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The Ad Valorem Tax Appeal Process:

Timelines, Rules and Reminders

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Clock starts ticking with Annual Notice of Current Assessment

Taxpayer is mailed an annual notice of current assessment per O.C.G.A. § 48-5-306, no later than July 1st each year.

If problems with delivery of notice:

O.C.G.A. § 48-5-306 (c): Posting notice on certain conditions. In all cases where a notice is required to be given to a taxpayer under subsection (a) of this Code section, if the notice is not given to the taxpayer personally or if the notice is mailed but returned undelivered to the county board of tax assessors, then a notice shall be posted in front of the courthouse door or shall be posted on the website of the office of the county board of tax assessors for a period of 30 days. Each posted notice shall contain the name of the owner liable to taxation, if known, or, if the owner is unknown, a brief description of the property together with a statement that the assessment has been made or the return changed or altered, as the case may be, and the notice need not contain any other information. The judge of the probate court of the county shall make a certificate as to the posting of the notice. Each certificate shall be signed by the judge and shall be recorded by the county board of tax assessors in a book kept for that purpose. A certified copy of the certificate of the judge duly authenticated by the secretary of the board shall constitute prima-facie evidence of the posting of the notice as required by law.

Assessors must provide records and information upon request

O.C.G.A. § 48-5-306 (d): Records and information availability. Notwithstanding the provisions of Code Section 50-18-71, in the case of all public records and information of the county board of tax assessors pertaining to the appraisal and assessment of real property:

(1) The taxpayer may request, and the county board of tax assessors shall provide within ten business days, copies of such public records and information, including, but not limited to, a description of the methodology used by the board of tax assessors in setting the property's fair market value, all documents reviewed in making the assessment, the address and parcel identification number of all real property utilized as qualified comparable properties, and all factors considered in establishing the new assessment, at a uniform copying fee not to exceed 25¢ per page;

(2) No additional charges or fees may be collected from the taxpayer for reasonable search, retrieval, or other administrative costs associated with providing such public records and information.

The Superior Court has jurisdiction to enforce the record production requirements.

Fair Market Value

"Utilization" (not just consideration) of Income Approach Required:

The income approach, if data are available, shall be utilized in determining the fair market value of income-producing property and, if actual income and expense data are voluntarily supplied by the property owner, such data shall be considered in such determination.

See H.B. 196 (eff. January 1, 2018).

Prior year sale value may control: The transaction amount of the most recent arm's length, bona fide sale in any year shall be the maximum allowable fair market value for the next taxable year.

Fair Market Value

Heron Lake II Apartments, LP v. Lowndes County Board of Tax Assessors Supreme Court decision (9/2016) – impact of tax credits on value should be considered.

H.B. 196 (Effective January 1, 2018):

(vi) Rent limitations, operational requirements higher operating costs resulting from regulatory requirements imposed on the property, and any other restrictions imposed upon the property in connection with the property being eligible for any income tax credits described in subparagraph (B.1) with respect to real property which are claimed and granted pursuant to either Section 42 of the Internal Revenue Code of 1986, as amended, or Chapter 7 of this paragraph title or receiving any other state or federal subsidies provided with respect to the use of the property as residential rental property; provided, however, that such properties described in subparagraph (B.1) of this paragraph this division shall not be considered comparable real property for the assessment or appeal of assessment of other properties not covered by this division; and

(vii) (I) In establishing the value of any property subject to rent restrictions under the sales comparison approach, any income tax credits described in division (vi) of this subparagraph that are attributable to a property may be considered in determining the fair market value of the property provided that the tax assessor uses comparable sales of property which, at the time of the comparable sale, had unused income tax credits that were transferred in an arm's length bona fide sale.

(II) In establishing the value of any property subject to rent restrictions under the income approach, any income tax credits described in division (vi) of this subparagraph that are attributable to property may be considered in determining the fair market value of the property provided that such income tax credits generate actual income to the record holder of title to the property;

Appeal Initiation and General Provisions:

- Taxpayer may file a written appeal **within 45 days** of date of annual notice of current assessment.
- Taxpayer must elect method of appeal (board of equalization; hearing officer; or nonbinding arbitration).
- Taxpayer *may* submit as support for an appeal an appraisal from a real property appraiser, as classified by the Georgia Real Estate Commission and the Georgia Real Estate Appraisers Board, *prepared not later than nine months prior to the date of the assessment*.
- The appraisal "shall" be considered, and the Board of Tax Assessors "shall" notify the taxpayer (or agent) of acceptance of the appraisal or the reasons for rejection of the appraisal *within 45 days*.

