

Annual Board Meeting with County Assessors

Litigation Update

November 18, 2014
San Rafael, CA



6 Published Cases Since April 2014

1. *Jefferson v. Orange County Assessment Appeals Bd. No. 2* (2014) 228 Cal.App.4th 1
2. *Verizon California Inc. v. Board of Equalization* (Oct. 15, 2014, C074179) ___ Cal.App.4th ___
3. *Olive Lane Industrial Park, LLC v. County of San Diego* (2014) 227 Cal. App. 4th 1480
4. *Ocean Avenue LLC v. County of Los Angeles* (2014) 227 Cal. App. 4th 344
5. *SHC Half Moon Bay v. County of San Mateo* (2014) 226 Cal. App. 4th 471
6. *Chevron USA, Inc. v. County of Kern* (Oct. 28, 2014, F066273) ___ Cal.App.4th ___

Jefferson v. Orange County AAB No. 2

Rev. & Tax. Code, §§ 51.5, 80, 5140

- Challenge of AAB jurisdiction does not equal challenge to valuation.

Verizon California Inc. v. Board of Equalization

Rev. & Tax. Code, § 5148

- Plaintiff need name as defendants counties from which it seeks refund.

Olive Lane Industrial Park, LLC v. San Diego

RTC § 68 – Eminent Domain, BYV Transfer

Proposition 3 (Art. XIII A, sec. 2(d), RTC 68):

Property acquired to replace property taken by eminent domain does not undergo a change in ownership:

Requirements of RTC 68:

- i. Request for transfer of base year value must be filed within 4 years after the eminent domain order.
- ii. Is retroactive.

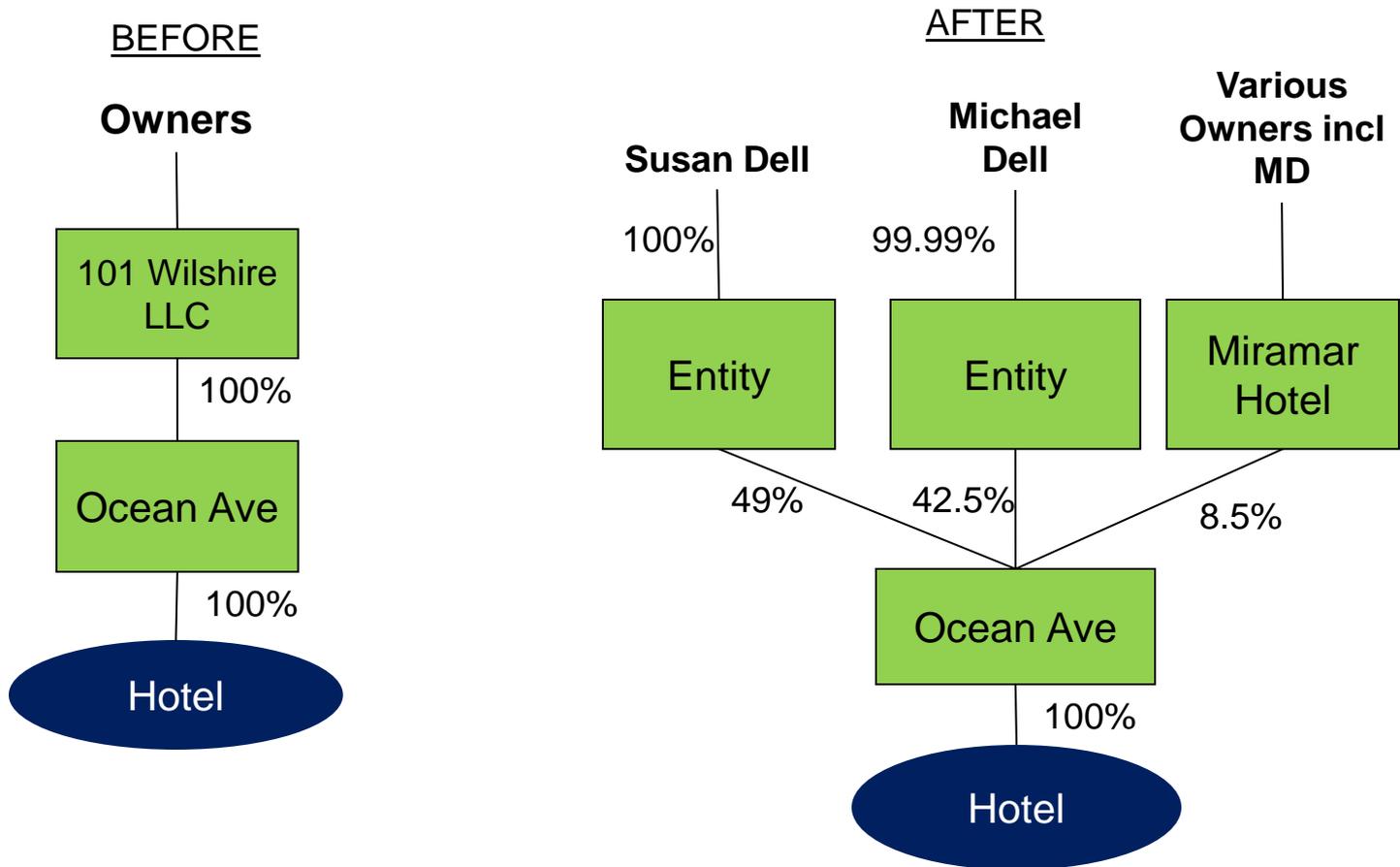
Olive Lane Industrial Park, LLC v. San Diego

