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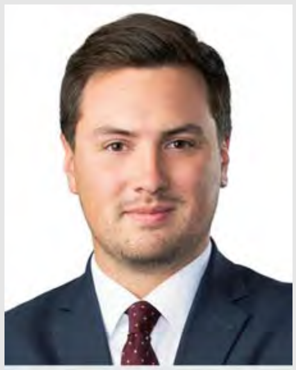

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In this article, the authors examine Louisiana's property tax relief for business property affected by the COVID-19 pandemic.

Through multiple proclamations, Louisiana Gov. John Bel Edwards (D) ordered that nonessential businesses close their doors or limit their operations, including restaurants, hotels, casinos, retail shops, barbershops, and beauty salons, as well as places of amusement such as concert halls and movie theaters. For many businesses, it is uncertain when they will be able to reopen and return to normal operations. One consequence of the ongoing disruption of business and ominous market conditions is the related decrease in the value of property used to operate these businesses.

Under Louisiana law, "[a]ssessments shall be made on the basis of the condition of things existing on the first day of January of each year."[1] In Orleans Parish, the status of property as of August 1 of each tax year is determinative of the fair market value of property for tax purposes.[2] As such, the assessed value of property for tax year 2020 will likely be overstated since the economic damage caused by the COVID-19 pandemic occurred after January 1, 2020. Fortunately, Louisiana law may already provide some relief to affected taxpayers for the 2020 tax year.

After the destruction of Hurricane Katrina in 2005, the Louisiana Legislature enacted La. Rev. Stat. section 47:1978.1 (section 1978.1), which provides guidelines for the reassessment of land and property that is damaged, destroyed, or nonoperational during a disaster or emergency declared by the governor. Section 1978.1 provides:

> [i]f lands or property, including buildings, structures, or personal property, are damaged, destroyed, *non-operational, or* uninhabitable due to an *emergency declared by the governor* or to a disaster or fire, the assessor or assessors within such parish *shall assess* such lands or property *for the year in which damage has occurred* at the percentage of fair market value provided in the Constitution of Louisiana by *taking into consideration all the damages to the lands or other property, including obsolescence*, and the depreciation of the value of such land or other property *caused by the disaster, fire, or emergency*.[3]

[1] *See* La. Rev. Stat. section 47:1952(A).

[2] *See* La. Rev. Stat. section 47:1703(B).

[3] Emphasis added.

Based on the plain language of section 1978.1, when the governor declares a public emergency, any property that is (1) damaged, (2) destroyed, (3) nonoperational, *or* (4) uninhabitable as a result of the emergency is entitled to reassessment.

A fundamental principle of statutory construction is that every word in a statute is intended to serve some useful purpose and thus every word must have meaning.[4] Another important principle of statutory construction is that when the word "or" is used in a statute, it is to be construed in the disjunctive (that is, independent and exclusive alternatives) and not as "and/or."[5] Therefore, section 1978.1 sets forth four independent conditions that may subject a property to reassessment following a disaster *or* emergency declared by the governor.

According to its common and ordinary meaning, the word "nonoperational" means not functional (that is, not able to perform a regular function) or not ready for use.[6] Clearly, any business that has been forced to close or significantly curtail operations because of the governor's stay-at-home orders has business property that is not functioning or ready for use. As such, section 1978.1 mandates that assessors reassess the impaired properties regardless of whether the time fixed by law for filing original assessment rolls has elapsed.

The Louisiana Tax Commission has promulgated a regulation, La. Admin. Code tit. 61, section V.3702, that implements section 1978.1. The regulation mimics the language of the statute, but also provides direction regarding how assessors are supposed to assess "damaged, destroyed, non-operational, or uninhabitable property." The regulation provides, in pertinent part:

- If the rolls have not been certified by the assessor to the local Board of Review, the regular procedures for public inspection of the rolls, review by the local Board of Review and certification to the Commission shall be employed.
- If the rolls have been certified by the assessor to the local Board of Review, the assessor is required to prepare a supplemental tax roll for all property damaged as contemplated by the statute and the supplemental roll shall be filed like regular rolls and the same procedures and appeal rights would apply.
- If the rolls have been certified to the Commission, the assessor is to make the change in value through the change order process.
  - If the property owner agrees with the change in the assessment, the change order shall be accompanied by a declaration from the assessor or a deputy of that agreement;
  - If the property owner does not agree with the change order, the assessor shall mail to the property owner, his or her determination of the assessed value;
  - If the property owner disagrees with the assessor's determination for value, the property owner has fifteen (15) days to contest the assessment with the Commission;
  - If dissatisfied with the Commission's decision, the property owner has fifteen (15) days from mailing of the decision to appeal to an appropriate district court.
- These procedures also apply to public service properties.[7]

