

## Memorandum

To: Honorable Betty T. Yee, Chairwoman  
Honorable Jerome E. Horton, Vice Chair  
Honorable Barbara Alby, Acting Board Member  
Honorable Michelle Steel  
Honorable John Chiang  
Honorable Ron Thomsen, President, California Assessors' Association

Date: November 8, 2010

From: Randy Ferris *RMF*  
Acting Chief Counsel

Subject: **Annual Board Meeting with County Assessors**  
**Item 3c – Significant Legal Opinions, Issues and Litigation**

This memorandum summarizes legal opinions, issues and litigation from late 2009 through October 2010 that may be of interest to the Board Members and the County Assessors. A number of these items will be discussed at the November 16, 2010 Annual Board Meeting with the County Assessors.

### I. Nonprofit Mutual Benefit Corporations

*Annotation 220.0439.* If membership in a nonprofit mutual benefit corporation does not convey an interest in real property akin to beneficial ownership, as in a mere license to use the property, the transfer of a membership interest in the corporation is not a change in ownership of any of the property owned by the corporation pursuant to Revenue and Taxation Code section 64(a). However, if members are granted sufficient rights to real property, such as exclusive use and development rights, as well as the right to buy and sell specific property, so that beneficial ownership is conveyed, a transfer of such membership constitutes a change in ownership of the property to which that membership gives rights.

Since mutual benefit corporations are “legal entities” within the meaning of section 64, the provisions of section 62(a)(2) and section 64(d) also apply. The proportional ownership interest should be measured by members, or by the board of directors if there are no members. The members or directors become “original co-owners” in the mutual benefit corporation such that if a voting interest change of more than 50 percent in the members or directors occurs, there would be a change in ownership of the property previously excluded under section 62(a)(2). If a single member obtains more than 50 percent of the voting interest in a mutual benefit corporation, the corporation would undergo a change in control pursuant to section 64(c)(1). C 6/2/2010.

### II. Case Updates

A. *Steinhart v. County of Los Angeles* (2010) 47 Cal.4th 1298. By the terms of the trust, the settlor transferred the entire fee interest to the plaintiffs and siblings upon her death. The California Supreme Court held that a “change in ownership” occurred within the meaning of California

Constitution article XIII A, section 2(a), because the entire equitable estate in the property, which included a life estate, was transferred to the plaintiffs. The settlor, as the sole beneficial owner of the residence before her death, retained no interest in the residence after her death.

- B. Farr v. County of Nevada (2010) 187 Cal.App.4th 669. The Court of Appeal held that the county's assessment appeals board failed to accord the taxpayer the presumption of correctness to which he was entitled under Revenue and Taxation Code section 167, subdivision (a). The assessor was not entitled to the presumption of correctness and had the burden of overcoming the presumption favoring the taxpayer by a preponderance of the evidence.
- C. Phelps v. Orange County Assessment Appeals Bd. No. 1 (2010) 187 Cal.App.4th 653. A beneficiary's interest in a trust's income was transferred to his children upon his death as the terms of the trust provided. The Court of Appeal concluded that the decedent had a present interest in the improvements, and retained the beneficial use of the property. The Court of Appeal held that the transfer of the deceased beneficiary's interest to his children was a change in ownership under California Constitution article XIII A and Revenue and Taxation Code section 60.
- D. Grotenhuis v. County of Santa Barbara (2010) 182 Cal.App.4th 1158. Under Revenue and Taxation Code sections 218 and 69.5, in order to transfer the tax basis of a former residence to a replacement residence, the former residence must be the principal residence of a person over the age of 55 years who was the owner of record at the time of the sale of original property. Here, however, the individual transferred the former residence to his wholly-owned corporation before it was sold. Consequently, the Court of Appeal held that he did not qualify for either the homeowner's exemption or a base year value transfer. The individual had to accept the tax consequences of this choice to transfer to a corporation whether or not such consequences were contemplated.
- E. Vanguard Car Rental USA, Inc. v. County of San Mateo (2010) 181 Cal.App.4th 1316. The Court of Appeal held that the rental car company had possession of a leasehold estate because it had sufficient authority and control over the common areas to establish independence under Revenue and Taxation Code section 107(a)(1). Also, exclusivity under section 107(a)(3) was not defeated by the other tenants' similar right to use the property because the company had beneficial rights in the common areas that the general public did not share.
- F. Schoenberg v. County of Los Angeles Assessment Appeals Bd. (2009) 179 Cal.App.4th 1347. The Court of Appeal upheld an assessment appeals board's decision when challenged on the ground that it had failed to assess land and improvements separately, holding that the board had properly valued the property and properly relied upon Revenue and Taxation Code section 1610.8 and Regulation 324, subdivision (b).
- G. Wunderlich v. County of Santa Cruz (2009) 178 Cal.App.4th 680. Proposition 60 grants tax relief, which allows qualified homeowners to transfer the adjusted property tax basis of their principal residence to a replacement dwelling of equal or lesser value. The Court of Appeal held that, under Revenue and Taxation Code section 69.5(g)(5), the replacement dwelling – including both land and structure – must be valued as of a single date, either the date that the property was purchased or the date that the structure was completed, whichever is later.

