

A Tax Deduction for Hotels?

Paula Eagleman, Sr. Tax Consultant

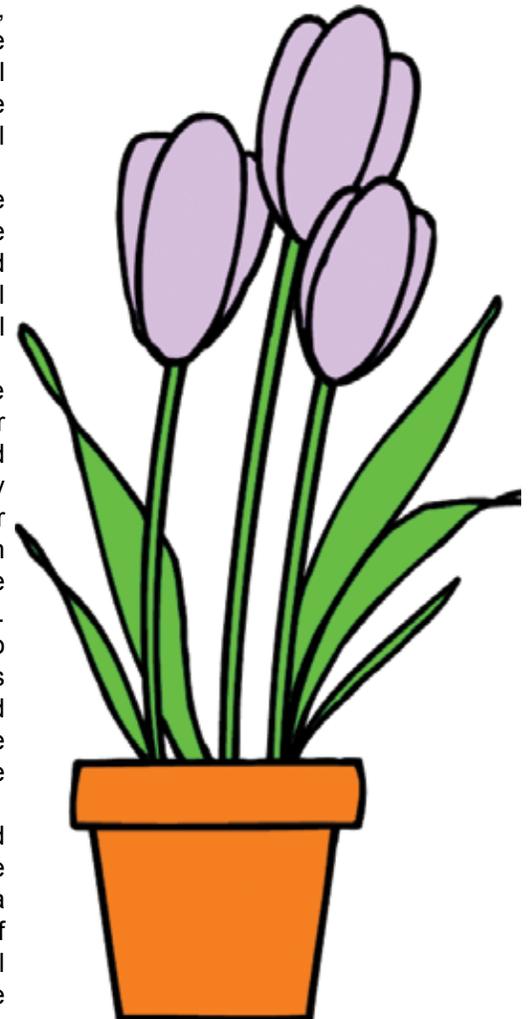
It may be beneficial for hotel owners to review their property tax assessments as there are some unique valuation issues which need to be addressed.

The first of these issues is the proper valuation and allocation of the Furniture, Fixtures, and Equipment (FF&E) versus the valuation of the real property. The standard method for valuing a hotel property is the income approach. In this approach the assessor generally uses a discounted cash flow analysis with assumptions based on the past income history of the subject property. Of course, the hotel's revenue is dependent, in part, on the FF&E in the hotel. Most people won't pay for a hotel room without a bed in it! Clearly the FF&E, which is personal property, contributes to the value of the hotel when it is valued using the income approach. However the FF&E should be assessed as personal property, not real property, to ensure that it receives the necessary deduction for depreciation.

The correct way to deduct for FF&E is to value the property using the income approach, then to deduct the cost of the FF&E from the value indicated by the income approach. The FF&E value is then assessed as personal property and depreciated each year. If the FF&E is not deducted from the value of the real property, it is possible that the assessor is taxing the FF&E twice, once as personal property and once as real property.

The second, more contentious issue regarding hotel valuations is the assessment of intangible assets such as the value of franchise flag. Under California law, intangible assets are generally not taxable and must be deducted from the property valuation. In a recent court case, EHP Glendale, LLC v. County of Los Angeles (2013) 219 Cal.App.4th 1015, it was argued that the assessor incorrectly included the value of intangibles such as the hotel franchise when assessing the property. The case took several years to wind its way from the Assessment Appeals Board all the way to the Second District Court of Appeals. The court ultimately found that the assessor used the correct methodology to deduct the necessary value from the property and did not incorrectly assess intangible property. This ruling ran counter to the advice given by the State Board of Equalization in their Assessor Handbooks, indicating that there is still some disagreement over the proper methods for removing intangible property value from a hotel valuation.

If you are concerned that your hotel property may have been assessed incorrectly, the staff at PTA would be happy to review the assessment and provide guidance. We have several staff members with hotel valuation experience and a track record of achieving value reductions for hotel properties. In addition, our staff has experience in reviewing assessments which contain both personal and real property and achieving reductions for both property types. Give us a call, we'd be happy to talk about your options.



