New Jersey Tax Liability of Environmentally Contaminated Industrial Property – 2015 Update

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In a recent New Jersey Tax Court decision, *Methode Electronics, Inc. v. Twp. Of Willingboro*, the court ruled that the assessment of a contaminated piece of property, which was not developable and could not be developed in the foreseeable future, should be reduced to a nominal valuation.

Methode involved an industrial property where printed circuit boards and airbag components were manufactured for nearly twenty years. As a result of this activity, the property became contaminated with volatile organic compounds and metals. The property owner ceased operations in 1999 and no other businesses have operated at the property since that time. The building was demolished, except for a concrete slab that served as the floor for the facility. The slab was left in place to prevent the off-gassing of toxic vapors from soil and groundwater.

Improvements on the property consisted of a groundwater treatment system consisting of a number of monitoring wells, which were required to be put into the property by the New Jersey Department of Environmental Protection ("DEP"). A small building was constructed by the taxpayer in order to house the groundwater treatment equipment. Additional improvements consisted of the parking lot and loading area previously associated with the facility.

Significantly, the monitoring wells were required to remain in place indefinitely. Along these same lines, the floor slab was also required to remain in place indefinitely pursuant to a remediation plan agreed to by the taxpayer and DEP.

The Tax Court agreed with the tax payer's position and reduced the assessment to a nominal sum ($2,000). The court reasoned that the DEP regulation of the property and remediation plan "severely limits the utility of the parcel." The property had no use and could not be developed for the foreseeable future.

In previous cases involving environmental contamination, courts have recognized that contaminated property for which there was no identifiable market could have a "value in use" to the owner of the facility, as long as property remained operational. Under those circumstances, normal assessment techniques were deemed appropriate. Regarding the impact of the cleanup on the value of the assessment, the cost to cure the contaminated property should be treated as a capital improvement and depreciated over the beneficial life of the property. *See Inmar Assocs., Inv. v. Borough of Carlstadt*, 112 N.J. 593 (1988). Following *Inmar*, tax courts have applied their specialized knowledge and expertise to calculate adjustments on a case by case basis in this scenario.

In a more recent decision, *Orient Way Corp. v. Township of Lyndhurst*, 27 N.J. Tax 361 (Tax 2013), the Tax Court deviated from the methodology of *Inmar* in a case where a sophisticated seller and a sophisticated buyer, who were aware of contamination on the property and the estimate of clean-up costs, freely negotiated a sale price for the property shortly before the relevant date of valuation. In that case, the court adopted the sales price as the true market value of the property.

Methode was distinguished from *Inmar* (and its progeny) and *Orient Way,* because the subject property could not be remediated for an indefinite period of time, and there was no identifiable market.

The *Methode* case demonstrates the importance of understanding the nuances involved in appealing property taxes for a contaminated piece of property in the State of New Jersey. If you are considering filing an appeal for industrial or commercial property, it is recommended that you consult with experienced legal counsel who can guide you through the process.

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