

ARE ALL CONSTRUCTION COSTS CONSIDERED ASSESSABLE?

Is the Assessor's Office enrolling excessive assessments to leasehold / tenant improvement items?

Sean P. Keegan, Vice President

Activities such as new buildings being completed and improvements being remodeled, renovated, or rehabilitated over the last few years have resulted in assessment increases for many taxpayers. The Assessor is notified when building permits are issued. The questionnaires from the County requesting data on construction activities are important components that the Assessor may rely on in establishing the taxpayer's new base year valuation or whether the completed project is assessable. The base year valuation is often estimated by the Assessor when communication with the taxpayer does not occur. The Assessor may conclude incorrectly what the construction activity or project has been. The assessments should be reviewed for accuracy.

In the Assessor's Office there is the Real Property Division which will establish the base year valuation after new construction of improvements or a change in ownership. The Business Division (Business Personal Property) will process the Business Property Statement (BPS Form 571-L) issuing a personal property and fixture assessment based on the costs reported by asset classification and asset acquisition year. In certain cases, the Business Division may be valuing the same components that were assessed in the base year valuation (e.g., leasehold/tenant improvement items). This may also occur when the Real Property Division reviews and equalizes the property under a Decline in Value Appeal (e.g., values the land and improvements).

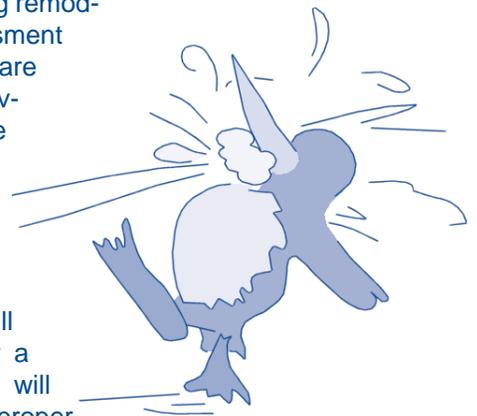
As an example, a tenant entered into a lease to occupy a mid-rise office building which was under construction. The tenant designed and paid to have their space finished (i.e., built out).

These leasehold/tenant improvements were completed and the certificate of occupancy was issued (i.e., completion of new construction). Interestingly, the Real Property Division assessed the improvements with the leasehold/tenant improvements by utilizing the income and sales comparable approaches to value (i.e., based on similar properties).

The Real Property Appraiser indicated that the rents and sales reviewed from comparable properties were in fact finished office buildings. Typically, an appraiser should consider the new construction costs however, in certain cases the Cost Segregation Report may not be completed by the taxpayer at the time the Assessor is completing the assessment.

These leasehold/tenant improvement costs were capitalized and reported to the Assessor's Office on the BPS Form 571-L as Structure Items. Subsequently, the Business Division arrived to perform a mandatory 4-year audit and proceeded to focus on the leasehold/tenant improvements, which were classified as Structure Items. The Business Division proposed to pick up these costs which they contended were escaped assessments. It is our position that the leasehold/tenant improvement items were in fact valued by Real Property when they valued the new building and established the original base year valuation.

Continued page 5...



INTEREST PAYABLE FOR PROPERTY TAX REFUNDS

Recently, a taxpayer had an incident where they withdrew a pending appeal. The company was in the midst of a mandatory audit. The auditor promised the taxpayer that the values would be lowered in the audit and therefore the appeal was not necessary. The taxpayer withdrew the appeal and the Assessor lowered the value as part of their mandatory audit. When the refund came the taxpayer realized that no interest was paid on the refund. Upon further investigation it was revealed that the auditor marked the decrease in value as an "Assessee Error" and coded his audit to exclude interest. The reason for the decrease was in fact assessor error and the granting of obsolescence.

Under Revenue and Taxation Code (R&T) taxpayers are entitled to interest whenever money is owed to the taxpayer. R&T §5151 (a) states that "Interest at the greater of 3 percent per annum or the county pool apportioned rate shall be paid, when that interest is ten dollars (\$10) or more, on any amount refunded under Section 5096.7, or refunded to a taxpayer for any reason whatsoever". The County pool apportioned rate is sometimes less than 3%.

