

**Strafford**

*presents*

# **Challenging a Business Property Assessment**

## **Strategies for Reducing Your Company's Valuation and Property Tax Bill**

**A Live 110-Minute Teleconference/Webinar with Interactive Q&A**

**Today's panel features:**

Kieran Jennings, Partner, **Siegel Siegel Johnson & Jennings**, Cleveland, Ohio  
Michael Remsha, Vice President and Managing Director, **American Appraisal Associates**, Milwaukee, Wis.  
David Hurrell, Senior Manager, Property Tax Services Group, **Ernst & Young**, Cleveland, Ohio  
Jeffrey Dexter, President, **Cost Reduction Services Group**, Naugatuck, Conn.

**Wednesday, October 13, 2010**

The conference begins at:

**1 pm Eastern**

**12 pm Central**

**11 am Mountain**

**10 am Pacific**

You can access the audio portion of the conference on the telephone or by using your computer's speakers.  
Please refer to the dial in/ log in instructions emailed to registrants.

For Continuing Education purposes,  
please let us know how many people  
are listening at your location by

- closing the notification box
- and typing in the chat box your  
company name and the number of  
attendees.
- Then click the blue icon beside the box  
to send.

For live event only

- If you are listening via your computer speakers, please note that the quality of your sound will vary depending on the speed and quality of your internet connection.
- If the sound quality is not satisfactory and you are listening via your computer speakers, please dial **1-866-869-6667** and enter your PIN when prompted. Otherwise, please send us a chat or e-mail [sound@straffordpub.com](mailto:sound@straffordpub.com) immediately so we can address the problem.
- If you dialed in and have any difficulties during the call, press **\*0** for assistance.

**Strafford**

# **Challenging A Business Property Assessment Webinar**

**Oct. 13, 2010**

**David Hurrell, Ernst & Young**  
**david.hurrell@ey.com**

**Jeffrey Dexter, Cost Reduction Services  
Group**  
**cut.costs@att.net**

**Michael Remsha, American  
Appraisal Associates**  
**mremsha@american-  
appraisal.com**

**Kieran Jennings, Siegel Siegel Johnson &  
Jennings**  
**kjennings@siegeltax.com**

# Today's Program

Developing, Leveraging An Assessor Relationship <i>(David Hurrell)</i>	Slides 6-14
Creating Your Presentation <i>(Jeffrey Dexter)</i>	Slides 15-20
Lessons From Assessment Scenarios <i>(Michael Remsha)</i>	Slides 21-31
Negotiating From A Position Of Strength <i>(Kieran Jennings)</i>	Slides 32-40

# **Developing, Leveraging An Assessor Relationship**

**David Hurrell, Ernst & Young**

---

# Agenda For This Section

---

- ▶ Understanding the landscape
- ▶ What to expect: Know your assessor
- ▶ Establishing working relationships with assessors
- ▶ Accomplishing your goals: Making the relationship work for you

# Understanding The Landscape

Total state and local business taxes, FY2008-FY2009, (\$Billions)

