

# CHELEPIS & ASSOCIATES, INC.

Lease Audit • Lease Administration • Construction Audit • Utility Audit • Energy Management Services

## *In This Issue:*

The Bottom Line • Audit Language  
Outrageous Audits • Recent Client Recoveries

*Results You  
Can Measure!*



**E**conomic downturn . . . financial crisis . . . recession . . . No matter the term, the current state of the economy has impacted every business in one way or another.

## **The Bottom Line**

The result? Companies need to find ways to be more productive with less capital, both financial and human. Sure, this was the trend even before the recession; however, this is no longer just a trend. It is now a necessity to ensure your company remains competitive and viable through this recession. While we can't predict how long the recession will last or how low the Dow will go, we can help your company improve its bottom line . . . here's how.



**CHELEPIS & ASSOCIATES** will review the details of your leased real estate portfolio with no strings attached. Upon analyzing the data, we will provide your management team with a straightforward recommendation on how and where we believe we can recover money for your company. We operate on a contingent fee, an hourly basis or flat fee basis . . . it's your choice. If you select the contingent fee pricing arrangement, we don't get paid until you get paid.

Yes, you read that correctly! Until you recover overbillings from your landlords as the result of our work, we don't get paid. Recoveries from lease audits drop straight to your company's bottom line: increasing your profits and propelling your company ahead of its competitors.

**CHELEPIS & ASSOCIATES** provides a straightforward approach to your lease audit needs. We've been in business for over 20 years and have recovered in excess of \$200 million for our clients over that timeframe. We are convinced you will be satisfied with our services. Email us at [info@chelepis.com](mailto:info@chelepis.com) or call us today at (877) 338-0590 to learn more about how we can help increase your **bottom line**.

# Audit Language

---

One of the most important sections of your lease relates to the operating expenses that you as a tenant will be charged. While you may have been diligent about itemizing the types of costs that you can be charged, you (or your attorney) may have overlooked the very valuable area of the timing requirements of any operating expense audit or “**audit window**”. An audit window is the amount of time that may pass from the date of the annual operating expense reconciliation to a date, typically stated in a number of days, when those expenses can no longer be disputed. This window of time is critical in preserving your right to examine the expenses the landlord has passed through to you, its tenant.



Audit language defines and often times limits the tenant’s ability to thoroughly review costs the landlord has presented as operating expenses of the building. There are a number of important aspects to this often overlooked paragraph. Components such as duration of time to complete the audit, survival of audit rights after lease termination, confidentiality, penalties, location of audit, qualifications of auditor and document availability are equally important in preserving your rights to review your bill.

The duration of time after the landlord submits the annual reconciliation statement, or audit window, is important in that it allows you to receive and review the statement and consider your options. Time duration may range from a very reasonable period of time, such as 3 years, to a very unreasonable time, such as 2 weeks. The longer the audit

window period, the better. Obviously, it allows you to review multiple years at one time, thereby reducing the travel cost and time involved in conducting the actual audit. A long audit window will also allow you to recoup past years overbillings when you may not have considered an audit. Short windows are problematic for large corporations who may have multiple layers of personnel through which the annual operating expense reconciliation statement must travel before a decision to audit can be reached. These prolonged processing channels can result in a short audit window expiring before the annual expense reconciliation can be properly analyzed.

**Survival of audit rights after lease termination** is also important. While it is possible to conduct an audit after vacating the premises, it is sometimes problematic due to the lack of financial motivation on the part of the landlord to cooperate. Performing the audit while you still occupy the space ensures the necessary financial incentives for the landlord to provide the required documentation, maintain the negotiation process and ultimately reach an agreeable settlement. Some of this negotiating leverage is sacrificed after the lease has expired and the landlord-tenant relationship has terminated.

Landlords frequently require **confidentiality agreements** to be signed prior to an audit. Landlords fear the tenants or their auditors will contact other tenants of the property to inform them of the

audit results. **CHELEPIS & ASSOCIATES** does not recommend, nor practice this unprofessional marketing tactic. While we have not found many confidentiality agreements to be overly burdensome, there have been situations where landlords have utilized onerous clauses within their agreements to discourage the tenant's auditors. If your lease audit paragraph does not contain a confidentiality agreement requirement, the parties are not required to sign such a document. However, if the lease requires a confidentiality agreement, sign the document only after you have thoroughly reviewed it and deleted any onerous clauses. Also, if the landlord requires an auditor confidentiality agreement, negotiate the language of the agreement during the lease negotiations and make the agreement part of the lease document.