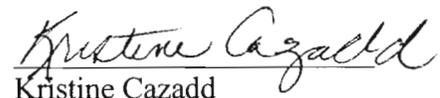
H. *Fashion Valley Mall, LLC v. County of San Diego* (2009) 176 Cal.App.4th 871. Revenue and Taxation Code section 61(j) establishes that the transfer of real property from a corporation to a limited liability company is a change in ownership. Here, the Court of Appeal concluded that the corporation did not retain a beneficial interest in the mall despite receiving an economic benefit as a member of the parent company. Thus, a 100-percent change in ownership occurred as a result of the transaction.

### III. Board Litigation Status Updates

- A. *Elk Hills Power, LLC v. State Board of Equalization, County of Kern, Court of Appeal, Fourth Appellate District, Division One, Case # D056943.* Plaintiff, the owner of an electric generation facility, contends that the Board improperly included the costs of emission reduction credits (ERCs) in valuing its electric generation facility, and seeks a declaratory judgment construing the provisions of Revenue and Taxation Code sections 110 and 212 as they apply to the Board's valuation and taxation of ERCs. At a hearing on cross-motions for summary judgment held October 23, 2009, and in its Judgment of January 11, 2010, the trial court granted the Board's motion for summary judgment and denied the plaintiff's motion for summary judgment. This case is currently before the Court of Appeal, Fourth Appellate District, Division One where Elk Hills filed its opening brief on July 9, 2010, and the Board's responsive brief was filed on September 30, 2010.
- B. *Western States Petroleum Association v. Board of Equalization, Court of Appeal, Second Appellate District, Division 8, Case # B225932.* The Western States Petroleum Association (WSPA), a trade association representing petroleum refineries has challenged Property Tax Rule 474 – *Petroleum Refining Properties*. Rule 474 provides a rebuttable presumption that for petroleum refining properties, in determining declines in value (Proposition 8) for which the current lien date fair market value is compared with the property's adjusted base year value (Proposition 13), land, improvements, and fixtures, machinery and equipment classified as improvements constitute a single appraisal unit, except when measuring declines in value caused by disaster, in which case the land constitutes a separate appraisal unit. On March 29, 2010, the trial court issued an order granting WSPA's motion for summary judgment. The court's judgment in favor of WSPA was entered on April 27, 2010. The case is currently before the Court of Appeal, Second Appellate District, Division 8.
- C. *Netjets Aviation Inc. v. Webster Guillory, Orange County Superior Court, Case # 30-2008-00107805.* The four consolidated cases filed against Orange and Santa Barbara counties challenge the fractionally owned aircraft taxation statutes, the enactment of which the Board supported in 2007 (Senate Bill 87 (Stats. 2007, ch. 180) and which became effective January 1, 2008. These statutes established a fleet-based method of assessment for fractionally owned aircraft similar to the method used to assess commercial aircraft. Santa Barbara County requested that the Board of Equalization file an amicus brief in support of the counties' position. The Board filed its amicus brief with the trial court on September 27, 2010.

If you need more information or have any questions, please contact Tax Counsel IV Richard Moon at (949) 440-3486.

Approved:



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