

Insights

Real Estate Tax Considerations for Landlords and Tenants

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It is customary for landlords to require their tenants to pay real estate taxes attributable to the landlord's property being leased, along with other common area expenses like maintenance, insurance and the like. When there are multiple tenants leasing spaces in a building on the property, the real estate taxes (and other common area expenses) are typically prorated by the landlord among all the tenants, and each tenant's required contribution is included in the monthly rent it pays. When there is a single tenant, that tenant is required by the lease to pay the entire tax bill, in which case the lease may provide for the landlord to (i) pay the bill and be reimbursed by the tenant, or (ii) send the bill directly to the tenant for payment, or (iii) arrange for the County Tax Collector to bill the tenant directly.

Like most other taxes, real estate taxes tend to go up and not down. As such, the parties paying them have an interest in keeping them as low as possible. If the landlord is passing that expense through to its tenants, the tenants may have a more compelling reason than the landlord to keep them low, but that doesn't mean that the landlord shouldn't care.

Factors Affecting Real Estate Taxes

The amount of real estate taxes attributable to any particular property is dependent upon several factors, primarily the assessed value of the property as established by the County Property Appraiser, and the County's annual budget, which fixes the millage rate to be multiplied by the assessed value in order to determine the taxes. This overall millage rate is a combination of the individual rates established by all the taxing districts in that particular County, and includes a millage rate assigned by the County, any applicable municipality, state and local school authorities, and the applicable water management district, among others. Non ad-valorem taxes can also be included in a tax bill, but these are specially set and not tied to either the assessed value or the millage rate.

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Challenging Property Values and Taxes

While property owners have no input into millage rates except through the County Commission hearings involved in the political process for the County's budget, they do have the right to challenge the property value proposed by the County Property Appraiser each year. In Florida, Property Appraisers are required to determine the value of each parcel of property as of January 1st for the purpose of that year's tax bill. This is done in the first half of the year, following which a notice of the County Property Appraiser's value and proposed taxes is sent to the property owner (or party paying the bill) in August of every year. This notice (called a Truth In Millage or TRIM notice) triggers a process by which the owner can contest that property value.

If an owner believes its property value is less than what the County Property Appraiser has assigned to the property, the owner can contact the Property Appraiser's office and try to convince them that the assigned value is too high. If this is unsuccessful, the owner is entitled to file an administrative appeal known as a Value Adjustment Board petition and attempt to lower its property value through this administrative process (which needs to be filed within 25 days of the original TRIM notice). There is ultimately also recourse to the courts via a process that has a different deadline for the owner to file the necessary lawsuit.

Tenant's Right to Contest Property Values

It is not unusual for a tenant who is leasing an entire tax parcel from a landlord (and therefore paying the entire tax bill) to negotiate in its lease for the right to contest the property value. Most landlords will accommodate that, subject to some caveats. If a tenant wants to contest a property's value, the County Property Appraiser will likely want to see some evidence that the tenant has the authority to do so under its lease, so a tenant should not assume that it can contest the proposed value absent an express lease provision allowing it to do so.

It is extremely rare for this right to be granted to multiple tenants of a single tax parcel, since each tenant's share of the tax bill is potentially a lot less than the entire bill, making it economically infeasible for any single tenant to incur the expense involved in such a challenge, not to mention the difficulties presented if multiple tenants want to contest the value of a single property. For this reason, County Property Appraisers do not allow more than a single entity to challenge a property's value in any given year.

Issues to Consider in Lease Provisions

Below are some of the issues that landlords and tenants should consider when drafting a lease provision addressing challenges to a property's assessed value for real estate tax purposes:

- The landlord already has the legal right to initiate a challenge. Will the landlord allow the tenant to do so? Only one of them can initiate a challenge, so if both want to do so they will need to agree who that will be, and cooperate.
- If so, should the tenant's right to initiate a challenge be conditioned upon the tenant not being in default under its lease, or should it be conditioned upon the proposed increase in property value exceeding a certain threshold?
- Should the lease require each party to send copies to the other of any notices they receive from the County Property Appraiser's office?
- If either party initiates a challenge, the other party should be required to cooperate, sign appropriate documents, appear in the proceedings, and have the right to participate in any negotiations, but only the landlord should have the right to approve any settlement.

- Will the landlord and tenant each pay their own expenses, or will the landlord be entitled to charge the tenant for the expense of pursuing a challenge, whether or not the challenge is successful?
- Should reimbursable expenses be limited to those that are commercially reasonable, or subject to the tenant's prior approval, not to be unreasonably withheld, or should they be specified?
- Will expenses include professional fees, like those of a property tax attorney or other consultant? A lease may require that the proposed increase in property value exceed a certain threshold before professional fees incurred by the landlord are chargeable to the tenant.
- While a challenge is pending, if the taxes are required to be paid, the tenant should either pay them (even if under protest), or post a bond in order to prevent the sale of a tax certificate for past due taxes. In Florida, at least 75% of real estate taxes owed must be paid in order to keep an appeal alive after the tax payment deadline passes.
- The landlord may want the tenant to indemnify the landlord against any liabilities associated with a challenge by the tenant.
- If the challenge is successful and the property tax bill is reduced below what has been budgeted, billed and collected by the landlord from the tenant, or paid by the tenant to the taxing authority (depending on which circumstance is applicable), there should be a reconciliation to ensure that the tenant was not overcharged and receives a refund.

It is best practice for both landlords and tenants (and their respective attorneys) to be proactive and consider all possible issues when drafting relevant a lease provision on this subject, in order to avoid ambiguities that could lead to disputes regarding each party's rights and obligations when challenging property tax assessments.

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