The interest computation period begins with the date of payment of the tax when:

1. When an appeal was filed
2. Reduction by Assessor or Board for a base year value
3. Incorrect entries to the roll and Board errors

In other cases, interest computations begin with the filing of a claim for refund or payment which ever is later. Since a claim for refund form is usually sent after the roll change, the period of interest is virtually non-existent. It is therefore extremely important for companies to protect their rights by filing a timely tax appeal and verifying that the reductions will go through the Assessment Appeals Board. In addition, if the appeal is to be withdrawn, the taxpayer must verify that the auditor notates in his work papers that the proper interest from date of payment will be paid.

The law is clear that interest should be paid for any reason whatsoever. When discretion of interpretation is left up to the auditor, the position taken will generally favor the County. It is therefore prudent for taxpayers to be knowledgeable and vigilant.

Kris Chacko, Sr. Tax Consultant

Printing Equipment:

Most assessors place a 15-yr useful life valuation table on large presses and bindery equipment used in the trade. Our market research shows this is over-estimating the market value of this equipment by 100% and more in recent years. Be sure to review your assessed value calculation and see if you have been assessed on a 15-yr life table.

Steel Equipment:

Steel processing as an industry is making a slow comeback from the 2001 market conditions that spelled bankruptcy for many steel producers and processors. If your company is one of the survivors, and you're up for audit in 2004, there is still opportunity to appeal assessments for the 2001-2004 years, where reductions for economic obsolescence of 50% and more are not unreasonable. Make sure you take advantage of this opportunity.

Have you got a Strong Sister?

Perhaps your company operates both a processing plant in California and a similar plant located outside of the State. Both plants make the same product. The out-of-state plant was built more recently however, to take advantage of tax incentives and lower operating costs than your California facility can achieve. A comparison between your plant and the newer one may reveal opportunities for reduction in assessment, if the "Strong Sister" shows there are excess capital costs, excess operating costs, design inefficiencies, or economic obsolescence in your California plant. Take your comparative information to the assessor to justify a reduction.

Networking Equipment:

Make sure your networking equipment that is used for data transference between computers (namely data hubs, switches, routers, etc.) is being assessed on the State Board of Equalization Table 6 factors, that are applied to computers and related equipment. If you have been assessed on a 6-yr or 8-yr life table for this equipment, you have been over-assessed.

Best Wishes from Oakland! Ben Clark, Regional Manager

Excess Costs Lead to Excess Property Taxes

Tim Brown, Tax Consultant

As we all know costs of doing business have been increasing for California companies. Operating expenses, such as labor, energy and environmental costs are just some of the many costs that have effected business and have lead companies to pay more than their fair share of property taxes. Here is how.

In the State of California property taxes are based upon the value of the property. So let's start with the definition of value. Section 110 of the California Revenue and Taxation Code defines Value as the amount of cash or its equivalent that property would bring if exposed for sale in the open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other. Value can also be defined as the sum of the present worth of future benefits. Future benefits can have many meanings, but for most businesses future benefits are the cash flows or income generated. The prices that companies can charge for their products is set in the market and companies are finding it harder and harder to pass along these increased costs onto the consumer because of competition not only from overseas, but also from other states. Especially from a neighboring state that doesn't have the same cost pressures as a company in California. Therefore, a company, in lets say Arizona, that manufactures the same product without the costs of a company in California, is able to sell their product for the same price and thus earn a higher margin and achieve a better income.

How does this effect property taxes? This is a case of economic obsolescence. Economic obsolescence, also called external obsolescence, is defined in the State Board of Equalization Assessor's Handbook Section 502 as a loss in value caused by negative influences outside the subject property that are generally beyond the control of the subject property owner. The excess operating expenses are the negative influences that effect the value by lowering the income that can be derived from the property.

The next question is how is economic obsolescence measured in this scenario? One of the most effective ways to measure economic obsolescence in this case is to compare the operating expenses per unit of items produced in a California plant with a plant in Arizona or Nevada or Utah or wherever competition exists. If in fact the cost per unit produced is greater in California, then economic obsolescence is easily measured by comparison.

Using the Internet to store your family photos

Have you ever worried about losing your treasured family history in a disaster? Your family photos are irreplaceable. Have you ever asked yourself how your photos would fare in the case of fire or floodwaters? Are your storage methods failsafe?



Now there is another alternative to ensure that your photo treasures are not lost. Why not try online photo storage? There are many of these sites with service available and lots of them are safe, fun and free. MyFamily.com is a good one.

Here's the good part about online photo storage: You don't have to know how to make a Web page to use it. You can build your site remotely and store your pictures safely, so that they will be available to generations to come—and it's easy.

—adapted from The GenaSearch Web site

What is Wi-Fi, anyway?