Appeal Initiation and General Provisions:

- Taxpayer *may* elect to consolidate appeals of all property owned by the taxpayer, although separate decisions shall be made for each separate parcel, and such consolidated appeal will constitute a single civil action if certified to Superior Court.

- The assessed value being appealed <u>may be lowered</u> by the deciding body based on the evidence presented, but <u>cannot be increased</u> from the amount assessed by the Board of Tax Assessors (effective for appeals initiated on or after January 1, 2016).

  (This provision does not apply where the taxpayer files an appeal during a period when the "freeze" of O.C.G.A. § 48-5-299(c) is in effect.)

Appeal Initiation and General Provisions:

- *Board of Tax Assessors has burden of proof by a preponderance of the evidence (i.e., more likely than not).*

- Following the notification to the taxpayer of the date and time of a taxpayer's scheduled hearing, the taxpayer shall be authorized to exercise **a one-time option** of changing the date and time of the taxpayer's scheduled hearing to a date and time acceptable to the taxpayer and the county board of tax assessors.

  ** The appeal administrator may grant additional extensions to the taxpayer or the county board of tax assessors for good cause shown, or by agreement of the parties.

- Within ten days of a final determination of value, which begins to run at the expiration of any appeal period, the Board of Assessors shall forward the final value to the Tax Commissioner for revised billing.

3 Statutory Methods of Appeal

(1) Board of Equalization

-taxability, uniformity of assessment, value, and denial of homestead exemption

(2) Hearing Officer

-value and uniformity for certain types of property

(3) Nonbinding Arbitration

-value

The Board of Equalization

- Under the Board of Equalization method of appeal, a staff appraiser will review the property value and any concerns identified by Taxpayer in the appeal letter, and **notify the taxpayer of any changes or corrections <u>within 180 days</u>.**

- *If notification does not occur within the 180 day time period,* <u>taxpayer's asserted value **must be applied** for the tax year</u>.

(*Note*: There is an automatic exception if the level of appeals exceeds 3% of total parcels or gross tax digest, and other exceptions possible where good cause is shown to the Commissioner of the Department of Revenue).

The Board of Equalization

- If Board of Tax Assessors **<u>changes value</u>**, the Taxpayer is sent a Change of Assessment Notice.
  - If Taxpayer is still dissatisfied, may continue appeal to Board of Equalization by mailing or filing written notice of continuance ***within 30 days*** *of the date of mailing of the change notice*.
- If Board of Tax Assessors **<u>does not change value</u>**, taxpayer is notified and appeal is automatically forwarded to Board of Equalization.
- Notices must *contain a <u>non-amendable</u> statement of the grounds for rejection of any position asserted by the taxpayer as to value.*

* By mutual written agreement, the parties may waive the BOE proceedings and have the matter certified directly to the Superior Court. *See O.C.G.A. § 48-5-311(g)(1).*

The Board of Equalization

- The Board of Equalization consists of panels of three persons appointed by the Grand Jury.
- The Clerk of Superior Court, as the appeal administrator, manages and has oversight of the Board of Equalization.

- **Within 15 days of receipt of the notice of appeal**, the county board of equalization shall set a date for a hearing on the questions presented and shall so notify the taxpayer and the county board of tax assessors in writing.

Remember: a taxpayer may exercise a one-time request for a continuance of the hearing.

The Board of Equalization

- Each party may request a list of witnesses, documents, or other written evidence to be presented at the hearing by the other party, which shall be provided to the requesting party ***not less than seven days prior*** to the time of the hearing.
  - Failure to comply with this requirement shall be grounds for a continuance *or* for exclusion of such witness, documents, or other tangible evidence.
- A taxpayer must specify in writing to the board of equalization the name of any agent or representative prior to any appearance by the agent or representative before the board.

The Board of Equalization

- The Board of Equalization is charged with considering the evidence presented by both parties (the Taxpayer and the Borad of Tax Assessors) at the scheduled hearing.
- *At conclusion of the hearing*, the panel will announce its decision before proceeding with another hearing.
- The decision of the Board of Equalization must be in writing, delivered by hand to each party, with written receipt, or sent by registered/certified mail or statutory overnight delivery.
- The original of the decision must be filed with the Board of Tax Assessors.
- Decision of the Board of Equalization may be appealed to Superior Court **within 30 days of delivery**.

Hearing Officer

- Only *non-homestead real property* or *wireless property* where the aggregate value is equal to or greater than $750,000 qualify for appeal to a hearing officer.

- Only appeals made on the basis of *value* or *uniformity* can be appealed to a hearing officer.

