
CHAPTER 23. REAL ESTATE ASSESSMENT AND APPEAL

SECTION 1. INTRODUCTION

- 23-1. Impact of Real Estate Taxes. Real estate taxes can have a significant impact on the operating costs of multifamily housing projects. To keep costs as low as possible, HUD directs its staff and project owners to follow strict guidelines to ensure that taxes assessed and paid are correct and that the project takes full advantage of any tax exemptions and abatements available.
- 23-2. Overview of Owners' Responsibilities. Project owners have primary responsibility for utilizing all available tax reductions and appeal processes. Section 2 of this Chapter lists guidelines to which owners should adhere throughout the year -- especially when preparing financial statements. For more information on the tax process and tax appeals in general, see Sections 4 and 5. For more information on types of available tax reductions, see paragraph 23-14.

SECTION 2. OWNER RESPONSIBILITIES

- 23-3. Accounting Procedures. Use the procedures set forth in HUD Handbook 4370.2, "Financial Operations and Accounting Procedures for Insured Multifamily Projects," to maintain books and accounts for mortgaged properties in order to permit speedy and effective audits (tax assessments and payment of new tax bills are an integral part of those requirements).
- 23-4. Prompt Payment of Taxes. Make payments to the proper taxing entities at the specified time in order to prevent the imposition of penalties or tax liens against the property. Also, take advantage of the discounts that some taxing jurisdictions provide for early payment.
- 23-5. Tax Review and Appeal. Review each tax assessment and appeal it, both retroactively and prospectively, if you find it is in error. If there are expenses associated with the tax appeal process, the owner must evaluate these costs before incurring the expense.
- A. Review the tax calculation for mathematical errors or overvaluation of property (e.g., 236 projects

are often overassessed because tax assessors base their values on market rent levels instead of basic rents).

- B. Review and question a substantial tax increase with the taxing authority.
- C. Ensure that the project is utilizing all appropriate State and local tax relief provisions available for subsidized, elderly, or low-income housing. The Field Office may provide information on State and local laws granting tax exemptions or abatements at the owner's request.
- D. Explore the possibility of making payments in lieu of taxes (PILOT), as this procedure may reduce total tax payments.
- E. If already making payments in lieu of taxes, compare the negotiated PILOT and the tax assessment to ensure that the PILOT does not exceed the amount that would be paid through the regular tax process.
- F. Examine records to determine whether the tax assessment is based on a value in excess of the current market value of the property. This may be the case if any of the following conditions exist:
 - 1. The project's value has been adversely affected by local economic conditions;
 - 2. The project has experienced accelerated obsolescence due to nearby modern construction and/or changing neighborhood characteristics;
 - 3. Gross rental income has been adversely affected by rental rates in competitive projects, or other similar factors;
 - 4. Actual and/or estimated annual operating expenses are high in comparison to annual income;
 - 5. Taxes represent a disproportionate percentage of operating expenses; and
 - 6. The tax assessment is based upon the

project's gross revenue which in turn is based on HUD assisted rents that may exceed market comparison rents.

Note: Some communities will agree to base an assessment upon rents that are below market rate (i.e., basic rents). For example, Section 236 market rents may be higher than the rents charged for other comparable unassisted apartment units because of marginal locations, inappropriate design, or other factors. Therefore, to avoid overvaluation of the property due to reliance on market rent, use the gross income for assisted projects based on basic rents. This estimate would result in a lower real estate tax on the property.

- G. If necessary, obtain aid in the review process from the Field Office as specified in paragraph 23-9.

23-6. Professional Assistance in Appeals Process. Apply for all tax reductions available, utilizing professional assistance when necessary according to the following guidelines:

- A. When possible, utilize the services of the management agent, as opposed to outside consultants, in the tax appeals process.
- B. If an identity of interest exists between the consultant or management agent handling the appeal and the project owner, follow the procedures outlined in HUD Handbook 4381.5, "Management Documents, Agents, and Fees."
- C. Adhere to the following guidelines in compensating the management agent or consultant:
 - 1. When possible, compensate the professional for his or her assistance on a contingency basis.
 - 2. If a professional is not available on a contingency basis, the cost and potential benefits must be evaluated prior to going ahead with the appeal. The professional's fee must be cost effective and may not exceed

the potential tax reduction.

3. If a retroactive tax reduction and refund is received, fees charged for an appeal may be paid from this refund.
4. If no retroactive refund is received, the expense incurred may be paid out of project income if the reasons for seeking the retroactive refund can be justified by documentation.