What is Wi-Fi and why should you care? Wi-Fi is the shortened term for "wireless fidelity." Wi-Fi is a local network that uses high frequency radio signals to send and receive data short distances, usually under 200 feet.

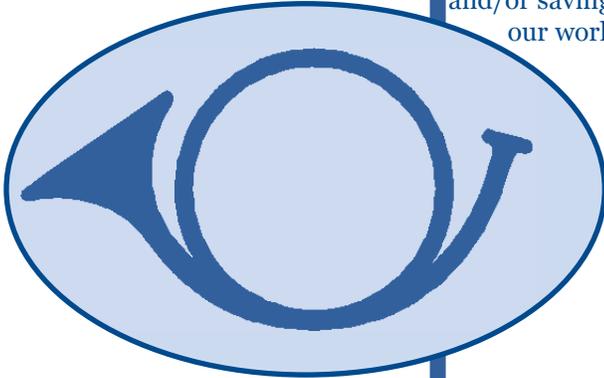
What all that really means is that Wi-Fi is a term for communicating without all the cords and cables usually necessary. The process usually uses radio frequencies or infrared waves.

Another term you will see used with Wi-Fi is "hot spot." What is a "hot spot?" A hot spot is simply a location where you can use Wi-Fi. Wi-Fi is free in some locations and requires a fee in others. Some hot spots issue passes for periods of time, a day, a week, etc., while other hot spots sell metered access.

—adapted from about.com



TOOTING OUR HORN!



Although this is an informational newsletter, we would like to take the opportunity to brag about a sampling of our successes, from various industries, in the last quarter. These are the amounts of the refunds and/or savings that our clients have received from the counties, due to our work.

Food Manufacturer	\$122,781.69
Technology	\$609,882.26
Sporting Goods	\$44,176.68
Dairy	\$26,895.68
Grocery	\$355,206.49
Plumbing Products	\$250,534.35
Semiconductor	\$242,925.25

Tax Tidbits

Property Tax Seminar Attendees

Thank you for attending our seminar on October 28th at the Embassy Suites Hotel in Irvine, CA. We enjoyed meeting with you and answering your questions. Our hope is that you went away with a better understanding of California taxes. Please feel free to call us with any questions you may have in the future. Lisa Henry 562-920-1864

Hot Popcorn Case Adopts an Opinion

The State Board of Equalization found last month that the popcorn sold by the Century Theaters was not hot and therefore was not taxable. The board 4-1 adopted a written opinion. Board member Bill Leonard said the written opinion was necessary so that all purveyors of products that were originally cooked and cooled down before being sold will be treated in the same manner.

California Ranked 38th Among Business Friendly Tax Climates

In a recent study by the Tax Foundation, California's business tax climate was rated 38th among the states. To find out more on this study please visit www.taxfoundation.org.



Quotes

On the New Year

A New Year's resolution is something that goes in one year and out the other.

__Anonymous

Youth is when you're allowed to stay up late on New Year's Eve. Middle age is when you're forced to.

__Bill Vaughn

On Courage

Courage is resistance to fear, mastery of fear--not absence of fear. Consider the flea!--incomparably the bravest of all the creatures of God, if ignorance of fear were courage.

__Mark Twain

It is courage based on confidence, not daring, and it is confidence based on experience.

__Dr. Jonas Salk

On Listening

Get all the advice and instruction you can, and be wise the rest of your life.

__Solomon

I like to listen. I have learned a great deal from listening carefully. Most people never listen.

__Ernest Hemingway

Nature gave us one tongue and two ears so we could hear twice as much as we speak.

--Epictetus

Courage is what it takes to stand up and speak; courage is also what it takes to sit down and listen.

--Winston Churchill

Property Tax Update

Continued from front page...

The Business Division has recognized the valuation problem with adding the additional values for the leasehold/tenant improvements.

As outlined in Assessor's Handbook (AH) 502, "Close cooperation between Auditor-Appraisers is essential when valuing landlord and leasehold improvements because special difficulties arise." There is recognition that this is a difficult valuation area due to building owner, tenant, Real Property Division, and Business Division coordination and the parties' record keeping.

