



June 23, 2026

Honorable Sally Lieber, Chair
California State Board of Equalization
621 Capitol Mall, Suite 2100
Sacramento, CA 95814

Re: 2026 Board Work Group on Further Uniformity
in Methods of Valuing Intangible Assets and Rights

Dear Chair Lieber and Members of the Board:

On behalf of the California Alliance of Taxpayer Advocates (CATA), I am submitting the attached Proposed Letter to Assessors (LTA) for the Board's consideration. I will discuss portions of the Proposed LTA at the Board Work Group meeting before the Board on June 25, 2026.

Very truly yours,

Cris K. O'Neill
CATA Member

Enclosure

cc: Honorable Malia Cohen, California State Controller
Honorable Ted Gaines, State Board of Equalization Member
Honorable Antonio Vasquez, State Board of Equalization Member
Honorable Mike Schaefer, State Board of Equalization Member
Yvette M. Stowers, State Board of Equalization Executive Director

**GUIDELINES FOR IDENTIFICATION,
VALUATION, AND ASSESSMENT OF
NON-TAXABLE INTANGIBLE
ASSETS AND RIGHTS**

GUIDELINES FOR IDENTIFICATION, VALUATION, AND ASSESSMENT OF NON-TAXABLE INTANGIBLE ASSETS AND RIGHTS

INTRODUCTION

In recent years, the treatment of non-taxable intangible assets and rights has become a significant issue in the assessment of taxable tangible property. These Guidelines are intended to assist assessors, taxpayers and assessment appeals board in the handling of non-taxable intangible assets and rights for property tax valuation purposes. Two issues often arise relating to intangibles: (1) The identification of non-taxable intangibles assets and rights; and (2) the appraisal methods available for valuation of non-taxable intangibles. These Guidelines address both issues. In addition, the Guidelines provide a brief historical overview of the development of California law relating to the identification and assessment of non-taxable intangibles, a summary of court cases reflecting the development of the law in this area, and a selected bibliography of financial and appraisal texts addressing the valuation of intangibles.

BRIEF HISTORY OF INTANGIBLES ASSESSMENT ¹

The identification, valuation and assessment of non-taxable intangible assets and rights in California falls into two distinct periods.

1930s to 1990

The first period began in the 1930s with the advent of the income tax in California. Prior to that time, intangibles were assessed along with taxable real and personal property, except for a small number of specifically identified intangible property types. In enacting the income tax, the Legislature specifically provided that intangible assets and rights would be subject to income taxation and no longer subject to property taxation.²

Intangible property received little attention from California’s appellate courts until 1948 when the Supreme Court issued its decision in *Roehm v. County of Orange*. In *Roehm*, the court determined that a liquor license was not taxable under California’s property tax laws (licensees already paid license fees to the State Board of Equalization). The court’s decision also affirmed the transfer of intangibles taxation to the income tax by holding that *all* intangible assets and rights were immune and exempted from property taxation. The *Roehm* decision pointed out that earnings from intangibles that were not regarded as separate class of property and could not be separately taxed

¹ For a fuller history of the treatment of intangibles for property tax assessment purposes, see S. Flavin, *Taxing California Property*, 2025-2026 ed., B. Marsh and C. O’Neill, editors, § 4.4.

² *Elk Hills Power, LLC v. Board of Equalization* (2013) 57 Cal. 4th 593, 611, n. 9; *Roehm v. County of Orange* (1948) 32 Cal.2d 280, 289-290; *Beery v. Los Angeles County* (1953) 16 Cal.App.2d 290, 298, n. 1 (income tax is in lieu of property tax on intangibles and intangibles are no longer taxable under property tax laws); Cal. Atty. Gen., Indexed Letter, No. 10485 (February 4, 1936), p. 3.

may be “reflected” in the value of taxable property.³ The court also noted that corporate franchises were not subject to property taxation because they were taxed under the state’s franchise tax laws.⁴

The Supreme Court issued two more opinions in the decades following *Roehm* relating to the treatment of intangibles. In *California Portland Cement v. State Board of Equalization* the court held that “income derived in large part from enterprise activity” should not be assessed and only earnings from taxable property should be considered.⁵ Earlier, in *Michael Todd Co. v. County of Los Angeles*, the Supreme Court, following *Roehm*’s broad exemption for all types of intangibles, held that motion picture copyrights are non-taxable assets. *Michael Todd* then considered whether non-taxable intangible values could be included in the fair market value of otherwise taxable property and concluded that taxable property should be valued by “assuming the presence of intangible assets or rights necessary to put the taxable property to beneficial or productive use.”⁶ This “beneficial or productive use” precept was later explained by the Supreme Court to mean that taxable property is to be valued in its highest and best use by assuming the taxable property is used in conjunction with intangibles.⁷

The ruling in *Michael Todd* prompted passage of legislation in 1974 which required motion pictures to be assessed for property tax purposes based on the value of the material on which the motion picture was recorded. Property tax exemptions for other types of intangible property were also enacted in 1973 and 1974.⁸

1990 to Present

The foundation laid by the Legislature and the Supreme Court in *Roehm* and *California Portland Cement* was further developed starting around 1990.

³ *Roehm, supra*, at 285, 289-290. Also see *Elk Hills Power, supra*, at 607 (all forms of intangible property exempt from property taxation); *Olympic and Georgia Partners, LLC v. County of Los Angeles* (2025) 18 Cal.5th 739, 756; *ITT World Communications, Inc. v. County of Santa Clara* (1980) 101 Cal.App.3d 246, 251.

⁴ *Roehm, supra*, at 286. Also see *County of Stanislaus v. Assessment Appeals Bd.* (1989) 213 Cal.App.3d 1445, 1453 (intangible franchise rights taxed under franchise tax laws and not property tax laws); *Assessors’ Handbook* Section 502, “Advanced Appraisal,” 1998, p. 150.

⁵ *California Portland Cement Co. v. State Bd. of Equalization* (1967) 67 Cal.2d 578, 584 (citing the Supreme Court’s decisions in *De Luz Homes, Inc. v. County of San Diego* (1955) 45 Cal.2d 546 at 572 and *County of Riverside v. Palm-Ramon Development Co.* (1965) 63 Cal.2d 534 at 538). Also see *Madonna v. County of San Luis Obispo* (1974) 39 Cal.App.3d 57, 60.

⁶ *Michael Todd Co. v. County of Los Angeles* (1962) 57 Cal.2d 684, 690-691, 694, 696. The court found that the valuation method which assessed film negatives at greater than salvage value properly included beneficial or productive use of film’s copyright.

⁷ *Elk Hills Power, supra*, at 616-617, n. 10 (citing *Watson Cogeneration Co. v. County of Los Angeles* (2002) 98 Cal.App.4th 1066, 1071, 1074).

⁸ See, e.g., Works of Art (*Rev. & Tax. Code*, § 986); Motion Pictures (*Rev. & Tax. Code*, § 988); Software (*Rev. & Tax. Code*, § 995); Business Records (*Rev. & Tax. Code*, § 997). Intangible assets or rights of a cable television system or the provider of video services were also exempted from property taxation in 1988. (*Rev. & Tax. Code*, § 107.7(d).)

