EFFECTS OF APPEALS/SETTLEMENTS ON THE MUNICIPAL RATABLE BASE DURING A DECLINING MARKET

Municipal Exposure & Financial Impact

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TAX APPEALS

- The unpleasant reality is that tax appeals do happen
- Economic pressures have negatively affected the values of properties throughout the state
- Office vacancy rates, foreclosures, short sales, etc. all impact market values
- Property owners are pursuing tax appeals to lower the assessment on their properties to adjust them to better reflect current market conditions

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SURPRISE! WERE YOU READY?

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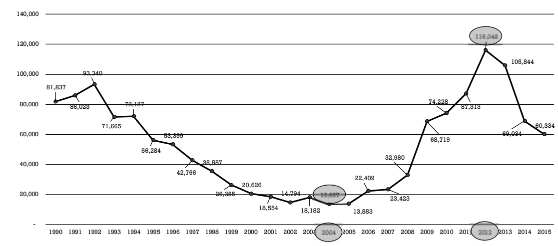
STATEWIDE TAX APPEAL TRENDS (26 YRS)



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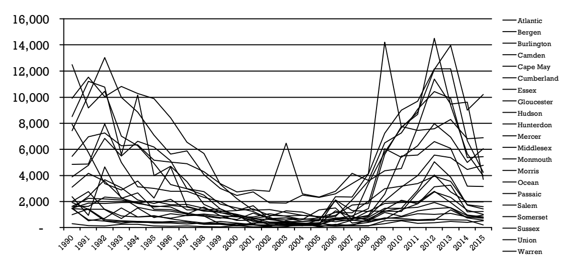

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STATEWIDE TAX APPEAL TRENDS (26 YRS)

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Atlantic	3,908	4,784	6,844	5,507	6,614	6,172	5,127	2,990	2,774	1,798	1,509	1,252	669
Bergen	7,430	10,176	13,035	10,002	8,866	7,105	5,654	5,886	4,079	3,019	2,466	2,747	1,905
Burlington	1,921	1,413	1,411	903	817	860	730	936	1,038	929	551	571	240
Camden	1,625	1,635	2,353	2,245	1,908	2,018	1,766	1,785	1,498	1,150	1,022	724	428
Cape May	2,370	940	4,649	2,250	2,678	1,407	1,388	1,120	888	282	271	207	86
Cumberland	1,458	602	501	330	484	367	351	273	367	273	273	216	212
Essex	5,477	6,981	7,257	6,278	6,366	5,164	5,036	4,904	4,295	3,378	2,747	2,885	2,792
Gloucester	1,519	529	723	1,509	824	928	665	493	360	485	351	241	167
Hudson	9,925	11,521	10,041	10,824	10,295	9,908	8,414	6,555	5,693	3,337	2,219	1,339	1,393
Hunterdon	1,439	1,377	528	451	409	405	481	417	290	361	173	352	351
Mercer	1,465	2,395	3,661	3,049	2,116	1,847	2,168	1,370	1,358	1,439	920	473	368
Middlesex	7,921	5,763	3,374	2,881	3,578	2,262	4,656	1,639	1,295	1,164	852	594	309
Monmouth	12,487	9,194	10,468	7,009	6,290	4,939	3,306	2,993	2,495	1,449	899	723	867
Morris	3,118	4,146	3,554	2,315	1,561	1,326	1,257	1,042	1,593	918	828	813	1,080
Ocean	8,515	11,233	10,779	5,593	10,175	3,985	4,703	3,516	1,781	1,235	1,303	1,675	625
Passaic	4,847	4,876	7,957	5,001	3,133	3,004	2,802	2,789	2,312	2,015	1,323	1,430	938
Salem	301	157	139	263	250	129	107	128	89	70	158	59	61
Somerset	2,014	2,745	1,400	688	1,504	767	1,067	922	963	786	618	1,106	703
Sussex	1,632	2,248	2,196	2,133	1,852	1,656	1,589	1,010	872	713	970	247	798
Union	1,476	1,878	1,850	1,926	1,929	1,587	1,698	1,575	1,267	1,291	1,028	671	627
Warren	989	1,430	620	518	478	448	434	423	250	263	145	229	175
	81,837	86,023	93,340	71,665	72,127	56,284	53,399	42,766	35,557	26,355	20,626	18,554	14,794

