PROPERTY TAX CASE STUDY
SALE LEASE-BACK

Our Client's Challenge

Our client had sold their property and leased it back from the new owner. The provincial assessment authority, promptly increased the assessment by 36%. Assessments in the province are based on the market value of the property on the base date, January 1st of the assessment year. The new assessment was within 11% of the sale price, but still below it. There were no changes to the property itself. The use of the property was identical to that of the previous year. The only difference is that on paper, the tax payer was now a tenant instead of an owner. Facing a 36% hike in their tax bill they turned to Turner Drake for assistance.

Turner Drake's Approach

Sale lease-backs are commonly used by businesses to generate cash that can be used improve their balance sheet or to invest in expanding their business. The procedure is simple. The vendor enters into a long term lease with a prospective purchaser and then sells them the property based on a multiple of the rent payments. All else being equal, leases with higher rents and longer terms will result in higher prices. Vendors can obtain whatever price they want by choosing lease terms agreeable to the purchaser that will ultimately encumber the property.

The International Association of Assessing Officers recognises that prices arising from sale lease-backs typically do not provide a good indicator of a property's value for assessment purposes. Assessments are equitable when they are based on the value of their unencumbered fee simple interest. Adhering to this practice results in identical properties with identical uses having identical assessments. Assessing properties based on prices set in a sale lease-back creates the situation where identical properties carry different assessments because they are encumbered by different leases. This makes no more sense than arguing a property's assessment should be higher or lower depending on the mortgage terms that encumber it.

Although assessment standards on this point are clear it is not uncommon for the assessment authority to argue that the assessment deserved a "bump" (i.e. was incorrect to start with) and produce a calculation that backs up an increased value without placing weight on the price. To be successful in the appeal it is necessary to do more than disqualify the price. The new estimate must also be shown to be incorrect. This case required expertise on both sides; our own to marshal the evidence … and Service New Brunswick to interpret it correctly and have the courage to exercise their professional judgement appropriately. We developed a position based on market rents, a replacement cost approach and sales information.

Winning Results

Service New Brunswick reviewed the data and agreed to reduce the assessment by 29%, thus relieving our client of $11,884 per annum in property taxes.

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