This period began with the six significant decisions issued in 1989, 1993 and 1994 by nearly all districts of the California Court of Appeal.⁹ The last of these, *GTE Sprint Communications Corp. v. County of Alameda*, was perhaps the most significant for two reasons. First, like the preceding decisions, the appellate court referred to the specific intangible assets and rights that the taxpayer separately identified. Second, and more importantly, the court ruled that the full values of identified intangibles are to be excluded when assessing taxable tangible property using an “identify, value, and exclude” procedure:

[T]he Board’s appraisers are required by law to *identify* and *value* intangible assets, if any, and *exclude* these values from the appraisal of the taxpayer’s property. * * * [T]he Board’s inclusion of the *full* value of the intangible assets in computing the enhanced value of Sprint’s tangible property, without adequately addressing Sprint’s evidence of intangible assets, was error. * * * [W]here the types of intangible assets *identified* by Sprint may reasonably be said to exist, the Board must *exclude* their *values* when assessing the tangible property for taxation.¹⁰

In 1995 the Legislature enacted Senate Bill 657 (SB 657, Maddy) amending *Revenue and Taxation Code* sections 110 and 212 to address the treatment of intangibles. The amendments, which were based on the Court of Appeal’s 1989, 1993 and 1994 decisions, specified that intangibles relating to going concern value, intangibles included in unitary valuations, and the exclusive nature of an agreement must not be included in the fair market value of taxable property.¹¹ The amendments to section 110 also provided that zoning, location and other intangible attributes that relate directly to the real property must be reflected in the value of that real property because they are an integral part of the property (unlike intangibles that relate to the real property only in their connection with the business using it).¹²

In 1998, with the Court of Appeal decisions and amendments to Sections 110 and 212 in hand, the Board included a 16-page discussion entitled “Treatment of Intangible Assets and Rights” in Chapter 6 of *Assessors’ Handbook* Section 502, “Advanced Appraisal.” The discussion in Section 502 affirmed the appellate courts’ and Legislature’s conclusions that the values of intangible assets and rights, including the value of a business, are not to be included in valuing taxable real

⁹ *County of Stanislaus, supra*; *County of Los Angeles v. County of Los Angeles Assessment Appeals Bd.* (1993) 13 Cal.App.4th 102; *Shubat v. Sutter County Assessment Appeals Bd.* (1993) 13 Cal.App.4th 794; *County of Orange v. Orange County Assessment Appeals Bd.* (1993) 13 Cal.App.4th 524; *Service America Corp. v. County of San Diego* (1993) 15 Cal.App.4th 1232; *GTE Sprint Communications Corp. v. County of Alameda* (1994) 26 Cal.App.4th 992.

¹⁰ *GTE Sprint, supra*, at 999, 1003, 1007 (italics added). Also see *SHC Half Moon Bay v. County of San Mateo* (2014) 226 Cal.App.4th 471, 494 (“identify, value, and remove value of intangible assets and rights”). Values of non-taxable intangibles may also be removed by “imputing” an income stream to the taxable property as discussed below (note 41).

¹¹ *Rev. & Tax. Code*, §§ 110(d), 212(c).

¹² *Rev. & Tax. Code*, §§ 110(f). Also see *Assessors’ Handbook* Section 502, pp. 155-156; *Elk Hills Power, supra*, at 620-621; *Shubat, supra*, at 803; *DFS Group, L.P. v. County of San Mateo* (2019) 31 Cal.App.5th 1059, 1087 (right to do business that is exercised in connection with the use of real property is not intangible attribute of real property under Section 110(f).)

property.¹³ The discussion also identified some of the types of intangibles that must be excluded and, in general terms, described methods for removing the full value of non-taxable intangibles, particularly intangible assets and rights related to a business operation's "enterprise related activities."¹⁴ *Assessors' Handbook* Section 502 continues to be a primary authority for the handling of non-taxable intangibles for property tax assessment purposes.

Since 1998, California's appellate courts have followed the judicial and statutory law relating to intangibles, as well as the guidance set forth in *Assessors' Handbook* Section 502.¹⁵ The most significant of these is the Supreme Court's decision in *Elk Hills Power, LLC v. Board of Equalization*.¹⁶ *Elk Hills Power* broadly affirmed the exclusion of intangible assets and rights from property taxation, following the decisions issued by multiple districts of the Court of Appeal in the 1990s.¹⁷ Significantly, the Supreme Court's decision explained that "assuming the presence of intangible assets and rights necessary to put taxable property to beneficial and productive use" (originally discussed in *Roehm* and *Michael Todd*, and set forth in *Revenue and Taxation Code* sections 110(e) and 212(c)) meant that property is to be valued in accord with fair market value standards in its highest and best use. And that the full value of identified non-taxable intangibles must be excluded in valuing and assessing taxable property.¹⁸ As discussed further below, *Elk Hills Power* also provided guidance relating to the methods for valuing and removing intangibles, particularly in the use of the income approach.

IDENTIFICATION OF NON-TAXABLE INTANGIBLE ASSETS AND RIGHTS

As discussed in *GTE Sprint*, the process of excluding non-taxable intangibles from property tax assessment begins with identification.¹⁹ In very broad terms, the fair market value of intangibles that make a direct contribution to the going concern value of an operating business enterprise that uses real property in conducting its operations (i.e., "enterprise activity") are not taxable and must

¹³ *Assessors' Handbook* Section 502, p. 152 ("Sections 110(e) and 212(c) do not authorize adding an increment to the value of taxable property to reflect the value of intangible assets and rights . . . * * * Although the presence of the intangible assets are assumed in the valuation of the tangible property, this does not mean that their values are included in that valuation.") and p. 159 ("The value of such intangible assets and rights does not enhance and is not to be reflected in the value of taxable property"); *Elk Hills Power, supra*, at 616 (approving language from *Assessors' Handbook* Section 502).

¹⁴ *Assessors' Handbook* Section 502, p. 155.

¹⁵ See "Summary of Court Cases" set forth at the end of these Guidelines.

¹⁶ *Elk Hills Power, LLC v. Board of Equalization* (2013) 57 Cal.4th 593.

¹⁷ *Elk Hills Power, supra*, at 610-611, 612-613 (citing *GTE Sprint, supra*; *Service America, supra*; *Shubat, supra*; *County of Orange, supra*; and *County of Los Angeles, supra*).

¹⁸ *Elk Hills Power, supra*, at 614, 615.

¹⁹ *GTE Sprint, supra*, at 999.

be deducted.²⁰ Those intangibles that “allow the business to generate more revenue” and provide an “income stream to the business” are to be valued and removed.²¹

Two methods of identifying intangible assets and rights may be employed.

