

Property Tax Issues for Construction Work In Progress: Minimizing Property Tax on CWIP

Leveraging Capitalization Policies, Establishing Grounds for Challenging Assessments on Partially-Built Properties

THURSDAY, SEPTEMBER 1, 2016, 1:00-2:50 pm Eastern

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The CWIP Challenge - Issues

- Value in use or value in exchange?
- Cost methodology – other?
- Does CWIP *diminish* value of remainder of existing property?
- Building permit cost reporting standards.
- Assessor audit potential.

Valuing CWIP

- Real property refers to the interest, benefits and rights inherent in the ownership of physical real estate.
- What about indirect costs?

Classification of CWIP

- Building.
- Equipment.
- Personal property.
- Annexed to real estate or in storage/on site waiting for annexation?
- Statutory v. common law classifications.

Valuation Methodologies

- Cost.
- Value in use v. *value in exchange*.
- What is “value” of CWIP to a buyer under a value in exchange analysis - or is it a liability?
- Cost approach as adopting *value in use* benchmark.
 - Obsolescence analysis may be required, even though dealing with new property, if super adequacy or over improvement exists.
 - External obsolescence – are licenses/governmental approvals required before use and occupancy is permitted?
 - Impact of need for certificate of occupancy on the value of CWIP?

- Income Approach –
 - Not Likely
- Sales comparison approach.
 - Not likely.

- “Partially completed new construction of real estate shall be liable for the payment of municipal taxes based on the assessed value of such partially completed new construction.”

- “The assessed valuation of property shall be considered as of July 31 . . . Valuing new construction in progress as of July 31 enables the assessor to conclude in the next years taxes at least part of the value of improvements made each year.”

- New construction is deemed completed on the earlier to occur of the date of the new construction is available for the owner's use. At which time the assessor must ascertain the full value of the newly constructed property. The full value of the construction is only that value resulting from the new construction and does not include value increases not associated with it.
- New construction in progress shall be appraised at its full value on the lien date and each lien date thereafter until completion . . .

- Commercial buildings (other than hotels) in the course of construction can obtain a “progress assessment” for maximum of three successive tax years – the building will not be assessed if it is not ready for occupancy by April 15.
- Balance of New York State – “progress assessments” not available.

- A structure in the process of construction on (general assessment date) is assessable for its then construction value for the following year.
- No taxpayer should escape its fair share of taxes because *ad valorem* taxation is imposed in respect of the physical presence of property in the taxing district. . . .

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II. Timing Issues in Assessments

Timing Issues in Assessments

- ▶ Commencement of construction
- ▶ During construction based on percentage complete
- ▶ Substantial completion
- ▶ Upon completion
- ▶ Upon issuance of certificate of occupancy

Timing Issues in Assessments

- ▶ When has construction begun?
 - ▶ When the land is cleared and graded?
 - ▶ When foundation is poured?
 - ▶ What if the property is being built on multiple tax parcels?

Timing Issues in Assessments

- ▶ When is construction complete?
 - ▶ When building is complete?
 - ▶ When building has been given clearance?
 - ▶ Health department impacts assessments?
 - ▶ When building is actually occupied/placed into service?
 - ▶ Partial occupancy while construction on-going?
- ▶ Caution about occupancy:
 - ▶ Timing – on one side of the assessment date or the other – can be critical, particularly in states with construction exemptions

Timing Issues in Assessments

- ▶ This raises questions of reporting to the Assessor
 - ▶ How can Assessor know percentage complete on particular date?
 - ▶ Are owners/developers required to provide information to Assessor?
 - ▶ Live with consequences if not.
 - ▶ Reporting date of completion – opportunity to stretch exemption for one more year?

Timing Issues in Assessments

- ▶ Retroactive nature of assessments
 - ▶ Some states tie to percent of value *upon completion*
 - ▶ Can an assessor go back and assess a percentage based on facts known after assessment date?
 - ▶ USPAP's "known or reasonably anticipated" standard
 - ▶ Does USPAP control Assessors?
 - ▶ Statute of limitations
 - ▶ Undervalued or omitted statutes

Timing Issues in Assessments

- ▶ Problems with projecting a value upon completion?
 - ▶ Income approach – market data as of assessment date or completion?
 - ▶ Cost approach – obsolescence is a market-based concept

Timing Issues in Assessments

- ▶ Other interesting timing issues:
 - ▶ Delaware's "unique" system
 - ▶ 30 days to appeal
 - ▶ Assessment of temporary structures

III. Constitutional Issues and Opportunities

Constitutional Issues and Opportunities

- ▶ Requirement of Market Value-based assessments
 - ▶ Market value assumes a market transaction
 - ▶ Would this CWIP sell? Could it sell?

Constitutional Issues and Opportunities

▶ Uniformity Clauses

- ▶ What does it mean to be “uniform and equal”?
- ▶ Issues in states with assessment levels
- ▶ What if no other CWIP is being assessed?
- ▶ What if method of assessing other CWIP is different?
 - ▶ Actual cost-based vs. expected value upon completion?

Constitutional Issues and Opportunities

- ▶ Other constitutional issues
 - ▶ Interaction between CWIP and Prop 13
 - ▶ States with property tax caps at varying levels
 - ▶ Which cap applies?

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Steps to Determine Assessment Standards

- Local office advice – chapter and verse of applicable law.
- Local/county/statewide assessor's manual.
- Court decisions.

- Case in point: the Connecticut experience.

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