

Everything You Always Wanted to Know About Taxes *from the desk of David M. Touchstone*

HOW ASSESSMENTS AND MILLAGES WORK

Few concepts, seemingly simple, generate as much conflict and discussion in our business as property taxes. For those who like the big, fancy term for it, we are discussing “ad valorem” tax. For those of you who don’t know what ad valorem tax means or why those of us who wish to sound superior call it that, all “ad valorem” means is “according to value”. This fancy pants Latin term just means that property is “assessed” to determine its value, and, generally speaking, its valuation will determine how much property tax (or ad valorem tax) the owner of the property will have to pay.

Who does the valuing? Why, the local parish assessor, of course. And just so you know, we aren’t just talking real estate here. Every kind of property, including all sorts of movable property such as furniture, fixtures, equipment, and even abstract property such as promissory notes and stock, is susceptible of ad valorem taxation; this is an important fact to keep in mind if you are involved in the sale of a business, such as a convenience store, motel, or printing company.

While it is the assessor who determines the value of the property for taxation purposes, that is not the end of the story. Most of the rest of the equation comes from the millage rate. The word “millage” probably comes from “mille”, the French word for “thousand”. Literally a “mill” is one thousandth of a dollar, or, we can say that it takes ten mills to make a penny. Each of our local government bodies determines what its respective millage rate will be, for instance, so many mills for the school board, so many mills for the police jury, and so forth. In most situations, the local governing bodies do not have complete freedom in the determination of their respective millage rates; there is an interplay here between the state constitution, acts



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of the legislature, and ordinances passed by the local bodies. In some instances, it takes a vote of the general public to increase a governing body’s millage rate. Generally speaking, with the exception of the municipal governments, the parish sheriffs act as the collection agents for all the local government bodies; the sheriffs collect and the sheriffs disburse. The exception to this rule is that cities, towns, and villages collect their own property taxes. In other instances, property may be located in special assessment districts, such as fire districts and water districts. In the case of special assessment districts, the parish sheriff serves as the tax collector.

Determination of how much property tax may be due as to any given item of property is further complicated by exemptions. There are many types of ad valorem exemptions, but the only one I propose to discuss in this article is the biggie -- the homestead exemption.

Turning our attention back to the assessor’s role in the calculation of how much tax will be due, we should take note that there are all sorts of factors that go into the assessor’s determination of value. Of course, the most significant factor is land price inflation, but other

important factors are change of use, and the addition of structures and increments to structures. The state constitution requires all parish assessors to reassess all real estate every four years. *2008 is a reassessment year.* My experience has been that reassessment years always result in confusion and unhappiness, so I strongly suggest that you pay attention to what I am about to say. While, at this moment in time, we may be in a lull as to inflation of property values (or even in a retrenchment), I think it is a pretty safe bet that almost all the values around here have significantly increased since our last reassessment year, 2004. In reassessment years in which there has been a big jump from the last reassessment, sometimes the local governing bodies will make a "millage rollback" so as not to obtain a windfall of extra tax monies. However, even a millage rollback will not change the fact that reassessment may lift a property somewhat above or even greatly above the homestead exemption threshold. If you do not account for this in your buyer's payment escrows, you will be *misestimating the buyer's monthly payments.* In reassessment years, we in the title business are faced with a Hobson's choice when setting up the buyer's escrow for taxes with his mortgage company. If, on the one hand, we calculate the buyer's payment on the probable valuation of the home (i.e. based on purchase price) we are met with wails and moans that neither the realtor nor the loan originator calculated that much for the buyer's monthly payment. If, on the other hand, we calculate the buyer's tax escrows on the 2007 assessment, we will get angry telephone calls from buyers in January and February of 2009 – after they learn that their mortgage company has massively increased their payments to make up for the tax escrow shortfall. Bottom line: if you don't estimate the buyer's payment on the reassessed valuation, you are doing him a disservice and, in my opinion, falling below the standard of professionalism you should expect of yourself. One other word on this issue: in normal assessment years, we use the same valuation for calculating the pro-ration of taxes as we use in calculating the buyer's tax escrows. However, in reassessment years, we often use last year's assessment for the tax pro-ration, but use the *estimated valuation of the property for this year* in calculating the buyer's tax escrow.