The first method applies definitions of intangibles found in texts used by appraisers specializing in the valuation of intangible assets and rights. One of those texts provides the following description of the elements to be used in identifying intangible assets and rights:

For an intangible asset to exist from a valuation or economic perspective, typically it should possess a number of characteristics or attributes. Some of the more common characteristics or attributes necessary for qualification as an intangible asset include the following:

1. It should be subject to specific identification and recognizable description.
2. It should be subject to legal existence and protection.
3. It should be subject to the right of private ownership, and private ownership should be legally transferable.
4. There should be some tangible evidence or manifestation of the existence of the intangible asset (*e.g.*, a contract, a license, a registration document, a computer diskette, a listing of customers, a set of financial statements, etc.).
5. It should have been created or have come into existence at an identifiable time or as the result of an identifiable event.
6. It should be subject to being destroyed or to a termination of existence at an identifiable time or as the result of an identifiable event.²²

Business intangible assets are also defined by other organizations as follows:

Nonphysical factors that contribute to or are used in producing goods or providing services, or that are expected to generate future productive benefits for the

²⁰ *Rev. & Tax. Code*, § 110(d)(1) (exclude “going concern value of a business that uses taxable property”); *Elk Hills Power, supra*, at 618, 619.

²¹ *Olympic and Georgia Partners, supra*, at 762, 770.

²² R. Reilly and R. Schweihs, *Valuing Intangible Assets*, 1999, p. 5. Regarding legal transferability (item 3.), Reilly and Schweihs state: “[I]ntangible assets have value separate and distinct from tangible assets, even though the intangible asset may (at some point in the commercialization process) require the use of tangible assets in order to realize its full value.” (*Id.* at 12.) This view was followed in the 1998 revision to *Assessors’ Handbook* Section 502 where the State Board of Equalization determined that the value of non-taxable intangibles must be removed even if the specific intangible cannot be sold separately from the real property it is used with. (*See Assessors’ Handbook* Section 502, p. 153.) This position is supported by the Court of Appeal. (*County of Orange, supra*, at 531-532 (intangibles included in an appraisal unit may be separately valued).)

individuals or firms that control the use of those factors. (Report of the Brookings Task Force on Intangibles)

Assets manifest themselves by their economic properties; the assets do not have physical substance; they grant rights and privileges to their owner and usually generate income for their owner. (International Valuation Standards Council, Guidance Note 4, *Valuation of Intangible Assets* (2006))

A non-monetary asset that manifests itself by its economic properties. It does not have physical substance but grants rights and economic benefits to its owner or the holder of an interest. (International Valuation Standards Council, Guidance Note 4, *Valuation of Intangible Assets* (2010))²³

A second method used to identify non-taxable intangible assets and rights is by reference to authorities such as *Assessors' Handbook* Section 502 which lists and discusses several types of intangibles.²⁴ Lists of intangibles are also found in authoritative appraisal texts.²⁵ In addition, reference can also be made to published California appellate court cases and California statutes which itemize and discuss many types of intangibles.²⁶

VALUATION AND APPRAISAL OF SPECIFICALLY IDENTIFIED NON-TAXABLE INTANGIBLES

In General

Any of the three standard approaches for determining the fair market value of taxable real and personal property may be used to value non-taxable intangible assets and rights, although some approaches may be less applicable to certain categories of intangibles.²⁷ As with taxable property, the values determined by those methods must represent the fair market value of the intangible under consideration.²⁸ The taxable property must be valued in its highest and best use in order to satisfy the “beneficial or productive use” requirement in *Revenue and Taxation Code* sections

²³ M. Mard, J. Hitchner, S. Hyden, *Valuation for Financial Reporting*, 3rd ed., (2011), pp. 29-32.

²⁴ *Assessors' Handbook* Section 502, pp. 153-155.

²⁵ R. Reilly and R. Schweihs, *Valuing Intangible Assets*, 1999, p. 65; M. Mard, J. Hitchner, S. Hyden, M. Zyla, *Valuation for Financial Reporting*, (2002), pp. 20-21.

²⁶ A summary of California Supreme Court and Court of Appeal decisions discussing the treatment of non-taxable intangible assets and rights is set forth at the end of these Guidelines. *Revenue and Taxation Code* sections 986, 988, 995, 997 and 107.7(d) also identify certain non-taxable intangibles.

²⁷ *Assessors' Handbook* Section 502, pp. 161-163. Also see *The Appraisal of Real Estate*, 15th ed., The Appraisal Institute, 2020, pp. 667-669; *GTE Sprint, supra*, at 1003 (intangibles valued using “established appraisal methods and authorities”).

²⁸ *Rev. & Tax. Code*, § 110(d)(2) (“fair market value of intangible assets and rights”); *Elk Hills Power, supra*, at 616.

110(e) and 212(c); however, the values of associated non-taxable intangible assets and rights are not included in the value of the taxable property.²⁹

Intangible assets and rights are most often found in complex properties that employ such intangibles in their operations. Complex properties include real property (land and improvements), tangible personal property (including fixtures), intangible personal property, and net working capital. These three types of property, working together, form a business enterprise “unit.” Locally-assessed properties such as hospitality properties (e.g., hotels), industrial properties (e.g., petroleum refineries), recreational properties (e.g., theme parks), and healthcare properties (e.g., hospitals and assisted living facilities) are examples of complex properties. For such properties, the value of non-taxable intangible assets and rights must be removed from the business enterprise unit in order to determine the value of the taxable real and personal property. The appraiser has to make adjustments so that the fair market value of any non-taxable property (i.e., intangible assets and rights) within the unit is removed.³⁰

As explained in *Assessors’ Handbook* Section 502, when applying each method of value, assessors and appraisers must exercise caution to avoid including value relating to non-taxable intangibles, including enterprise activity value, in the assessed value of the taxable real and/or personal property.³¹ This occurs when the sales approach is used and the sales prices of the subject property or comparable sale properties include non-taxable intangibles within the appraisal unit.³² It also happens in applying the income approach when a property’s income is capitalized but portion of that income includes revenues and expenses attributable to a business enterprise appraisal unit that uses non-taxable intangible assets and rights.³³ As discussed further below, these concerns

²⁹ *Assessors’ Handbook* Section 502, p. 159. This was affirmed by the Supreme Court in *Elk Hills Power*. (*Elk Hills Power*, *supra*, at 616-617, n. 10.)

³⁰ *Assessors’ Handbook* Section 502, p. 158; *Assessors’ Handbook* Section 501, “Basic Appraisal,” 2002, p. 12. As discussed below, the removal may be handled by excluding income attributable to non-taxable intangibles. (*Assessors’ Handbook* Section 502, p. 70.) The allocation of fair market value to various types of property, including non-taxable intangibles, is supported by *Revenue and Taxation Code* section 110(b) and Property Tax Rule 2(d) (18 *Cal. Code Regs.*, § 2(d)) which both state “If a single transaction results in a change in ownership of more than one parcel of real property, the purchase price shall be allocated among those parcels *and other assets*, if any, transferred based on the relative fair market value of each.” (Italics added.)

³¹ *Assessors’ Handbook* Section 502, p. 160. Also see *Service America*, *supra*, at 1239-1240. “Enterprise activity” occurs when a business engages in the sale of goods or services. Income attributable to enterprise activity may not be ascribed to taxable property. (*Assessors’ Handbook* Section 502, p. 160; *SHR St. Francis*, *supra*, at 634.)

