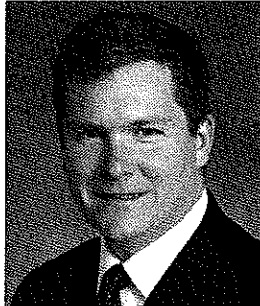


Eliminating Real Estate Taxes on Non-Real Estate Items is an Ongoing Effort



J. KIERAN JENNINGS

How do you get a \$7.2 million assessment on a well-run 145 room Marriott Courtyard hotel reduced to \$4,200,000? In a landmark case, the State Board of Tax Appeals in Tennessee led the Country in establishing a proper methodology to separate non-real estate items from hotel assessments. This same case was overturned later by the same court. In New Jersey the Courts took years to decide how they might deal with intangibles. So far the only guidance that courts have given is that the current methods are not sufficient to quantify the value of branding, service, work force, and other non-real estate items associated with hotels.

The Supreme Court in Ohio has ruled that assessors are only to tax real estate. Non-real estate items are not to

be included in assessments. The Ohio Supreme Court held that where there is a combination of business and real estate that the two activities must be kept separate. Furthermore, the separation of income and expenses is important not only when determining value based upon an income approach, but also when utilizing sales comparisons. However, the Court did not give any guidance on how to accomplish this separation.

Some appraisers trying to comply with the mandate to only value real estate for taxes, have used the theory that by applying an appropriate rate of return on the investment for non-real estate items an appraiser can estimate the income derived from that item. For instance, the value attributable to the income stream attributed to furnishings can be



Pillars of Success

Education Relationships Leadership

The Society for Marketing Professional Services (SMPS) offers A/E/C marketers opportunities to take their careers to a new level. Member benefits include:

- Marketing/business development educational seminars.
- Monthly programs focused on A/E/C industry trends.
- Certification program.
- Access to national online job bank.
- National marketing conference.
- Free subscription to Properties Magazine.
- Networking. Networking. Networking.

Get Involved. Join today.
Contact Diana Kole, Membership Chair
(216) 524-6800
dkole@donleyinc.com

SMPS
NORTHEAST
OHIO

www.smpsneo.org

determined by applying market rates of return to the investment for furnishing the hotel. That income stream is the return on the investment. And the amortized cost would be the return of the investment. Thus by removing both the return on and of the furnishings the total income attributable to furnishings, the appraiser separates income attributed to the furnishings and removes the value of the actual furnishings. Or said differently, the income and the principal of the non-real estate investment is removed from the real estate tax assessment.

Other appraisers merely remove the cost to purchase the furnishings, ignoring the fact that persons paying for a hotel room are not paying for a furnished room. Or said differently the principal of the non-real estate investment is removed but not its associated income. As clearly erroneous as this seems it is the method most favored by taxing authorities and the courts.

Other issues surround the actual purchase price of hotels. Although many States like Ohio mandate that real estate tax be based on the uniform market value of the real estate alone, problems arise because courts have traditionally interpreted market value to be the purchase price between an unrelated willing buyer and willing seller. As a result, assessors and courts tend to assess based on recent sales in the market place. Hotels present a distinct problem because they almost always sell as an ongoing business complete with personal property, inventory, an assembled workforce, cash, and flag affiliation. Assessors applying sales prices to the tax roles over-tax hotels by assessing not only real estate, but also the entire business operation.

Because the courts have not fully embraced the theory separating non-real estate items, taxpayers are forced to choose between advancing the theory which removes non-real estate income and principal investments or to be satisfied being over assessed. **P**

J. Kieran Jennings is a partner in the Cleveland law firm, Siegel Siegel Johnson & Jennings Co., L.P.A. where he practices in the area of state and local taxation with a concentration in real estate taxation. He has been published by National Real Estate Investor and regularly contributes articles to globestreet.com among others. He is also a member of Institute for Professionals in Taxation and the American Property Tax Counsel.



216.231.1100
TELEPHONE



Know Your Customers' Customer

Through identifying, anticipating and servicing their customer's changing needs, on the customer's terms, The Crowley Group is able to deliver projects which help their customers grow and thrive.

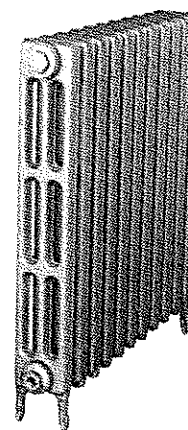
- + General Contractors + Construction Managers +
- + Design-Build + Interior Construction +
- + New Facilities + Renovations +
- + Owner Representation +

www.crowleygrp.com
email: sales@crowleygrp.com



www.woodhillsupply.com

We Custom Fabricate Cast Iron Radiators!



Woodhill Supply is your One Stop source for:

- Pipes, Valves & Fittings
- Water Heaters
- Complete Line of HVAC Equipment & Parts
- Tools - Ridgid, Milwaukee and More
- Full Range of Plumbing Fixtures & Parts
- Kitchen Cabinets
- Countertops

440.269.1100

4665 Beidler Rd., Willoughby 44094

216.229.3900

1862 E. 123rd St., Cleveland 44106