

## 6 Tips For Shaving Down A Hotel Tax Bill

By **Natalie Rodriguez**

*Law360, New York (June 20, 2014, 8:03 PM ET)* -- Hotels can have a hard time scoring fair tax assessments given their complicated revenue streams. And now that the lodging business is booming, some experts predict, tax bills will rise, too — and not always justly.

“Assessors just make mistakes, and they don't recognize that some of the hotels, particularly in secondary markets, aren't doing as well as their brethren in Midtown Manhattan or Boston,” said Frank E. Ferruggia, a tax partner with McCarter & English LLP.

Or they don't realize that older properties may not be bustling the way newer competitors are, as happened in a tax appeal case that Ferruggia won for the Boston Park Plaza's owners last year.

So if a hotel client gets hit hard on its latest assessment, keep these guidelines in mind:

### **Have a Reputable Expert on Speed-Dial**

Key to many successful appeals is engaging an expert who's experienced in valuing hotel properties, which are often difficult to assess given on-site retail, restaurants and more that can easily muddle certain calculations, attorneys say.

“As soon as the client contacts you, your next phone call should be to retain an expert. Then start the process of getting all the necessary financials,” said Peter M. Sarkos, a Fox Rothschild LLP litigator who recently helped Atlantic City, New Jersey's Borgata Hotel and Casino chop down multiple years' worth of tax bills.

Ideally, the expert also has a solid reputation in the area, which can often go a long way with some assessors and make a difference in initial negotiations, attorneys note.

Remember, it's best to settle an appeal quickly, lest fighting the bill becomes more trouble than it's worth. But expert appraisers will be a necessity if early talks don't pan out.

“If you go to court, you clearly have to have an appraisal,” Ferruggia said.

### **Know the Property Inside and Out**

Get as much information on a hotel's various operations as soon as possible and have that information on hand before sitting down for the first meeting with an assessor.

“It's important to get familiar with the property as quickly as possible so that when you're approaching the assessor, you have a really good handle on the strengths and weaknesses of the case,” said Philip S. Olsen, a tax litigator with Burns & Levinson LLP who also worked on the Boston Park Plaza appeal.

And when it's time to go on the site visit — which many assessors will ask for — make sure to have facilities and management personnel on hand that have a solid knowledge of the hotel's inner workings and how it compares to other hotels, Olsen said.

### **Keep Communication Channels Unclogged**

Most assessors have a mountain of paperwork to deal with, and it'll be on you to keep the hotel owner's objectives a high priority. One of the best ways is to simply check in on a regular basis and make sure he or she has all the information needed.

“My attitude is you can't call them enough. If you think there's an opportunity to settle, then you can't call them enough,” Sarkos said, noting that cases in New Jersey Tax Court can sit for years.

Also, err on the side of being as transparent as possible. Offering up detailed income and expense information, for example, can, in many cases, be the turning point in negotiations, experts say.

“Usually, the assessor is not given that information. They might know the room rates, but they don't typically know the income,” said David J. Sangree, president of hospitality consulting firm Hotel & Leisure Advisors.

Look to develop a trusting relationship. And even before an assessment is made, it's important to be timely with any communication requested from the hotel. Appeals can be tossed because the owners didn't provide certain income and expense information on time, according to Olsen.

“You could be over before you even get started,” he said.

### **Be Prepared to Educate**

Along with good communication, be prepared to spend time talking assessors through the methodology that your client believes should be used in valuing the hotel. There are a lot of differing approaches in how to break down the real estate, personal property and business values of a hotel, and often, winning a tax bill reduction can come down to making the case for your expert's methods.

Many assessors take an income-focused approach that some hotel experts contend can wrongly muddle certain revenue streams into the property's valuation. Hotel representatives tend to support the so-called Rushmore methodology — named after the expert in a key New Jersey Tax Court case — that essentially subtracts the hotel's operating business and personal property values in order to get at the real estate value.

This model avoids the common problem of the more income-focused method, which can be that the business end of a hotel is valued extremely high, while the real estate assessment is very low, according to Sangree.

“A lot of assessors are not as familiar with the Rushmore methodology,” Ferruggia said. “You have to take the time to sit down and educate the assessor in this particular area.”

And even those comfortable with the Rushmore method or those similar to it can often stumble on arguments to extract furniture, fixtures and equipment values from the real estate property values, he noted.

“You have to be very prepared; you have to have done your due diligence; and you have to have a very thorough analysis,” Sangree said.

Though be careful to not get stuck in a rut by going too in-depth in early negotiations, some say.

“My experience has been that the preferred method is not to drill down in the weeds when you're just negotiating a settlement. Deal with things in the broader sense and try to reach a number that the parties are happy with,” Sarkos said.

### **Be Flexible With the Settlement**

Keep in mind that the assessor has a residential constituency to answer to as hotel taxes help pay for a number of public services in most areas. And having to empty out a reserve account to pay back a hotel can be a sensitive issue, Olsen notes.

“There are a lot of times where a municipality would prefer not to write a check,” Ferruggia said. “[But] they can, under certain circumstances, commit to a future reduction one year or two years out.”

Swallowing the current tax bill in exchange for those reductions can often be in a hotel's best interest. Another option is to take your client's refund as a credit on taxes moving forward, which also keeps the city or municipality from having to pull out money right away, Sarkos said.

### **Don't Fear Trial**

Even if the courthouse is the last place you want your client's appeal to end up, you better not fear having to take it there. If the case isn't strong enough to stand up to trial, walk away from the appeal altogether, attorneys recommend.

“If you don't have a credible threat that you're prepared to go to court, you're not going to get a good settlement,” Ferruggia said.

On your side are the recent Borgata and Boston Park Plaza wins, which have many municipalities a little more willing to stay out of the courthouse, too, Ferruggia noted. But at the end of the day, don't try to strong-arm the assessor on a weak appeal as that will likely fail, and then there's unnecessary bad blood between the parties.

“If you've done your homework and filed an appeal that's meritorious, then the data will support it,” Ferruggia said.

--Editing by Jeremy Barker and Christine Chun.