Environmental Compliance- Value added or Cost to Cure?

Albert Zamarripa, VP Northern CA Office

Environmental Compliance means conforming to environmental laws, regulations, standards and other requirements. In recent years, environmental concerns have led to a significant increase in the number and scope of compliance imperatives across all global regulatory environments. Being closely related, environmental concerns and compliance activities are increasingly being integrated and aligned to some extent in order to avoid conflicts, wasteful overlaps and gaps.

Corporations are constantly required to make costly expenditures to either remediate or comply with new ordinance which may impact their ability to operate and/or avoid hefty fines. Questions may arise as to the taxability of these expenditures. Typically, assessors will deem any cost spent on a facility taxable, since compliance measures may and often include expenditures for tangible property.

Typically, market value of a plant in compliance with environmental regulations is greater than an identical plant not in compliance. This difference in value measures a form of obsolescence-a non-complying plant is obsolete compared to an otherwise identical counterpart. Mandatory compliance measures may be looked at in a similar fashion as contamination of a property.

The International Assessors Association of Assessing Officers recognized this point:

The cost to cure [contaminated properties] lessens utility of property and should be considered a form of functional or economic obsolescence of improvements. This would be assessed to the accrued depreciation, because current replacement costs new would be based on assuming a typical, presumably clean, environment.

Mandatory environmental compliance is a form of obsolescence. California courts have determined that environmental protection statutes which require a property owner to take measures to remediate contamination are considered restrictions on land use within the meaning of R&T Code §402.1, the impact of which must be considered in valuing a property. *Dominguez Energy v. County of Los Angeles* (1997). see also. *Mola Development Corp. v. Orange County Assessment Appeals Bd* (2000).

It is generally recognized that the obligation to comply with environmental regulations does not add value to a property, but instead, lack thereof would have a negative impact on the fair market value. California State Bar Association, Taxation Section, *Eagles Lodge West* (2004) p. 3.

The appropriate valuation sequence is to first reduce existing value by an amount equal to the projected cost to comply with the government regulation. This can be viewed as a form of obsolescence, which reduction in value is then (theoretically) restored as remediation process is initiated and completed. The "before" and "after" approach is required by R&T Code §51(a)(2) and SBE Property Tax Rule 461(e).

This valuation sequence was diagramed in *Weyerhaeuser Co. v. Easter. Weyerhaeuser* (for illustration purposes) which considered how the assessor should appraise expenditures required for pollution control, specifically water treatment facilities associated with a paper plant.

The Washington Supreme Court concluded that the failure to allow a deduction to the value for the cost of the pollution control equipment was in error:

If environmental contamination is a form of functional obsolescence, then pollution control facilities which add value to a plant imply that the obsolescence is curable. The Board's decision has the effect of excluding curable obsolescence from consideration as a deduction. This is not true for typical examples of obsolescence and should not be true for pollution control. We therefore direct the Board to consider the amount outstanding for the pollution control equipment as it would any cost to cure functional obsolescence.

Continued...

Quotes

When you were born, you cried and the world rejoiced. Live your life in such a manner that when you die the world cries and you rejoice.

___ Old Native American Saying

You can't build a reputation on what you are going to do.

___ Henry Ford

The man who rows the boat usually doesn't have time to rock it.

___ Unknown

Before I can walk in another person's shoes, I must first remove my own.

___ Unknown

Take a tip from nature—your ears are not meant to shut, but your mouth is.

___ Unknown

I've been in this business 36 years, I've learned a lot and most of it doesn't apply anymore.

___ Charles E. Exley

The closer one gets to the top, the more one finds there is no "top."

___ Nancy Barcus

Imagination is more important than knowledge.

___ Albert Einstein

They cannot take away our self respect if we do not give it to them.

___ Mahatma Gandhi

Problems are opportunities in work clothes.