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Atlantic	761	458	634	2,081	595	3,388	5,778	7,663	8,867	12,129	13,956	9,000	10,227
Bergen	1,877	2,490	2,325	2,594	3,389	4,127	7,242	9,004	9,698	12,176	12,185	6,679	4,242
Burlington	210	190	601	464	635	1,263	1,267	1,486	2,859	5,029	3,875	1,742	1,429
Camden	420	360	206	745	714	670	1,260	1,238	2,680	4,028	2,743	1,979	1,969
Cape May	529	286	268	2,136	1,305	1,248	1,865	1,923	1,959	2,801	1,926	979	827
Cumberland	119	155	339	147	123	142	533	588	563	581	1,373	752	572
Essex	6,468	2,582	2,329	2,800	4,157	3,631	6,494	7,272	9,077	10,427	9,917	5,377	5,455
Gloucester	200	147	156	99	160	661	643	1,364	1,838	3,134	3,249	1,206	1,240
Hudson	1,164	948	838	690	895	1,469	5,626	7,763	7,473	7,590	8,289	6,815	6,898
Hunterdon	385	268	306	211	571	484	738	701	597	653	611	567	204
Mercer	250	142	317	1,294	838	551	1,393	2,104	1,835	2,749	2,316	1,349	1,020
Middlesex	329	341	373	674	696	958	2,571	5,486	5,575	6,590	6,092	3,191	3,147
Monmouth	1,288	1,193	744	937	1,736	1,862	6,049	5,398	6,273	7,988	6,948	4,992	6,063
Morris	861	604	750	1,171	1,136	2,039	2,986	3,190	3,277	3,943	3,551	1,764	1,610
Ocean	446	491	534	2,374	2,346	4,151	14,195	7,710	8,698	14,497	9,372	5,666	3,974
Passaic	907	943	857	833	2,115	3,576	4,376	4,541	7,703	11,386	9,487	9,630	3,701
Salem	48	319	72	268	168	170	312	526	329	372	479	399	516
Somerset	742	634	1,364	1,523	333	523	1,169	873	1,289	1,459	1,527	914	767
Sussex	332	208	185	600	550	794	1,476	1,475	1,562	1,939	1,504	744	980
Union	599	664	580	653	717	878	2,047	3,104	3,989	5,558	5,362	4,470	4,776
Warren	247	234	115	115	244	395	699	819	1,072	1,019	1,082	819	717
	18,182	13,657	13,883	22,409	23,423	32,980	68,719	74,228	87,313	116,048	105,844	69,034	60,334

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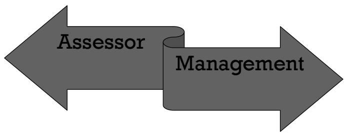
TAX APPEALS

- Are you listening to your Tax Assessor?
- Is your Tax Assessor listening to you?
- Do your Assessor and your Expert communicate?



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MUNICIPAL PLANNING FOR TAX APPEALS

- Establishing appropriate reserve levels
- Consider a revaluation or reassessment
  - When is the right time to engage in a revaluation or reassessment?
- Anticipating what may happen and planning appropriately for the inevitable
- Failure to plan will put the municipality at risk

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BOND RATING PROCESS

- How can excessive tax appeals impact the bond rating process for a municipality?
- One of the components of a bond rating is the review of reserves available and pending litigation or open obligations
- If the reserves have been depleted or are insufficient to cover the pending appeals, the rating agency will look at this negatively
- The cost of issuing debt will increase in the event that there is a negative bond rating change

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TAX APPEAL REFUNDS

- The **municipality** is burdened with returning monies that were collected for other taxing entities
- The other taxing entities do not have to return their portion
- The **municipality** has to come up with all of the money from its own funds
- In most cases, a **municipality** is one of the smallest components of the overall tax bill

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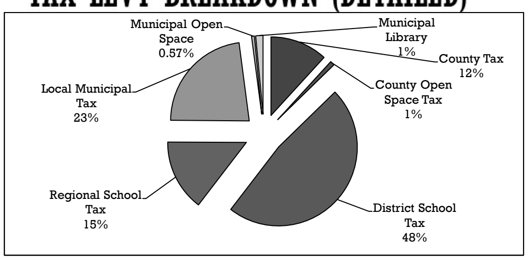
TAX LEVY BREAKDOWN (DETAILED)



