

BUSINESS REPORT

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Act Before April 30 To Reduce Your Property Taxes

If you own Minnesota real estate, or pay property taxes pursuant to a lease, you recently received notice from the county of the estimated market value of your property for property taxes payable in 2004. The first half of your property taxes payable in 2003 will be due on May 15 of this year.

Your property taxes may be too high, and you may be able to reduce them. In past years we have helped companies and individuals save thousands of dollars in property taxes. Our firm handles these cases on an hourly fee basis.

You need to examine your property tax notice and verify whether there is a problem to be addressed. In particular, take note of whether the alleged "Market Value" exceeds the price for which you could sell the property. Do you have evidence that the assessed value is too high? If a challenge of your taxes is appropriate than action must be

taken promptly so papers can be filed with the courts before April 30. Review the following list of questions to determine whether or not you have a valid case to reduce your property taxes:

What determines the amount of my property taxes?

The amount of your property tax is determined by three factors: the estimated market value of your property, the kind of property that you own (such as commercial or residential), and the local tax rate (formerly known as "mill rate").

The estimated market value of your property is set by your local assessor as of January 2 of each year. This amount is used to determine your property taxes payable in the following year. For example, the estimated market value of your property as of January 2, 2002 will be used for determining your property taxes payable in 2003.

Why am I paying too much in property taxes?

There are many reasons why a company or individual may be paying too much in property taxes, but frequently the reason is that the property has been over assessed; that is, the estimated market value of the property has been set by your county assessor at a value higher than it ought to be. The estimated market value is supposed to be the fair market value of the property. But sometimes the property will be assessed at an amount higher than fair market value. By establishing that your property has been over assessed, you can reduce the estimated market value of your property, and thus reduce your taxes.

How can I reduce my property taxes?

To reduce your taxes payable in 2003, you have alternatives. First you could ask your local assessor for an abatement. This is entirely an administrative proceeding, and whether you will be given an abatement is within the sole discretion of the local assessor. You have no appeal rights.

A second option is to file a petition with the Minnesota Tax Court. Such a petition is generally given much more respect by the local assessor and, in our opinion, is usually the most effective way of challenging your property taxes. But to reduce your taxes payable in 2003, this petition must be served and filed with the Court by no later than April 30, 2003.

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Felhaber Larson Fenlon & Vogt

Hugs and Kisses Do Not Guarantee Commission

Coles Sales Solutions (“CSS”) is a product broker which frequently does business with Target Stores. Several years ago, CSS convinced Eddie Bauer that Target would be a good customer to sell an Eddie Bauer line of camping and outdoor equipment. Prior to CSS’s contact, Eddie Bauer had no prior direct relationship of any sort with Target stores.

Eddie Bauer was interested. As a result, CSS set up a meeting between Eddie Bauer and Target. Prior to that meeting, CSS asked Eddie Bauer to enter into an agreement clarifying the terms under which Eddie Bauer would compensate CSS for brokering the Eddie Bauer camping program to Target. According to CSS, representatives of Eddie Bauer repeatedly assured CSS that the Eddie Bauer’s license for selling camping goods through Target was available and that CSS would be compensated for its efforts, either as an independent sales agent or as a licensee of the Eddie Bauer name. As a result, CSS expected to be paid a commission of 4.5% on all sales to Target stores under the Eddie Bauer camping program.

Representatives of Eddie Bauer traveled to the Minneapolis/St. Paul area and met with CSS in March of 2000. The Eddie Bauer representatives visited several retail stores in this area and made final preparations for their meeting with Target stores. During the meetings between CSS and Eddie Bauer, representatives of Eddie Bauer told CSS that they had a deal and that no formal agreement was necessary between the parties.

Immediately prior to their meeting with Target, representatives of CSS said they were reluctant to proceed with the Target stores meeting unless and until CSS received a written agreement from Eddie

Bauer. However, no such agreement was signed and the scheduled meeting took place. At the end of the meeting, the Target representatives were very enthusiastic about adding a camping goods program and said that they would provide a formal response to the proposal shortly.

**The only way to
guarantee your work
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Eddie Bauer subsequently told CSS that Target stores had agreed to launch a line of Eddie Bauer camping and outdoor products but that Eddie Bauer had decided not to go forward with a licensing agreement with CSS or to give CSS any compensation for acquiring the Target account for Eddie Bauer. CSS subsequently learned Eddie Bauer had entered into a multi-year licensing agreement with a different company to market and sell a line of camping and outdoor products to any retail store three months before the meeting with Target. That program has been very successful for Target and presently accounts for about \$100,000,000 in annual sales.