HOW TO READ ASSESSMENTS

If you have ever reviewed the text of an assessor's assessment, you may have been a little confused. Say, for instance, you have a house listed for \$150,000.00

and the assessment printout shows the land value at \$2,000.00 and the value of the improvements (house) at \$10,000.00, you may wonder what this means. In this instance, according to the assessor's assessment, the combined land and house value would be \$12,000.00. The state constitution requires that assessors value residential land, agricultural land, commercial land and residential structures at 10% of their fair market value. Commercial structures, on the other hand, are required by the constitution to be assessed at 15% of their fair market value. In our example, the assessor's most recent valuation is based on his estimate that the fair market value of the property is \$120,000.00. No doubt, the assessor will reassess this property close to the purchase price in the reassessment year. In this instance, \$140,000.00 would be a good guess at the reassessment valuation. One might wonder what this arcane system of 10% and 15% valuation is all about. I don't know for sure, but it looks like politics to me. Homeowners' property taxes are based on a lower assessment rate than businesses' property taxes (10% as opposed to 15%), without even taking into account the homestead exemption.

HOMESTEAD EXEMPTION

As I stated above, homestead exemption is just one type of property tax exemption. In Louisiana, there is an exemption for cars, boats, church properties, certain commercial and industrial businesses that have been granted special exemptions, etc., but the only exemption I want to cover in this article is the homestead exemption. There are a number of rules about homestead exemptions. I'll try to cover as many of them as I can think of. The homestead exemption can apply to one or more tracts so long as the owner resides on one of the tracts. The maximum amount of land for which the homestead exemption is available is 160 acres. If the owner resides in it, the homestead exemption can apply to a mobile home, even though the owner of the home does not own the land upon which the home is sited. In order to qualify for homestead exemption treatment, the owner of the property, whether site built or a mobile home, must make his residence on the property and must file with the tax assessor an application for homestead exemption on a form provided by the assessor. No one can claim more than one homestead exemption in Louisiana. Once the homestead exemption has been granted, the homeowner will not normally have to re-file. Once each year after the initial filing, the assessor sends out

a post card notice. The homeowner who receives this notice is not required to take action; however, if the post office returns the post card to the assessor's office as undeliverable, the assessor will cancel the homestead exemption. If a husband and wife own a home together which has previously been granted a homestead exemption and one of them dies, the survivor will be entitled to have the homestead exemption fully maintained for as long as the survivor resides in the home. Persons (usually parents) who donate or sell their home are allowed to maintain the homestead exemption, if the transferors retain a right of usufruct and continue to live in the home. If more than one person owns a home, and less than all the owners reside in the home, the homestead exemption will be allowed only on a pro rata basis. Example: a mother and daughter purchase a home, but only the daughter lives there; in this instance, the daughter could file for a homestead exemption but she would receive an exemption only as to \$37,500.00 of the home's value, not the customary \$75,000.00 exemption. A homestead exemption can be applied for at any time during the tax year through December 31. Depending on how merciful any given assessor may be, sometimes the homestead exemption can even be filed in the early part of the following year; this is called a "delayed homestead". If a homeowner has temporarily lost ownership of his property by allowing it to be sold for taxes and then redeems the tax sale, he will have to refile with the assessor to recover his homestead exemption. The homestead exemption applies only to parish taxes; it does not apply to municipal taxes, nor does it apply to the assessments of special assessment districts, such as fire districts. Persons who have attained the age of 65, whose adjusted gross income is less than \$60,498.00, and who have a homestead exemption on their home can file an application with the assessor to have their home valuation "frozen"; this protects seniors from inflation.