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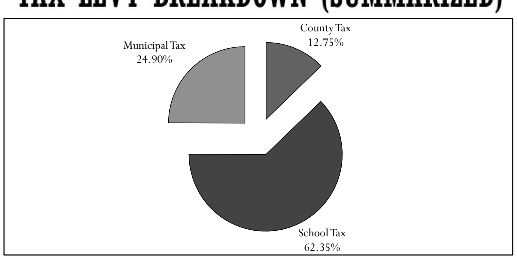
TAX LEVY BREAKDOWN (SUMMARIZED)



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LONG TERM IMPACT OF TAX APPEALS

- Indicator of a declining ratable base
- Shifting of the tax burden to other tax payers
- Shift from Commercial to Residential or vice versa

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GROUP APPEALS

- We have seen an increase in the number of group appeals
- An attorney will send a blanket of letters to a neighborhood, townhouse association, or condo association encouraging a group filing of an appeal
- Once there is one successful appeal you are likely to see a snow ball effect

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PAYING FOR TAX APPEALS

- Impact on Current Year collections and the impact on Fund Balance
- Fund Balance (Surplus) levels are already at historic lows
- The forced return of appeals puts a municipality at risk of running deficits in Fund Balance (Surplus)

- So how does a Municipality pay for Tax Appeals?

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LOCAL FINANCE NOTICE 2012-4

- This LFN came about as a result of a growing number of municipalities being faced with tax appeal refunds in excess of the available reserves to fund them
- Provides guidance to local government on Preparing for Tax Appeals and Paying for their Impact
- Many municipalities have been preparing for tax appeals by setting up appropriate reserves and conducting revaluations or reassessments
- However, economic pressures have impacted the ability of all to completely prepare which puts them at risk

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LOCAL FINANCE NOTICE 2012-4

- Option 1:
  - Emergency Appropriation to Authorize Repayment
- Option 2:
  - Issue Notes in the Amount of Credits Reflecting Overpayment in Previous Quarters for the Current Year
- Option 3:
  - New Legislation Allows Municipalities to Borrow for Prior Year Cash Deficits Resulting from Tax Appeals

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LFN 2012-4, OPTION 1

- For Municipalities who have not budgeted sufficient funds to refund property owners for prior year taxes paid
- Can pass an emergency appropriation to authorize repayment
- That emergency appropriation, with the approval of the Local Finance Board, may then be refunded over a period of years
- Generally, the Local Finance Board will approve such refundings so long as maturities are designed to ensure that the annual impact of paying down the refunding is a **minimum** of $50 on an average assessed home

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LFN 2012-4, OPTION 2

- To the extent that a Municipality's budget is unable to absorb the revenue losses associated with settled or adjudicated current year tax appeals, the municipality may issue notes in the amount of 75% of the property tax credits reflecting the overpayment of previous quarters for the current year
- This option was first made available in Fall of 2011 when the Attorney General's Office modified previous legal advice that prohibited such an option

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LFN 2012-4, OPTION 2

- The Local Finance Board generally places the following conditions on such approvals:
  1. Not to make similar applications in the future
  2. To conduct a revaluation or reassessment in order to address the underlying factors that lead to the substantial number of tax appeals
  3. Not to hire any employees for the ensuing year without first receiving the approval of the Director of the Division of Local Government Services

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LFN 2012-4, OPTION 3

- Governor Christie signed P.L. 2011, c. 224 into law on January 17, 2012
- This law contains a provision permitting municipalities to seek Local Finance Board approval to bond for the prior year deficit resulting, in part or in whole, due to impacts from tax appeals

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LFN 2012-4, OPTION 3

- Section three of P.L. 2011, c. 224 states that:

  "Any municipality that has ended the previous budget year with a deficit in operations caused, whether in whole or in part, by obligations created from tax appeals, may issue notes with the approval of the Local Finance Board on such conditions as the Local Finance Board deems appropriate. The amount of notes authorized pursuant to this provision shall not exceed the cash payments or tax credits due to tax appeals and shall be authorized by a bond ordinance approved by the Local Finance Board."

