Dual Appraisal Methods Improve Opportunities to Get Fair Taxation for Seniors Housing Properties

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The seniors housing sector can't seem to catch a break. Owners grappling with staffing shortages and other operational hardships lingering from the pandemic are facing new challenges related to debt and spiraling costs. High interest rates and loan maturations loom over the industry, with $19 billion in loans coming due within the next 24 months, according to Cushman & Wakefield's "H1 2024 Market Trends and Investor Survey" on senior living and care.

Factors driving high costs include wage pressures, inflation and — incredibly — rising property taxes. Despite operational challenges and declining occupancy at many facilities during the COVID-19 pandemic, property tax relief for seniors housing was mixed. Many assessors resisted downward adjustments to taxable values, maintaining that recovery was around the corner. Now, seniors housing operators face property tax assessments that equal or exceed pre-pandemic levels.

As in the hospitality sector, most seniors housing owners understand that their operating properties include more value components than real property alone. In evaluating whether a tax assessment is reasonable and fair, however, owners need to realize that *how* an assessor addresses their real estate, personal property and intangible assets can drastically affect property tax liability.

Intangibles have value

The Appraisal Institute's "The Appraisal of Senior Housing, Nursing Home, and Hospital Properties" states that the valuation of a going concern in the sector includes real property, tangible personal property and intangible personal property. Real property or real estate equates to fee-simple, leased-fee or leasehold interests; tangible personal property is furniture, fixtures and equipment.

Intangible personal property can include assembled workforces, licenses, certifications, accreditations, approvals such as certificates of need, employment contracts, medical records, goodwill and management.

The Appraisal Institute's text also cites a requirement from the Uniform Standards of Professional Appraisal Practice in stipulating that the market value of real estate must be identified and valued separately, apart from the tangible and intangible personal property. Adopted by Congress in 1989, the Uniform Standards serve as ethical and performance standards for appraisal professionals in the United States.

Assessors and real estate appraisers are familiar with the process of separating real property and tangible personal property for purposes of valuation. Valuing intangible personal property, however, is often less clear.

Top-down vs. ground-up valuation

Appraisers often back into an intangible personal property value by first developing a going-concern value and then subtracting values for real property and tangible personal property. In practice, the whole does not always equal the sum of the parts.

Appraisers frequently opt for this "top-down" approach, so described because the appraiser develops a value opinion for the total going concern and then works "from the top down," assigning values to the various components based on market statistics or other data.

By contrast, some appraisers take a "ground-up" approach by valuing all the components independently and then adding those amounts to value the going concern. If done properly, both methods should yield similar value indications for each component.

For especially difficult property tax cases, taxpayers may find it worthwhile to have two appraisers perform independent appraisals using each method and then present both conclusions to the trier of fact.

Either method can help to demonstrate the considerable investment value imbued in many elements of intangible personal property. The assembled workforce may have taken several months to adequately staff and train, for example, while acquiring and maintaining licenses requires investments of time, capital and effort to overcome regulatory and adherence challenges. The loss of licenses or a portion of the workforce at a seniors housing facility can impair its operation and send effects rippling throughout the business, reaching beyond intangible personal property.

Business appraisers, who are accustomed to valuing intangible assets as part of mergers, acquisitions and similar activities, can provide clarity for taxpayers building a case for a tax assessment reduction on their seniors housing property. A business appraiser can be invaluable in these circumstances, allowing for a ground-up approach to valuing the elements of the intangible personal property and even working alongside real estate appraisers to come up with a clearer picture of the going concern.

Accounting counts

Most seniors housing operators fastidiously follow Generally Accepted Accounting Principles (GAAP) and strive to maintain compliance with accounting rules from the Internal Revenue Service (IRS) and Securities and Exchange Commission (SEC). These taxpayers would be wise to include a fourth consideration for their accounting team, which is to understand how their state and local governments define taxable real estate.

Tax definitions may vary slightly from one jurisdiction to another. Thus, it is possible to have one allocation for IRS, SEC or GAAP guidelines while having a different allocation for property tax purposes that corresponds to tax practices in the area. This type of nuance is one of the reasons seniors housing owners or operators can improve their odds of success in a property tax dispute by working with an adviser who understands both local case law and the area assessor's approach to valuing components of seniors housing properties.

In several states and municipalities across the country, assessors will simply increase a property's assessment to the purchase price entered in county records. This can lead to sticker shock when an operator receives their first tax bill after an acquisition.

By working with tax professionals and valuation experts during the due diligence and acquisition process, and by documenting the consideration paid for each component of an acquired asset's value, operators can limit upside exposure for future increases in property taxes and retain the necessary documentation to support these allocations.

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