TAX SALES AND ADJUDICATIONS

In most parishes and municipalities of Louisiana, taxes are paid in arrears. For instance, the obligation of an owner of property located in Bossier Parish (or any other parish) is created on January 1 of the tax year. Therefore, the debt for 2008 taxes came into existence on January 1, 2008. However, in most parishes, the various tax collectors do not begin collection of the taxes due for any given year until December 1 of that

year. One of the interesting features of this system is how it affects the tax treatment of new construction. If a builder builds a house on a lot between February 1, 2008 and June 30, 2008, and sells it to the homeowner on September 1, 2008, the homeowner will get a "lot only" tax assessment for 2008 taxes (no taxes on the house itself), so long as the homeowner does not make the mistake of applying for his homestead exemption before 2009. As set forth above, taxes for the tax year 2008 cannot be tendered to the tax collectors until December 1, 2008. After December 31, 2008, if still unpaid, the 2008 taxes will be delinquent. At that time, the unpaid tax collectors will begin to add late charges and interest to the tax bill. Tax collectors who are not timely paid are required to send written notices of delinquency to tardy property owners and are required to advertise in a local newspaper the names of the owners with short descriptions of the properties for which the taxes remain unpaid. The local tax collectors hold their tax sales in June or July. So, if the property tax due for 2008 on any given property has not been paid, that property will go to a public auction in June or July of 2009. Anybody can bid on the property at the public auction. The tax collector is required to sell the property to the bidder who agrees to pay the tax obligation and who is willing to accept the least undivided interest. Example: if the tax obligation is \$800.00 and three persons are bidding on the property, they will bid in declining undivided interests. The first bidder might say: "I will pay the taxes for a 100% interest". The second bidder might say "I will pay the taxes for a 90% interest". The third bidder might say: "I will pay the taxes for an 80% interest". If no one else bids, the tax collector will sell the property to the third bidder who will then pay the taxes and receive a deed to an undivided 80% ownership interest in the property; the record owner in this example would continue to own a 20% interest. If no one bids on the property, then the tax collector "adjudicates" the property; this means that the tax collector deeds the property to the tax jurisdiction. If a sheriff adjudicates the property, he deeds it to the parish government in the parish where he is sheriff. If a city tax collector adjudicates the property, he deeds it to the city for which he is the tax collector. Whether the property goes to a tax sale or is adjudicated, the record owner (the guy who lost it) has the right to "redeem" the tax sale for a period of three years from the day the tax sale deed or tax adjudication deed was recorded with the parish clerk of court. No one can question or impede the right of redemption during the three year period and anybody can pay the redemption

amount. After the three years have expired, well, that's a different story. If the record owner was one of the lucky ones whose property was adjudicated rather than being sold, in most cases, the sheriff or city tax collector will allow the redemption without too much trouble even though the three years have elapsed. However, recently the local tax collectors have gotten much more aggressive about selling inventoried adjudicated properties to investors and speculators. When property has gone to tax sale and more than three years have elapsed, that can be real trouble for the record owner. In such an instance, a record owner often finds himself in the position of begging mercy from the tax sale purchaser or having an attorney threaten the tax sale purchaser with litigation. Even though more than three years have elapsed since the tax sale, record owners shouldn't just give up, because the tax collectors around here (and all over the state, for that matter) routinely fail to observe essential procedural requirements when conducting tax sales. So, oftentimes, there is a "technicality" which allows a record owner to recover his property in court if the record owner litigates the matter. If the record owner is able to have a tax sale judicially rescinded, the court will require, as a precondition to his recovering title, that he pay all back taxes, penalties, and interest. Because tax titles are notoriously infirm, title lawyers will never approve titles that are based solely on tax sales or tax adjudications. In such instances, we title lawyers always require that the tax titles be "firmed up". But, as Bilbo says, "that's another story", and I think we've talked enough about property taxes for one day.