

Client Alert

A report
for clients
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of the Firm **January 2007**

Lawyer Wins Property Tax Exemption for Expansion of Millennium Broadway Hotel

In a decision with far-reaching ramifications for redevelopment projects in Manhattan, a New York state appellate court in 2003 agreed with top real estate tax lawyer Donald Liebman that sometimes building out, rather than up, is the best option.

When CDL, the owner of the Millennium Broadway Hotel on West 44th Street in Manhattan, expanded the hotel in a \$36 million renovation in 1997, it applied for a tax incentive that allows real estate exemption benefits for renovations to commercial properties. Contrary to most New York City property owners who must build vertically to expand, CDL could only build horizontally. So it built a new wing onto the Millennium, expanding the hotel from 549,000 to 623,000 square feet with the addition of 125 rooms.

To qualify for real estate exemption benefits under the New York State Industrial and Commercial Incentive Program, expansions must be physically and functionally integrated with the existing buildings; they also cannot increase the bulk or height of the building by more than 30 percent.

The City denied CDL's application for the tax exemption for the renovation, claiming that the wing was a separate structure and not part of the main hotel building. The New York County Supreme Court agreed with the City in December 2001, and Liebman, who is Senior Counsel in Proskauer Rose LLP's Real Estate Department in New York, appealed on behalf of CDL.

In June 2003, the New York Supreme Court's Appellate Division agreed with Liebman that CDL was

in fact eligible for the tax break, and overturned the trial court's decision. CDL collected \$7 million in back tax payments, tax credits and interest as a result of the judgment.

The case's importance extends beyond his client's ability to take advantage of a tax incentive. "This decision applies to any commercial building owner who is trying to expand horizontally," says Liebman. "The law encourages building owners to expand where it is economically beneficial. The court clearly saw that the hotel did exactly what the policy was meant to encourage."

If New York is going to succeed in its effort to encourage redevelopment in Manhattan, it must be able to provide financial incentives for economic growth in the city, Liebman explains. The Millennium's success in winning its tax exemption could encourage other businesses in the city to renovate and even expand.

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Donald Liebman
212.969.3790 – dliebman@proskauer.com

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