23-7. Rent Increase Requests. When applying for a Budgeted Rent Increase, the project owner is required to provide a certification which states the following: "The project has received or requested any tax relief for which it is eligible and management has analyzed the project's property tax bills and appealed any assessments which appeared unreasonable". This certification is provided in chapter 7 of this HUD Handbook.

When applying for a Special Rent Increase under Section 8, the project owner must submit supporting data to justify a special adjustment for rent to cover an increase in property taxes.

23-8. Cash refunded to the Property (tax appeal), Cash refunded can be used to reimburse fees as stated in paragraph 23-6, C3. All other cash must be deposited into the residual receipts account.

SECTION 3. FIELD OFFICE RESPONSIBILITIES

23-9. General. The following responsibilities should be carried out by the Loan Management Branch:

- A. Maintain tax roll data files in the MIPS system and use this information to evaluate a project's present year taxes. Review of MIPS data is part of the budgeted rent increase approval process.
- B. A HUD representative may appear at regulatory proceedings for the purpose of advising taxing officials of the nature of subsidized housing.

23-10. Income and Expense Analysis. Implement the following procedures as part of periodic income and expense

analyses of HUD-held and HUD-insured projects including coinsured and formerly coinsured projects:

- A. Request from the owner or mortgagee a copy of the most recent real estate valuation for tax purposes issued by the local taxing body.
- B. Conduct a preliminary comparison of the project's three prior year's real estate tax expenses as reflected on Form HUD-92410, Profit and Loss Statement or 92558, Income and Operating Expense Analysis. Compare these recent valuations and assessments to those of similar projects within the same taxing jurisdiction.

NOTE: When reviewing financial statements for Section 202 projects, verify that the project was processed with the same tax status that the project currently claims. In some cases, owners of Section 202 projects may need to reapply annually to retain tax exemptions or abatements established in initial processing. For more information, see HUD Handbook 4571.1 REV-2. Also,

review project's file to see if owner signed form number 1708 entitled: Agreement for Payment of Real Property Taxes by Sponsor.

- C. If tax assessments for the property appear reasonable, take no further action. If, however, the most recent assessment represents an excessive increase or is inequitable compared to assessments at similar properties, recommend to the owners to appeal the assessment. However, it is the responsibility of the owner to evaluate the cost benefit of appealing taxes and to decide whether or not to appeal taxes.

23-11. Rent Increase Requests. Implement the following procedures when owners apply for a Budgeted Rent Increase or a Special Rent Increase under Section 8:

- A. Review the project's tax expenses in the manner specified in Section 2.
- B. Ensure that the owner provides the proper certification in the case of a Budgeted Rent Increase, or the owner provides supporting data to justify the request for a Special Rent Increase.

- C. If a Budgeted Rent Increase or a Special Rent Increase under Section 8 is requested while a tax appeal is pending, process the rent increase on the basis of known expenses. If an appeal is granted, the rent increase will be recalculated to reflect the net tax savings.

SECTION 4. THE TAX PROCESS

- 23-12. Basic Factors. Many states provide some form of tax relief for subsidized housing. Tax policy and procedures vary from State to State and locale to locale. The basic factors involved in the tax process are described below:
 - A. Real Estate Taxing Bodies. Assessments on real property are levied by various governmental and quasi-governmental taxing bodies to raise revenue for performance of various public functions. More than one taxing body may levy assessments on parcels of real estate located within a political subdivision. Taxes on real estate may be levied by State, county, city, school district, and special districts including community colleges, hospitals, public utilities, libraries, etc. Properties with mortgages insured and held by HUD are subject to local assessments.
 - B. Collection of Taxes. The logistical aspect of the collection of taxes varies from State to State and from one taxing jurisdiction to another. Frequently, one taxing jurisdiction services several taxing bodies from a single collection office. Conversely, several collection offices may service a like number of taxing bodies within a locality. Payment to the proper taxing entity at a specified time prevents imposition of penalties or tax liens against a property. Mortgagors and mortgagees also should be sensitive to the payment of taxes in those taxing jurisdictions that provide discounts for early payment.
 - C. Personal Property Taxes. Personal property taxes may be included as part of tax bills on real estate.
 - 23-13. Types of Appraisals. All property within a taxing jurisdiction should be valued or appraised uniformly
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and taxed according to a uniform rate based upon appraised value. Each taxing jurisdiction is required to establish administrative procedures that will assure both the proper valuation of properties-parcels within the jurisdiction and their uniform assessment. Local assessment officers use several standard approaches in conducting an ad valorem appraisal on each property. The term "ad valorem" refers to a tax which is measured by the property value. An ad valorem tax appraisal is an appraisal at market value and/or a percentage of market value (ratio) of properties-parcels of real estate within a city, county, or other political subdivision of a State. A short explanation of the standard approaches to conducting an ad valorem appraisal follows:

- A. Market Approach. Both the market approach and the income approach are of great importance, as most abatements are accomplished by using one of these methods. For both market and income approaches, the assessor compares and makes the necessary adjustments to arrive at a fair and equitable market value of the HUD-held and/or HUD-insured property. The four steps of the market approach are:
1. Select sales of comparable properties;
 2. List the sales;
 3. Adjust sales to the subject property; and
 4. Correlate results and estimate value of subject.
- B. Income/Capitalization Approach. The income/capitalization approach is an appraisal technique designed to determine the present worth of future net income. Through this approach, a property's income stream (the income which a property produces in rent month-by-month and/or year-by-year) is converted into capital value. Often when assessed values are appealed, the appeals body requires an explanation of the income/capitalization approach taken to arrive at the assessment. Thus, owners should investigate the particular income/capitalization approach employed on their property and be ready to explain the approach to the appeal body. The basic steps of the income/capitalization approach are:

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1. Determine/estimate annual gross income (potential or actual);
 2. Deduct vacancies and/or rent loss (estimate or actual);
 3. Estimate operating expenses;
 4. Select capitalization rate;
 5. Select rate of capital recapture;
 6. Select technique to use in converting net income into capital value; and
 7. Compute the indicated valuation.
- C. Cost Approach. In most cases, the cost approach will have little bearing on abatement procedures on HUD-held and HUD-insured properties. The four steps of the cost approach are:
1. Value land as though vacant;
 2. Estimate cost of new improvements equal to those actually built (this is called "replacement cost");
 3. Estimate and deduct accrued depreciation based on age of existing improvements; and
 4. Total the land value and improvements.
- 23-14. Types of Tax Reductions. Property owners should apply for all available tax reductions both retroactively and prospectively, as reductions for both time periods may be available. The four basic types of tax reductions include:
- A. Full Exemption. Some jurisdictions grant full exemption from taxes to particular types of projects, e.g., nonprofit projects.
 - B. Reduction. A jurisdiction may reduce a project's assessment because of the status of the property, e.g., nonprofit, elderly, and subsidized projects.
 - C. Payment in Lieu of Taxes. Jurisdictions may allow subsidized projects to make payments in lieu of

taxes (PILOT) instead of full payments.

- D. Incorrect Assessments. Jurisdictions may compute assessments incorrectly either because of mathematical errors or through overvaluation. A downward adjustment to an incorrect assessment will result in a tax reduction.

SECTION 5. APPEAL OF REAL ESTATE ASSESSMENTS

- 23-15. General Information. Assessment officers employed by local taxing bodies are responsible for the initial determination of real estate value. Their determinations, however, are subject to review by property owners, by the taxing bodies themselves, and by higher administrative and judicial bodies. Frequently, a body of reviewing officials is called a board of review. Upon appeal from a property owner, local review or equalization boards are authorized to either change the value of specific properties or alter the relationship between values of groups of properties. Procedures for appeal are not uniform among localities or states. In most instances, however, appeals progress from an informal review at the local taxing office to a formal review at the local board of equalization or the State tax appeal board. If a property owner does not gain the relief he seeks, he may appeal for relief through the courts.

- 23-16. Basis of Appeal. When a property owner believes his or her real estate assessment to be inequitable he or she may choose to lodge an appeal with the local taxing body or to engage the services of an attorney and/or an expert real estate appraiser in accordance with paragraph 23-6 who will prepare the appeal.
 - A. Such appeals are generally based on the following contentions:
 - 1. Overvaluation
 - 2. Inequality
 - 3. Illegality

 - B. The majority of appeals are based upon grounds of overvaluation. Contention that an assessment is based upon overvaluation or inequality may be

supported by the findings and testimony of an expert appraiser. Illegality must be contended

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with the aid of an attorney.

23-17. Appeal Assumptions.

- A. Administrative and judicial bodies charged with reviewing tax appeals are guided in their decisions by the following assumptions:
 - 1. The local assessor's valuation of the property is correct until proven otherwise. To counter this assumption, property owners must themselves, or with the assistance of an expert witness, demonstrate the methods by which they arrived at a different valuation estimate. A witness must prove his or her right to be qualified as an expert.
 - 2. If capitalized income results in a higher valuation than replacement cost, then replacement cost will be accepted as closer to market value.
- B. Administrative and/or judicial review boards rely on the local assessor to supply all data upon which the original assessment was made.