NEW YORK CITY'S PANDEMIC PROPERTY TAX PROBLEMS PERSIST

Property tax assessments show market-wide value declines for the first time in 25 years but fall short of reflecting taxpayers' true losses.

By Joel Marcus of Marcus & Pollack LLP

What happens when an irresistible force meets an immovable object?

The longstanding physics conundrum encapsulates the situation in which New York City property owners currently find themselves, and for better or worse, they're about to discover the answer to the age-old question.

City government has squeezed increasing sums of property taxes from its real estate stock in each of the past 25 years, but the pandemic is changing everything.

The basic fact is that 53 percent of New York City revenues come from real estate taxes. Fueled by rising rents that are tied to high costs of new construction, the city property tax base has grown and enjoyed record tax revenues in recent years.

Total real property tax revenue was almost $30 billion in 2020, according to the city's annual property tax report. Historically speaking, no major event in recent memory has been responsible for a pause in the year-over-year tax increases — not the Financial Crisis of 2018, nor Hurricane Sandy, nor even the events of September 11. It seems as though only a global pandemic has this particular power.

COVID-19 has affected every element of New York City's economy, but its effect on real estate and property taxes deserves special attention. The total market value of Class 2 properties, which includes cooperatives, condominiums and rental apartment buildings, decreased by 8 percent last year, according to the Department of Finance's tentative property tax assessment roll for fiscal 2022.

The total market value for Class 4 properties — primarily nonresidential commercial properties such as hotels, offices, retail centers and entertainment venues — fell by a whopping 15.75 percent, including a 15.5 percent drop in value for office buildings.

Citywide declines were 21 percent for retail buildings and 23.8 percent for hotels, two asset classes in which the impacts of the pandemic have been felt most harshly and visibly.

Impact of Tax Status Dates

New York City assesses all its real estate as of Jan. 5 of each tax year. Therefore, last year's market values that were set as of Jan. 5, 2020, did not reflect any effects of the soon-to-arrive pandemic. For the 2021-2022 tax year, however, the valuation date of Jan. 5, 2021, must fully account for the impact of COVID-19.

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As the tentative property tax assessment roll shows, tax assessors have acknowledged significant reductions in property values. But were these values decreased enough to reflect actual contractions in market value?

Many property owners and tax experts believe that recent assessments fail to adequately reflect the extent to which property owners have suffered due to the pandemic. Taxpayers filed a record number of appeals by the March 1 tax protest deadline, and there are massive appeal efforts underway to complete the Tax Commission's review of all the filed cases by the end of the year.

While the newly released assessment values show that assessors addressed many COVID-19 issues, such as the negative effects of state and city executive orders and lockdowns, many properties have not seen adequate assessment reductions.

Many hotels, for instance, are experiencing ongoing closures, and some hotels report that their total 2020 revenues are less than their property tax bills, even before accounting for operating expenses and debt service.

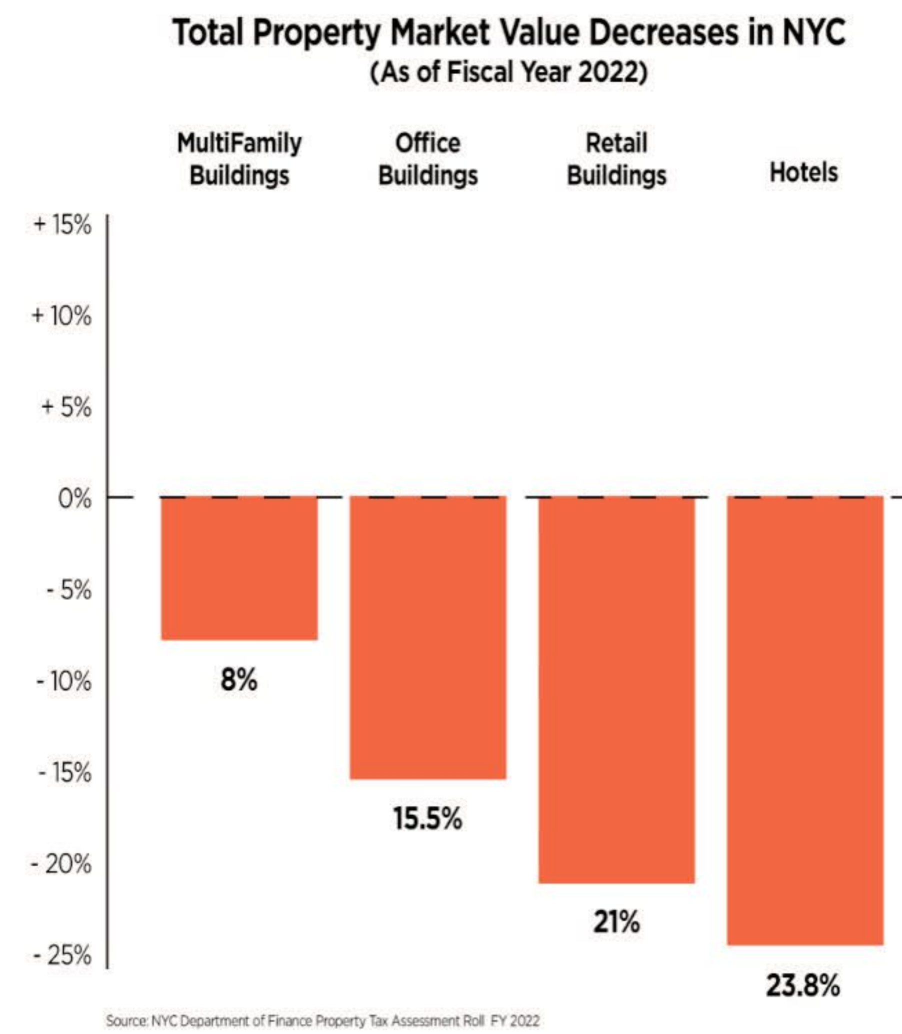
For entertainment venues, like movie theaters, the questions of when reopenings on a mass scale will be allowed and what occupancy restrictions will be put in place remain unclear. In many cases, retail landlords have either lost their tenants or stores are withholding rent payments. Residential renters are not paying rent and new laws prohibit eviction proceedings.

Relief Strategies

Property owners can improve their chances for obtaining further relief on appeal by quantifying property value losses.

For hotel owners and operators, this means gathering documentation that shows closure dates, occupancy rates and any special COVID-19 costs that they will incur when they reopen.

Approximately 25,000 hotel rooms have been permanently closed, and among the few hotels that did not cease operations, occupancy was about 25 percent for most of the tax year. Some occupied rooms were for COVID-19 patients and displaced homeless families. Most industry forecasts anticipate at least a four-year recovery period for hotels to reach pre-pandemic revenues.



Most property types in New York City experienced dramatic value loss due to the COVID-19 pandemic.

Retail and office property owners should be prepared to show declines in gross income and rents received or paid on their financial reports filed with the city.

These landlords should make lists of tenants that vacated and of those that are not paying rent. Additionally, the Tax Commission now requires taxpayers to explain the basis of rent declines greater than 10 percent.

In conclusion, tax assessments must reflect the entirety of what this pandemic has done to the real estate industry over the course of 15 months. The unfortunate fact is that almost every avenue and street in New York City has multiple empty stores, and local standby establishments are out of business.

Theaters and Broadway are shattered; tourists and all manner of visitors have practically vanished, leaving an empty, lonely and bleak picture for real estate.

New York City authorities must provide more substantial tax relief for property owners. Taxpayers and their advisors will need to take an active part in obtaining reduced assessments, by carefully assembling proof of the decline in their property's market value.

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