When CSS found out that the anticipated \$4.5 million in commissions was going somewhere else, they sued Eddie Bauer. Part of their claim against Eddie Bauer was that the company had usurped a valid and reasonable business expectancy in preventing CSS from realizing revenue and profit from the implementation of the Eddie Bauer camping program at Target

stores. CSS alleged that Eddie Bauer knew or should have known of CSS’s expectancy to participate in the revenues from the sales of the Eddie Bauer camping program at Target.

Unfortunately for CSS, a federal district court recently held that CSS is lost in the woods on its claim that Eddie Bauer wrongfully interfered with CSS’ prospective business advantage in earning commissions off the sale of Eddie Bauer products through Target. The court held that the only alleged consequence on CSS of Eddie Bauer’s actions was that CSS was denied a commission on the sale of Eddie Bauer camping goods to Target stores. Since CSS continues to do business with Target for other manufacturers, the court held that Eddie Bauer did not tortiously interfere with a prospective economic advantage because the only contract Eddie Bauer interfered with was a contract to which Eddie Bauer was supposed to be a party. The court held that Eddie Bauer cannot tortiously interfere with a contract with itself.

This lawsuit has not yet ended. However, the outcome of this case should remind salesmen and companies which work off commission that an expectancy that your hard work and contacts will be rewarded does not always legally translate into the commissions. As a result, the only way to guarantee your work will be rewarded may be to get the contract signed before the benefit runs out the door to someone else. If you have any questions, contact Bob Bach from our Minneapolis office.



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There Really is Interest in Minnesota

One of the questions that frequently arises is whether a defaulting party on a contract can be charged interest for failure to pay. The rule in Minnesota generally has been believed to be no unless a customer has signed a contract agreeing to pay interest on the purchase price for the goods or services sold.

However, a recent decision by the federal court here in Minnesota changes that situation. In the case of *Egge v. Healthspan Services Company*, a patient at a local hospital refused to pay for the portion of the medical expenses that were not paid for by his medical insurance company. The hospital sent this customer a letter requesting payment of his account balance, stating that interest may be charged at 6% per annum on the past due accounts. Neither this letter nor a similar second letter resulted in payment.

The customer who refused to pay the bill eventually sued the hospital alleging that bills demanding interest from a patient who didn't agree to pay interest was in violation of the Federal Fair Debt Collection Practices Act. While admitting that the general rule of law in the State of Minnesota is that liability for interest is purely a matter of contract, the federal district court in Minnesota held that the hospital's bills which identified the amount owing created a legal indebtedness on which a 6% interest charge could be made under Minnesota law. The court held that the Minnesota statute says that the interest for any legal indebtedness shall be at the rate of 6% upon a \$100.00 for a year unless a different rate is contracted for in writing. The court held that this statute expresses a legislative intent for interest to attach to any legal indebtedness. As a result, the court threw out the plaintiff's case.

The outcome of the *Egge* case was bad for *Egge*, good for the hospital. However, the question it raises is how a normal creditor should treat a slow or non-paying customer and whether interest will be available. The *Egge* case does support the fact that interest at a rate of 6% can be charged in the state of Minnesota against a non-paying customer who has been notified that a default exists and interest is owing. However, it costs money to chase a non-paying account and interest rarely will cover that cost. If you are selling products or services on credit, it will be to your benefit to request an agreement which requires your customer to pay the costs of collecting that debt (including attorneys' fees and interest). If you cannot acquire such an agreement from a customer, the *Egge* case provides support for limiting the interest lost by non-payment of bills.

If you have any questions, please contact Dan Kelly or Eva Lastovich of our Minneapolis office.



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Welcome Our New Attorney!

Felhaber, Larson, Fenlon and Vogt, P.A. is pleased to announce that H. Le Phan has joined our firm. Please join us in welcoming her to Felhaber.

H. Le Phan

Ms. Phan graduated with a Bachelor of Arts, summa cum laude, in 1993, and earned her Juris Doctor from William Mitchell College of Law in 1997. Ms. Phan practices in the areas of labor & employment litigation, commercial litigation, and business immigration.



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The Sum Of All HIPAA Fears

The compliance date for the privacy rules under the federal law known as HIPAA is fast approaching (April 14, 2003). Included in this letter is a compliance checklist for your use in double-checking your organization's current HIPAA compliance plan. We hope that you find this simplified checklist and summary to be helpful in checking your progress.