A staff appraiser should review the written appeal and respond by written notice to the taxpayer ***within 90 days*** of either *changes* or *no changes.*

*No express penalty if this time frame is not met.

Hearing Officer

- If Board of Tax Assessors ***changes value***, the taxpayer must be sent a Change of Assessment Notice (*within 90 days* of receipt of appeal).
- If the taxpayer is still dissatisfied, the taxpayer may further appeal to a Hearing Officer (or taxpayer may opt for Board of Equalization) *within 30 days* after the mailing date of notice.
- Within ***30 days*** of the date of mailing of the taxpayer's notification desiring further appeal, the Board of Tax Assessors shall send all papers to the Clerk of Superior Court, and to the taxpayer.

Hearing Officer

- If the Board of Tax Assessors ***does not change value***, a notice of no changes or corrections must be sent to the taxpayer (*within 90 days* of receipt of appeal).
- Taxpayer has 30 days from the date of mailing of the Board of Tax Assessors' notice of no changes to opt to have the appeal forwarded to the Board of Equalization (as an alternative).
- If no response by taxpayer within 30 days of mailing of no change notice, the appeal and all papers should be certified to the Clerk of Superior Court for assignment to a hearing officer, with a copy to the taxpayer.

Hearing Officer

- Clerk of Superior Court notifies parties of scheduled hearing date, and randomly selects a hearing officer from an approved list of appraisers (unless the parties mutually agree on an appraiser from the list).
- The County pays for the services of the hearing officer (minimum $75.00 for first hour, $25.00 thereafter, unless otherwise agreed with consent of governing authority).
- The parties are responsible for any additional costs they choose to incur, such as legal representation and/or appraisal or consulting fees.
- Hearing Officers are either state certified general real property appraisers or state certified residential real property appraisers as classified by the Georgia Real Estate Commission and the Georgia Real Estate Appraisers Board.
- In the case of wireless property matters, Hearing Officers must be designated appraisers by a nationally recognized appraisers' organization for wireless property.

Hearing Officer

- In general, the Hearing Officer will swear in witnesses and control the hearing.
- The Hearing Officer shall confer with the parties and set a date, time, and place for the Hearing either in the County where the property is located or such other place as mutually agreed.
- The Hearing Officer shall provide electronic or written notice of the hearing date, personally or by registered or certified mail or statutory overnight delivery, <u>not less than 10 days before the hearing</u>.
- Exchange of tangible evidence required ***not less than 7 days in advance*** or *continuance or exclusion* of documents may occur.
- The decision of the hearing officer may be appealed into Superior Court by either party <u>within 30 days of the date of delivery of the decision</u>.

Nonbinding Arbitration

- An appeal of value may be filed specifying nonbinding arbitration with the Board of Assessors within 45 days of the date of the Annual Notice of Current Assessment.
- The Board of Tax Assessors must **acknowledge receipt** of an appeal to nonbinding arbitration within 10 days.
- *Within 45 days* after the date of transmittal of the notice of receipt of the appeal, the taxpayer **must** provide a certified appraisal.
- The appraisal must be signed by a licensed appraiser and reflect an appraisal date close to January 1 of the tax year.
- If appraisal is not timely submitted, **appeal terminates** (unless taxpayer has within that period elected to change method of appeal to Board of Equalization).

Nonbinding Arbitration

- **Within 45 days** of receiving the taxpayer's certified appraisal, the BTA must accept the taxpayer's appraisal value (which brings the appeal to a close) *or* reject it.
- Notification of *acceptance*? (*timeline for notification is not clear*)
- Notification of *rejection*: the Board of Tax Assessors must **within 10 days of rejection** notify the taxpayer in writing by certified mail and certify the appeal to the Clerk of Superior Court for arbitration.
- If the taxpayer's certified appraisal is neither accepted or rejected within 45 days after receipt, the appraisal value becomes the final value.
- If the notice of rejection is not sent within 10 days, taxpayer's appraisal value becomes the final value.

Nonbinding Arbitration

- The Board of Tax Assessors shall, at the time the appeal is certified for arbitration, notify the taxpayer of a meeting time and place to decide upon an arbitrator, which is to occur **within 60 days** after the date of rejection of the appraisal (one reset at option of taxpayer permitted).
- If the parties cannot agree on an arbitrator, one or more parties may petition the presiding or chief judge of the Superior Court for an appointment, which the court should do within 30 days after the filing of a petition by either party.
- Within 15 days of certification to the appeal administrator, the Court shall issue an order authorizing arbitration.