³² *Assessors’ Handbook* Section 502, pp. 163, 164. *Revenue and Taxation Code* section 110(b), last sentence, is intended to guard against this by providing that a purchase price that includes real property parcels and “other assets” (including non-taxable intangible assets and right) be allocated based on the relative fair market value of the real property and the other assets. This same provision appears in Property Tax Rule 2(d) (18 *Cal. Code Regs.*, § 2(d)) for the same reason. Also see *The Appraisal of Real Estate*, 15th ed., The Appraisal Institute, 2020, p. 669.

³³ *Assessors’ Handbook* Section 502, pp. 160, 164. When the income capitalization approach is used to value an operating enterprise, result is total value for all items of property which are part of that enterprise, including intangibles used by the enterprise. (*Los Angeles SMSA Ltd. Partnership v. State Bd. of Equalization* (1992) 11 *Cal.App.4th* 768, 776, n. 6, citing *South Bay Irr. Dist. v. California-American Water Co.* (1976) 61 *Cal.App.3d* 944, 988.) See, e.g., *DFS Group, L.P. v. County of San Mateo* where the Court of Appeal overturned the assessment due to the inclusion of revenues attributable to non-taxable intangibles when capitalizing the entire

generally do not arise in the application of the cost approach which usually focuses solely on the taxable tangible real and/or personal property.

Assessors' Handbook Section 502 describes two overall methods for removing the values of non-taxable intangible assets and rights from the value of a business enterprise. The first method is to evaluate the stream of income produced by the identified intangible, including return of and return on (see discussion further below), and then exclude that income stream from the income stream of the business enterprise. The second method is to separately value the identified intangible (using the sales, income and/or cost approaches to value) and then deduct the concluded value for that specific intangible from the concluded total business enterprise value:

If the income stream used by the appraiser is in part generated by intangible assets and rights, the appraiser must either (1) attribute sufficient income to provide a return of and on the intangible assets and rights, or (2) remove the value of the intangible assets and rights from the income indicator (using any acceptable valuation method) after the income stream has been capitalized or discounted to present value.³⁴

Using Income Approach to Value Identified Non-Taxable Intangibles

Assessors' Handbook Section 502 explains how the income approach may be used to value identified non-taxable intangible assets and rights employed in conjunction with taxable property that is employed by a business enterprise engaged in business-enterprise activities. The first step is to evaluate the separate income stream associated with the identified intangible. The income stream may be a fee or royalty paid for use of the intangible asset or right. The fee may be set forth in a contract for services relating to the business enterprise. Or the income stream may represent the cost savings (foregone expense) resulting from ownership of the intangible asset or right. In some instances, expenses may be subtracted from the income stream. Next, the duration of the fee or cost savings stream is projected into the future. Finally, the income stream (or net income stream) is capitalized or discounted to present value using a capitalization or discount rate appropriate for that particular type of intangible asset or right. The result is an indication of the value for the intangible asset or right.³⁵ The values for all intangibles determined using this method are then subtracted from the value for the entire business enterprise (“business enterprise value” or “BEV”).³⁶ The value remaining, after such subtraction, is the value of the tangible taxable real and/or personal property.³⁷

income stream generated by the taxpayer’s retailing operations. (*DFS Group, supra*, at 1084-85, 1088; *also see County of Orange, supra*, at 533; *Service America, supra*, at 1240; *Assessors' Handbook* Section 501, p. 98.)

³⁴ *Assessors' Handbook* Section 502, p. 163. In general appraisal terms, the valuation of assets in a complex property by addressing the income stream for each asset is known as the “excess earnings” methodology. (*The Appraisal of Real Estate*, 15th ed., The Appraisal Institute, 2020, pp. 672-675.)

³⁵ *Assessors' Handbook* Section 502, pp. 161-162.

³⁶ “Business enterprise value” refers to the value of the entire business enterprise and includes all tangible assets and all intangible assets and rights. (*Assessors' Handbook* Section 502, p. 156.)

³⁷ The methodology described in this paragraph is sometimes referred to as the “Parsing Income Method.” (*The Appraisal of Real Estate*, 15th ed., The Appraisal Institute, 2020, pp. 675-676.) This method has been approved by the appellate courts. (*Elk Hills Power, supra*, at 618; *GTE Sprint, supra*, at 1004.)

The method of valuing intangible assets and rights described above, based on identifying, valuing, and excluding income streams associated with specific intangibles, resulted from prior appellate court decisions calling for assessors and appraisers to “impute” an appropriate income for the taxable real property when the income generated by the property was in large part due to “enterprise activity.”³⁸ Early court decisions did not provide specific instructions for imputing value either to taxable property or non-taxable intangibles.³⁹ That changed with *Elk Hills Power* where the Supreme Court held that assessors must apportion the income a property produces between enterprise activity and the taxable property being used by the enterprise.⁴⁰ Consistent with this holding, and in line with the method described in *Assessors’ Handbook* Section 502 (summarized in the prior paragraph), the Supreme Court discussed an “income stream approach” which values and excludes “enterprise activity” intangibles that directly contribute to the going concern value of a business by evaluating the income streams generated by and attributable to those intangibles.⁴¹

The Supreme Court’s decision in *Elk Hills Power* also identified a separate line of cases where the income approach was employed to include the value of the intangible assets and rights in the assessed value of the taxable property.⁴² Focusing on *American Sheds, Inc. v. County of Los Angeles*,⁴³ which pertained to an operating landfill property, the court reviewed the Court of Appeal’s holding that the use permit for operation of the landfill was taxable. The Court of Appeal’s decision indicated that the use permit there was “site specific,” making it akin to zoning which is an intangible attribute of real property taxable under *Revenue and Taxation Code* section 110(f).⁴⁴ *Elk Hills Power* also discussed *Los Angeles SMSA Limited Partnership v. State Bd. of Equalization* where the Court of Appeal ruled that an FCC license used by a public utility that was centrally-assessed was taxable.⁴⁵

³⁸ *De Luz Homes, supra*, at 565, 571-572; *California Portland Cement, supra*, at 584; *County of Stanislaus, supra*, at 1455, 1456.

³⁹ An exception to this is *County of Riverside, supra*, at 538-539, n. 4 (describing method for imputing income).

⁴⁰ Court of Appeal decisions have also indicated that apportionment of income is required. (*Service America, supra*, at 1239; *SHR St. Francis, supra*, at 634.)

⁴¹ *Elk Hills Power, supra*, at 617-619. The Court’s decision is consistent with *Assessors’ Handbook* Section 502 (p. 56) and Property Tax Rule 8(e) (“[A]djustments must be made to exclude income that is not attributable to the taxable property pursuant to Rule 8(e).”). Imputing income directly to real property, where possible, remains a valid method for valuing taxable property and removing non-taxable intangibles from taxable property. (See, e.g., *County of Riverside, supra*, at 539-540, n. 4 (imputing percentage of income to land); *Service America, supra*, at 1242 (impute income from rental properties that lacked influence of sports stadium).)

⁴² *Elk Hills Power, supra*, at 618.

⁴³ *American Sheds, Inc. v. County of Los Angeles* (1998) 66 Cal.App.4th 384.

