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Don't be taxed on the value of your business, pay taxes only on the value of the real estate

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If you own or manage a hotel or medical facility, it is highly likely that you are being assessed for more than the value of your real estate. The same is true for owners of shopping centers, restaurants, parking facilities and any real estate designed for a specific franchise.

Why? Because, during a revaluation, the revaluation company rarely deducts the business value of the enterprise. You are very likely being taxed for both the real estate and the business enterprise value even though the law is quite clear that such intangible property is not to be taxed.

On the good side, most courts and assessors now understand the concept of business enterprise value. Most will agree that when a hotel or franchised restaurant is sold, the purchase price includes personal property, real estate and business enterprise value. Most understand that only the personal property and real estate can be assessed.

On the bad side, it is still very difficult to reach any agreement as how to calculate enterprise value. The valuation of business enterprise value is so new, that the even the Appraisal Institute has only recently codified appropriate terms and definitions.

So what should be done? Unfortunately, there is no one easy answer. When talking about business values, businesses are so different that there is not one size that fits all. With real estate we can use comparables, income expense analysis and occasionally replacement value. These methods are largely the same for all types of real estate. Not so when determining the business value. The hospitality business differs greatly from a hotel shopping center.

Here is what not to do.

1. Hire an attorney with little or no experience in valuation or buying and selling real estate. It is very likely that the attorney, owner and appraiser will have to work together to analyze problems.

2. Hire the out of state expert who wrote the book or leading article on the subject. Most such experts are highly theoretical and are rigidly in love with their own theory. Courts and assessors often disregard them out of hand. That is exactly what happened in a recent Connecticut case involving a health care facility.

Here is what to do.

1. Hire an attorney experienced in trial work, tax appeals, and buying and selling commercial real estate. It is important that s/he knows how and why buyers buy and sellers sell and how assessors approach valuation.

2. Hire an appraiser who is very familiar with the type of real estate being appealed. S/he will have a good sense of how to value the business as well as the real estate. S/he will know the various appraising tools that can be applied to the property at hand.

It is absolutely crucial that the analysis be simple and easy to understand. The analysis should be one that the assessor can calculate himself. If the analysis is so esoteric that it can not be replicated

by the assessor, it is highly unlikely that any court would impose it upon the assessor.

The vast majority of tax appeals settle ..... if both sides are agreeing to a common methodology. In order to have the best chance at a very favorable settlement, the attorney and appraiser must provide a simple, clear analysis that will be accepted by the assessor or the judge attempting to settle the case.

Hopefully, over time, various methods of analysis will become standard for various types of real estate. Presently, however, the utmost care must be given to preparing a case that assures that the property owner will be paying taxes only on the value of the real estate, not the business.

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