Another example, an Apartment Building owner completed a project after acquiring a property which would be considered correcting the deferred maintenance to the apartment units. The Assessor treated this deferred maintenance as assessable "New Construction" and therefore treated the property as the "substantial equivalent to a new structure or portion thereof" (Rule 463(b)(3) (Title 18, California Code of Regulations, section 463(b)(3)) and assessed the value difference via the Income Approach to Value. Although there were monies expended to replace windows, doors, minor electrical, etc., the "structure" was not altered. (Rule 463(b)(4) excludes items "[P]erformed for the purpose of normal maintenance and repair.") After a significant expenditure of time and effort by the Taxpayer, the Assessor's Office agreed to eliminate a substantial portion of the assessment. Only the newly constructed units were considered re-assessable (i.e., the units added to the apartment complex that did not previously exist).

The critical question to ask oneself is whether the construction items or the work completed were legally assessable. The underlying determination has to start with defining whether "New Construction" occurred. Otherwise if the construction activity does not meet the definition, then an erroneous or illegal assessment has been enrolled and should be adjusted or cancelled.

In AH 502, there are several examples given that are normally excluded from the "New Construction" definition such as "Re-plumbing corroded galvanized steel pipe with copper pipe, Replacing an old forced air heating unit, Re-painting worn areas, Replacing wall and floor coverings" to name a few. There are also provisions outlining items such as fire sprinklers, disabled person access, and seismic retrofitting expenditures that are excluded from assessment according to Revenue and Taxation Code Sections 70, 73, 74, 74.3, and 74.5.

Unfortunately, the property tax system generally requires that a taxpayer make a payment of taxes prior to an assessment appeal application being submitted for a hearing date. There is an opportunity to discuss the Appraiser's position when written notice is given of their proposed findings. Then, an appeal application should be prepared and submitted within the 60 days following the Assessor's Supplemental Notice or Tax Bill (e.g., Notice of Enrollment of Escape Assessment if issued on the Unsecured Roll) depending on the County's notice procedure.

A timely review coupled with a timely filed Assessment Appeal Application has provided rewards to taxpayers that include the enrollment of the correct value, tax refunds, tax bill cancellation, penalty abatement, and time saved for all parties involved.

Bears can tell the difference in beers

A bear in Washington State passed out from drinking too much beer. Thirty-six of them to be specific.

The tipling black bear broke into campers' coolers and used his teeth and claws to open the cans.

From the cans he left behind, it seems the bear has a somewhat sophisticated palate—he preferred a locally brewed brand to a mass-marketed brand.

Resort workers found the bear conked out at a campground surrounded by empties.

The bear was chased away—but it returned to the scene of its lone party. Wildlife agents set a trap using honey, doughnuts—and you guessed it—two cans of the preferred suds.

—adapted from CNN.com



Presort Std
U.S. Postage
PAID
WMS

David L. Gangloff Jr., Esq. President
Property Tax Assistance Co., Inc.
16600 Woodruff Ave.
Bellflower, CA 90706

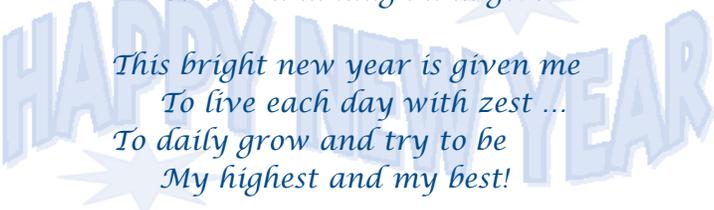
www.property-taxes.com
Bellflower, CA (Corporate Headquarters)
Property Tax Assistance Co., Inc.
16600 Woodruff Ave.
Bellflower, CA 90706
Phone 562-920-1864 Fax 562-920-5775
PTA@property-taxes.com
Los Angeles, CA
Property Tax Assistance Co., Inc
Real Estate Tax Division
620 N. Brand Blvd., Suite 402
Glendale, CA 91203
Phone 818-551-9563 Fax 818-551-9670
RETD@property-taxes.com
Oakland, CA
Property Tax Assistance Co., Inc.
7700 Edgewater Drive, Suite 552
Oakland, CA 94621
Phone 510-569-8060 Fax 510-569-8045

Editor: Lisa Henry
LHenry@property-taxes.com
562-920-1864

Property Tax Update

A New Year

*Another fresh new year is here ...
Another year to live!
To banish worry, doubt, and fear,
To love and laugh and give!*



*This bright new year is given me
To live each day with zest ...
To daily grow and try to be
My highest and my best!*

*I have the opportunity
Once more to right some wrongs,
To pray for peace, to plant a tree,
And sing more joyful songs!*

William Arthur Ward