Edwards declared that a statewide public health emergency existed because of the COVID-19 pandemic. He also ordered all nonessential businesses to cease or limit their operations. Also, many localities have issued their own stay-at-home orders and mandated that some nonessential businesses close or significantly reduce their operations. For example, the New Orleans mayor issued a proclamation ordering all nonessential businesses to cease operations and limiting gatherings to 10 persons or fewer with

[4] *See City of New Orleans v. Louisiana Assessors' Retirement and Relief Fund*, 986 So. 2d 1, 17 (La. 2007).

[5] *See* La. Rev. Stat. section 1:9; and *Turner v. East Baton Rouge Parish School Board*, 252 So. 3d 990, 993 (La. App. 1 Cir. 2018).

[6] *See* La. Rev. Stat. section 1:3.

[7] La. Admin. Code tit. 61, section V.3702. Under the Louisiana statutes, some specifically defined businesses, including airlines, barge lines, pipelines, railroads, telephone companies, and electric companies, are defined to be "public service" companies. *See* La. Rev. Stat. section 47:1851. Public service companies are "centrally assessed" by the Tax Commission.

social distancing. Violators are subject to criminal penalties. Those businesses are to stay closed or curtail their operations until at least April 30, and the restrictions will likely be extended into at least May. Even when the restrictions begin being lifted, many businesses will be required to phase in operations until more COVID-19 testing can be performed. Unfortunately, for many businesses, business as usual is many months, if not years away.

Because of the COVID-19 pandemic and the governor's executive orders, the FMV of property used by many Louisiana businesses in their day-to-day operations will decrease in value, and for some businesses the impairment will be substantial. The damaged property includes not only land and buildings, but also machinery and equipment, furniture and fixtures, leasehold improvements, vessels, barges and other watercraft, and aircraft. Based on a plain language reading of section 1978.1, these business properties are nonoperational because of a declared emergency and therefore are entitled to a reassessment even though the January 1, 2020, assessment date (in all parishes except Orleans Parish) has already passed. As such, under section 1978.1 these properties shall be reassessed by assessors (including the Orleans Parish assessor) taking into consideration all damages, *including obsolescence*, caused by the governor's declaration.

Obsolescence is a form of depreciation and is subdivided into two categories: functional obsolescence and economic obsolescence. In the Tax Commission's rules and regulations, both forms of obsolescence are defined as follows:

> Economic Obsolescence — loss in value due to causes outside the property and independent of it, and not included in physical depreciation.
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> * * *
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> Functional Obsolescence — loss in value due to lack of utility or desirability of part or all of the property, inherent to the improvement or equipment. Thus a new structure or piece of equipment may suffer functional obsolescence.[8]

[8] *See* La. Admin. Code tit. 61, section V.301.

Business properties that are nonoperational because of the governor's executive orders will suffer from economic obsolescence as the impairment is "due to causes outside the property." While economic obsolescence can be difficult to quantify, there are recognized methods of establishing its existence and impact on business properties.

As such, it is vital that taxpayers whose business properties were rendered nonoperational by the COVID-19 pandemic and the governor's executive orders gather and preserve pertinent business records that can be used as evidence to support reassessment. Examples include:

1. financial statements, including monthly profit and loss statements;
2. year-to-year (or month-to-month) revenue and expense data; and
3. year-to-year and month-to-month actual production and sales data, such as the amount of product manufactured and sold, customers served, rooms occupied, or patrons admitted.

Each business should also have data regarding the dates of closure and reopening (assuming operations have resumed). Obviously, businesses in different sectors of the economy track their success using different metrics. Each business will need to consider, perhaps in consultation with a trusted adviser, what data and evidence best support its claim for a reduced FMV of its business assets.

Businesses affected by the pandemic and the governor's executive orders should start gathering documentation to support a claim for reassessment and a valuation that more accurately reflects the true market value of their business properties in the current economic climate. After that first step is accomplished, businesses should consider meeting with their local assessors to pursue the relief provided by section 1978.1. If an agreement on the proper FMV of business property as a result of the governor's executive orders cannot be reached with an assessor, section 1978.1 and the Tax Commission's regulations provide taxpayers with the right to appeal to the commission and then in court, if necessary. ■