Nonbinding Arbitration

- Both the taxpayer's appraisal and the assessor's appraisal will be submitted to the appointed arbitrator.
- The arbitrator will schedule a hearing, to take place *within 30 days of appointment* of the arbitrator.
- The arbitrator shall provide written notice of the hearing, personally or by registered/certified mail or statutory overnight delivery *at least ten days before the hearing*.
- Notice of hearing shall advise parties that *documents and other tangible evidence* a party desires to utilize at the arbitration must be provided to the other party **not less than 7 days prior** to the time of the hearing.
- If documents are not timely exchanged, the evidence may be *excluded* (absent written agreement of the parties otherwise).

Nonbinding Arbitration

- The taxpayer may exercise a one-time option of changing the date and time of the hearing; arbitrator may also postpone in consultation with the parties.
- The arbitrator will issue a decision at the conclusion of the hearing.
- The party whose value is farthest from the fair market valued determined by the arbitrator must pay for the fees and costs of the arbitrator.
- This decision can be appealed to Superior Court by either party in the same manner as Board of Equalization decisions.

Appeals to Superior Court by the Board of Tax Assessors

Reminder: A Board of Tax Assessors shall not appeal a decision of the county board of equalization, arbitrator, or hearing officer, as applicable, changing an assessment by 20 percent or less *unless the board of tax assessors gives the county governing authority a written notice of its intention to appeal, and, within ten days of receipt of the notice, the county governing authority by majority vote does not prohibit the appeal*.

- In the case of a joint city-county Board of Tax Assessors, such notice shall be given to the city and county governing authorities, either of which may prohibit the appeal by majority vote.

Appeals to Superior Court

- After the Board of Equalization, Hearing Officer, or Arbitrator has reached a decision, a party may seek further appeal.
- An appeal may be initiated by mailing or filing the appeal with the Board of Tax Assessors.
- An appeal by the Board of Tax Assessors may be initiated by giving notice to the taxpayer.
- An appeal **must be mailed or filed within 30 days** from the date of the decision for which review is sought.

Appeals to Superior Court

Settlement Conference Required if Taxpayer Initiates Appeal

- *Within 45 days of receipt* of a taxpayer's appeal to Superior Court, and before actually certifying the matter to Superior Court, the Board of Tax Assessors will send notice of the date, time, and place of a **Settlement Conference**, at which the parties will confer in good faith in an effort to resolve the matter.
- The Settlement Conference must occur ***no later than 30 days*** from the date of the notice of the Settlement Conference.
- Settlement Conference requirement does not technically apply to BTA initiated appeals.
- A taxpayer may exercise a one-time option to reschedule the Settlement Conference.

Appeals to Superior Court

Settlement Conference Requirement

What if the BTA doesn't comply with the timeline for a Settlement Conference?

In the event a Board of Tax Assessors does not hold a settlement conference within the 45 day review period, the *appeal terminates* and the taxpayer's stated value must be entered in the records of the Board of Tax Assessors as the fair market value, and the roll-over provisions of O.C.G.A. § 48-5-299(c) will apply.

Appeals to Superior Court

Settlement Conference Requirement

What if taxpayer does not participate?

- In the event that a *taxpayer* chooses not to attend the Settlement Conference, the meeting should still take place and a decision should be entered.
- Taxpayer may still pursue further appeal to the Superior Court *within 10 days* from the date of the Settlement Conference.
- By not attending the Settlement Conference, a taxpayer is barred from being awarded fees and costs in the event of resolution of the matter in Superior Court.

Appeals to Superior Court

- If at the conclusion of the settlement conference the parties *cannot agree* on a fair market value, then written notice shall be provided to the taxpayer that the filing fees of $25.00 must be paid by the taxpayer to the clerk of the superior court **within ten days of the date of the conference**, *with a copy of the check delivered to the county board of tax assessors*.
- *Within 30 days of receipt of proof of payment* to the clerk of the superior court, the county board of tax assessors shall certify to the clerk of the superior court:
  - the notice of appeal; and
  - any other papers specified by the appealing party, including, but not limited to, the staff information from the file used by the county board of tax assessors, the county board of equalization, the hearing officer, or the arbitrator.

Appeals to Superior Court

- All papers and information certified to the clerk shall become a part of the record on appeal to the superior court. At the time of certification of the appeal, the county board of tax assessors shall serve the taxpayer (and any attorney of record), with a copy of the notice of appeal and with the civil action file number assigned to the appeal.
- No discovery, motions, or other pleadings may be filed by the county board of tax assessors in the appeal until such service has been made.
- After certification, the case proceeds in Superior Court, with written discovery and depositions potentially being pursued. If the case is not resolved prior to trial, the case may be tried to a jury.

Questions?

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