KE ANDREWS COVID-19 UPDATE

POTENTIAL COVID-19 PROPERTY TAX IMPLICATIONS IN THE STATE OF TEXAS

There are a number of things to consider from a property tax implication perspective given that we are in uncharted waters economically across many industries. Some things to keep in mind:

THE ASSESSMENT DATE

In a letter issued April 13, 2020, in response to TXOGA, Texas Comptroller - Glenn Hegar outlined and reiterated a **hard January 1 assessment date.** In his own words:

> *"I recognize, of course, the significance of the oil and gas industry to the Texas economy, and I'm very sympathetic to the downward pressures put on the industry in this global economic contraction.* ***After considerable research by my staff, however, it's clear that Texas law stipulates a uniform appraisal date of Jan. 1. While the existence of COVID-19 in China was known on Jan. 1, the eventual global spread of the virus and its economic impact was not.*** *Changes to the economy occurring after Jan. 1 do not decrease or increase the appraised market value of property as of Jan. 1, unless those changes were part of a market trend predictable as of the appraisal date…."*

These same principles apply to all property types - both real and personal property.

We are finding in early negotiations with many of the appraisal districts that they are in fact taking a hard line on the January 1 assessment date regardless of the COVID-19 anomaly.

EARLY INDICATIONS CONCERNING LIEN DATE AS IT AFFECTS VALUATION

Early indications from the appraisal valuation firms working early released counties have been met with the appraisal firms taking a hard stance on any issues that occurred after the January 1 lien date. With the Jan. 1 lien date, the **appraisal districts position is that anything that happens past that date is not allowable** (market conditions as of Jan. 1).

APPLICATION OF THE TEMPORARY TAX EXEMPTION FOR QUALIFIED PROPERTY DAMAGED BY A DISASTER

The Attorney General of Texas- Ken Paxton issued a letter to Senator Bettencourt April 13, 2020, in regards to the temporary tax exemption for economic disaster as it relates to COVID- 19; stating the following opinion in summary:

> *"Section 11.35 of the Tax Code creates a temporary tax exemption for qualified property damaged by a disaster, as declared by the Governor. A court would likely conclude that the Legislature intended to limit the temporary tax exemption to* ***apply to property physically harmed*** *as a result of a declared disaster.* ***Thus, purely economic, non-physical damage to property caused by the COVID-19 disaster is not eligible for the temporary tax exemption*** *provided by section 11.35 of the Tax Code."*

SENATE BILL 2 PROPERTY TAX REVENUE CAP- COVID-19 LOCAL DISASTER CHANGES

Due to the significant reduction in overall sales tax receipts as well as a massive reduction in oil and gas severance taxes collected by the state of Texas, local governments will be experiencing revenue short-falls. Historically local jurisdictions look to property taxes to make up the difference.

Senate Bill 2 calls for a 3.5% cap on increased tax revenue over the previous year, a revision from the former 8% cap. **Section 26.07(b) of SB2 notes that cities and counties that require additional revenue to cope with a disaster may increase property tax revenue up to 8% without a vote** should the Governor declare a disaster. While the Governor's office is discouraging cities and counties from doing this, there is uncertainty as to how local jurisdictions will deal with current revenue short-falls given the 8% allowance under Section 26.07(b).

ECONOMIC ATMOSPHERE FOR HIGH PROPERTY VALUES REGARDLESS OF THE COVID-19 ANOMALY, AND HIGHER THAN NORMAL LOCAL PROPERTY TAX REVENUE INCREASES

The environment that has been created in the area of property tax in the state of Texas is an unusual one. While it is extremely important every year to ensure all property assessments are aggressively evaluated and protests are aggressively pursued, under the current economic climate even with significant value reductions, savings could be negated by unexpected tax rate increases allowable due to the COVID-19 disaster. Accurate accrual projections will be extremely important throughout this tax cycle. In addition, unlike previous years, this year the overall negotiations and appeals process will be different with the inability to present arguments in person.

OUR RESPONSE

KE Andrews is prepared with the expectation that negotiations will require an unprecedented, diligent, and aggressive response to what appears to be an un-level playing field. Our appraisers stand ready to aggressively engage in value discussions, negotiations and protests (both informally and formally) on behalf of our clients in an unprecedented fashion. We estimate that there will be a large increase in appeals activity, and more often than normal, added litigation in order to find resolution. We also stand ready to assist our clients throughout this unusual year in the accruals process as uncertainty concerning local tax rate increases will be high this year. We will continue in this environment to ensure that our clients are in the best tax position possible.

KE Andrews will continue to monitor the property tax implications of COVID-19, and will provide updates as significant developments occur.