RTC § 68 – Eminent Domain, BYV Transfer

- On July 8, 2003, Taxpayer's property was relinquished to the Dept. of Transportation in eminent domain.
- On Dec. 14, 2006, Taxpayer purchased replacement property.
- On Dec. 18, 2008, (> 4 years after the final order) Taxpayer filed base year value transfer claim.
- Court held RTC 68 does not preclude prospective relief if claim filed after 4 years. Prospective relief for claims filed after the 4 year period because it advances the voter intent of Proposition 3.
 - No time requirement in Proposition 3
 - Consistent with just compensation principles governing eminent domain proceedings

Ocean Ave., LLC v. Los Angeles

RTC § 64 – Legal Entities



Ocean Ave., LLC v. County of Los Angeles

RTC § 64 – Legal Entities

1. Result = 100% of Ocean Ave transferred; thus 100% of hotel property transferred indirectly: 49% to Susan Dell; about 45% to Michael Dell.
 - No CIC under RTC 64(c)(1), thus no reassessment of hotel – none of Ocean Ave’s owners owns more than 50%. No “original co-owners” under RTC 64(d).
 - NOTE: Rule 462.180, ex. 7 explicitly states no attribution of shares between husband and wife thus neither MD nor SD have control.
2. AB 2372 - Creates reassessable event when 90% or more of the ownership interests in a non-affiliated legal entity *are sold or transferred* to a non-affiliated legal entity or person, whether or not any one legal entity or person acquires more than 50 percent of the ownership interests.

SHC Half Moon Bay v. County of San Mateo

RTC §§ 110, 212 - Intangibles

- SHC Half Moon Bay, LLC purchased hotel for \$124.35M in 2004; included real property, personal property, and intangible assets and rights
- At time of sale, Ritz Carlton Hotel Company, LLC managed hotel pursuant to long-term management agreement
- Assessor applied income method (Rushmore approach); appraised value was within 5% of purchase price so assessor enrolled value at \$124.35M

SHC Half Moon Bay v. County of San Mateo

RTC §§ 110, 212 - Intangibles

- Issue: Did the income approach used by the assessor properly identify and exclude intangible assets prior to the assessment? (Court applied a *de novo* standard of review.)

