And They're Off! Kentucky's Annual Real Property Tax Appeals Season Begins the First Week of May

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Now that much of the craziness and uncertainty of the COVID-19 pandemic has passed, which affected the normal tax process for prior years, Kentucky returned to its normal two-week appeal period the first week of May. This will be a busy year for appeals as many businesses continue to look to challenge any increase in their real property values due to new construction, expansion or acquisition of properties, or to help combat any lingering effects from the pandemic or current economic environment. This article has you covered with all the basics for Kentucky's real property tax appeal process.

May Day – Kentucky's Two-Week Annual Appeal Period

Every year in early April, many Kentuckians will receive a notice of assessment from their local property tax administrator ("PVA") notifying them that the value of their personal and/or business property has increased. This may be good news for some in terms of your property's resale/market value, but for most, it simply means that you will pay higher taxes on the property. As this is one of the most common issues I am asked about as a tax practitioner each year, this article provides taxpayers with an overview of what to look for when you receive a property tax bill in Kentucky, why your values have increased, and the deadlines and options you have for appealing same.

Kentucky real property tax is assessed on January 1 of each year. If there is a change in value from the prior year, the owner of record for that year (as of January 1) will receive a Notice of Assessment ("Notice") from the local PVA. While typically sent in April, you do not have to receive a Notice in order to contest your property value as you have the right to do so each year.

In Kentucky, you typically only have one chance, each year, to appeal your property values, and if you miss it, you could lose your

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ability to appeal the value until the following year, absent an error or other issue later discovered which allows for an exoneration, correction or refund request. Kentucky law allows for a two-week "Open Inspection Period" annually at the beginning of May (or mid to late May in some jurisdictions) that property owners may file a property tax appeal with their local PVAs (more on that in a bit).

Whether appealed or not, the PVA typically sends out a final property tax bill for that year around October. So, for example, if you received a tax bill in October 2023, the tax bill was required to be paid by December 31, 2023, or else it becomes delinquent, and additional interest, penalties and fees will be assessed, and the property may eventually be sold at auction or the tax bill sold to third-party collectors pursuant to local processes (a story for a different day).

Properties may be reassessed in a given year due to various situations which demonstrate an increase in value, including a recent sale of the property or a business on the property, major improvements on the property, expansion of a facility, and/or nearby sales or developments. But remember, Kentucky PVAs are required to physically inspect properties every four years, so a Notice could come any given year regardless of whether any changes to/near the property have occurred. So, as you check your early Derby racing forms in April, also be sure to check your mailbox for a Notice for the typical appeal process, which generally begins the first week of May.

Notice Received – Should I Appeal, and What is the Process for Doing So?

Once a property owner receives a Notice, one must go through a variety of questions to determine whether to file an appeal. A step-by-step process for such a determination includes:

Step 1: When Is the Deadline to Appeal?

The Open Inspection Period begins the first Monday in May and continues for a 13-day period (excluding Sundays). Therefore, each year the exact dates of this appeal period may change.

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For the 2024 tax year (i.e., property owners as of January 1, 2024), the Open Inspection Period begins Monday, May 6, 2024, and ends May 20, 2024, in most jurisdictions. This is just the statutory minimum, as some of the larger counties in Kentucky, like Jefferson County (Louisville) and Fayette County (Lexington), will often extend the deadline to file such an appeal by opening the period early or extending for an additional time period, so it is important to stay on top of these dates or contact your local tax practitioner to verify. For example, Jefferson County extended this timeframe in 2024 by opening the period up ten days *early* – starting April 26, 2024.

Why is this so important? Because if you don't file an appeal during this period, the typical appeal process may no longer be available, and you may have to seek other relief, such as a potential exoneration/refund claim, or wait until the next annual Open Inspection period to challenge the value. This is critical because if you have to wait until the following year, you have to pay higher taxes for that year or may need to pay the tax owed before seeking any exoneration or other relief.

Step 2: Should I Appeal?

