



STATE BOARD OF EQUALIZATION
PROPERTY AND SPECIAL TAXES DEPARTMENT
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May 21, 2004

TO INTERESTED PARTIES:

PROPERTY TAX RULE 461,
REAL PROPERTY VALUE CHANGES

In Letter To Assessors 2004/017, interested parties were advised that the Board had received a petition from the California Assessors' Association (CAA) proposing that the Board commence the rulemaking process to amend Property Tax Rule 461, *Real Property Value Changes*. Interested parties were invited to provide comments on the CAA petition. Enclosed is a matrix summarizing the comments received.

An interested parties meeting will be held on June 25, 2004 to discuss the proposed amendments to Rule 461. The meeting will begin at 9:30 a.m. at the Board's headquarters in Sacramento, 450 N Street, Room 122. The petition to amend Rule 461 is scheduled for the September 8, 2004 Property Tax Committee meeting.

Since the same interested parties submitted comments on a second CAA petition to amend Property Tax Rule 305.3, *Application for Equalization Under Revenue and Taxation Code Section 469*, both rules will be discussed at the June 25 interested parties meeting.

All documents regarding this project will be posted to the Board's Web site at <http://www.boe.ca.gov/proptaxes/ptr461.htm>. If you plan to attend the interested parties meeting on June 25, please advise Ms. Sherrie Kinkle at sherrie.kinkle@boe.ca.gov or (916) 322-2921.

Sincerely,

/s/ Dean R. Kinnee

Dean R. Kinnee, Chief
Assessment Policy and Standards Division

DRK:sk
Enclosure

**PROPERTY TAX RULE 461
REAL PROPERTY VALUE CHANGES**

On September 25, 2003, the California Assessors' Association (CAA) petitioned the Board to consider the following amendments to Property Tax Rule 461:

(e) Declines in value will be determined by comparing the current lien date full value of the appraisal unit to the indexed base year full value of the same unit for the current lien date. Land and improvements constitute an appraisal unit except when measuring declines in value caused by disaster, in which case land shall constitute a separate unit. For purposes of this subsection fixtures and other machinery and equipment classified as improvements may constitute a separate appraisal unit.

Following are comments received in response to the CAA petition.

No.	SOURCE	COMMENTS
1	Dennis C. Graves, Contra Costa County Counsel	<p>The Assessor of Contra Costa County believes that, in its application to heavy industrial properties valued under the income approach, existing Rule 461(e) is inconsistent with Revenue and Taxation Code Section 51(d), which the rule is supposed to implement. Indeed, the assessor believes the rule is unconstitutional when applied to such properties. The assessor estimates that the improper Rule 461(e) interpretation of Section 51(d) results in an unjustifiable loss of millions of tax dollars each year for major industrial properties in Contra Costa County alone.</p> <p>While concurring with the change proposed by the Assessors' Association, the Contra Costa Assessor believes the addition of a new subsection (f), as set forth below, is important to correct this problem for heavy industrial properties valued under the income approach.</p> <p>New subsection (f): <u>Notwithstanding subsection (e), for properties where the income approach is the primary determinant of fair market value and the entire property (land, improvements, fixtures, machinery, equipment, etc.) typically is sold together in the marketplace, the entire property shall constitute the appraisal unit for purposes of determining declines in value on any lien date.</u> [Current subdivision (f) would be renumbered as subdivision (g).]</p>
2	Dick Thomson, Oxnard Procter & Gamble	<p>The Oxnard Procter & Gamble paper plant is a 24/7 manufacturing facility which produces Charmin and Bounty paper products. We want to remain in California and we want to expand. We are concerned about the proposed change to Rule 461 and its impact on our ability to meet either one of those objectives.</p> <p>The rule change could unnecessarily add to the burdensome challenge of remaining viable as a business in this state. Our consumer products business is extremely competitive. Product upgrades and regular capital investment to simply maintain market share are ongoing requirements. We need regulatory certainty in order to secure favorable financial consideration for investment. Today we have a process for assessment that is working for all parties and that provides a stable and predictable outcome from year to year. We are concerned about the uncertainty created by the rule change and its potential impact on the future of our business in California.</p>

