STATE OF CALIFORNIA

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March 13, 1987

No. 87/27

TO COUNTY ASSESSORS:

COX CABLE SAN DIEGO, INC. v. COUNTY OF SAN DIEGO,
185 CAL.APP.3d 368 (SEPTEMBER 9, 1986)

On November 26, 1986, the California Supreme Court denied Cox Cable's petition for hearing, and on December 4, 1986, the Fourth District Court of Appeal issued the remittitur which makes their decision final. All counties that had either a superior court case or an assessment appeal on cable TV pending received a copy of the appellate decision in late September and were notified of the supreme court action by San Diego County. A brief summary of the appellate decision follows:

This case was divided into three phases for purposes of trial. Phase one, which was the subject of appellate decision, dealt only with the existence of a taxable possessory interest. Valuation issues were not reviewed and will be dealt with in subsequent phases. Here, the primary issue is the taxability of Cox's rights to locate parts of its distribution system over, under and upon the public streets and rights-of-way in the county and the seven cities it served.

Cox took the position that franchises and possessory interests are separate and distinct types of property each of which may or may not be taxable in its own right but neither of which is taxable as the other. In contrast the county contended that possessory interests which are taxable can be and here were created by the franchises from the public entities.

The superior court found in Cox's favor. It concluded that the rights granted by the franchises did not constitute taxable possessory interests; a possessory interest cannot exist within the public right-of-way because the underlying fee simple is owned by the abutting property owners, and any compensation by Cox for the use of the streets to lay its cables has been covered by the franchise fee.

On appeal, where the county was joined by the State Board of Equalization as Amicus Curiae, these conclusions were reversed. The appellate court held that the county and state's position was supported by the general taxability language of the California Constitution, Article XIII, Section 1, with implementing statutes and regulations and also by case law from early in this century. Those cases involved the assessment of franchises of power and gas companies for the right to use of the public highways for purposes of transmitting electrical power on transmission lines and the installation of

underground gas mains. The California Supreme Court held in these cases that the gas and electric companies possessed an assessable franchise. Furthermore, the appellate court noted that public streets and rights-of-way are exempt from taxation as public property, and the fact the underlying fee is privately owned has no bearing on the taxability of the interests granted to Cox by the franchises.

The case was remanded to trial court for further proceedings in accord with the appellate decision.

At least 11 counties had a court case or an assessment appeal pending on a cable TV company at the time the case was decided. They received a copy of the decision. We will be happy to supply a copy of the Cox Cable TV case to any counties that do not have one.

Sincerely,

Verne Walton, Chief
Assessment Standards Division

VW:wpc
AL-08A-1763A