___ Henry John Kaiser

Transfer of Ownership - Form BOE 100-B

JP Patel, Sr. Tax Consultant

It appears in recent years that many companies are receiving transfer of ownership form BOE 100-B. A change in the ownership or control of a corporation, partnership, limited liability company or legal entity that owns real property in California constitutes a reassessable transfer of ownership if the entity has:

1. Obtained control (acquired more than 50% of the interest) of any other entities;
2. Been acquired by any other entity (through a transfer of more than 50% of its interest.)

The transfer is excluded from reassessment when the proportional interests owned by every person and/or entity remained exactly the same for each and every piece of transferred real property before and after the transfer.

A legal entity must file a form BOE 100-B, "Statement of Change in Control and Ownership of Legal Entities" with the California State Board of Equalization (BOE) if:

1. A form has been received from the BOE, even though there was no change in ownership or control;
2. The legal entity has been dissolved;
3. The legal entity does not own or lease property in California;
4. The entity is not located in California;
5. The entity underwent a non-taxable reorganization.

A 10% penalty of the current year's taxes will be charged for not filing form BOE 100-B, or for not filing within 45 days of the Board's request, or for filing an incomplete form. The penalty may be waived if the form is correctly filed within 60 days of penalty notification.

Real property included, but is not limited to, land, structures, fixtures, mines, quarries, timber, trees and vines. It may be owned outright, or leased for a term of 35 years or more including written renewal options, or leased from government agency for any period of time. It may also consist of any right, including a working interest, to produce or extract oil, gas, minerals, or steam for any term, whether the resource is being produced or not.

If you need assistance in filing or reviewing form BOE 100-B, we are always available.

Where's the best place in the world to work?

Where's the best place in the world to work? If you're thinking of relocating to another country (or just curious), check out this list from the Mother Earth Network website:

- **Bulgaria:** 410 days of paid maternity leave, at 90 percent of salary.
- **Brazil:** Legally mandated 41 days of paid time off (30 days of vacation plus 11 federal holidays).
- **Finland:** Up to 40 paid days off a year (30 days of legally mandated vacation, and 10 public holidays).
- **Germany:** 27.8-hour workweek.
- **Netherlands:** 27.6-hour workweek (along with 16 weeks of maternity leave at full pay).
- **Norway:** Parental leave of up to 57 weeks at 80 percent of salary—with 10 weeks specifically reserved for fathers.

TOOTING OUR HORN

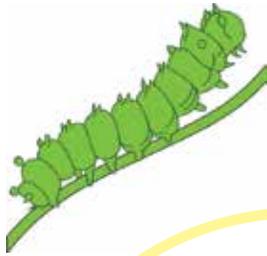
Although this is an informational newsletter, we would like to take the opportunity to brag about a sampling of our successes, from various industries, in the last quarter. These are a few **examples of the refunds** that our clients have received from the county, due to our work.

Business Personal Property

Campgrounds	\$146,155.54
Cement Manufacturing	\$91,818.04
Commercial Printing	\$30,780.38
Container Manufacturing	\$42,814.42
Contractors	\$74,572.97
Data Center	\$249,309.97
Entertainment Service Provider	\$309,382.52
Food Wholesalers	\$37,238.83
Food Manufacturing	\$110,436.00
Grocery Chain	\$63,752.76
Instrument Manufacturing	\$253,254.2
Paper Product Manufacturing	\$315,367.8
Prefab Building Mfging	\$395,432.1
Steel Production	\$766,135.77
Tire Manufacturing	\$110,633.15
Television Broadcasting	\$257,696.11

Real Property California

Industrial Prop. (2 Prop.)-SD County	\$45,875
Retail Property-(2)-LA County	\$127,479
Multifamily Prop. (2)-SC County	\$33,884
Multifamily Prop.-Alameda County	\$807,222
Multifamily Prop.-SD County	\$103,500



Tax Tidbits

Reminder!

May 7

10% Penalty Date in California

This is the last day to file a business personal property statement (571L) without incurring a penalty.