Intangible	Assessor	Court
1. Assembled workforce (\$1M) 2. Leasehold interest in employee parking lot (\$200K) 3. Agreement with golf course operator (\$1.5M)	Deduction for management and franchise fee (\$1.6M) – Accounted for “most” intangibles.	Income method used by assessor violated RTC 110(d) by failing to identify and remove these three items.
4. Goodwill (14.15M) – Calculated using a “residual approach” (start with purchase price, deduct tangibles and intangibles above)	No deduction for goodwill because management and/or franchise fees capture the goodwill for the benefit of Ritz-Carlton Hotel Company, LLC as opposed to SHC	Agreed. Taxpayer failed to present substantial evidence that a deduction of the management and franchise fee did not capture the intangible asset of goodwill.

Chevron USA, Inc. v. County of Kern

RTC 75 et. seq, Rules 463, 468

- Pre-2006, Kern issued supplemental assessments on new wells at 70% cost of drilling (exempting 30% of cost as fixtures) and did not issue supplemental assessment for replacement wells.
- In 2006, Kern started issuing supplemental assessments based on full reported cost of all subject wells (both infill and replacement).
- Supplemental assessment of infill and replacement oil wells drilled by Chevron in 2006-2008 tax years; for which assessor valued new construction using the cost approach.

Chevron USA, Inc. v. County of Kern

RTC 75 et. seq, Rules 463, 468

	TAXPAYER	COURT
Valuation Method	Various arguments that assessor must use an income approach. Contended that assessment was incompatible with Rule 468 which required the use of the income approach to value its entire oil field as a single appraisal unit each time a well was newly constructed.	The Court disagreed explaining that Rule 468 was compatible with Rule 463 which requires supplemental assessments to be issued based on only the newly constructed wells, and not the entire oil field.
New wells as new construction	Replacement wells not subject to supplemental assessment because: <ol style="list-style-type: none"> 1) Supp assessment of replacement wells and fixtures not just a change in timing as required by law, but an assessment of an entirely new class of property; 2) Replacement wells constitute “repair and maintenance” because they merely maintain production; 3) Certain wells are lost and replaced as the result of misfortune. 	<ol style="list-style-type: none"> 1) Appraisal units for lien date assessment and supplemental assessment are different (Rule 468 as compared to Rule 463(a)) and new wells add value to property 2) Replacement wells are brand new wells and not reconstruction or repair of existing wells 3) No disaster declaration from Governor; losses are anticipated and result from natural forces and taxpayer’s own operating practices
Double taxation	Cost method unlawfully resulted in double assessment - since property’s value determined by income approach which assumed the existence of the wells added to the assessment roll based on their cost.	<ul style="list-style-type: none"> - Income approach may forecast the anticipated construction of new wells at the associated expense, but it does not include value of the wells because they did not exist on the lien date - Cost of new wells was not added to assessed value derived from income approach, but was instead added to base year value of nonpetroleum interests which are determined based on cost approach - New construction was not included in previous year’s lien date assessment because it did not exist for purposes of property taxation

Legal Opinions

The Tax and Fee Programs Division provides written legal opinions at assessors' and taxpayers' request. They are not binding on any party and have been given varying weight at the Assessment Appeals Boards and courts. Requests should include:

1. Complete statement of facts and other information.

Organizational charts, diagrams, lists of transfer steps, etc are always helpful.

2. Copies of relevant portions of wills, trusts or other documents pertinent to the transfer.

3. Analysis of material facts. Should also include relevant authorities.

Legal Opinions

4. Disclosure regarding whether an AAB hearing on the particular matter has been scheduled or is in litigation

- (a) Matters before the AAB – Opportunity will be offered to the non-requesting party to provide any relevant information. For convenience of all parties, a joint request is recommended.
- (b) Matters in litigation – Legal will generally not opine unless Court requests. This is most often done by way of amicus brief request at the appellate court. Requests are subject to Board approval.

5. Typically takes 60-90 days

- (a) Will not opine on matters outside of California property tax.
- (b) Factual determinations are always within the purview of the assessor.

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