⁴⁴ The Court of Appeal’s decision cited to Section 110(f) and stated the permit controlled how the specific property was to be operated. (*American Sheds, supra*, 393, 395.) The Supreme Court in *Olympic and Georgia Partners* categorized the intangibles in *American Sheds* as “intangibles associated with realty, such as zoning, permits, and licenses.” (*Olympic and Georgia Partners, supra*, at 756.) The Court of Appeal also found that the taxpayer had failed to present substantial evidence to support their claims that the intangibles there were non-taxable. (*American Sheds, supra*, at 396, 398.)

⁴⁵ *Los Angeles SMSA Limited Partnership v. State Bd. of Equalization* (1992) 11 Cal.App.4th 768, 776-779. The Court of Appeal held that unitary assessment of a public utility going concern allowed the value of the FCC

The “income stream approach” discussed in *Elk Hills Power* was further explained in *SHR St. Francis, LLC v. City and County of San Francisco*.⁴⁶ In that case, the Court of Appeal viewed the income stream generated by an intangible asset or right as having two parts. The first part is the “return of” which the court equated with the fees or expenses associated with the intangible (the management agreement fee in the case). The “return of” represented the investor’s recovery or recapture of the amount of his or her original investment. The second part is the “return on,” i.e., the profit or gain over and above recovery of the original investment, that the investor receives for his or her investment. The appellate court stated that both parts, “return of” and “return on,” must be considered and included for the full value of an intangible to be recognized.⁴⁷ In other words, the income stream used to value an intangible must take into account both “return of” and “return on” (unless the “return on” or profit is zero).⁴⁸ The Court of Appeal’s decision referenced Property Tax Rule 8(e) which calls for “a return on ... other nontaxable operating assets.”⁴⁹ The decision also followed *Assessors’ Handbook* Section 502 which states that, when applying an income approach appraisers must not only subtract the fee or expense relating to an intangible (“return of”), but must also subtract the “return on” that intangible.⁵⁰

Using Cost Approach to Value Identified Non-Taxable Intangibles

Property Tax Rule 6, subparagraph (a), calls for the use of the cost approach when there is no reliable income or sales data available for evaluating the taxable property.⁵¹ When identification of a separate income stream attributable to specific intangible assets and rights is not possible, *Assessors’ Handbook* Section 502 and appellate court decisions encourage use of the cost approach.⁵² This is so because the cost approach does not typically capture the value of intangible

license to be included in the utility’s assessed value. *Elk Hills Power* also cited *Watson Cogeneration Co., supra*, and *Freeport-McMoran Resource Partners v. County of Lake* (1993) 12 Cal.App.4th 634 as affirming the assessment of non-taxable intangibles. The intangibles in those cases, government-facilitated power purchase agreements created under the Public Utility Regulatory Policies Act of 1978 (PURPA, 16 U.S.C. § 798, et seq.), are no longer in use which limits the applicability of these cases.

⁴⁶ *SHR St. Francis, LLC v. City and County of San Francisco* (2023) 94 Cal.App.5th 622.

⁴⁷ *Assessors’ Handbook* Section 501, p. 99 (“Investors demand both a return of their investment (a recapture of the investment) and a return on their investment (a yield on the investment).”) and p. 103 (income stream to investor includes components for “return of the investment” and “return on the investment”); *SHR St. Francis, supra*, at 635.

⁴⁸ *SHR St. Francis, supra*, at 635-636, 638.

⁴⁹ 18 *Cal. Code Regs.*, § 8, subparagraph (e); *SHR St. Francis, supra*, at 635. The summary of Rule 8(e) in *Assessors’ Handbook* Section 501 states “sufficient income must be excluded to provide a return to working capital, any other nontaxable intangible assets and rights, and unpaid or underpaid management,” equating the term “nontaxable operating assets” in Rule 8(e) with “nontaxable intangible assets and rights.” (*Assessors’ Handbook* Section 501, p. 96.)

⁵⁰ *Assessors’ Handbook* Section 502, p. 162 (“The value of intangible assets and rights cannot be removed by merely deducting the related expenses from the income stream to be capitalized. Allowing a deduction for the associated expense does not allow for a return on the capital expenditure.”); *SHR St. Francis, supra*, at 636, 637.

⁵¹ 18 *Cal. Code Regs.* § 6(a); *Assessors’ Handbook* Section 502, p. 160, n. 129.

⁵² *Assessors’ Handbook* Section 502, p. 160, n. 129; *County of Orange, supra*, at 533-534, n. 9; *The Appraisal of Real Estate*, 15th ed., The Appraisal Institute, 2020, p. 670.

assets and rights; the property being evaluated typically only includes the taxable real and/or personal property and appraiser does not have to identify and exclude the value of non-taxable intangibles.⁵³

Using Sales Approach to Value Identified Non-Taxable Intangibles

Use of sales to value intangibles is usually limited by the availability of market sales information for the specific intangible asset or right. Nevertheless, market transactions of certain intangibles such as liquor licenses occur and those transactions can be a reliable source of value information.

BURDEN OF REMOVING THE VALUE OF NON-TAXABLE INTANGIBLES

Taxing authorities bear a constitutional duty to assess taxable property at fair market value while making sure that the value of intangible assets is not improperly subsumed within the value of taxable property.⁵⁴ Whether non-taxable intangibles have been subsumed in the value of taxable property can only be known by reviewing the assessor's valuation analysis. Because an assessor's evaluation is presumed to be correct, taxpayers are at a disadvantage when it comes to showing that non-taxable intangible have been subsumed in an assessor's valuation of taxable property.

Given this situation, California appellate courts have allocated the burden of proof in cases involving non-taxable intangibles between taxpayers and assessors. Initially, taxpayers are required to "put forth credible evidence that the fair market value of [non-taxable intangible] assets has been improperly subsumed in the valuation."⁵⁵ Successful presentation of such evidence removes from the taxpayer the obligation "to prove the actual value of the ... intangible interests to the satisfaction of the [Assessment Appeals] Board."⁵⁶ The burden then shifts to the taxing authorities to "value intangible assets and actively remove that value from a unit's taxable base value, so that the intangible assets are not directly taxed." In other words, assessors [are to] actively "remove the *fair market value* of intangible assets from the fair market value of the taxable unit prior to assessment."⁵⁷

⁵³ *Assessors' Handbook* Section 502, pp. 159, n. 126, 163, 164; *County of Orange, supra*, at 528, 533-534, n. 9. Related to this, if the cost approach value is well-below the value indication using the income approach, the income approach value may include non-taxable intangible or business enterprise components. (*Assessors' Handbook* Section 502, pp. 163-164; *The Appraisal of Real Estate*, 15th ed., The Appraisal Institute, 2020, p. 667; *County of Orange, supra*, at 533-534.)

⁵⁴ *Elk Hills, Power, supra*, at 614.

⁵⁵ *Elk Hills, Power, supra*, at 615, 617, n. 11 (taxpayer's failure to "proffer evidence" abrogates assessment appeals board's duty to remove value of intangible asset or right).

⁵⁶ *DFS Group, supra*, at 1074-1075 (by showing that the value of intangibles was subsumed, the taxpayer also demonstrates that the assessor "utilized a legally erroneous methodology"); *SHR St. Francis, supra*, at 637.

⁵⁷ *Elk Hills Power, supra*, at 608, 615, 616, 618.