No.	SOURCE	COMMENTS
3	David A. Brown, Yuba County Assessor	<p>I am writing to request your support for the amendment to Rule 461(e) that has been petitioned by the California Assessors' Association (CAA). The problem with the current rule is that a type of real property (fixtures) is not being assessed according to constitutional and statutory law when those fixtures do not constitute a separate appraisal unit in the marketplace. The amendment to Rule 461(e) as proposed by the CAA will bring Rule 461(e) into constitutional and statutory harmony.</p> <p>In the assessment of fixtures for property tax purposes, the vast majority of all fixtures constitute a separate appraisal unit in the marketplace and for purposes of measuring declines in value of fixtures, they can be accurately valued by treating them as such. The reason they are valued as separate appraisal units is not because Rule 461(e) mandates that treatment, it is because the market reality for most fixtures is that they are commonly bought and sold in the marketplace separate from the land and improvements where they are sited. However, those fixtures that are part of a highly integrated income producing property are never bought and sold separately and are incapable of producing income separately, and therefore cannot be valued separately. Unless property is in <u>fact</u> an appraisal unit in the marketplace, it is <u>impossible</u> to accurately value such property.</p>
4	Rock Zierman, California Independent Petroleum Association	<p>CIPA opposes the California Assessors' Association's proposed change to Rule 461. It is our view that Rule 461 has a long history of fulfilling the original legislative intent of the California Legislature and does not conflict with the California Revenue and Taxation Code.</p> <p>In addition, in light of the recent ruling in favor of British Petroleum pending in the California court system, it would be inappropriate at this time for the State Board of Equalization to consider a change to Rule 461.</p>
5	Eric Miethke, Industry Representative	<p>I am writing on behalf of the Motion Picture Association of America, Inc., whose members are concerned with the proposed change to Property Tax Rule 461. Rule 461 currently requires assessors to value real property as a separate appraisal unit from "fixtures" (a fixtures is personal property affixed to real property in such a way as to manifest an intent to leave it there permanently). The CAA proposal seeks to allow the assessors discretion to combine real property with fixtures into a single appraisal unit. We respectfully submit the assessors could use this discretion to impose a two-fold tax increase: 1) they can violate the 2% cap per year that Proposition 13 places on the growth of real property assessed value by transferring value above the cap onto fixtures; and 2) they can hide depreciation on fixtures that they would otherwise be required to recognize under Proposition 8 by offsetting it with the above-described increases in real property value to which the fixture is attached.</p>
6	Cris Andrews, Shasta County Assessor; President, California Assessors' Association	<p>As you know, the Elected Board of Equalization approved the California Assessors' Association (CAA) petitions to commence the rulemaking process for amendments to Property Tax Rules 138, 305.3 and 461 on December 4, 2003. I am writing to you to express the CAA's appreciation to you and the Board for your support in our efforts to improve the fairness and efficiency of California's property tax system.</p>

No.	SOURCE	COMMENTS
7	David S. Hall, Berry Petroleum Company	<p>Berry Petroleum Company opposes the California Assessors' Association's proposed change to Rule 461. It is our view that Rule 461 has a long history of fulfilling the original legislative intent of the California Legislature and does not conflict with the California Revenue and Taxation Code.</p> <p>In addition, in light of the recent ruling in favor of British Petroleum pending in the California court system, it would be inappropriate at this time for the State Board of Equalization to consider a change to Rule 461.</p>
8	Wm. Gregory Turner, California Taxpayers' Association	<p>We strongly urge you not to abandon the Board's long standing position and reject the CAA petition on Rule 461. State Board of Equalization Rule 461(e) protects all real property owners who have depreciating fixtures, machinery and equipment located in and on appreciating buildings and land. This provision prevents the unauthorized shift of value from land, on the one hand, to fixtures, on the other hand, in violation of Proposition 13. The assessors' proposed amendment inserts the word "may" before the word "constitute" in the last sentence. This would remove any standard for allocation of value and leave that allocation up to the whim of the appraiser depending on the particular valuation approach that appraiser decides to use on a property. The CAA's proposed amendment of Rule 461 would thus remove the very uniformity in state property tax appraisal practice that the State Board is constitutionally required to enforce.</p> <p>Finally, the Legislature has amended Section 51 six times since Rule 461 was promulgated and has not found it necessary to overturn, modify, or clarify the State Board's rule. Not only is Rule 461(e) in harmony with Section 51, but also with the entire regulatory scheme constructed by the SBE for the assessment of property under the provisions of Proposition 13.</p>
9	Steven L. Kinney, President, Economic Development Corporation of Oxnard	<p>My non-profit corporation works closely with the manufacturing sector in the Oxnard area, with the goal of building it to provide for the greatest number of quality jobs for local residents. Since manufacturers as a class are typically equipment-intensive in their facilities, I am concerned about the potential financial impact of the proposed change to Rule 461. While I am not in any sense an assessment expert, it seems to me that the effect of the proposed change would be to give unwarranted and unauthorized latitude to local assessors to combine any changes in value of land, buildings, and/or equipment in whichever way would be most advantageous to the goal of maximizing the assessed valuation of any given business.</p>
10	Bob Poole, Western States Petroleum Association	<p>WSPA opposes the California Assessors' Association's proposed change to Rule 461. It is our view that Rule 461 has a long history of fulfilling the original legislative intent of the California Legislature and does not conflict with the California Revenue and Taxation Code.</p> <p>In addition, in light of the recent ruling in favor of British Petroleum pending in the California court system, it would be inappropriate at this time for the State Board of Equalization to consider a change to Rule 461.</p>
11	Jeffrey Sinsheimer, California Cable & Telecommunications Association	<p>CCTA is in the process of formulating a position on the changes to Rule 461. As an initial matter, however, we have concerns that adoption of the position of the California Assessors' Association would lead to assessment of realty and fixtures as a single appraisal unit which would not be in the public interest.</p>