	1/2 <sup>aa</sup> ⊙	1/2 <sup>aa</sup> α	* ff <sup>1</sup> N <sup>1</sup> /3% ff <sup>1</sup> /3N <sup>5</sup> /8L <sup>F</sup>	■ -5/8¥...5/8 <sup>1</sup> /3 <sup>F</sup> —⊙ <sup>1</sup> /3—⊙ <sup>5</sup> /8
-V <sup>1</sup> L <sup>F</sup> €-5/8L <sup>F</sup> L <sup>F</sup> ff <sup>1</sup> /3N	• 1/2 <sup>a</sup> αP <sub>t</sub> <sup>na</sup>	• 1/2 <sup>o2</sup> P <sub>t</sub> <sup>1/4</sup> <sup>a</sup>	1/4 <sup>n</sup> P <sub>t</sub> <sup>2a</sup> *	1/2P <sub>t</sub> <sup>⊙a</sup> *
■ C <sub>R</sub> <sup>1</sup> H <sub>T</sub> <sup>5</sup> /8C <sub>R</sub> <sup>N</sup> L <sub>R</sub> s N <sub>L</sub> <sup>1</sup> /3N <sup>5</sup> /8L <sup>F</sup> 1- 2/3V <sup>1</sup> L <sup>F</sup> €-5/8L <sup>F</sup> L <sup>F</sup> H <sub>T</sub> C <sub>R</sub> <sup>1</sup> H <sub>T</sub> <sup>5</sup> /8C <sub>R</sub> <sup>N</sup> L <sub>R</sub> s	• ⊙ <sup>1</sup> /4 <sup>1</sup> /4P <sub>t</sub> <sup>1/2</sup>	• ⊙ <sup>1</sup> /2 <sup>n</sup> P <sub>t</sub> <sup>α</sup> <sup>a</sup>	1/2 <sup>o</sup> P <sub>t</sub> <sup>2a</sup> *	¥C <sub>P</sub> <sub>t</sub> <sup>⊙a</sup> *
□ 5/8-5/8C <sub>R</sub> <sup>1</sup> /3% <sub>0</sub> L <sub>F</sub> <sup>1</sup> /3% <sub>0</sub> 5/8L <sup>F</sup> N <sub>L</sub> <sup>1</sup> /3N <sup>5</sup> /8L <sup>F</sup> 1- 2/3V <sup>1</sup> L <sup>F</sup> €-5/8L <sup>F</sup> L <sup>F</sup>	• 2⊙P <sub>t</sub> <sup>⊙a</sup>	• 2 <sup>a</sup> P <sub>t</sub> <sup>na</sup>	⊙P <sub>t</sub> <sup>na</sup> *	¥ <sup>o1</sup> /4P <sub>t</sub> <sup>aa</sup> *
€-H <sub>T</sub> V <sub>T</sub> N <sub>L</sub> L <sup>F</sup>	2 <sup>1</sup> /4 <sup>1</sup> /2P <sub>t</sub> <sup>2</sup>	• 1/4 <sup>a</sup> P <sub>t</sub> <sup>⊙a</sup>	2P <sub>t</sub> <sup>1/2</sup> <sup>a</sup> *	¥2P <sub>t</sub> <sup>2a</sup> *
-1 <sup>F</sup> C <sub>R</sub> H <sub>T</sub> <sup>1</sup> C <sub>R</sub> <sup>1</sup> /3N <sup>5</sup> /8 €-1/8 <sup>1</sup> N <sup>o5</sup> /8 % <sub>0</sub> 1/3N	• 1/4⊙P <sub>t</sub> <sup>2a</sup>	• 1/4⊙P <sub>t</sub> <sup>1/4</sup> <sup>a</sup>	nP <sub>t</sub> <sup>2a</sup> *	1/2P <sub>t</sub> <sup>1/4</sup> <sup>a</sup> *
ff <sup>1</sup> -5/8N <sup>oH</sup> <sub>T</sub> % <sub>0</sub> 1 <sup>R</sup> sN <sup>o5</sup> /8-N <sub>L</sub> €-L <sub>F</sub> V <sub>T</sub> C <sub>R</sub> <sup>1</sup> /3-1/8 <sup>5</sup> /8	• 1/4⊙P <sub>t</sub> <sup>na</sup>	• 1/4 <sup>1</sup> /2P <sub>t</sub> <sup>1/4</sup> <sup>a</sup>	2P <sub>t</sub> <sup>2a</sup> *	¥ <sup>o</sup> C <sub>P</sub> <sub>t</sub> <sup>⊙a</sup> *
-V <sup>1</sup> L <sup>F</sup> €-5/8L <sup>F</sup> L <sup>F</sup> 1/3-3/8 1/8 <sup>1</sup> C <sub>R</sub> H <sub>T</sub> <sup>1</sup> C <sub>R</sub> <sup>1</sup> /3N <sup>5</sup> /8 % <sub>0</sub> € <sup>1</sup> /8 <sup>5</sup> /8-L <sub>F</sub> <sup>5</sup> /8	• 1/2⊙P <sub>t</sub> <sup>aa</sup>	• 1/2⊙P <sub>t</sub> <sup>⊙a</sup>	⊙P <sub>t</sub> <sup>α</sup> <sup>a</sup> *	1/2P <sub>t</sub> <sup>α</sup> <sup>a</sup> *
‡-3/8€⊕€ <sup>3</sup> /8V <sub>T</sub> <sup>1</sup> /3% <sub>0</sub> €-1/8 <sup>1</sup> N <sup>o5</sup> /8 N <sub>L</sub> <sup>1</sup> /3N 1- 2/3V <sup>1</sup> L <sup>F</sup> €-5/8L <sup>F</sup> L <sup>F</sup>	• 1/2αP <sub>t</sub> <sup>1/2</sup> <sup>a</sup>	• 1/2 <sup>n</sup> P <sub>t</sub> <sup>1/4</sup> <sup>a</sup>	⊙P <sub>t</sub> <sup>2a</sup> *	αP <sub>t</sub> <sup>α</sup> <sup>a</sup> *
€-1/8 <sup>1</sup> N <sup>o5</sup> /8	• ⊙ <sup>n</sup> P <sub>t</sub> <sup>⊙</sup> <sup>a</sup>	• ⊙ <sup>2</sup> P <sub>t</sub> <sup>na</sup>	1/2P <sub>t</sub> <sup>na</sup> *	¥2P <sub>t</sub> <sup>1/2</sup> <sup>a</sup> *
■ V <sup>1</sup> /2% <sub>0</sub> € <sup>1</sup> /8 V <sub>T</sub> N <sub>L</sub> €% <sub>0</sub> € <sup>N</sup> L <sub>R</sub> s N <sub>L</sub> <sup>1</sup> /3N <sup>5</sup> /8L <sup>F</sup>	2 <sup>1</sup> /2αP <sub>t</sub> <sup>o</sup>	• 1/2 <sup>2</sup> P <sub>t</sub> <sup>1/2</sup> <sup>a</sup>	⊙P <sub>t</sub> <sup>1/4</sup> <sup>a</sup> *	¥1/4P <sub>t</sub> <sup>1/4</sup> <sup>a</sup> *
• N <sup>1</sup> /8€ <sup>L</sup> <sub>F</sub> <sup>5</sup> /8 N <sub>L</sub> <sup>1</sup> /3N <sup>5</sup> /8L <sup>F</sup>	• n <sup>o</sup> oP <sub>t</sub> <sup>⊙a</sup>	• 2α <sup>a</sup> P <sub>t</sub> <sup>aa</sup>	oaaP <sub>t</sub> <sup>aa</sup> *	¥1/4P <sub>t</sub> <sup>2a</sup> *
‡-L <sub>F</sub> V <sub>T</sub> C <sub>R</sub> <sup>1</sup> /3-1/8 <sup>5</sup> /8 H <sub>T</sub> C <sub>R</sub> <sup>5</sup> /8N <sup>o</sup> € <sup>V</sup> <sub>T</sub> N <sup>o</sup> L <sub>F</sub> N <sub>L</sub> <sup>1</sup> /3N <sup>5</sup> /8L <sup>F</sup>				
■ N <sub>L</sub> <sup>o</sup> 5/8C <sub>R</sub> 2/3V <sup>1</sup> L <sup>F</sup> €-5/8L <sup>F</sup> L <sup>F</sup> N <sub>L</sub> <sup>1</sup> /3N <sup>5</sup> /8L <sup>F</sup>				
ff <sup>1</sup> N <sub>L</sub> <sup>1</sup> /3% <sub>0</sub> -V <sup>1</sup> L <sup>F</sup> €-5/8L <sup>F</sup> L <sup>F</sup> ff <sup>1</sup> /3N <sup>5</sup> /8L <sup>F</sup>				

