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Calling out casino tax assessors

In the perplexing world of property taxation, it is hard enough to get an appropriate assessment on a good day. But it is even harder when the deck is stacked against you.

Property tax is usually the largest single expense for a property after debt service, so when tax assessors routinely over-assess gaming properties, the result can be the payment of millions of dollars of excess taxes.

In the shadow of the Great Recession, local tax assessors have become increasingly aggressive with gaming properties. Casinos are often the largest taxpayer in an area, and when left with the choice between raising taxes on voters' residences and raising taxes on the casino down the street, the house often loses. Further, in some states, taxing districts can sue to increase the level of assessment. In those states, even if the assessor sets a fair value for the property, the local school district can sue to make it higher.

One of the most common errors made by assessors, and even some appraisers hired by casinos, is the use of gaming revenues as an indication of a property's income-earning ability. In the property tax world, one of the main ways to value an investment property is by capitalizing an income stream. To value the real estate, that income stream is supposed to be income from the property, i.e. rental income. Casinos aren't typically leased, however, so casino properties don't generate income. The income often attributed to the casino real estate is actually income from the gaming license or the gaming operation itself. Capitalizing gaming revenue may be a way to value a gaming license, but it is completely irrelevant in valuing real estate.

Assessors also read—and misinterpret—public filings. Annual reports, purchase price allocations, and gaming commission filings typically include the values assigned to a variety of assets, including real estate. Those values, however, are measured using accounting standards which are specialized for that purpose. The fair market value of real estate for property tax purposes is not usually measured using those same standards. Nevertheless, it is easy for an assessor to see a line item for real estate on a 10-K and rely on it to increase an assessment.

Complex properties are notoriously difficult to value, and gaming properties—with their various casino, hotel, restaurant, retail, and parking components—are unquestionably complex. One of the difficulties of valuing complex properties is separating the value of the real estate from the value of personal property and intangible property. Personal property may be separately assessed, but it should not be included in the value of real estate. Similarly, intangible assets—gaming licenses, liquor licenses, player lists—are typically exempt from property taxation, so their value must be completely removed from the value of the real property.

Mistakes involving the failure to subtract non-real estate value often arise in the context of using the sales of other properties to value a particular property. There is an active, if infrequent, market for operating casinos, and the total sales price often makes headlines. Headlines can be misleading, though, because those transactions are rarely, if ever, purchases of the real estate alone.

What can operators of gaming properties do to hold back the tide of rising assessments? First, when purchasing a property or a gaming operation, be careful about how the transaction is reported. Ensure that the value reported on the sales disclosure form is the value of the real property only, and be prepared to answer questions from the assessor if the larger, all-inclusive purchase price is covered by the local media.

Further, when assessors request business income information unrelated to the property itself, casino operators should consider objecting to the request. If the information is truly unrelated to the property and relates only to the business going on inside it, you should explain why the information is irrelevant. And if compliance with the request is required, be sure to take steps to guard against disclosure of proprietary information.

Most importantly, know the process. How are assessments set in your area? What property can and cannot be taxed in your state? What are the deadlines to challenge an assessment? Don't be afraid to ask questions. You know your business and your property better than anyone else, and you certainly wouldn't let someone stack the deck in your casino. Don't let assessors stack the deck against it either.

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