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No. 2023/031

August 30, 2023

TO COUNTY ASSESSORS:

2022 LITIGATION

This letter summarizes court cases involving property tax issues that were decided in 2022 by California's Courts of Appeal.

290 Division (EAT), LLC v. City and County of San Francisco (2022) 86 Cal.App.5th 439

The City and County of San Francisco (City) owned two office buildings and offered them for sale. As a condition of the sale, the City required that the purchaser lease back to the City for a period of up to five years after the sale; three years at specified below-market rates followed by two one-year options at market rates. 290 Division (EAT), LLC (Taxpayer) submitted an offer for \$52 million, which the City accepted. Prior to closing, a loan appraisal, which took the leaseback into consideration, valued the property at \$52 million. The parties finalized the sale. Once the change of ownership occurred, the Assessor initially assessed the property's new base year value at \$68 million for property tax purposes. Taxpayer appealed that assessment arguing that the Assessor failed to consider the leaseback as an "enforceable restriction" in valuing the property under Revenue and Taxation Code¹ section 402.1(a)(2), which states that enforceable restrictions include "recorded contracts with government agencies." The City responded that the leaseback was not an enforceable restriction as they had acted in a proprietary capacity as opposed to a regulatory capacity. The parties stipulated that the value of the property was \$52 million if section 402.1 did apply and \$63.1 million if it did not apply. The Assessment Appeals Board concluded that section 402.1 did not apply and found the fair market value of the Property to be \$63.1 million for property tax purposes. Taxpayer filed a complaint for refund of property taxes in San Francisco Superior Court. The trial court held that the lease was not an enforceable restriction because it lacked a governmental or regulatory component. Taxpayer appealed. The Appellate Court affirmed the judgment of the Superior Court and held that "enforceable restrictions" for purposes of section 402.1 mean land use restrictions imposed by government acting under its police power, not restrictions agreed to by a public entity selling property to a private buyer in an ordinary arms-length transaction.

Fisher v. County of Orange (2022) 82 Cal.App.5th 39

In 1986, Fischer (Taxpayer) purchased a mobilehome located on a particular space within The Groves for the price of \$80,000. At the time, The Groves was not a resident-owned mobilehome park, so Taxpayer did not have a taxable land interest and instead paid rent for the use of the space

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

upon which the mobilehome was located, as well as the use of the community land and facilities within The Groves. After The Groves converted to a resident-owned mobilehome park, in 2006, Taxpayer purchased a share in The Groves corporation for \$84,000. The Assessor established a base year value of \$290,000 for both the land and the mobilehome. The taxpayer filed an assessment appeal application with the Assessment Appeals Board (AAB), for the 2011-2012 fiscal year, arguing that the property had suffered a decline in value and that the Assessor had used an incorrect methodology of determining the base year value. The AAB denied the application, sustaining the Assessor's enrolled value and rejecting the Taxpayer's challenge of the use of the extraction method of assessment by the Assessor. The Taxpayer filed a lawsuit against the County in the Superior Court challenging the AAB's decision. The trial court entered judgment in favor of the County, which Taxpayer appealed. The Taxpayer argued that both the AAB and the trial court erred by affirming the Assessor's use of the extraction method to assess the value of the real property because it violated section 62.1(b). While the Appellate Court stated that the extraction method is not automatically the method of assessment to be used in all cases, its use is not foreclosed by section 62.1 consistent with relevant precedent; further, the Court held that there was no error arising from the Assessor's use of the extraction method.

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/ David Yeung

David Yeung
Deputy Director
Property Tax Department

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