- ▶ Property taxes on real, personal and utility property by business account for the largest share of total state and local business taxes, 36.5% or \$215.3 billion. Property taxes increased 2.7% in FY2009, after growing 4.8% in FY2008 and 6.4% in FY2007. Property taxes as a share of total state and local businesses taxes increased by 2.2 percentage points in FY2009. Property taxes are the largest local business tax (74.1% of total local business taxes).

---

# Understanding The Landscape (Cont.)

---

- ▶ **Trend: Mounting state and local budget deficits, reflecting fallout of economic recession**
- ▶ **State/local taxing jurisdiction responses:**
  - ▶ Use of more hired external auditors for personal property audits on a contingency fee basis.
  - ▶ Dismissal of distressed sales as evidence of “market value”
  - ▶ Revaluations reflecting minimal decreases, unless challenged by taxpayers
  - ▶ Pressure for increased tax levies
  - ▶ Consideration of split/rolls adverse to business property
  - ▶ Reconsideration of changes in ownership limits on caps (i.e., CA – proposed change – Prop XIII)

---

# What To Expect: Know Your Assessor

---

## Assessment community – general characteristics

- ▶ Mass appraisal techniques
- ▶ Comfort level with the cost approach
- ▶ Typically slow to react to market changes
- ▶ Pushing back with greater force and frequently on appeals, value reductions and waivers for fees, penalties, etc.
- ▶ Greater flexibility in an informal setting vs. appeals