APPROACHES FOR VALUING SPECIFIC TYPES OF NON-TAXABLE INTANGIBLES

As discussed in *Assessors' Handbook* Section 502, all three approaches to value may be used to value non-taxable intangible assets and rights that are to be excluded from the assessed value of taxable property.⁵⁸ However, because data for developing all three approaches is often unavailable, it is usually the case that only one valuation approach is suitable for valuing a specific category of intangible. The discussion that follows presents sample valuations of non-taxable intangibles applying the approach typically used for that category of intangible.

Using the “Income Stream” Generated by Intangibles

Where an intangible asset or right generates a separate income stream that can be quantified, as evidenced by a fee or “relief from royalty” paid to another party, that income stream may be capitalized using a rate that reflects the risk associated with the cash flow the intangible produces.⁵⁹ If the income stream is based solely on the fee incurred for use of the intangible (the “return of”), then an additional step may be required in order to remove the profit (the “return on”) received on the intangible, as well.⁶⁰ This “income stream” approach can be used for valuing franchises, agreements and contracts (management, operating, service, marketing), licenses, and trademark/brand rights.

The discount rate applied to the intangible’s income stream can be developed using a weighted average cost of capital (WACC) analysis based on the capital (debt and equity) structure appropriate for the property under consideration and the type of intangible. The cost of debt and cost of equity used in the WACC analysis may be developed using the capital asset pricing model (CAPM) or other acceptable techniques.⁶¹ The concluded WACC, which represents a discount rate, is converted to a capitalization rate by deducting the long-term growth rate. The concluded rate must also be adjusted to a pre-tax rate in accordance with Property Tax Rule 8(c).⁶² Rates for intangible assets and rights are usually higher than those for real or tangible personal property because income to intangibles has higher risk.⁶³

In the following example, the value of a hotel’s management agreement is determined in two steps. First, the “return of” the management agreement is calculated by subtracting the management fee paid by the hotel’s owner for the services of the hotel manager. This calculation is included in the pro forma income analysis for the entire hotel business enterprise. Next, the “return on” the management agreement is calculated as follows:

⁵⁸ *Assessors' Handbook* Section 502, pp. 161-164.

⁵⁹ The fee/expense and capitalization rate should be at market levels in order to produce the fair market value of the subject intangible. In some cases, market expenses relating to the gross income stream will also need to be deducted.

⁶⁰ *Assessors' Handbook* Section 502, p. 162; *SHR St. Francis, supra*, at 635, 636, 637.

⁶¹ The WACC and CAPM are discussed in *Assessors' Handbook* Section 502, Appendix A, pp. 166-183.

⁶² The procedure for adjusting to pre-tax rates is set forth in *Assessors' Handbook* Section 502, p. 180.

⁶³ *The Appraisal of Real Estate*, 15th ed., The Appraisal Institute, 2020, p. 674.

Management Fee (annual)	\$ 2,000,000
Cost of Capital (pre-tax)	<u>12.00%</u>
Return on Management	\$ 240,000
Capitalization Rate (pre-tax)	<u>10.00%</u> (long-term growth rate = 2.00%)
Value of “Return On”	\$ 2,400,000

In this example, the “return of” was already removed from the valuation of the hotel by the deduction of the management fee in the calculation of the hotel’s business enterprise value. However, that valuation is not complete until the “return on” shown above is also deducted from the hotel’s business enterprise value.⁶⁴

Using “Cost to Create” Intangibles

For some intangible assets and rights, it is appropriate to determine their value using replacement or reproduction cost. The appraiser must determine what it would cost to create or re-create the same asset if it did not exist on the date of value (sometimes referred to as one-time cost savings or cost avoidance). The cost approach can be used to value assembled workforce, business records, operating manuals, technical drawings, operating permits, and customer lists/subscriber base. Each of these intangible assets required expenditure of certain costs to create, and each of them has a calculable cost that would be incurred if they had to be re-created.

Assembled workforce is an intangible asset that can be valued using the cost approach, as shown in the example below:

Annual Employee Payroll/Benefits	\$ 24,000,000 (from operating statements)
Months Required for Training	<u>3</u> (all employee categories)
Value of Assembled Workforce	\$ 6,000,000
Plus: Recruiting, etc. allowance	\$ <u>600,000</u> (10% of Workforce Value)
Final Workforce Value	\$ 6,600,000

In the example above, the months required for training is an average for all categories of employees. The addition for “Recruiting, etc.” includes advertising costs, employment agency placement fees, interviewing expenses, and training expenses.

⁶⁴ An analysis similar to that shown above would be used to value a trademark or technology-based assets using a “relief from royalty” technique by dividing the market royalty that would be paid by the property owner by an appropriate capitalization rate.

Using “Market Sales” of Intangibles

The sales comparison approach can be used when there is an active market for the asset that has been identified. Liquor licenses are an example of an intangible that may be valued using this approach because there is an active market for such licenses.

Valuation of “Service Centers” Operating within Complex Properties

Oftentimes a complex property will include separate business enterprises that operate using the same real and/or personal property. These “businesses within the business” have separate intangible value which must be excluded in order to value and assess only the real/personal property in the complex property appraisal unit. A typical example of this is a full-scale restaurant (“Food & Beverage” or “F&B”) business operation within a large full-service hotel. The business enterprise value of the restaurant is removed through a valuation process that only attributes the value of the real property used by the restaurant to the complex property’s taxable appraisal unit. The analysis below would apply to all of the service centers within a hotel. It also applies to business operations within other types of complex properties.

The process for extracting the restaurant’s business enterprise value is shown below. First, the revenues and expenses are used to determine the net profit directly attributable to the restaurant operation. Then, an estimate of the restaurant’s rental expense for space occupied in the hotel property is estimated and deducted. A management fee is also estimated and deducted. Lastly, the portion of hotel overhead (general and administrative expenses) allocable to the restaurant operation is deducted. The resulting cashflow is then capitalized to produce the value of the non-taxable restaurant business enterprise which is removed from the hotel’s overall business enterprise value.

Food & Beverage Revenues	\$ 40,000,000
Food & Beverage Direct Expenses	\$ 30,000,000
Estimated Market Rent Expense	\$ 2,000,000 (from restaurant industry data)
Management Fee	\$ 1,200,000 (estimate 3% of F&B Revenue)
Hotel Overhead Expenses	\$ <u>5,000,000</u> (portion allocable to F&B)
Cashflow to Food & Beverage	\$ 1,800,000
Capitalization Rate	<u>10%</u>
Value of Restaurant Operation	\$ 18,000,000

SUMMARY OF COURT CASES (In date order)

Set forth below are summaries of the significant California appellate court cases relating to the treatment of non-taxable intangible assets and rights:

Roehm v. County of Orange (Supreme Ct., 1948) 32 Cal.2d 280. Owner of property challenged property tax assessment of license permitting sale of liquor, contending license was a non-taxable intangible asset or right. After reviewing constitutional and legislative history, the court determined that all intangible assets and rights were exempt and immune from property taxation and not taxable in the state. The court pointed out that earnings from intangibles that were not regarded as separate class of property and could not be separately taxed may be “reflected” in the value of taxable property. The court also noted that corporate franchises were not subject to property taxation because they were taxed under the state’s franchise tax laws. Intangible: Liquor license.