As you may know, the privacy rules under HIPAA require "covered entities" to take certain steps to protect the privacy of a patient's "personal health information." Covered entities include health care providers, group health plans and group health clearinghouses.

Health care providers are covered under HIPAA if they transmit personal health

information "electronically." Therefore, if a health care provider does not use electronic means to transmit personal health information, the provider may be exempt from this law. You should note, however, that an otherwise exempt provider may be subject to the law under two different scenarios:

1. If a provider uses the services of a person or entity which transmits the protected health information electronically on behalf of the provider, the provider will then be covered. (An example would be a provider who uses an outside billing company which submits claims electronically on behalf of the provider.)
2. If a third party payer requires the provider to comply with HIPAA and submit claims electronically as a condition to participation in its network the provider must comply. Medicare and

Medicaid is requiring electronic filing for all but very small providers. In addition, other third party payers are requiring electronic claims submission and compliance with HIPAA as a condition to participation in their networks.

If you have determined that HIPAA does not apply to your organization because it doesn't use electronic transmissions, you may want to rethink this analysis considering the information set forth above.

If the HIPAA's privacy rules apply to you or your organization, there are several steps you need to take to be in compliance by the deadline of April 14, 2003. Each step is defined in the HIPAA privacy rules, which are extensive. The following is a very simplified list of the basic requirements under the privacy rule:

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How can an attorney assist me in reducing my property taxes?

We could first work with you in evaluating whether it is worthwhile to challenge your property taxes. You will need to have evidence of the fair market value of your property. We can review your evidence of value and help you determine if your property is over assessed. Once you decide on your strategy, we would then take any necessary legal action and, if appropriate, would negotiate with the local assessor regarding the estimated market value of your property.

If I retain an attorney to represent me, how is the attorney paid?

We represent taxpayers on an hourly fee basis, and you will be responsible for out-of-pocket expenses, which generally are modest in amount and consist primarily of service of process and the court filing fees. Many cases are resolved by settlement negotiation without a trial. If you decide to pursue the appeal to a trial in the Tax Court, then your expenses will include substantial costs for trial including particularly an appraiser as expert witness on the issue of value.

What information is required?

You will need some objective evidence of market value. Also, if your property is "income producing" then within 60 days of filing a petition you need to send the county

assessor income and expense data regarding the property as well as a calculation of net rental area.

If you have any questions or comments, please do not hesitate to contact Jim Blomquist at our Minneapolis office or Stephen Yoch or Betsy Kiernat at our St. Paul office.



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Join Us For A Complimentary Client Seminar

Consider attending one of our upcoming seminars, with timely discussions on a variety of legal topics. The seminar presenters include Felhaber attorneys who have expertise in the seminar subject matter. The following seminars have been scheduled for 2003. Please contact Karen Dyck, Marketing Director, at kdyck@felhaber.com if you would like to receive a seminar invitation. Please state your name and address with the name of the seminar you would like to attend. You may also log on to www.felhaber.com, which will offer on-line registration approximately three weeks ahead of the seminar date.

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A Professional Association – Attorneys at Law

2003 SEMINAR DATES:

- Workers Compensation - April 10
- Association Management - April 24
- Multi-Employer Benefit Seminar - May 21
- Estate Planner - May 29
- Builder/Developer - Sept./Oct.
- Labor & Employment Law - October 10
- Health Law Seminar - To be determined

The Sum of All HIPAA Fears ■ Continued from page 4

For Covered Entities

- Designate a privacy officer for your organization
- Prepare notice of Privacy Practices for organization
- Post Notice of Privacy Practices
- Provide Notice of Privacy Practices to Individuals upon their first service date on or after April 14, 2003
- Obtain written acknowledgment of receipt of the Notice of Privacy Practices from individuals
- Prepare HIPAA Patient Authorization Form(s) for use in obtaining authorizations required under HIPAA
- Obtain HIPAA Patient Authorizations from each individual for uses and disclosures as required
- Identify Business Associates
- Prepare and Execute Business Associate Agreements with All Business Associates Containing Required Terms
- Draft Workplace Policies to Limit the Disclosure of Protected Health Information
- Provide Training to Employees Regarding Privacy Practices
- Establish Security Measures to Assure the Security of Protected Health Information

- Maintain File with a List of All Compliance Activities for Potential Audit by the Secretary of Health and Human Services

After reviewing the checklist, if you need additional assistance with the compliance steps, or if you have any questions concerning compliance please feel free to contact: Jennifer Forbes or Janet Newberg.



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Business Report is an update on legal developments. It is not intended to be legal advice and should not be relied on without consulting counsel.

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