



Tax Appeals: How Can Property Owners Challenge the Assessed Value of Property?

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In May 2010, Governor Perdue signed Senate Bill 346 (SB 346) into law. This bill codified a comprehensive and uniform property tax appeal process. As a result of this new law, all property tax appeals, regardless of the county, must be carried out in one of three explicitly detailed processes.

A tax assessment is based upon the perceived fair market value of a property. SB 346 defines the fair market value of real property as the amount a knowledgeable buyer would pay and a willing seller would accept for the property. The assessor determines this fair market value through one of three approaches: comparable sales, income stream and the cost new less depreciation.

Accordingly, an objection to the tax assessment must demonstrate that the assessor's determination failed to provide an accurate fair market value for the property. The property owner appealing a tax assessment must be armed with evidence to support their contention as to the fair market value of the property.

To initiate an appeal process, the property owner must decide which of the three appeal processes to utilize. Prior to the adoption of SB 346, the property owner was limited to two avenues of appeal: a board of equalization or arbitration. Among other things, SB 346 created a third appeal process for non-homestead property valued in excess of \$1 million. The owner of such a property may appeal the assessment directly to a hearing officer.

Portions of SB 346 became effective July 2010 with the remainder of the bill taking effect January 1, 2011. In 2009 Governor Perdue signed House Bill 233 (HB 233) into law freezing tax assessments for 2009 and 2010. With the recent, significant decline in property values, it is expected that many commercial as well as residential property owners will appeal their 2011 assessments. The changes in the appeal process as a result of SB 346 should both accelerate the timeframe for appeals to be heard and standardize the appeal processes so all property owners are treated consistently.

Changes To Arbitration

To file an appeal a property owner must hand deliver, mail or e-mail (where available) a written objection of the tax assessment to the county board of tax assessors (Board) within 45 days from the date of the assessment notice. If the property owner does not specify the method of appeal, the appeal will be directed to the county board of equalization. SB 346 did not change the framework for an appeal to a county board of equalization.

However, SB 346 initiated a set of changes that formalized the arbitration process throughout the state, regardless of county. Once the property owner's objection notice and a request for arbitration are received, the Board is required to acknowledge receipt of the appeal within 10 days.

Within 45 days after filing the appeal notice, the property owner must submit to the Board a copy of a certified appraisal. The Board has 45 days to either accept or reject the owner's appraised value. If the Board fails to respond to the owner's appraisal within 45 days, the appraised value is deemed final. However, if the appraised value is rejected, the Board is required to certify the appeal to the county superior court. At that time, the court will submit the matter to an arbitrator who will set a time and place for a hearing.

At the hearing, both the Board and the property owner are entitled to offer documents and testimony as well as cross-examination in an effort to demonstrate the fair market value of the property. Based on evidence presented, the arbitrator determines the value of the property and the appeal is resolved.

Notably, SB 346 changed the arbitration process to binding arbitration. As such, neither the property owner nor the Board may appeal the decision of the arbiter to the county superior court. The impact of this change to commercial property owners is minimal due to introduction of the hearing officer. Under the previous "non-binding" arbitration, commercial property appeals not resolved through arbitration were certified to the county superior court. This appeal right is still available to those property owners who request their appeal be handled through the hearing officer process.



The New Appeal Process: Hearing Officer Approach

For some property owners, SB 346 establishes a third, streamlined appeal option. Property owners with property valued in excess of \$1 million and who have not filed a homestead exemption in connection with the property can elect to involve a hearing officer. Therefore, this process is available for retail, office, hotel, industrial and multi-family properties with value in excess of \$1 million.

The hearing officer approach relies on a court-appointed expert and provides commercial property owners a better appeal avenue since all parties involved have a more in-depth understanding of commercial valuation. Since most non-residential properties are valued based on an income stream approach, a hearing officer understands the complexities associated with evaluating a property's income generation as well as operating costs. Therefore, the result is a more accurate assessment of fair market value. In contrast, appeals to a local Board of Equalization, comprised of "lay" individuals, typically rely on more "soft" evaluative measures, such as comparable sales, to determine value.

To initiate an appeal process, the property owner must mail a written objection to the tax assessment to the Board within 45 days from the date of the assessment notice. The objection notice must state the property address, the identification number contained in the assessment notice (if any) and the election to appeal to a hearing officer. The Board has 90 days to respond.

If the property owner and Board are unable to reach an agreement on value, the property owner must advise the Board of the impasse within 30 days of the Board's response. At this time, the Board must initiate the appeal process requesting that the county superior court select a hearing officer. Once both the property owner and Board present testimony and evidence, the hearing officer delivers a decision on the value of the property.

Either the property owner or the Board may file an appeal of the hearing officer's determination of the property value. If the property owner elects a bench trial, the superior court hears the appeal within 30 days following the date of filing. If the county superior court assigns a property value that is 80% or less of the value set by the hearing officer for non-residential property or 85% or less of the value set by the hearing officer for residential property, the property owner has the right to recover litigation costs and attorney fees incurred as a result of the action from the county.

Conclusion

SB 346 could not have come at a more opportune time. The decline in property values will undoubtedly compel more property owners than customary to contest the Board's 2011 fair market value assessments. By formalizing the arbitration process and creating a streamlined appeal process with a hearing officer, Counties will be in a better position to manage an increased number of tax appeals and property owners will have a more efficient avenue to appeal their assessments.

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