

TAX ADJUSTMENTS

The following are some issues relating to tax adjustments which are a bit unusual and are encountered less than regularly in the average property transaction. Tax adjustments become particularly important at certain times of the year, and when the size and configuration of a lot changes. Some of these issues stem from various pieces of legislation and the interaction of it with the interests arising between Vendor and Purchaser. With the time allotted for this topic, I will only be able to "scratch the surface" and raise some questions to think about when dealing with these types of tax adjustments.

Before getting into some specific examples, I will set out some general principles about the assessment of properties for taxes in the various Municipalities and the relevant times frames which affect these assessments.

SOME GENERAL PRINCIPLES

The Assessment Act of Nova Scotia is the relevant piece of legislation from which all tax assessments are made. Assessable property is defined in Section 2 of the Act and for most of our purposes, it will include land and buildings and structures erected or placed upon, in, over, under or affixed to land , including buildings and structures under construction or partially constructed.

Some property is specifically exempt from taxation. For example, property of every Municipality is exempt from taxation. Property specially exempted from municipal taxation by any Act of the Legislature is another example.

Section 32 of the Act requires that property shall be assessed as property of the owner unless otherwise provided.

Property partly exempt from taxation or wholly exempt from taxation or in respect of which assessment is fixed by law at an amount less than the amount of the assessment determined by the assessor is valued and entered on the assessment roll in the same manner as taxable property is valued and entered, and the amount of exemption or reduction applicable to the property is also shown. This means for example that lands owned by the Department of Housing, although exempt from taxation is still assessed with a particular value.

The assessment roll for all properties in Nova Scotia is completed by December 31st in each year. The assessment roll reflects the state of the property as it existed on the first day of December of that year.

This means that the following years' taxes will be based on the assessment of the property as it existed on December first of the previous year. If a change to the property occurs after December first, in a particular year, that change will be reflected in the next assessment in December of the following year.

It is, of course possible for many changes to a property in one year. The property may be subdivided more than once in that period, and the property can change hands more than once in that period. Either a change in the ownership or the change in the size of the parcel as a result of subdivision or consolidation results in a need in the change of the assessment. Some of these changes take longer than others. A change in the assessment as a result of a change in ownership only, takes less time than a subdivision of a parcel and the change of ownership. These types of changes take four to six weeks on average. The change of assessment for these lots is much quicker because the assessment is amended to reflect the change of ownership only and usually does not require an immediate change of the valuation.

All properties sold this year (1994) and next year are being inspected by municipal assessors. They are visiting the property including the inside of any structures on the property. This will provide them with more information on what was valuable in the sale to be used as a comparison to other properties. The purpose is so that a more accurate valuation will be reflected in the new assessment for 1996. This assessment is supposed to reflect the January 1, 1994 values.

An example of the timing of assessments may help illustrate the manner in which assessments take place. If, for example, there is a foundation placed in the ground in November of 1993, the assessor would obtain that information from the building permit and note it on the assessment for the property for the December 1, 1993 assessment which takes effect on January 1, 1994. The first tax bill in the 1994 year, due in April 1994 will be equal to one-half of the 1993 tax bill. The new foundation had no effect on this bill. The next tax bill due in September 1994 would pick up the increase in value of the property as a result of the foundation. This tax bill would be the adjusting bill for the December 1993 assessment. By September of 1994 the house is likely completed. Generally the assessors visit properties in October of each year. The December 1994 assessment would likely show a completed house on the property. The April 1995 tax bill would still only be one-half of the assessment for 1994, which is the assessment showing only the foundation. It would not be until September 1995 that the property owner would get a full tax bill for the completed property. As you can see, it can take almost two years for the some changes in assessment to take place. It can cause confusion for property owners if there have been other intervening changes.

When a new parcel is created, a new assessment number is allocated to the new lot. The parent

assessment number stays with the residual lot. Therefore, you can tell by looking at the numbers which was the residual lot. It has the oldest number. Sometimes, this results in the last piece being assessed too high. It may be that some pieces conveyed out were not accounted for. It may be that the roadway is still part of that parcel. It should be noted that the roadway need not be conveyed to the municipality to be non-assessable.

Often a lot which has been subdivided is still shown as being in a bulk assessment. If the lots are not assessed separately, always make sure you obtain an undertaking from the vendor's lawyer that the bulk taxes will be paid for that tax year.

SOME SPECIAL TYPES OF TAX ADJUSTMENTS

1. What to do when buying from a previously exempt body like the Department of Housing. What if the deed into the Purchaser (Builder) is not recorded right away, when is the lot assessable for taxes? How to adjust?

The lot being purchased is assessed for taxes even though it is tax exempt. The exemption ceases when title transfers. It is advisable to call the assessment office to obtain the tax assessment for the property and calculate the prorated amount of taxes from the date of transfer. This amount is payable by the purchaser to the tax department of the relevant Municipality. Problems can arise when the purchaser is a Builder who takes a deed from the Department of Housing but does not record it until after a home is built on the property and is sold to another Purchaser. An inquiry should be made from the Vendor (Builder) as to when title transferred. This may avoid the situation where the second purchaser gets stuck with taxes from the date of the conveyance to the Builder, instead of the taxes from the date of conveyance out of the Builder to the Purchaser. It is therefore important to be watchful of the date of the deed out of the Department of Housing and the recording date of the Vendor's deed. See section 9 of the Act.

2. What to do when you are buying a property for which the tax assessment is under appeal but the appeal has not been decided. How to adjust.

The right to appeal taxes is within 21 days after the notices of assessment are served. These notices are served in early January of each year. If taxes are under appeal, the court has the power to confirm, reduce or increase the assessment. The normal tax adjustment may not reflect

the ultimate taxes payable after appeal. Therefore, a different type of tax adjustment may be warranted. One way of dealing with this issue may be to adjust on the actual taxes and hold in trust an amount which would be equal to the difference between the adjusted taxes on the expected appealed amount and the actual billed taxes. Although this amount may be just a guess, it may provide some relief to a vendor who has adjusted taxes on a higher amount and who ultimately would have had lower taxes.

3. What to do when the assessment notice comes to your client who has sold the property?

Your client should appeal the tax assessment and send a copy to the new purchaser and the tax collector. The tax collector has an interest in seeing that all taxes which are payable are collected. If the lot has also been subdivided (i.e. a semi), then the tax bill may be issued to the owner of the lot with the residual assessment number which was the original bulk assessment number. It may be difficult for that owner to obtain an agreement with the other owner or owners on how the taxes are to be divided.

4. What to do when the mortgage company of the vendor says they are paying the final tax bill but the Municipality says the taxes have not been paid yet.

In this case, I would be advisable to require the vendor's lawyer to hold the tax amount owing in trust until the Municipality issues a receipt for those taxes. Too often, the vendor's payout statement reflects the fact that the taxes are paid and the funds are in the process of being transferred to the Municipality. Unless you can be absolutely that the Mortgagee has the funds and will not refund the vendor with these funds, a holdback for an equivalent amount is the only way to protect yourself.

5. What to do when the assessment for the property does not reflect its proper use. For example, if the assessments says commercial yet it is used as a residence.

The assessor has the power to amend the assessment upon the date of notification of the change of use. If the assessment is incorrect in the assessment notice, then the assessment should be appealed.

There will always be new problems which arise with tax adjustments. These have been only a few examples which I have encountered on several occasions and I feel warrant careful consideration.