De Luz Homes, Inc. v. County of San Diego (Supreme Ct., 1955) 45 Cal.2d 546. In valuing property wherein actual income is derived in large part from enterprise activity and cannot be ascribed entirely to the use of the property, an imputed income analysis may be both useful and appropriate.

Michael Todd Co. v. County of Los Angeles (Supreme Court, 1962) 57 Cal.2d 684. Assessor levied property tax assessment on film negatives for copyrighted motion picture. Taxpayer appealed contending assessment methodology taxed motion picture copyright, a non-taxable intangible. Court agreed that copyright was non-taxable intangible. Court then considered whether values of non-taxable intangibles and rights, such as the copyright, could be included in the market value of otherwise taxable property. The court concluded that taxable property should be valued by “assuming the presence of intangible assets or rights necessary to put the taxable property to beneficial or productive use” and, therefore, assessor’s method of assessing film negatives was proper. Intangible: Copyright.

County of Riverside v. Palm-Ramon Development Co. (Supreme Ct., 1965) 63 Cal.2d 534. Imputed income analysis is both useful and appropriate when property’s actual income is derived in large part from enterprise activity and cannot be ascribed entirely to the use of the property. Intangible: Enterprise activity (development, subleasing, and percentage renting of property for commercial or professional use).

California Portland Cement Co. v. State Bd. of Equalization (Supreme Ct., 1967) 67 Cal.2d 578. Income derived in large part from enterprise activity should not be ascribed to property being appraised; only earnings from appraised property are to be considered. Profits arising largely from enterprise should not be used in capitalization of income method of appraisal if doing so results in tax on income rather than on property. Taxing authority may use imputed income analysis method to impute an appropriate income to the property. Intangible: Business enterprise.

Madonna v. County of San Luis Obispo (Ct. Appeal, 2nd Dist., 1974) 39 Cal.App.3d 57. Taxpayer demonstrated that capitalized income valuation of hotel property improperly included enterprise income. Court held that when the income approach is employed, the income used should be the

expected future income from the property to be appraised and exclude income from businesses or enterprises carried on in the same property; property income must be segregated from business income and only property income should be evaluated for property tax purposes. Intangible: Enterprise value.

Western Title Guaranty Co. v. County of Stanislaus (Ct. Appeal, 5th Dist., 1974) 41 Cal.App.3d 733. Title company challenged assessment of property title records owned and used by company in providing title information services and title insurance policies. The court found that such records did not constitute a separate class of property, i.e., non-taxable intangible property, and the production or earning value of the records could be reflected in the valuation of the taxable property. The court also noted that subsequent to the years at issue in the legal proceeding, the Legislature approved *Revenue and Taxation Code* section 997 which exempts business records from assessment. Intangible: Title company records.

ITT World Communications, Inc. v. County of Santa Clara (Ct. Appeal, 1st Dist., 1980) 101 Cal.App.3d 246. Public utility challenged valuation and assessment of its property asserting method used by taxing authority, capitalization of earnings, included income attributable to enterprise value and that replacement cost new less depreciation (RCNLD) method should have been used because it RCNLD method resulted in a lower value. Court held that taxing authority's conclusion of value in excess of the value indicated by the RCNLD method does not necessarily include enterprise value and the taxpayer had not presented evidence so indicating. Intangible: Enterprise value.

County of Stanislaus v. County of Stanislaus Assessment Appeals Bd. (Ct. Appeal, 5th Dist., 1989) 213 Cal.App.3d 1445. Cable television system operator's right to do business by charging fees to subscribers and making a profit by operating a business under franchises from local governments was a non-taxable intangible asset. Intangible: Right to do business (franchise).

Los Angeles SMSA Limited Partnership v. State Bd. of Equalization (Ct. Appeal, 2nd Dist., 1992) 11 Cal.App.4th 768. Court determined that unitary valuation and taxation of public utility property was appropriate due to the interrelation and operation of the utility as a unit. Court held that unit taxation prevents intangible value from escaping assessment by treating utility property as a whole without differentiation into separate kinds of assets. Court also found that specific evidence of value for principal intangible asset identified by utility (i.e., FCC license) was not provided. Finally, the court concluded that the CEA value indicator (income approach) could reflect enhancement value because the utility's assets were operated as a going concern, and value was not limited to reproduction cost new less depreciation value. Intangible: FCC license.

Freeport-McMoran Resource Partners v. County of Lake (Ct. Appeal, 1st Dist., 1993) 12 Cal.App.4th 634. Court held that agreement for purchase of power plant's electricity at fixed prices that were above market was not a non-taxable intangible asset. The power purchase agreement was not a separate class of property but was inextricably tied to the beneficial use of the property as a power plant. The agreement was assessable because it was the means by which the power plant was put to beneficial use and, therefore, its value must be considered in assessing the plant's full value. Intangible: Power purchase agreement.

County of Los Angeles v. County of Los Angeles Assessment Appeals Bd. (Ct. Appeal, 2nd Dist., 1993) 13 Cal.App.4th 102. Taxpayer rental car companies operated at airports under concession agreements giving companies right to conduct car rental businesses and occupy space at airports. County's valuation of taxpayers' possessory interests by capitalizing concession fees was not an accurate or proper basis to determine the value of the taxable property. Intangible: Right to do business (business opportunities, endeavors, and techniques; advertising, goodwill, reservation systems).

County of Orange v. Orange County Assessment Appeals Bd. (Ct. Appeal, 4th Dist., 1993) 13 Cal.App.4th 524. Intangible assets and rights used by owner and operator of cable television system providing services to subscribers enhanced value of business, not property, and were therefore not taxable. Comparable sales and income approaches to value taxable property were unreliable because values determined using those approaches captured the value of non-taxable intangibles. Cost approach was most reliable because it did not include non-taxable intangible value, making it the only analytically and procedurally proper valuation. Finally, components of an appraisal unit, specifically intangible assets and rights, may be valued separately from the entire appraisal unit. Intangibles: Franchises, licenses, subscriber base, marketing contracts, management, operating systems, workforce in place, going concern value, and goodwill.

Shubat v. Sutter County Assessment Appeals Bd. (Ct. Appeal, 3rd Dist., 1993) 13 Cal.App.4th 794. The court affirmed assessment appeals board's valuation of and allocation of value to non-taxable intangibles identified by the taxpayer (cable television system owner/operator) and to taxable possessory interest. The court dismissed assessor's argument that non-taxable intangibles could not be separated from real property for valuation purposes, holding that intangibles such as going concern and franchise rights are not "subsumed as a matter of law" and only relate to real property in their connection with the business being conducted on such property. Intangibles: Subscriber base, franchise operating rights (right to conduct business, franchise), assembled workforce, noncompetition agreement, going concern (business procedures, accounting/billing systems, programming contracts, relationships with advertisers).

Service America Corp. v. County of San Diego (Ct. Appeal, 4th Dist., 1993) 15 Cal.App.4th 1232. Operator of food service concession in public sports stadium was assessed using an income method that relied upon capitalizing the entire concession fee (less expenses) the operator paid to the stadium's government owner. The court held the portion of the concession fee the operator paid in excess of fair rental value for stadium space was attributable to non-taxable intangible enterprise value arising from the operator's relationship with sports teams, exclusive rights to sell, and performance of services. Intangible: Enterprise value.