Even if you believe your property is overvalued, it is always wise to determine if the increase in value, and corresponding increased tax, is enough to make an appeal worthwhile. A review of Kentucky's real property tax rates is a good place to start. Most Kentucky real estate is subject to full state and local rates. The state real property tax rate can vary from year to year and is computed by the Department of Revenue's Office of Property Valuation typically by July 1, and is currently $0.114 per $100 value (after previously being $0.115, $0.119 and $0.122 in 2022, 2021 and 2020, respectively). The *local* tax rates make up the bulk of a taxpayer's real property taxes as it often includes not only the county's tax rate, but also taxation by local schools, cities, and other municipal jurisdictions. For example, the 2023 rates for a property in Louisville include a county rate ($0.1240/$100), a sizeable school tax rate ($0.7600) and possible additional city and other local district taxes on top. Thus, the potential tax savings for challenging the increased assessment

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not only for the tax year at issue, but also for future years, can be substantial, making an appeal well worth the fight.

In addition to determining how much the increase in value will cost in additional taxes, a property owner should also understand that it must provide support for your belief that the increased value was wrongful. Knowledge of recent/nearby sales, recent appraisals, insurance policies, or other documentation can be very persuasive in an appeal. A taxpayer must also understand how the PVA may calculate or support its increase in value as it is entitled to use one of three valuation methods – the cost method (how much does the land/improvements cost), the sales method (recent/comparable property sales), and the income method (detailed income/expense analysis). The latter method is the most commonly used for income-producing properties such as commercial and rental properties, and is often the most complicated as it requires the use of a subjective "capitalization rate" which is based on the location (Tier I, II, III or tertiary city), quality/amenities (e.g., Class A-C), and type of property (e.g., office, industrial, retail, multifamily, hotel, etc.). Kentucky also enacted new additional methodologies for valuing low income/subsidized housing in 2023 via House Bill 360. (*See* our article on this development.)

Step 3: How Do I Appeal?

In order to file a timely real property tax appeal, the property owner must first have a "conference" with the local PVA during the Open Inspection Period. Historically, an in-person meeting with your local PVA official was required to discuss why you disagree with the value. However, many local PVAs allow for, and often require (e.g., Jefferson County), such a "conference" be held remotely online or via telephone, with many more counties doing so now after COVID. As part of this conference, a property owner typically must provide certain financials and other relevant documents (e.g., recent appraisals, contracts, policies, etc.), as well as an income/expense worksheet for income-producing properties, to support the property owner's assertion of the "fair cash value" of the property under Kentucky law. Again, knowing your county's local requirements and customs is critical to a timely and successful

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appeal.

If a property owner provides sufficient/compelling information, data or documentation to support its position that property was overvalued, the local PVA may agree to an adjustment. But oftentimes, the PVA will uphold its increase/assessment, and the property owner must then appeal this decision to your local Board of Assessment Appeals ("BAA").

This appeal is a more formal process than the PVA conference as it generally involves an in-person hearing with the local BAA (comprised of three members from the local community) who will consider the property owner and PVA's positions, any supporting documents, and will then issue a decision either: (i) upholding the PVA's value/assessment, (ii) adjusting the assessment (e.g., meeting in the middle); or (iii) agreeing with the value asserted by the property owner.

A party aggrieved by the local BAA's decision (the property owner and/or PVA) may then appeal this decision to the Kentucky Board of Tax Appeals ("KBTA") within 30 days of the mailing date of the BAA's decision. This is the next level of formality as a Petition of Appeal *must be filed by a Kentucky-licensed attorney*, and both parties may potentially issue discovery, make substantive filings, and retain experts (e.g., appraisers, consultants, etc.) for a full-evidentiary hearing before the KBTA. However, in my personal experience, many of these appeals often get resolved prior to reaching this stage which is often the best approach for cost-tax savings purposes.

Pro Tip – Be Ready at the Starting Gates or You May Get Disqualified

Challenging an increase in your property value can often be a confusing and complex process, so you should contact your local, trusted tax practitioner or advisor to help you. And don't forget: the first week in May is not just for the Derby, but also for appealing your personal or business property value; otherwise, you may be scratched from that year's race.

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For more information please contact Daniel Mudd or any attorney in Frost Brown Todd's Tax practice group. For up-to-date information on tax-related issues, visit our Tax Law Defined Blog.

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