BIG PROPERTY TAX SAVINGS ARE AVAILABLE

Millions of property tax dollars can be saved by understanding seven issues before buying real estate.

By Sharon DiPaolo and Tammy Ribar

We asked property tax lawyers around the country for tax advice they wish their clients would request before an acquisition to avoid excessive taxation. Their responses, like tax laws, vary by state.

Ask early. Transaction timing can help avoid having an assessment increased to equal the sale price, says Gilbert Davila, a principal with property tax law firm Popp Hutcheson in Austin, Texas. Texas reassesses every Jan. 1, so a transfer in the third or fourth quarter is likely to receive an assessment increase the following January. Closing the transaction in the first or second quarter allows time to gather facts for an appeal.

In Chicago, real estate taxes following a purchase depend on location and where the county is in its three-year revaluation cycle, says Mary Anne "Molly" Phelan, a partner with Siegel Jennings Co. LPA. Local counsel can advise whether to expect an immediate increase or a couple years of stable property taxes.

Structure the transaction. Purchasing an entity that owns real estate or combining the purchase of assets and real estate may offer advantages. For example, Pennsylvania authorities calculate transfer tax using current assessed value when a buyer acquires 100 percent of interests in a property's holding company. With an outright purchase of real estate, however, transfer tax applies to the purchase price.

If a property is under-assessed, purchasing the holding company can reduce the tax amount and avoid the need to appeal an assessment based on a purchase price well above the current assessed value. The buyer saves on transfer taxes upfront and will likely save on future real estate taxes with an unchanged assessment.

Sharon DiPaolo
Siegel Jennings Co. LPA

In cities like Pittsburgh, where transfer tax is 4.5 percent and soon to be 5 percent, the savings can be significant. Some savvy buyers have structured their purchases of Pittsburgh properties using the "89/11" provisions of the tax statute. This precluded transfer tax for buyers who acquired 89 percent or less of the owning entity, then purchased the remaining 11 percent after a three-year hold. The strategy drew a public outcry following some high-profile transfers, prompting a recent legal change that made this approach more difficult.

Chicago buyers of a business that owns real estate may avoid a property tax increase altogether, Phelan observes. A local attorney is critical in such cases to advise on not only the law, but also on nuances of its application and the local political climate.

Allocate properly. Property sale prices often include going-concern value, business value and personal property. Phelan cautions buyers to carefully segregate the real from the non-real components exempt from property tax. Then, "document, document, document," she says. "Having documentation in the file to back up the buyer's allocation of the various components can make all the difference if an appeal is filed down the road."

Similarly, Robb Udell, an attorney with Rennert Vogel Mandler & Rodriguez PA in Miami, advises that Florida law imposes a documentary stamp tax on consideration paid for real estate. There is no documentary stamp tax due for personal property or intangible value, however, so ensure the recorded price excludes those values. Hotel transactions include significant tangible and intangible personal property value.

Details matter. Details may strengthen arguments opposing an assessor's attempt to increase the assessment to equal the sale price. For example, 1031 exchanges, portfolio transactions or purchases by a REIT may not meet a jurisdiction's criteria for an arms-length, market-value sale.

What information will be public? Ask a local attorney what information will become public in a sale. Texas buyers are not required to divulge their acquisition price on the deed, Davila says, so assessors go to great lengths to discover Texas sale prices. They may search for loan documentation or use subscription services documenting recent sales, for example, to estimate the price.

Budget correctly. Buyers who fail to understand the law when budgeting for real estate taxes can overpay on acquisitions by millions of dollars. This is especially true in states like Pennsylvania and Ohio, where taxing entities can appeal to increase a property's assessment.

School districts often appeal assessments to chase sale prices, then file "fishing expedition" discovery requests of the buyer's financial information to support the district's case. Out-of-state buyers have overpaid for property due to their budgeting on historical real estate taxes not accounting for the potential government-initiated increase appeal. This common practice in Pennsylvania has drawn increasing challenges from property owners outraged at being unfairly singled out for an increase.

Tammy Ribar
Houston Harbaugh PC

In Georgia, it is the assessors who increase assessments on properties using recent sale prices. Lisa Stuckey, partner in the Atlanta law firm of Ragsdale Beals Seigler Patterson & Gray LLP, advises that due to a recent change in Georgia law assessors can value recently traded properties as high as the purchase price, but not higher. Since the statutory change, many assessors have adopted a policy of increasing assessments to full sale prices in the year following the sale.

Understand assessment caps. In Florida, there are two values related to property taxes: market value and assessed value. County property appraisers determine market value annually and cap increases in the assessed value of non-homestead properties at 10 percent from one year to the next. School districts tax uncapped market value, however, so that portion of a property owner's tax bill is sensitive to increases in market value.

Udell cautions that capped assessments reset to market value the tax year following a change of property ownership or control, so a purchase price consistent with the prior year's market value can still have a significant tax impact if the previous assessment was capped at a low value. Capped assessments also reset to market value the tax year following an improvement that increases market value by 25 percent or more, and other factors also can affect the cap's applicability. Thus, proper budgeting for tax consequences requires a clear understanding of Florida law.

Asking the right questions can save enormous tax dollars. ■

Sharon DiPaolo is a partner in the law firm of Siegel Jennings Co. LPA, the Ohio and Western Pennsylvania member of American Property Tax Counsel, the national affiliation of property tax attorneys. Tammy Ribar is a director of Pittsburgh-based law firm Houston Harbaugh PC and chair of its real estate department.