Landlord OPEX/CAM Reconciliation Time is Here

Here's How Businesses Can Get Prepared

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On top of all the responsibilities a business has to juggle, a major item that often gets overlooked are commercial landlord billing errors, resulting in thousands (or even millions) of dollars in unnecessary payments by a tenant each and every year. The right team can help your business identify and recover erroneous charges that may also be retroactive for years. Reviewing or auditing your annual billings should be considered a "best practice," and we'll share the reasons why, along with some factors that businesses need to consider when it comes time to review their leases.

Why Should Businesses Conduct Lease Reviews and Lease Audits?

Thousands, and even millions of dollars in recoveries can be achieved.

With a lease audit expert conducting a thorough examination of pass-through and other occupancy related expenses, you will not pay for expenses that are not required by the lease or leave valuable savings on the table.

Conducting a lease audit is cost effective.

Typically lease audits result in enough overcharges that a small portion of the savings can be used to cover your costs.

Time is of the essence.

You may have a limited amount of time to notify your landlord of your intent to dispute your billing or to exercise your lease audit rights.

Lease auditing is a real estate function, not an accounting issue.

You need the knowledge and experience necessary to uncover and successfully recover variances from real estate industry standards.

The Top Five Commonly Missed Errors

1. Tenant Reimbursements

In a multi-tenant building, you could be paying for above standard services directly. Costs that the landlord incurs to provide after-hours services like utilities, heating and air conditioning, repairs, security and any other after-hours related expenses should never be included in operating expenses, and if they are, these should be backed out of the operating expenses immediately.

2. Gross Up Errors

Office leases often contain a provision allowing the landlord to bill operating expenses based on expenses as if 95% or 100% of the building is occupied, even when occupancy is less than that. This adjustment is called a gross up, and is a calculation that frequently contains errors, which requires a detailed review of the landlord's gross up calculation to identify these errors. Often times also looking at the gross up for the base year reveals errors, resulting in a potential savings for businesses when discovered.

3. Capital Expenditures

A lease may allow for the amortization of capital expenditures based on certain requirements and methodology. However, this expense may be buried in a repair and maintenance account that can easily be missed. The capital expenditure must be reviewed, if it is allowed, and a thorough review of the amortization calculations are necessary to ensure compliance with the requirements stated in the lease.

4. Ownership Expenses

Landlords may pass through certain expenses like refurbishments which consist of upgrades of lobbies, parking entrances, exterior facades of buildings, new trees and bushes that are considered ownership expenses or improvements as they enhance the value and marketability of the building. Other expenses which landlords sometimes fail to carve out of operating expenses are preparation of spaces for new tenants, tenant relations costs, and ownership legal and tax preparation fees.

5. Controllable Operating Expenses and their Caps

These are generally all operating expenses other than taxes, insurance, utility costs and snow removal charges. Leases may have caps on these controllable expenses, and it may be cumulative, compounded and even cumulative and compounded. These caps are often confusing and difficult to calculate or administer, let alone challenging to decipher which costs are truly controllable based on the definitions in the lease. Other increases may be based on a Consumer Price Index (CPI) and also can be confusing or difficult to calculate.

Five Signs You May Need An Audit On Your Commercial Lease

1. You Notice a Significant Increase in Expenses

An annual increase of more than 5%-10% in total Common Area Maintenance (CAM) or your total operating expenses should be investigated as it may indicate an overcharge in your billing.

2. There are Fluctuations or Changes in Expense Categories

Significant year-over-year variations in expense category totals and/or changes in the title of expense categories could signal a change in the accounting treatment of expenses and/or the inclusion of ineligible expenses. Changes like these also make it difficult to compare year-over-year expenses and should be reviewed as soon as this happens.

3. Initial Base Year, or a Change in Base Year

A base year audit is critical because it documents the billing methodologies and expense inclusions/exclusions that you're starting with. A review ensures that the base year accurately reflects a full year of expenditures, ensures the same gross up allowed for in the lease was used, and ensures compliance with all other terms and conditions of the lease.

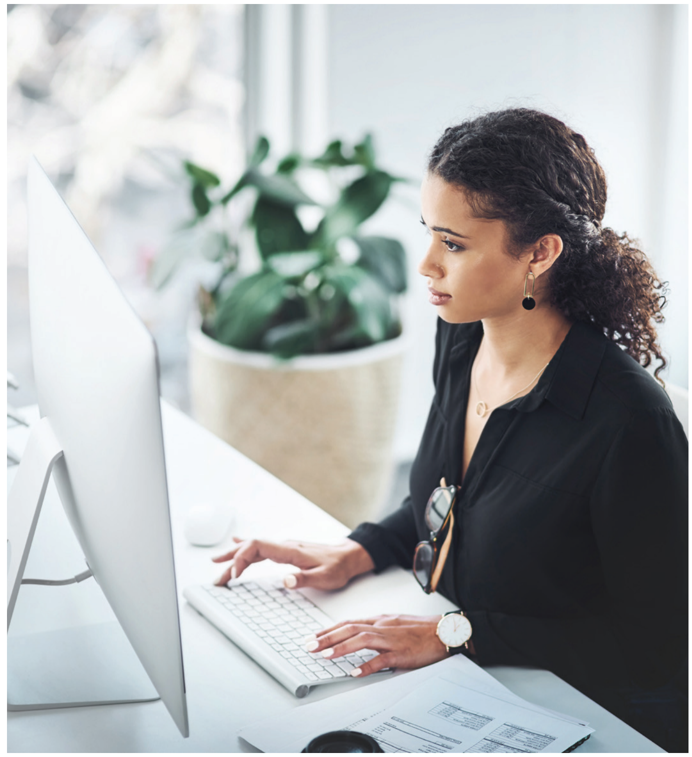
4. The Ownership/Building Management Changes

A change in building ownership and/or even building management may result in a change in billing methodology and expense line items. Expenses that were previously not passed through to tenants could be included by the new ownership, like increased management fees as well as the costs of the transfer to the new ownership/management.

5. There is Increased Building Activity

Large changes in your building's occupancy, major renovations, improvements, equipment or other large replacements, and/or weather damage could result in expenses not permitted by your lease. The addition of space or building square footage is a signal that something changed and should be reviewed.

The lease audit experts on our Hughes Marino Portfolio Lease Administration & Advisory team are here for the sole purpose of helping to protect tenants from erroneous charges billed by landlords. By reviewing lease documents, supporting information and detailed operating expense statements, we are able to uncover any red flags or possible areas of concern that might otherwise go undetected. We encourage you to be proactive in reviewing your charges and our team can assist you every step of the way. ☐



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