

# Law Report



## WORKING OUT OF THE BOX

By Joanne P. Elliott

Assessments keep going up, property values appear to be going down, but it is becoming increasingly difficult to obtain assessment reductions. Why? The assessing officials are requiring more proof that reductions are needed. To achieve success attorneys need to digest new, changing and, often, unwritten rules and provide the authorities with the evidence they require. This forces attorneys to be on their toes and to think and work out of the box.

officials seem bent on making it more difficult for taxpayers to obtain assessment reductions. Much legislation has been bandied about to tighten the rules, increase burdens of proof and allow taxing bodies to intervene in the process. As a result, Elliott & Associates has adopted new strategies to ensure our clients get the best results possible. Here are some of the things we are doing:

**\* Vacancy Cases.** If a property experiences above normal vacancy, substantial tax reductions are possible. In the past, all that was required was an affidavit signed by the taxpayer. Today, the Cook County Assessor requires that he be informed of vacancy at the time the complaint is filed so he can arrange for a field inspection. He no longer takes the taxpayer at his/her word. In addition, if the property generates rental income, the Assessor requires

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For years, experienced tax practitioners could predict what it took to get an assessment reduction: obtain an appraisal; submit an affidavit attesting to the existence of vacancy; perform an income and expense analysis to determine what the property is worth; etc. Submit predictable documentation and obtain a predictable result.

But, today's world is a bit odd. Politicians and assessing



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income and expense data to be provided at the time the complaint is filed.

Unlike the Assessor, the Cook County Board of Review does not conduct field inspections; they do not have the staff to do this. However, the Board does require evidence to corroborate vacancy (photographs, confirming affidavits, listing agreements, utility bills, etc.).

Our office needs to know if vacancy exists and we need to know that early in the process. Therefore, we review each client file to identify those properties that are vacancy candidates. We are also writing our clients and asking them to let us know if their property is experiencing substantial vacancy. Then, we can collect the necessary documents early enough to obtain meaningful vacancy relief.

**\* Appraisals.** It is critical to find the right appraiser for the job. For example, for a hotel, nursing home or gas station, we need an appraiser who understands how to value the real estate separate from the value of the business that operates in the real estate. Or, when valuing a truck terminal, we want an appraiser who understands the dynamics of that specialty market.

In addition, appraisals are often based on historical sales data. However, review of sales data from a hot market (as is the case today) may confirm a high market value. Therefore, we attempt to determine whether sales prices are declining for client properties. If we find a decline, we will advise the appraiser to make sure he/she is aware of this problem and accords it proper weight. We also highlight this information with the assessing officials.

**\* Income-Expense Analyses.** In the past, assessing officials would value income-producing property by the rental income the property produced. Today, the officials are increasingly asking to see evidence to confirm what market rental rates are, what market expense levels are, and what market capitalization rates are. Then, they may value the property based on market income rather than the income generated by the property itself.

This requires us to collect and review market income, expense and capitalization data to confirm whether the income generated by the subject is at, above or below market.

**\* Uniformity Of Assessment.** Often, property is assessed at the price the taxpayer paid for it while comparable property is assessed much lower (this is called sales chasing). Or, property may be assessed at well under its purchase price while comparable property is assessed even lower.

In these cases, we attempt to identify comparable property and to determine whether our client's property is assessed higher or lower. This is called a uniformity of assessment analysis. This evidence will often enable us to obtain a meaningful assessment reduction.

The bottom line is that times change and real estate tax practitioners must change with the times to obtain top-notch assessment relief.



## TAX TALE Opportunities To Lower Taxes For Hotels, Nursing Homes And Gas Stations

**H**otels, nursing homes and gas stations all share one thing in common: they are businesses where a major portion of their income is derived from real estate; however, other assets also contribute to their income in a material way.

In Illinois, the real estate tax is a tax levied on the value of real property, which is defined by statute to include land, buildings and permanent fixtures. The real estate tax is not a tax on personal property located in a building, nor is it a tax on the assets of a business operated within the real estate.

Hotel, nursing home and gas station businesses own many assets including real estate (land and building),

personal property (furniture, fixtures and equipment; inventory; and cash), and intangible property (accounts receivable, franchise agreement, computer software, assembled and trained work force and "goodwill" — the premium a buyer will pay for the future profits he expects a business to generate). Hotels, nursing homes and gas stations cannot operate without their non-real property assets. And, these non-real property assets contribute to the income and value of these businesses.

