceeds the fair cash value. "Full and fair cash value" has been interpreted to mean the fair market value or the price a willing buyer would pay to a willing seller in an open market. A subcategory of this ground on which to appeal includes the argument that the property has been improperly classified.

2. **Assessment in Excess of the Uniform Percentage.** If the assessor of a municipality assesses all of the property in the municipality at a uniform percentage of the full and fair cash value, it is improper if the subject property has been assessed at a higher percentage of full and fair cash value than other property in the municipality.

3. **Illegality.** Examples of illegal taxes are those that attempt to tax exempt property and those that are selective, arbitrary and discriminatory.

Step One: File An Annual Account

1. **Requirements.** The first step in appealing an assessment is filing an annual account, or, as described in R.I. Gen. Laws § 44-5-15, “a true and exact account of all the ratable estate owned or possessed by that person or body, describing and specifying the value of every parcel of the real and personal estate, together with such additional information as may be prescribed by the assessors” The Rhode Island Supreme Court has interpreted the account requirement in R.I. Gen. Laws § 44-5-15 to mean that the failure to file an annual account deprived the Superior Court of subject matter jurisdiction over an appeal of an assessment.

2. **When to File.** Each year, the assessors will determine a date by which every taxpayer's account must be filed. Such a determination must be published in public places throughout the various municipalities and in the newspaper once a week for the three weeks prior to the assessors' annual meeting. In the alternative, by January 31 of each year, a taxpayer may file “written notice” that the taxpayer intends on bringing in an account. If such a notice of intention is filed by January 31, the account must be filed with the assessor between March 1 and March 15 of that given year. An account must be filed before the taxpayer is even aware of the final assessment. However, taxpayers are not required to file an account in order to preserve an appeal if the tax assessment increases. It is important to note that taxpayers must pay taxes during the pendency of an appeal.

Step Two: File Appeal with Tax Assessor

1. **When to Appeal to the Assessor.** R.I. Gen. Laws §44-5-26 requires the appeal to the local office of tax assessment to be filed by the taxpayer within ninety (90) days of the date the first tax payment is due. Generally, this is approximately one hundred twenty (120) days after the bills are first sent to the taxpayers.

2. **What Happens Next?** The assessor has forty-five (45) days to review the appeal, render a decision and notify the taxpayer.

Step Three: File Appeal with Board of Assessment Review

1. **When to File with the Board of Review.** If the assessor denies the taxpayer's appeal within the 45 days, the taxpayer has thirty (30) days to file an appeal to

the local Board of Assessment Review. If the assessor fails to render a decision within the forty-five (45) day period, as a taxpayer still aggrieved, you must file an appeal within ninety (90) days of the expiration of the assessor's 45-day period to decide the original appeal.

2. Hearing before the Board. The Board is required to hear your case within ninety (90) days of the date the appeal to the Board was filed, and must render a decision within thirty (30) days of the date of the hearing. However, the Board may request an extension of time from the Director of the Department of Revenue.

3. Proceedings Before the Board. Proceedings before the Board of Review are fairly informal. Rules of evidence are not followed. Depending on the municipality, the attorney may make opening remarks, qualify the appraiser as an expert witness, and work with the appraiser in stressing the major arguments, or the attorney/taxpayer may just have a discussion with the Board.

Step Four: Superior Court

1. When to File. Within thirty (30) days after a final written decision of the Board of Review, a taxpayer still aggrieved “on any ground whatsoever” may file a petition for relief from the assessment in the Superior Court for the county in which the city or town lies.

2. Successive Petitions. If the Superior Court or the Supreme Court on appeal finds that the property was over-assessed, the taxes for the years for which the suit was pending will not automatically be recomputed. Therefore, a renewed appeal procedure (including the filing of an account, the appeal to the assessor and the appeal to the Board of Review) must be filed for each year that the suit is pending. These cases will be ripe for consolidation for trial upon motion by either side. While this process is inefficient and costly, it is required under the current statute and case law.

3. Evidence and Method of Proof. It is common for a taxpayer to make his or her case (when the case is not dependent on the legality of the tax) by showing that his or her property has been over-assessed based upon the three approaches to value (cost, market and income). When comparable sales are used, it is critical that the expert witness verifies those sales to prevent being discredited on cross-examination. The evidence submitted by the expert must relate to the assessment date of the year(s) being challenged and not to the date the case is being heard. The burden of proof is on the taxpayer. Unless the taxpayer carries his burden by a preponderance of the evidence, the assessor will prevail. Neither the taxpayer nor the assessor is confined to any one approach to value.

4. Settlement. If, at any time prior to a Superior Court judgment, you are able to resolve the matter with the municipality, you should determine whether the abatement must be approved by the City or Town Council.

5. Trial and Judgment. A victorious taxpayer will receive a reduction in the assessment by the amount of the excess or illegal tax and court costs, in the event that the taxpayer has not paid his taxes at that time. If, however, the taxpayer has paid his taxes in full (at the originally-assessed amount), the judgment shall include a refund in the amount overtaxed, plus interest on the date that the tax (and penalty, if any) were paid.

6. Appeals to Supreme Court. Either party has the right to appeal to the Rhode Island Supreme Court. The trial justice's or jury's finding of fact, however, are given great consideration and will not be overturned unless the trial justice or jury has overlooked or misconceived material evidence or was clearly wrong.

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