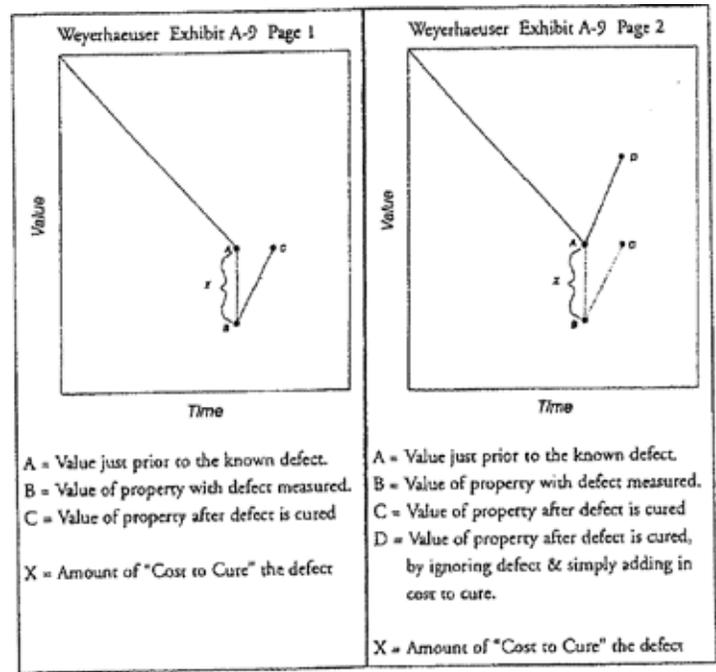


Environmental compliance continued.....

The diagram depicts a decline in value immediately upon recognition of a problem requiring cure (lines A, B), which was the requirement to install water treating facilities. The negative impact of this obligation is then mitigated and value restored as compliance is undertaken (lines B, C). The diagram assumes that the cost to cure or comply measures the decline in value, and the resulting obsolescence can be cured by complying with the regulatory order.

Page 2 depicts the common error of simply accumulating expenditures (lines A, D) without first recognizing the negative impact of the regulation.

It is important to note, that not all compliance measures will qualify for exclusion dependent on the exact scenario. There are examples where compliance measures may be rightfully taxed by the jurisdiction.



A VERY OLD MAN USED TO MEDITATE EARLY EVERY MORNING

A very old man used to meditate early every morning under a large tree on the bank of the Ganges river in India. One morning he saw a scorpion flailing helplessly in the strong current of the river, tangled in a complex network of tree roots.

The old man immediately reached out to rescue the drowning scorpion. The panicked animal tried to sting him, but the man persisted. For several long minutes his hand darted back and forth, evading the scorpion's deadly stinger as he tried to rescue it.

A passerby on the riverbank saw the struggle. "Hey, old man, what's wrong with you? Don't you know that you may kill yourself to save that dangerous animal?"

Slowly the man turned his head to gaze calmly into the stranger's eyes: "Friend, it is the nature of the scorpion to sting. Why should I give up my own nature to save?"

It's an eternal challenge: to maintain our compassionate nature in a world that bites and stings.

It pays to listen

Franklin Delano Roosevelt was often bored by the tedious small talk he was forced to endure and participate in at various social functions during his political career

One reason: He felt no one was really listening to anyone. Sometimes he liked to play a joke to make his point: When someone greeted him, he would reply in a casual voice, "I murdered my grandmother this morning."

Often, he said, he was met with a polite, noncommittal response proving the other person wasn't listening. One day, however, he met an attentive listener. The calm reply? "I'm sure she had it coming to her."



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Property Tax Update

America is a land of taxation that was founded to avoid taxation.
-Laurence J. Peter

I am thankful for the taxes I pay because it means that I'm employed.
-Nancie J. Carmody

Government's view of the economy could be summed up in a few short phrases: If it moves, tax it. If it keeps moving, regulate it. And if it stops moving, subsidize it.
-Ronald Reagan

Did you ever notice that when you put the words "The" and "IRS" together, it spells "THEIRS?"