# What To Expect: Know Your Assessor (Cont.)

---

## Local assessor meetings – Tips for preparation

- ▶ Understand the LOCAL landscape
  - ▶ News reports: Local economy, business and political climate
  - ▶ Research recent and historical property tax cases and hearings
  - ▶ Connect with colleagues, business contacts and consultants who operate in the local jurisdiction
  - ▶ Gain a working understanding of the assessor’s methodologies, comfort levels and acceptable risk parameters
    - ▶ Local statutes
    - ▶ Standard of value
    - ▶ Where to get comparables
  - ▶ Understand local customs – “When in Rome ...”
- ▶ “Step into the shoes” of the assessor by considering:
  - ▶ Jurisdiction responsibilities
  - ▶ Reporting requirements
  - ▶ Documentation needed

---

# Establishing Working Relationships With Assessors

---

## Basics

- ▶ Respect is a must
- ▶ Always be truthful; don't omit or hide facts
- ▶ Identify potential common bonds by observing the assessor's surroundings
- ▶ Be as transparent as possible. Develop credibility and trust by acting ethically.

---

# Establishing Working Relationships With Assessors (Cont.)

---

## Practical considerations

- ▶ Gain credibility
  - ▶ Know the subject property
    - ▶ Site visit
    - ▶ Spend time with operations people
- ▶ Develop a meaningful argument with market-based support
  - ▶ Thorough preparation is key
  - ▶ Third-party documentation
- ▶ Be comfortable with the information you provide
- ▶ Special considerations for proprietary information

---

# Accomplishing Your Goals: Making The Relationship Work For You

---

## The art of negotiation

- ▶ Balancing what the assessor will accept with your company's needs
  - ▶ How aggressive do you have to be to achieve the desired result?
  - ▶ Political considerations/standing in the community
  - ▶ Internal buy-in
- ▶ Establish acceptable settlement parameters
  - ▶ Leverage your knowledge of how the assessor operates
  - ▶ Outline key objectives
  - ▶ Document settlement options
  - ▶ Be prepared for pushback
  - ▶ Make it a win-win situation
- ▶ Marathon, not a sprint

# **Creating Your Presentation**

**Jeffrey Dexter, Cost Reduction  
Services Group**

# Determining If There's A Case

- Gathering property info (*see info sheet for this section*)
- Benchmarking resources to check
- Review any recent appraisal
- Tour the property

# “Know Your Audience”

- Revaluation company and staffers
- Board of Assessment Appeals
- Assessor
- Town/county attorney
- Your property manager/contact

# “Developing Your Presentation”

- Start with the basics (*see presentation handout for this section*)
- Discuss the problems (note what detracts from value)
- Know if something *adds* to value
- Income/expense info
  - » Data source, time frame, format
- Show all rent information
- Use comparable assessments, if warranted
- Photos: A picture is worth a thousand words

# “Show Time!”

- Where to go ... and getting there.
- Listening in (a/k/a “eavesdropping”)
- The “ice breaker”
- Asking questions (e.g., of the revaluation company)
- Answering questions
- Beg for questions

# Post-Presentation

- Any “after the meeting” questions needing an answer?
- Any amendments to be made?
- Critique your performance
- On to the next show

# **Lessons From Assessment Scenarios**

**Michael Remsha, American  
Appraisal Associates**

# Levels Of Value



## **Definitions vary by state**

- Market value
- Fair market value
- Full value
- Fair and cash value
- True value
- Among others

**Generally, the assessment should reflect what you can sell the property for in the market**

- **With or without installation?**

# Approaches To Value



## **Income approach**

- Can be too complex
- Data may not be available

## **Sales comparison approach**

- Can be very useful for marketable assets

## **Cost approach**

- Can be applied to most assets

# Real Life Story No.1



## **Very large manufacturing plant in the auto industry**

- Supplied parts to the auto assembly plants
- Supplied replacement parts to the public
- Global market
  
- 20 years old (effective age of PP = 10 years)
- Updated many times over the years
- Major issues with functional obsolescence (FO)
  - FO was not economically curable
  - Technology continually changing
  - County assessor relied on state tables!

