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## Florida Court Retreats from Holding Rushmore Method Illegal, but Consequences for Property Valuation Still Nearly the Same

The Florida Fifth District Court of Appeal in [Singh v. Walt Disney Parks & Resorts US, Inc., et al.](#), No. 5D18-2927 (Fla. 5th DCA Aug. 7, 2020), reconsidered its earlier opinion declaring the Rushmore Method - a popular appraisal method - illegal in Florida. The court's earlier opinion prohibited Property Appraisers' Offices in the Fifth District from using the Rushmore Method altogether and would have been persuasive authority for the rest of the state to prohibit the Rushmore Method as well. However, the effect of the revised opinion may be nearly the same - although backing off from the declaration that the Rushmore approach is "illegal", the Court confirms that the Property Appraisers' Offices should not include intangible business value when valuing an income producing property, utilizing the Rushmore Method or otherwise.

The Fifth District Court's revised opinion arose from ongoing litigation between Disney and Orange County Property Appraiser Rick Singh over the value of Disney's Yacht & Beach Club Resort, a luxury hotel with an annual property tax bill of more than \$4 million. The Fifth District Court's earlier opinion issued in June stated that the Rushmore Method "violate[d] Florida law because it does not remove the nontaxable, intangible business value from an assessment." In the revised opinion, the Fifth District Court stated that "the manner in which" the Property Appraiser's Office applied the Rushmore Method impermissibly included intangible business value. However, the remainder of the opinion remained overwhelmingly unchanged.

As we summarized in our [initial bulletin](#),

The Disney case dates back to 2016, when Singh reevaluated values of resort-style hotels, like the kind found at Disney World and Universal Orlando, using the Rushmore Method.

Under Singh, the Rushmore Method led to some dramatically higher assessments. The assessed value of Disney's Yacht & Beach Club, for instance, more than doubled, to nearly \$340 million. As a result, Disney sued, arguing that Singh's office overstated the value of its hotel property by illegally including the value of intangibles, like the Disney brand.

At trial, both sides used the ADR to calculate the property's net operating income, but each valued the restaurants and retail sites differently. Disney's appraiser applied rental rates to the restaurant and retail spaces using market comparables, assuming that the retail and restaurant spaces were leased to third parties. Disney's appraiser felt this method was the "cleanest way" to remove business value. In contrast, the Property Appraiser's office relied on the Rushmore Method to assess the property and added "ancillary income" from restaurant sales and contracts for the resort's convention center. The ancillary income in this case was substantial. After making adjustments to the income, the Property Appraiser's office removed a management and franchise fee from the figure, which he asserted removed business value. The Fifth District Court agreed with Disney's approach to value, but found that Disney's rental rate and square footage were not supported by competent evidence.

As the appellate court explained in both its earlier and revised opinions:

The Florida Constitution specifically prohibits counties from levying ad valorem taxes on intangible personal property. Art. VII, § 9, Fla. Const. . . . "Intangible personal property" is "money, all evidences of debt owed to

the taxpayer, all evidences of ownership in a corporation or other business organization having multiple owners, and all other forms of property where value is based upon that which the property represents rather than its own intrinsic value." § 192.001(11)(b), Fla. Stat. **In contrast, "real property" is "land, buildings, fixtures, and all other improvements to land."** § 192.001(12), Fla. Stat.

In the earlier opinion the appellate court concluded:

[B]y using the Rushmore Method, [the Property Appraiser] impermissibly included the value of Disney's intangible business assets in its assessment. The Rushmore Method requires franchise and management fee expenses to be deducted from the total property income, which purportedly removes the business value from the assessment. However, it does not provide for adjustments to the gross business income for intangible business value prior to making those expense deductions.

The revised opinion instead focuses on the application of the Rushmore Method instead of the Method itself:

[The Property] Appraiser, **in the manner in which he applied the Rushmore Method**, impermissibly included the value of Disney's intangible business assets in its assessment. **That application** requires franchise and management fee expenses to be deducted from the total property income, which purportedly removes the business value from the assessment. However, it does not provide for adjustments to the gross business income for intangible business value prior to making those expense deductions.

Still, even under the revised opinion, **ancillary income from sales of merchandise and goods in restaurants or retail sites on a hotel's property should not be attributable to the net operating income of the hotel for property tax purposes because this income includes non-taxable, intangible business value.** Instead, it is appropriate to consider a rental rate that would be attributable to that restaurant or retail space which contributes to the overall net operating income for the hotel. In almost all circumstances, this rental rate revenue will significantly lower the net operating income used in such an income approach to value as compared to the ancillary income which is directly benefited by a business's intangible business value.

In Disney's case, the ancillary income from on-site sales and convention center contracts was over \$70 million, whereas the argued rental rate income for the on-site retail and restaurant spaces were only north of \$1 million. The court's instruction that the Property Appraiser's Office impermissibly included intangible business value should result in a significant reduction to Disney's market value.

While the revised opinion may not be as powerful as the initial opinion, it is persuasive authority throughout the State to reinforce the argument that intangible business value should not be included in property valuation.

For more information, [contact](#) our team.

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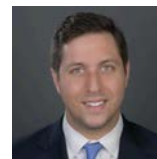
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