GTE Sprint Communications Corp. v. County of Alameda (Ct. Appeal, 1st Dist., 1994) 26 Cal.App.4th 992. Court held that taxing authority's appraisers had a legal duty to identify and value intangible assets and exclude that value from the assessment of the taxable property; taxing authority erred by actively ignoring evidence of separate intangible assets presented by the taxpayer, assuming valuation method that was used (income approach) only assessed enhancement value of intangibles, and including the entire value of the widely-accepted categories of intangibles identified by the taxpayer in the value of the tangible property. Intangibles: Trade name, customer

base, assembled workforce, transmission capacity leases, advertising agency relationships, advertising materials, avoided start-up costs, goodwill.

American Sheds, Inc. v. County of Los Angeles (Ct. Appeal, 2nd Dist., 1998) 66 Cal.App.4th 384. Court held that landfill use operating permit was a site specific attribute of real property and not a non-taxable intangible asset or right. Intangible: Landfill use operating permit.

Mola Development Corp. v. Orange County Assessment Appeals Bd. (Ct. Appeal, 4th Dist., 2000). Buyer who purchases real property plus an intangible is only taxed on the value of the property. Intangible: Indemnification agreement.

Watson Cogeneration Co. v. County of Los Angeles (Ct. Appeal, 2nd Dist., 2002) 98 Cal.App.4th 1066. Court ruled that assessor acted properly in using actual above-market prices set by power purchase agreement to assess electric power plant. The government-facilitated power purchase agreement, which guaranteed a stable above-market income to the power plant, was different from other types of non-taxable intangible assets because it was inextricably intertwined with the subject power plant and specific to the market in which the plant operated. Intangible: Power purchase agreement.

County of Los Angeles v. Southern California Edison Co. (Ct. Appeal, 2nd Dist., 2003) 112 Cal.App.4th 1108. In valuing electric power generating plants for transfer tax purposes, using property tax valuation standards, value of intangible assets must be excluded pursuant to *Revenue and Taxation Code* sections 110(d) and (e) and 212(c). Intangibles: Going concern value, goodwill, workforce in place, proximity of infrastructure, operating permits.

Elk Hills Power, LLC v. Board of Equalization (Supreme Ct., 2013) 57 Cal.4th 593. Court reconciled *Revenue and Taxation Code* sections 110(d) and 212(c) with section 110(e), holding that taxing authorities must actively remove fair market value of non-taxable intangible assets and rights while, at the same time, assuming the presence of such intangibles in valuing the taxable property. The court explained that where income attributable to enterprise-related intangibles directly enhances or contributes to the income of the business operating on taxable property, the value of the intangibles' income stream must be deducted prior to assessment so the intangibles are not directly taxed or improperly subsumed in the valuation of taxable property. The court also found that intangible rights to do business exercised in connection with use of real property are not intangible attributes of real property under *Revenue and Taxation Code* section 110(f). In addition, the court affirmed that a challenge to an appraisal methodology that includes the value of non-taxable intangible assets presents a question of law subject to de novo review. Lastly, the court ruled that when a taxpayer presents evidence that the fair market value of an intangible asset contributes to the value of the taxable property, the taxing authorities must deduct that value prior to assessment. Intangibles: Emission reduction credits, enterprise activity (goodwill, customer base, franchise, and operating contracts).

SHC Half Moon Bay v. County of San Mateo (Ct. Appeal, 1st Dist., 2014) 226 Cal.App.4th 471. Owner and operator of hotel contended assessor's income approach valuation of property failed to attribute hotel's income stream that was directly related to enterprise activity to specifically identified non-taxable intangible assets and rights and, as a result, hotel's assessment failed to

exclude the values for such intangibles. Testimony before assessment appeals board showed assessor's deduction of the management and franchise fee paid by the hotel removed some but not all of the hotel's non-taxable intangible business value. The court ruled that the deduction of the management and franchise fee did exclude the intangible asset of goodwill; however, the court's ruling was based on a lack of substantial evidence definitively showing that deduction of such fee did not capture and remove the value of goodwill. Intangibles: Assembled workforce, parking lot leasehold interest, agreement with golf course operator, and goodwill.

DFS Group, L.P. v. County of San Mateo (Ct. Appeal, 1st Dist., 2019) 31 Cal.App.5th 1059. Taxpayer claimed its exclusive right to operate duty-free retailing concession at San Francisco International Airport was non-taxable under *Revenue and Taxation Code* section 110(d)(3). County assessed taxpayer's possessory interest using income approach that capitalized the entire concession fee taxpayer paid to airport. Court held the County's assessment using the entire concession fee was illegal as it captured the value of taxpayer's non-taxable exclusive concession right to sell duty-free goods at airport. Court also ruled that taxpayer claiming exemption for non-taxable intangible only has to put forth evidence that intangible has been subsumed in valuation and need not prove value of intangible. Intangible: Exclusive right (airport duty-free goods retailing concession).

SHR St. Francis, LLC v. City and County of San Francisco (Ct. Appeal, 1st Dist., 2023) 94 Cal.App.5th 622. Assessor valued hotel property using income approach, removing value of non-taxable intangibles by deducting the fees or expenses associated with intangibles from the hotel's income stream. Hotel owner contended assessor's fee/expense deductions did not remove the full value of four identified intangibles. The court agreed with owner, holding that such deductions caused values of non-taxable intangibles (management agreement, in-room movies service, and laundry service, but not attrition income) to be subsumed in the value of the hotel's taxable property. Citing Property Tax Rule 8(e) and *Assessors' Handbook* Section 502, the court explained that the assessor's technique of deducting fees or expenses only removed the "return of" but not the "return on" intangibles. The court also found that the contracts for the identified services were non-taxable intangibles because income from those contracts directly contributed to the going concern value of the hotel. Finally, the court said the taxpayer met its burden of showing that the assessor's valuation method subsumed the value of non-taxable intangibles and, having done so, taxpayer did not have to prove the value of the intangible value subsumed by the assessor's method. Intangibles: Management agreement, in-room movies service, guest laundry services, attrition income.

Olympic and Georgia Partners, LLC v. County of Los Angeles (Supreme Ct., 2025) 18 Cal.5th 739. Owner and developer of convention center hotel challenged assessor's inclusion of certain non-taxable intangible assets and rights in the assessed value of property: (1) transient occupancy tax (TOT) agreement; (2) key money agreement (right to manage the hotel property); and (3) enterprise assets (management/franchise agreement, food and beverage operation, assembled workforce). The court held that the income generated by the TOT and key money agreements derived not from enterprise activity but from the beneficial use of the hotel property and, therefore, the values of the agreements were properly included and assessed with the hotel's taxable property. Regarding the enterprise assets, the court remanded to the assessment appeals board the question of their values (the parties agreed that the enterprise assets were non-taxable intangibles).

PROPOSED

Intangibles: Transient occupancy tax agreement, key money agreement, management/franchise agreement, food and beverage operation, and assembled workforce.

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