# Real Life Story No. 1 (Cont.)



## Replacement plant design

- Same capacity and utility of actual plant
- Utilized new, modern machinery and equipment
- Design, cost and operating characteristics different
  - Smaller workforce
  - Lower energy expense
  - Less scrap

# Real Life Story No. 1 (Cont.)



## Economic obsolescence (EO)

- 
- Compared the returns on invested capital
  - Current returns vs. “the good old days”
  - Value line investment survey data
  - Returns as of appraisal date = 15%
  - Returns as of “the good old days” = 19%
  - EO = 21%
- Compared equity-to-book ratio
  - Subject industry vs. U.S. industry
  - S&P industry surveys data
  - Subject industry = 2.36
  - U.S. industry = 3.90
  - EO = 39%

# Real Life Story No. 1 (Cont.)



## Functional obsolescence (FO)

- Labor: 1,800 people vs. 1,254 people
- Energy: 8.35 MMBtu per lb vs. 6.23 MMBtu per lb
- Scrape: 1.25% of production vs. 0.50% of production

## Annual penalty

- Labor: \$35,333,000
- Energy: 2,045,000
- Scrap: 3,458,000
- Total: \$40,836,000

**Present value of the annual penalty = \$158,000,000**  
**Over the remaining life of the property**

# Real Life Story No. 1 (Cont.)



Reproduction cost new	\$420,000,000
• Less FO due to excess capital costs	<u>(60,000,000)</u>
Cost of replacement	480,000,000
• Less physical depreciation	220,000,000
• Less economic obsolescence	52,000,000
• Less functional obsolescence	<u>158,000,000</u>
Equals cost indicator of value	\$ 49,000,000

**Assessment was more than \$100 million**

# Real Life Story No. 2



**Very large manufacturing plant in the telecommunications industry**

- 
- Manufactured high-tech equipment
- Technology advanced every six months
- Manufacturing equipment was constantly changing
- Global market
  
- Major issue with “ghost assets” or “unrecorded retirements”
- Continually being updated
- Cannibalism was an issue
- Major issues with functional (technological) obsolescence
  - Technology was continually changing
  - County assessor relied on state M&E tables!

# Real Life Story No. 2 (Cont.)



**Cleaned up the property record (asset ledger)**

**Went to the market to survey selling prices of M&E**

- Obtained actual market data from used equipment dealers
  - Age vs. actual selling price
- Developed a market-based depreciation schedule
  - Age vs. % of historical cost
  - Applied it to the cleaned-up property record
  - Result: Market value of the actual assets on-site
- Won case
- State developed a special depreciation schedule for the future!

# In Conclusion



## **Income approach**

- Can be too complex
  - Working capital vs. intangible assets vs. tangible assets

## **Sales comparison approach**

- Can be very useful for marketable assets
- Develop market-based depreciation curves

## **Cost approach**

- Must be able to quantify all forms of depreciation and obsolescence

**Any approach supported by factual evidence will get the point across and can be used in negotiations/court**

# Negotiating From A Position Of Strength

**Kieran Jennings, Siegel Siegel  
Johnson & Jennings**

*“If you know your enemies and know yourself, you can win a hundred battles.” –  
Sun Tzu*

# Discovery

- What is discovery?
- What evidence must we turn over?
- Discoverable vs. admissible
- What can we learn from our opposition?

# Knowledge That Is Necessary At Beginning Of Case

- Case law
- Reassessment rules
- Opposition
- Local custom (unwritten rules)
- Available valuation arguments

# When To Start Negotiation

- Informal reviews
- Filing the case
- County level
- Appeal level

**Note:** Each case is different, but the decision of when to start negotiation must be made after considering your opposition.

# Factors With The Case Judge

- Has this judge decided similar cases?
- Has this judge heard appeals for the subject?
- Is the judge strict with rules of evidence and timelines?
- What other factors may effect the pace of litigation?

# Your Evidence/Witness

- Are you required to provide all evidence in your possession?
- When do you need an appraisal?
- What witnesses are needed to preserve evidence and testimony to be used at trial?
- How can you effectively start to negotiate?

# Opposing Witnesses

- What cases did the witness testify in previously?
- What is the style of testimony?
- Are there potential contradictory statements in other court records?
- What is the witness' reputation?

# Opposing Attorney

- What is their style of negotiation/litigation?
- What is their background?
  - Will they pull from other areas of law?
  - Is your case a test case for them?

# Getting Everyone To Agree

- *“One hundred victories in one hundred battles is not the most desired. Capitulating the enemy without fighting is the most desired.” – Sun Tzu*
- Mediation
- Negotiation face-to-face vs. phone vs. e-mail