**Audit penalties** put the audit fee burden on the landlord. In the event they over-billed the tenant for operating expenses. Penalties may include interest charges on the amount over-billed or may require the landlord to pay the tenant's cost of the audit if the agreed-upon findings are more than a stated percentage of the total operating expense bill. These penalties provide an incentive to the landlord to be reasonable in their annual billing.

**Location of audit and qualifications of the auditor** are limitations that landlords attempt to include to limit the ability to audit. It is not unreasonable to require the audit to take place at the landlord's office, due to the location and amount of records necessary to conduct an audit. However, it may be advantageous to include language that requires the landlord to submit a detailed general ledger to the office of the auditor. Often times the general ledger will provide that extra assurance as to the necessity of the audit. The latest trend for landlords to discourage audits is to require they be conducted by a Certified Public Accountant. The CPA requirement can be overcome by locating a firm, such as **CHELEPIS & ASSOCIATES**, that is owned by a Certified Public Accountant and employs CPAs on its staff.

Lease language should require the landlord to provide reasonable **document availability** in support of the operating expense statements at no cost to the tenant. This documentation should include general ledgers, invoices, vendor contracts, cost allocation and gross-up schedules, payroll documentation and files that the landlord may view as confidential, but are necessary to conduct a thorough investigation of the costs billed by the landlord. The lack of this wording may lead to arguments with your landlord as to what documents your auditor may review. This clause should also specifically permit your auditor to copy the landlord's records as part of the audit work papers.

Finally, the absence of **audit window language** will not preclude you from reviewing your costs. Courts have held that a tenant has a reasonable right to review bills presented for payment. However, a lack of the audit paragraph may result in a protracted argument with your landlord. It is advisable to protect your audit rights up front in the lease document. If you have negotiated this paragraph into your lease, you should avail yourself of the right to verify that your operating expenses are in compliance with the terms of the lease.

If you or your lease negotiating team is struggling with appropriate audit language, the professionals at **CHELEPIS & ASSOCIATES**, can assist with the crafting of this section of your lease.

# Outrageous Audits - Parking Lots, Real Estate Taxes, Shoe Shines

---

\* A landlord owned a 3-story office building with a surface parking lot. Located at one end of the parcel of land was a small outbuilding, which the landlord graciously donated to a local soup kitchen. Unfortunately, he forgot to record the transaction with the County, and the soup kitchen land and building remained on the annual real estate tax bill for the office building. Real estate taxes were charged back to the tenants in their annual Operating Expense statement. Hence, the tenants had paid for their landlord's generous contribution to the soup kitchen through their annual operating expenses.

\* The landlord developed an additional surface parking lot for a suburban office building on 5 acres of the adjoining 11 acres of pasture land. As a result of the change in use, the county reassessed the land from agricultural to commercial. This resulted in an increase in property taxes from the prior year which the landlord passed through with operating expenses.



At the same time the landlord developed the parking lot on 5 acres, the landlord also re-platted the remaining 6 acres of pasture to create a new subdivision which could later be sold as an outparcel. The

county also removed the agriculture exemption from this tract of land resulting in a significant increase in taxes.

The lease excluded increases in property taxes not attributable to normal appreciation including changes in use. This resulted in a significant recovery as the tax increases were not attributable to normal appreciation and were the result of a change in use from undeveloped agriculture land to commercial development use.

\* Review of the "Cleaning Payroll" account during an audit identified payments to a leather care specialist. Not observing any leather in the common areas of the building, examination of the invoice discovered the leather care specialist operated a shoeshine stand in the building lobby. At \$6 per shine, the stand could hardly be considered a building amenity and was certainly not a necessary expense of "operating, maintaining and repairing the Real Property" as defined in the lease. The landlord concurred that unless the shoe-shines had been provided free of charge to tenants or the income from the concession offset against the expense, this cost should have been excluded from operating expenses.

