Property Tax Consulting - Fixed Fee or Contingency Fee??

There's an old adage with says, "You get what you pay for!" That does NOT necessarily hold true in property tax consulting work.

Generally, there are two ways of paying for property tax consulting services. A flat fee based on the amount of work a consultant will expect to perform, or on a contingency fee that is based on the amount of property tax savings the consultant achieves for the client.

Each offers the client benefits, and each has weaknesses. Ultimately, the client must decide what is in their best interest when choosing a property tax representative.

The question of which fee plan you go with depends in part on your understanding of the property tax assessment appeal system in Pennsylvania. Also, you need to understand how property tax consultants go about their jobs. Once you know how these two activities merge, you'll be in a better position to choose which fee scenario is best for you or your company.

Please don't confuse the job that an attorney will do for you in a property tax appeal on a contingent basis with that of a "tax consultant" or "tax rep". An attorney, regardless of how they are compensated, provides useful legal services and can help navigate the administrative rules and laws regarding tax appeals. As you will see as you read further, it is the services of a "tax consultant" that I question, not that of an attorney.

Contingency Fees

Some tax consultants contract with the property owner for a contingency fee. That is, if the consultant achieves a reduction in taxes for the property owner, the consultant receives a portion of the tax savings as the fee. This percentage can be any amount agreed upon by the two parties. In my experience some of the highest fees I have seen have been in Pennsylvania. I have seen this fee ranging from 35% of one year's tax savings up to 50% of the tax savings for each of three years of savings! In these higher fee instances, who is the tax appeal really benefiting; the property owner or the tax consultant?

Some property owners tend to favor a contingency fee arrangement like this since it seems to place the risk of achieving success on the tax consultant. If there is no success, there is no payment owed.

On the other hand, many owners and consultants do a flat fee or hourly fee arrangement whereby the consultant is paid based on the actual amount of work they perform for the client. The property owner benefits from a large assessment reduction, not the consultant.

Remember, most reputable, professional tax consultants and appraisers have a general idea of the merits of a potential case *in advance* of contacting the property owner. Most consultants and appraisers do this basic research in advance to determine for themselves the amount of risk-reward for a particular contingency fee assignment.

Property owners must realize that professionals who are licensed/certified real estate appraisers cannot, in many states, perform a real estate appraisal on a contingency fee basis. Nor can they contract with a property owner for a contingency fee and then *subcontract* the actual appraisal work to a third party. The Board that regulates appraisal licensing in these states can penalize, fine and even revoke the license of a certified appraiser working on a contingency fee basis.

Appraisers must take a flat fee for the appraisal (hourly or fixed fee amount).

Just as an aside, if they are not licensed real estate appraisers, why would you want them appraising your property anyway?

To still gain the benefit of a large fee, some tax consulting firms charge contingency fees to the property owner/client, but then subcontract with local appraisers to have the appraiser write valuation reports on a flat fee basis. The flat fee appraiser then becomes the expert witness at the Appeals Board.

If the appraiser is the expert witness, what then is the function of the contingency fee consultant? *What do they do to earn the large contingency fees*?

The property owner must find out from the salesperson or marketer selling the service who exactly is going to write the appraisal and offer testimony to the Appeals Board.

Property Tax Consultants

Property tax consultants offer their services, for a fee, to assist the property owner in its appeal of the assessment. This "service" varies from firm to firm, so the property owner must be aware of what services it is getting, from whom, and for how much.

There are several stages to an appeal:

- Identification of a potential case
- Appraisal
- Filing of the appeal
- Coordinating the appeal

- Appearance at the appeal
- Post-appeal analysis and considerations
- Appeal to Court if the administrative levels are unsuccessful.

Most property tax consultants do all these tasks for the property owner. The primary difference among service providers is in the completion of the Appraisal. As mentioned, a consultant who is going to accept a contingency fee as compensation for their services cannot complete an appraisal or give expert testimony. An appraiser who knows that his/her compensation is based on a large reduction in taxes is motivated to provide a very low appraisal to persuade the Board of Appeals to grant the largest reduction.

So, what do property tax consultants do that are being paid on a contingency fee? They hire *outside* appraisers to complete the report for them. Then these outside appraisers are the expert witnesses in front of the Board.

This arrangement is perfectly legitimate. Except that the property owner rarely knows that this is happening. The Tax Consultant, in many instances, leads the property owner to believe that the Consultant's firm will be completing the appraisal. That, we believe is unethical and not a good client relations practice.

Flat Fee vs. Contingent Fee Comparisons

As we have noted, a property tax consultant can be paid on either a fixed fee or on a method contingent upon the results of the appeal. If there is a successful appeal, the consultant gets paid. If not, the property owner is not out-of-pocket for these services.

On the face of it, it might look like a better deal for the property owner to work out a contingency fee arrangement all the time. After all, if there aren't savings, there is no fee to be paid. This however, has several disadvantages, which cost the property owner ***a lot*** of money.

Let's go back a step to the first bullet point above, "Identification of a potential case". In most instances, the property owner is contacted by the tax consultant saying that there is a potential case. *How* does the consultant make this determination? By research of land records, experience with the appraisal of similar property types, and knowledge of the local assessment appeals system.

