

(916) 324-6594

October 30, 1984

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Dear

This letter is in reply to your letter of June 27, 1984 to [redacted] in which you set forth the following facts:

The Irvine Company is a land development corporation owning property amounting to about the center one-fifth of Orange County. In April 1983, Mr. Donald Bren (the then largest single stockholder in the Irvine Company, with 34 percent of the shares outstanding) purchased an additional 52 percent of the outstanding shares thereby gaining control of the corporation and all of its real estate holdings. Although the assessor has encountered little resistance to the determination that a change in ownership took place, the Irvine Company has actively campaigned to hold down the amount of revaluation based on the theory that the sale price paid for the enterprise purchased could be allocated among the parcels owned by the entity.

The Irvine Company argues that the price paid for 52 percent of the company shares could be increased pro rata to account for all the shares, then further adjusted to account for the debt of its real estate holdings. Irvine asserts this is fair since the corporation's holdings are almost entirely real estate, and this approach should provide the "ceiling" of value for the parcels valued. However, the value arrived at through this method is only a fraction of the value of comparable properties in the area.

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The assessor disagrees with the theory of valuing all of Irvine's holdings based on a single bulk sale, and has valued the individual parcels as described by assessor's parcel numbers using market data on sales of similar property, replacement costs, or income from the individual properties. This decision is based on the appellate court decision in Guild Wineries & Distillers v. County of Fresno, 51 Cal. App. 3d 182.

A second minor issue raised by the Irvine Company concerns the effect on valuation of the rate of "absorption" possible with real estate holdings of such a mammoth size precluding an active market for its disposition.

Here the assessor has made allowances in the valuation for the size and stage of production of the various parcels involved, but he does not feel bound to value the property as a single block of real estate. Guided again by the court's holding in the Guild Wineries case, the assessor has used recognized appraisal methods to arrive at a taxable value, subject to the requirements of fairness and uniformity.

You have asked that we review the Guild Wineries case and the information related above and provide you with our written opinion as to the proper method of valuation under the circumstances.

As requested, we have reviewed the Guild Wineries case and agree that under the authority of that case, the acquisition of the controlling interest in the Irvine Company is not conclusive on the assessor in his assessment of the real property owned by Irvine Company. The court stated the applicable principles as follows at page 188 [51 Cal. App. 3d]:

"[W]hile a recent open market, arm's length sale of a particular type of property may be a very important factor in determining its fair market value, the sale, by itself, does not provide sufficient, reliable data to enable the assessor to make an accurate valuation of that property (citation omitted); it is only a starting point in appraising the property. (Footnote omitted.)

"...Market value, therefore, is generally established by numerous sales of the same or comparable property and, although the price paid for property may be admissible to prove market value, that fact alone is not conclusive."

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The court then set forth the applicable guidelines for assessors quoting from DeLuz Homes, Inc. v. County of San Diego, 45 Cal. 2d 546, 563, 564, as follows at page 188 [51 Cal. App. 3d]:

"Assessors generally estimate value by analyzing market data on sales of similar property, replacement costs and income from the property..., and since no one of these methods alone can be used to estimate the value of all property, the assessor, subject to the requirements of fairness and uniformity, may exercise his discretion in using one or more of them." (Citation omitted.)

The valuation approach advocated by Irvine Company in this case is the stock and debt approach as described in Property Tax Rule 3(b). One of the major limitations of the stock and debt approach as pointed out by the Board's Valuation Division in its May 1981 handbook "The Appraisal of Public Utilities" at page 17 "is that typical stock prices do not effectively measure the advantages of ownership and control which are inseparable in noncorporate property." It is true that control was acquired here. However, since Mr. Bren, before acquiring control, owned 34 percent of the stock and was then the largest single shareholder, he necessarily acquired his additional 52 percent through the acquisition of several blocks of minority stock which typically sell at a lower unit price than control stock. Your letter does not indicate whether the prices paid in this case were indicative of the value of the stock as minority interests or as control stock.

Probably the more important consideration here, however, is the question of the unit to be valued. Irvine Company seems to be taking the position that because there was a change in control of its stock, all the real property owned by the Company is to be appraised as a single unit. I don't believe that is necessarily true. Although a change in control of a corporation is a change in ownership of the real property of the corporation which requires a reappraisal of that real property, the unit or units to be valued should be determined in accordance with the principles set forth in AH 501 at pages 11 and 12. Accordingly, any determination of the unit to be valued should be based on considerations of not only ownership, but also of use and location and should reflect the unit most likely to be sold if the property were exposed to the open market. It appears from your letter that you have done this.

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Your approach with respect to the issue of "absorption" also appears to be correct in that you have considered the stage of production and size of the various appraisal units defined. These considerations accord with the principles of AH 501, which states at page 16 that "once the unit to be appraised is defined, the stage of production governs what level of market data is relevant in determining the final value estimate."

In summary, the stock and debt approach, which the Irvine Company contends sets the ceiling of value in this case, is merely one of several approaches available to the assessor. It is, however, not binding or conclusive on the assessor either as a valuation approach or as a sale of the subject property. The assessor, subject to the requirements of fairness and uniformity, may use one or more valuation approaches in his discretion. Based on the foregoing, it appears that the assessor, in valuing the real property of Irvine Company, has complied with the legal principles set forth in Guild Wineries and DeLuz Homes and the applicable appraisal principles of AH 501.

Very truly yours,

Eric F. Eisenlauer  
Tax Counsel

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cc: Honorable Richard Nevins  
Honorable Ernest J. Dronenburg, Jr.  
Honorable William M. Bennett  
Honorable Conway H. Collis  
Honorable Kenneth Cory  
Mr. Douglas D. Bell  
Mr. J. J. Delaney  
Mr. Gordon P. Adelman  
Mr. Robert H. Gustafson  
Mr. Verne Walton