## **Recent Client Recoveries**

---

**\$504,000**

**Office Building  
New York, NY**

Landlord failed to reconcile actual electricity costs to estimated costs, as required by the lease, for a 4 year period.

**\$65,000**

**Data Center  
Tulsa, OK**

Corrected computation error in calculation of annual expense cap on controllable expenses.

**\$1,773,000**

**Office Building  
New York, NY**

Lease limited the inclusion of capital improvements to the amount of any realized savings. Successfully demonstrated that the capital improvements significantly exceeded realized savings in operating expenses, negotiated the exclusion of other capital improvements which did not generate any cost savings, and corrected an error in the calculation of Tenant's actual pro rata share of building expenses.

**\$478,000**

**Office Building  
Princeton, NJ**

Corrected error in cleaning contract related to actual cleanable building square footage, corrected Landlord's methodology for gross-up adjustments to conform to BOMA guidelines, and successfully negotiated the amortization of certain capital expenditures which had been included in operating expenses.

**\$572,000**

**Office Building  
Charlotte, NC**

Negotiated a reduction in management fees to conform with lease language, eliminated unauthorized administration fees, and performed an energy study resulting in adjustments to above standard hourly charges for overtime HVAC and chilled water.

**\$117,000**

**Office Building  
Miami, FL**

Removed hurricane related repairs from operating expenses as Lease contained specific exclusionary language regarding casualty related repairs.

# Why am I receiving this newsletter?

---

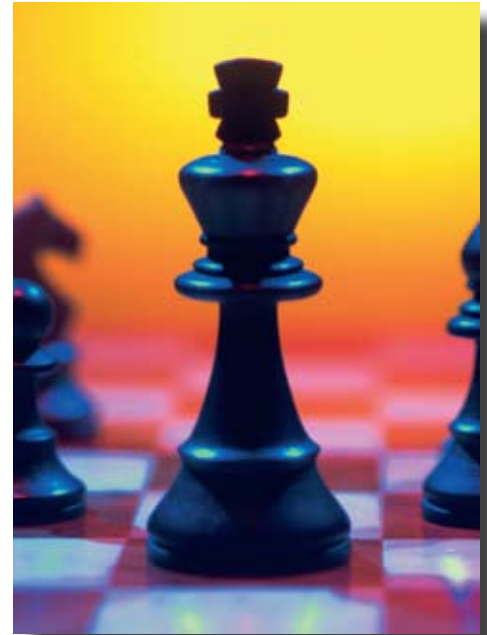
You have been identified as a cost-conscious real estate executive who does not have either time or money to spend frivolously. We sincerely believe that through these newsletters, our website, and our lease and construction services, we can introduce you to a whole new opportunity for controlling your increasing occupancy costs.

**CHELEPIS & ASSOCIATES**, was established in 1987 by Tracy Chelepis, CPA. While auditing a major construction project for a large telecommunications provider as an independent contractor, he realized there was a future here. After recovering \$3.8 million on this one venture, he discussed the opportunity with them for future projects in both the construction and lease services departments. Thus began **CHELEPIS & ASSOCIATES**. Now, 21 years and the addition of several professionals later we have identified and recovered over \$200 million for our clients.

We specialize in finding solutions to the ever-escalating occupancy costs related to your workspace.

Our professionals have developed working relationships with both local and national landlords. We can demonstrate potential cost savings that will improve your bottom line without incurring outrageous "consultant's fees" or time commitments. Many of our clients select a contingent fee billing arrangement. They incur no out-of-pocket expenses until occupancy cost overcharges are refunded to them.

To raise your awareness of landlords' billing practices, our newsletters will provide you with thought-provoking articles about the cost-saving provisions that could be included in your leases. We may even entertain you with case histories about occupancy cost savings that we have returned to our clients. We welcome your call to one of our professionals for a consultation.



---

## ***Che-lep-is***

(ch-LEP-us) v. **1.** To audit and administer lease documents and recover money for clients. **2.** To audit and manage construction contracts and recover money for clients. **3.** To audit and monitor utility invoices and recover money for clients.

**Syn.** Experience, Proven Results, Value, Professional