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LFN 2012-4, OPTION 3

- The amount of the notes cannot exceed the cash payments or tax credits due to tax appeals
- This option should be used as a last resort; the Local Finance Board, as a condition of support, will impose the same substantive level of State monitoring and oversight as is imposed on Municipalities seeking financial assistance through the Transitional Aid Program

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LOCAL FINANCE NOTICE 2012-16

- Just when you think you have it all figured out…
- LFN 2012-16 released August 2, 2012
- Questionnaire for Municipalities and Counties Seeking Local Finance Board Approval for Certain Applications
- Would be required for anyone seeking a number of items, one of which is "***issuance of refunding bonds/notes relating to tax appeals or emergencies***"

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LFN 2012-16 REQUIRED DISCLOSURE

- The extent of their preparation for tax appeal impacts and reasonable foreseeable emergencies
  - For example, has the municipality set aside funds for pending tax appeals commensurate with their potential exposure?
- The extent to which efficiencies have been implemented, including but not limited to personnel actions such as layoffs, furloughs, and/or attrition as well as the elimination or reduction of non-essential services (Who determines this?)
- Whether the municipality refrains from paying excessive compensation to part time officials, including elected officials

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LFN 2012-16 BOARD REVIEW

- The LFN contained the following statement:

"Please note that the Board will closely scrutinize questionnaire responses. Municipalities or counties whose answers indicate a lack of preparation for reasonable foreseeable liabilities or an unwillingness to pay down liabilities through efficiency and spending restraint, risk denial of their applications."

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CAP LAWS & RESTRICTIONS IMPOSED

- Municipalities are subject to a Levy CAP of 2%
- There are a couple of exceptions
  - Health Benefit Increases over the 2% but not in excess of SHBP increases
  - Pension Costs
  - **Debt Service** and Capital Improvements
  - Extraordinary costs incurred directly related to a declared emergency approved by the Governor

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IMPACT OF TAX APPEALS ON THE TAX BASE

- What happens to the tax rate?
- Who covers those appeals?
- Redistribution of the tax effort

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IMPACT OF A TAX APPEAL ON TAX RATE

Prior to Tax Appeal

Tax Levy	$50,000
Tax Rate	$5.00/$100 AV
Total Ratable Base	$1,000,000

Tax Levy	$50,000
Tax Rate	5.56/$100 AV
Total Ratable Base	$900,000

- The example above assumes that there was a successful tax appeal which reduced the assessed value by **$100,000**
- Notice that the tax effort does not change but simply impacts the tax rate itself

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RESERVE FOR TAX APPEALS

- How to set it up
  - Budget Appropriation
  - Direct Charge to Budget Operations
- Funding Goals
  - What is an appropriate level to fund?
  - What was the worst tax appeal year ever experienced by the municipality? That would be a good starting point
- How do you get there?
  - Time and Money
  - Establishing and maintaining an appropriate tax appeal reserve may take several years of planning, commitment and patience

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TAX APPEAL SETTLEMENTS

- In an ideal world, tax appeal settlements would involve future value reductions rather than reductions in the current year
- This eliminates the need to come up with the funding to return the tax money
- The tactic of a prospective tax assessment settlement allows the tax burden to be redistributed in subsequent year(s)
- Is a less controversial way of dealing with value inequities
- A good working relationship with your commercial property owners will help to facilitate this

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STATE TAX APPEALS

- In the event that a municipality experiences a large number of State Tax appeals
- A refunding ordinance may be adopted, but requires approval of the Local Finance Board
- Allows the costs of the appeals to be spread over a number of years (Usually limited to 3-5 but may be more depending upon the circumstances)
- The refunding ordinance may only be used for settled appeals

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CONCLUSION

- What we have learned is that there is a great need for **planning, planning and more planning**
- Without a good long range plan the municipality is at risk of financial pressures in excess of their financial means
- Planning includes not only how to pay for the appeals but also for how to mitigate the inevitable occurrence of appeals
- Planning should not occur in the bad years, it should be something that is accomplished during good times so that the municipality has the ability to endure the bad
- The planning process should take into consideration "Murphy". What can go wrong will go wrong!

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QUESTIONS

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