State of California

B *850.0016*
Legal Division - MIC:82

Memorandum

To : Tom McClaskey **Date:** January 30, 1996

From : James M. Williams

Subject: CATV Appraisal Unit for Prop 8

In response to your memo of December 13, 1995 to Mr. Richard Ochsner I have reviewed the various attachments, referenced statutes, rules and cases and have concluded that Property Tax Rule 461 (18 Cal. Code of Regs. 461) specifies the appropriate appraisal units for measuring value declines in a cable television system pursuant to the mandate of Proposition 8.

Your question arose in the context of the selection of NorCal Cablevision as a sample property in the survey of Yuba County. When NorCal changed ownership, the assessor correctly valued the property as a single unit and allocated the unitary value among the various components of the system: possessory interest, fixtures and personalty. However, in subsequent years the assessor ignored the mandate of Rule 461(d) and continued to value the property as a single unit rather than treating the fixtures of the distribution system as a separate appraisal unit. Essentially this treatment eliminates any value reduction with respect to the machinery & equipment due to depreciation and results in the enrollment of the factored base year value for the single unit, which usually means higher taxes.

For your purposes, I think it would be best for me to review each letter from the assessor and respond to each of his contentions with reference to the authority that controls each issue. In his letter of August 18, 1995 he states: "In order for there to be a reduction of any real property component of the appraisal unit, it would be necessary to demonstrate that the current market value of the entire unit was less than the factored Proposition 13 Value. See: (Section 51(e),R & T Code); PT Rule 324(b); and Assessors Letter 91/59". The

assessor's conclusion is incorrect for value changes because Rule 461(d) specifically directs that fixtures and other machinery and equipment classified as improvements constitute a separate appraisal unit. Revenue and Taxation Code, Section 51(e) provides a clear alternative to the marketplace appraisal unit in the last clause which states: **or which are normally valued separately**. This is an explicit exception that results from Rule 461(d). Rule 324(b) has a parallel exception that states: **or that are specifically designated as such by law.** Again, specifically designate is exactly what Rule 461(d) does. Finally, LTA 91/59 does not apply to subsequent, factored valuations; it provides guidance for supplemental valuation that results from change in ownership or new construction. None of the authority cited supports the assessor's position and moreover, both the statute and the rule lead directly to the correct conclusion.

In his letter of September 29, 1995, the assessor states that: "The Board's treatment of the cable distribution system as a separate appraisal unit is wrong. It is opposite of statutory law ... ." He does not, however, refer to the statute so I cannot verify his point. In his letter of December 11, 1995 the assessor repeats his reference to Section 51(e) and Rule 324(b) but again he ignores the exceptions that I have pointed out in bold above. On the second page of this letter the assessor draws a comparison with Rule 473(e)(4)(c) and argues that our interpretation is contrary to this rule. My response is yes, that is correct; but if the assessor had contemplated subdivision (a) of that rule, he would find that that rule applies only to property rights that relate to the production of geothermal energy. It is irrelevant to the valuation of any other kind of property.

In your letter of October 11, 1995 to the assessor you referred him to *County of Orange v. Orange County Assessment Appeals Bd.*, 13 Cal. App.4th 524 (1993) to demonstrate that the courts have approved Rule 461(d) for the appraisal of cable distribution systems. In reply he stated that this case presented a totally different set of factual circumstances and that he did not want to get into an analysis of the case. He probably read what the court said on page 530:

> Relying on Revenue and Taxation Code section 51, subdivision (e) the County says the Board erred as matter of law by failing to value American as one unit, "the whole system itself." [Does this sound familiar?] [After pointing out the ***normally valued separately*** clause the court concluded]: **Taken as a whole, neither section 51 in general, or subdivision (e) in particular, mandates appraisal of the property as a single unit.**

The key to this part of the opinion is that it is not fact-driven and not applicable to only this case. It simply undermines the assessor's position that only a single market derived unit is permissible under the statute. More important, it is so blunt that there is no way around it.

In order to understand the purpose of Rule 461(d) I reviewed our file for relevant materials at the time of adoption. Proposition 13 became effective on June 6, 1978 but was quickly modified by Proposition 8 on November 7 of the same year. Board rules, including Rule 461, had been adopted on June 29, 1978 so by LTA 78/218 (attached) of December 18, 1978 the Board disseminated proposed amendments to Rule 461 and others and requested comments and suggestions thereto on or before a public hearing on January 23, 1979. By letter of January 9, 1979 (attached) the Honorable Carl S. Rush, Assessor of Contra Costa County, submitted comments of Mr. Al Lagorio of his staff (who was also secretary of the Business Property Subcommittee of the Assessor's Association) which noted approval of the proposed and still current language of Rule 461(d). Also attached is the letter of January 19, 1979 from the Honorable William H. Cook, Assessor of Santa Barbara County, at the time President of the California Assessors Association, which notes the approval of Rule 461(d) by the Association's Executive and Standards Committees. Based on these recommendations the Board adopted the language in question on January 25, 1979 and it has remained unchanged since that time.

The intent of Proposition 13 was to implement an "acquisition value" system of taxation. The intent of Proposition 8 was to compensate for circumstances wherein the market value fell below the factored acquisition value. By providing a separate appraisal unit for fixtures and other machinery and equipment

classified as improvements in Rule 461 the Board, staff, assessors and taxpayers reached a compromise that they felt would best implement the intent of the voters. Rule 461 is the only general rule that controls real property value changes and it has done so for seventeen years. There is no statute or other rule that specifically controls the method of valuation of cable television property for years subsequent to a change in ownership. It must be concluded that Rule 461 applies.

This leaves the assessor with two clear choices. First, and highly recommended, he can abide by the rule. In so doing he can also attempt to change the rule to his liking or initiate a new rule that would specifically apply to cable television property. The California Assessors Association provides him with an excellent vehicle to bring about change. Secondly, as you pointed out in your letter of October 11, 1995 he should consult Revenue and Taxation Code, Section 538, which mandates the assessor to bring an action for declaratory relief against the board in lieu of making an assessment that is contrary to a rule that he believes to be invalid. Based on the facts contained in all of the letters mentioned above, the assessor is already in violation of this statute.

Finally, I think we should recommend that the assessor consult with his county counsel and review the testimony of the county appraiser and the holding of the court in *Main & Von Karman Associates v. Orange County,* 23 Cal. App. 4th 337 (1994). He should also check the annotation and the case listed under Section 538 on page 1845 of Volume 1 of the Property Tax Law Guide. At the conclusion of *Prudential Insurance Co. v. City and County of San Francisco,* 191 Cal.App.3d 1142 (1987),the court awarded the taxpayer $127,000 in attorneys fees because the rule was not followed.

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cc: Mr. Jim Speed, MIC:63
Mr. Richard Johnson, MIC:64
Ms. Jennifer Willis, MIC:70