Regardless of whether the consultant will be paid on a fixed fee or contingent upon success, s/he does the homework necessary to weed out marginal or poor appeals cases. Taking a poor case to the Appeals Board is a good way to ruin ones professional reputation!

If the consultant did not think your property is a winnable case, you would not be getting contacted!

So, what are the financial ramifications of flat fee vs. contingency fee? To the consultant, convincing a property owner to accept a fee contingent on success is usually a windfall. The consultant attempts to convince the property owner that he, the consultant is accepting all the risk of the appeal, so that his fees should be higher. In addition, many tax consultants will have the property owner sign two and three year contracts, so that contingent payments are made to the consultant for quite a while.

The chart below highlights the differences to the property owner and consultant based on a hypothetical situation:

Assessment Before the Appeal	$2,000,000
Assessment After the Appeal	$1,400,000
Assessment Savings	$ 600,000
Local Millage Rate (tax rate)	$20.00 per 1000
One Year Tax Savings	$12,000
Consultants Percentage/Fee	50%
1st year fee	$6,000
2nd year fee	$6,000
3rd year fee	$6,000
Total Consultant's Fee	$18,000
Property Owner's Net 3 Years Tax Savings	**$18,000**

Under a flat fee arrangement, the consultant is paid based on its expected time and expense in a project; much like a real estate appraiser, accountant, or doctor is paid. The chart below offers this example:

Assessment Before the Appeal	$2,000,000
Assessment After the Appeal	$1,400,000
Assessment Savings	$ 600,000
Local Millage Rate (tax rate)	$20.00 per 1000
One Year Tax Savings	$12,000
Consultants Percentage/Fee	Flat Rate
1st year fee	$7,500
2nd year fee	$ 0
3rd year fee	$ 0
Total Consultant's Fee	$7,500
Property Owner's Net 3 Years Tax Savings	**$28,500**

Of course, flat fees vary according to the difficulty of the property appraisal, complexity of the assignment and data availability.

The property owner has to ask: "How much money am I really saving? How much money is the consultant making versus the real risk of the appeal?" Whose money is it anyway, the property owner's or the consultant's?

The Property Owner

The property owner needs to weigh the risk and reward relationship in any property tax consulting case. How much will they spend? How much risk of achieving results? The property owner has to remember *how* the consultant came to them in the first place – by research and understanding of property values.

Ask the consultant how many cases they have actually lost – in which there has been NO reduction in property tax, at the Board level, at Court of Common Pleas, or in a settlement scenario. The true answer is very very few!

There are no guarantees in this business – only promises. Even contingent fee property tax appeals lose from time to time. However, the client needs to understand how much money is at stake and who is reaping the rewards of this service. Is it truly the property owner? Or is it the tax consultant?

Other Considerations

Many of these consulting firms are primarily focused on *sales and contracts* and not the valuation or testimony in support of the appeal. They tend to charge a large contingency fee for coordinating the appeal service, not for performing the actual appraisal work since these appraisers cannot by law do the appraisals on a contingent basis. Some of these consulting firms are merely focused on writing contracts, not for providing any technical service.

Questions the Property Owner Should Be Asking

So, what is a property owner to do to protect him/herself from an unscrupulous property tax consulting firm? Here are several key steps:

- Know the reputation of the firm you are dealing with. Are they knowledgeable about the local appeals process? Have they done significant work in this area? Do they have a good track record of successful appeals at the County Appeals Board <u>and</u> in Court?

- Why has the consulting firm contacted you? Find out. Do they know something about the local real estate market that affects your underlying value? Do they truly know your property, or are you merely another listing on a "contact" sheet?

- What are the terms of the service contract? Are they going to charge you as high as 50% of tax savings for each of three years? Or, is a 25% to 50% commission fee for one year sufficient to accept your engagement? Are you willing to pay a flat fee for the appraisal and representation and take the risk that there will be no savings? *Whose money is being saved anyway*? What special service is the consultant offering which entitles him/her to a three-year 50% contract? Does the concept of "spend a dollar to save a dollar" really make good business sense, especially over a three-year period?

- Who is actually going to write the appraisal and give the testimony? Real estate appraisals cannot be completed in many states on a contingency fee arrangement. Who will the consultant contract with to do the appraisal? Remember that the appraisal is the key to success or failure since the burden of proof is on the taxpayer to show the value is not in-line with the market.
- When a property owner contracts with the consultant, the contract should specifically detail which appraisal firm will be doing the appraisal. The property owner should receive a complete disclosure of the experience and background of the appraiser *before* the contract is signed.

- If the appeal to the County Assessment Appeals Board is unsuccessful, who will be paying the bills for an appeal to court since, at the court level, there needs to be an attorney involved as well as an appraiser?

- If the consultant submits something *other than an appraisal* to the Board, the property owner should know what that will entail prior to the contract being signed. The property owner should have the opportunity (they should *demand*) to review any materials the consultant is submitting to the Board.

- Rate the *real* risk of a flat fee vs. a contingent fee-consulting project. For the extra dollars you spend for a contingent assessment appeal, are you really getting your money's worth?

- Ask hard questions to the consultant. It's your money at stake!

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