Hotels, nursing homes and gas stations are often over-assessed and over-taxed because the assessing officials tend to value the real property for what the business is worth. The business, however, is often worth

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# SOUTH SUBURBS TO BE REASSESSED A SUMMARY OF THE PROCESS AND RECENT DEVELOPMENTS

All properties in the south suburbs of Cook County (south of North Avenue) are scheduled to be reassessed during 2008 as part of the Assessor's ongoing triennial (3 year) reassessment process. For further information on what municipalities will be reassessed this year, please go to our website at [www.elliottlaw.com](http://www.elliottlaw.com) and visit the E-News section.

Over the last few years, the Assessor has attempted to complete the assessment process as early as possible so that tax bills would be mailed on time. As a result, we expect the first re-assessment notices to be mailed in April or early May and the last to be mailed around Thanksgiving.

The Assessor will post the anticipated and, eventually, the actual filing deadlines on his website ([www.cookcountyassessor.com](http://www.cookcountyassessor.com)).

Taxpayers will have only 30 days from the date their township assessment notices are mailed to file complaints with the Assessor. Time frames are tight and an effective appeal requires thoughtful preparation. Therefore, we like to begin our work before assessment notices are mailed.

It is important to note that the Assessor will not grant vacancy relief unless **(1)** evidence of vacancy is filed at the time the complaint is filed, **(2)** information on income and expenses generated by the subject are submitted at the time the complaint form is filed (if the subject generates rental income), and **(3)** the taxpayer requests on the complaint form that the Assessor conduct a field inspection to verify the existence of the vacancy.

Decisions of the Assessor may be appealed to the Board of Review. The Board will announce a 30-day filing window for each township shortly after the Assessor completes its work for that township and certifies the assessment roll. Taxpayers may file complaints to the Board individually or through an attorney. Non-lawyers are prohibited from representing taxpayers before the Board.

The Board operates under increasingly tighter time frames each year. Currently, Board hearings are scheduled about 10 days after the filing deadline. The taxpayer or its attorney must submit a brief (written argument) and supporting documentation at the hearing and will have the opportunity to argue the case directly to the Commissioners or one of their deputies. The Board will render a written decision in about 30 to 60 days from the hearing date.

If the taxpayer wants to appeal the Board's decision, they will have a choice of appeal routes: Property Tax Appeal Board (PTAB) or Circuit Court. The choice of forum (PTAB or Court) is critical; however, the factors to be considered are beyond the scope of this article. Each of these forums requires that an appeal first be filed with the Board. Each forum also has its own filing deadlines. Appeals to PTAB must be made within 30 days following the post-mark date of the Board's decision. Appeals to Court must be made within 165 days following the due date of the second installment tax bill.

Each case must be monitored in subsequent assessment years.

One-year only reductions (granted as a result of vacancy or abnormally low rental income) will certainly require consideration and possibly an appeal the following assessment year. Material, detrimental reductions in property operations (fire, substantial vacancy or abnormal reductions in operating income, for example) may warrant additional assessment reductions. Lastly, appeals must be filed to the Board in subsequent years as a prerequisite to filing an independent appeal to PTAB or Court for that year. And, since relief in the first year of an assessment period is likely to be granted for subsequent years of that same period, it is crucial to file necessary Board, PTAB and/or Court complaints in subsequent years.



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***“We have achieved  
success for our clients  
— with resulting  
tax savings”***

much more than the real property since the business contains other valuable assets such as personal property and intangible property, including goodwill.

It is convenient for an assessing official to assess a hotel, nursing home or gas station at the value of the business because sales of these businesses are often recorded in the public records. For example, assume a profitable hotel business sells for \$4 Million and such sale is reflected in the public records. The Assessor will likely assess the hotel real property at or near \$4 Million, thereby overstating its value. The taxpayer’s attorney needs to determine what the real property only is worth and convince the assessing officials of that fact. Often, the real property is worth 70% to 80% of the value of the business.

Elliott & Associates routinely makes these determinations by analyzing the income and expense statements of these businesses, their balance sheets and other pertinent market data. We also work with appraisers who understand

the nuances of dissecting the sale price of a business among its component assets. We have achieved success for our clients — with resulting tax savings — by convincing the assessing officials (either through negotiation or litigation) of the correct value of the real property holdings.

