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June 17, 2015

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No. 2015/032

TO COUNTY ASSESSORS:

2014 LITIGATION

This letter summarizes court cases involving property tax issues that were decided in 2014 by either the California Supreme Court or one of California's Courts of Appeal.

Joseph E. Holland, Assessor v. Assessment Appeals Board No. 1, et al. (2014) 58 Cal.4th 482

The primary issue in this case is the proper valuation of transfers of individual ownership interests in resident-owned mobile home parks under Revenue and Taxation Code¹ section 62.1. The assessor followed the guidance provided in Letter To Assessors (LTA) 99/87 in determining the fair market value of the transferred mobilehome park interests, which the Court of Appeal found to be invalid.

The Supreme Court disagreed with the Court of Appeal and held that LTA 99/87 is consistent with section 62.1(b). The court concluded that section 62.1(b) simply describes a unit of real property that is subject to reassessment and does not mandate any particular formula for appraising the fraction of real property that is deemed to change ownership upon transfer of an interest in the resident-owned entity that owns a mobilehome park.

William Jefferson & Co., Inc. v. Orange County Assessment Appeals Board No. 2 (2014) 228 Cal.App.4th 1

In this case, the taxpayer challenged the assessor's determination of the property's value when transferred to a previous owner. The assessment appeals board conducted an evidentiary hearing and determined that it lacked jurisdiction to change the base year value because nearly 15 years had elapsed between the assessor's base year value determination and Jefferson's application challenging that determination. The taxpayer filed a court action to compel the assessment appeals board to grant the taxpayer's appeal and direct the assessor to change the property's base year value. The taxpayer, however, failed to address the assessment appeals board's determination that it lacked jurisdiction to grant the taxpayer's appeal, instead relying on the assessor's allegedly erroneous property valuation. The trial court entered summary judgment in the assessment appeals board's favor.

The appellate court held that any lawsuit that seeks a property tax reduction by challenging the base year value assigned to an owner's property must be brought as a tax refund action against the county or city that collected the tax pursuant to section 5140, not the local assessment appeals board. The taxpayer did not request a new hearing before the assessment appeals board or otherwise challenge the assessment appeals board's determination that it lacked jurisdiction by

¹ All statutory references are to the Revenue and Taxation Code, unless otherwise provided.

reason of untimeliness. Accordingly, the case law providing that an assessment appeals board can be compelled to hold a hearing when it erroneously fails or refuses to decide an issue did not apply. The appellate court upheld the trial court's decision on the ground that the taxpayer brought this action against the wrong party.

Ocean Avenue LLC v. County of Los Angeles (2014) 227 Cal.App.4th 344

The issue in this case was whether a change in ownership of property held by a limited liability company occurred when all of its membership interests were sold, but no one person or entity obtained—directly or indirectly—more than a 50 percent interest in the capital and profits. The Fairmont Miramar Hotel was owned by Ocean Avenue, an entity formed by Hotel Equity Fund VII, L.P. (Equity Fund). In March 2006, the hotel was put up for sale. On July 7, 2006, Ocean Avenue entered into a contract to sell the hotel. On September 6, 2006, the parties terminated the initial contract and escrow. The same day, Equity Fund sold 100 percent of its membership/ownership interest in Ocean Avenue. The assessor concluded that a change in ownership had occurred and reassessed the property.

The appellate court found in favor of the taxpayer, concluding that no legal entity or person had acquired over 50 percent interest as required by section 64 and Property Tax Rule 462.180. Therefore, no change in control and no change in ownership of the property had occurred. The assessor could not reassess the hotel on the theory that the change in ownership legislation was unconstitutional without first prevailing in a declaratory relief action on that issue.

Olive Lane Industrial Park, LLC v. County of San Diego (2014) 227 Cal.App.4th 1480

Under section 68, an application to transfer the base year value from a property taken by governmental action to a replacement property must be filed within four years. The trial court denied a tax refund claim filed by a taxpayer after the four-year period had expired.

The appellate court concluded that a taxpayer who acquires an eminent domain replacement property within the four-year timeline set forth in section 68 but fails to file the claim with the county within the four-year period is nevertheless entitled to have a request for prospective relief considered by the assessor.

SHC Half Moon Bay, LLC v. County of San Mateo (2014) 226 Cal.App.4th 471

This court case involves a dispute regarding the property tax assessment of the Ritz Carlton Half Moon Bay Hotel and presents the question of how to properly value taxable property, with associated intangible assets, at fair market value. The taxpayer's principal contention is that the variation of the income approach the assessor used to assess the hotel violates California law by failing to identify and remove the value of intangible assets.

According to the appellate court, the assessor failed to identify, value, and remove the value of the following intangible assets and rights from the hotel's income stream prior to taxation: (1) the hotel's workforce; (2) the hotel's leasehold interest in the employee parking lot; and (3) the hotel's agreement with the golf course operator. Thus, the appellate court concluded that the assessor's valuation of the hotel failed to exclude certain intangible assets in violation of section 110, subdivision (d)(1), which prohibits an assessor from using the value of intangible rights and assets to enhance the value of taxable property, and section 110, subdivision (d)(2), which requires the fair market value of those assets be removed.

Verizon California Inc. v. Board of Equalization, et al. (2014) 230 Cal.App.4th 666

This appeal stems from a judgment of the Superior Court of Sacramento. Verizon (a state assessee) owns property in 38 counties; however, Verizon only named 9 of those counties, along with the Board of Equalization, in the state-assessed property tax refund action. The Board, and the 9 named counties, filed a demurrer seeking dismissal of the refund action due to Verizon's failure to name all 38 counties as defendants pursuant to Revenue and Taxation Code section 5148 on grounds that all 38 counties were necessary and indispensable parties. The Superior Court agreed, sustaining the Board's demurrer, and entered a judgment of dismissal of Verizon's claim. Verizon appealed.

The Court of Appeal held that section 5148 did not require the state assessee to name every county in which it owned unitary property in its refund action, and further that it was premature to conclude at the demurrer stage that the absent counties were necessary parties to the lawsuit. Also, the Court of Appeal held that the Board and the 9 named counties could adequately represent the general interests of the absent counties in the lawsuit.

Chevron USA, Inc., et al. v. County of Kern (2014) 230 Cal.App.4th 1315

Taxpayer challenged the county's supplemental assessments of newly constructed wells, making a number of arguments that the cost approach used by the County was erroneous because the county's assessment was incompatible with Property Tax Rule 468 which, in its view, required the use of the income approach to value its entire oil field as a single appraisal unit each time a well was newly constructed. The Court of Appeal disagreed explaining that Rule 468 was compatible with Rule 463 which requires supplemental assessments to be issued based on only the newly constructed wells, and not the entire oil field. The appellate court also held that taxpayer's replacement wells were not exempt from supplemental assessments as normal maintenance and repair or as misfortune or calamity.

The appellate court also affirmed the lower court's holding that although the corporate parent's name appeared on the check for the taxes, and was the conduit for the payment of the taxes, the supplemental assessments were paid with plaintiff's funds and therefore it had standing to pursue the refund action.

The full text of these court cases may be viewed from the California Courts website at www.courts.ca.gov/opinions-slip.htm. If you have any questions regarding any of these court cases, please contact the County-Assessed Properties Division at 1-916-274-3350.

Sincerely,

/s/ Dean R. Kinnee

Dean R. Kinnee
Deputy Director
Property Tax Department

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