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No. 2020/034

July 29, 2020

TO COUNTY ASSESSORS:

2019 LITIGATION

This letter summarizes court cases involving property tax issues that were decided in 2019 by California's Courts of Appeal.

DFS Group, L.P. v. County of San Mateo (2019) 31 Cal.App.5th 1059

The plaintiff, the holder of an exclusive lease and concession in an airport terminal for sale of duty-free merchandise, brought suit for refund of property tax assessment on the possessory interest, which had been affirmed by county assessment appeals board. The County Assessor's valuation used the income approach methodology to value the leasehold interest based upon the entire fee the plaintiff was required to pay for its rights, in effect, treating that entire amount as economic rent. The plaintiff contended this included valuable, but non-taxable exclusive concession rights and taxing such non-taxable intangible rights would be a violation of Revenue and Taxation Code¹ sections 110(d) and 212(c). The trial court affirmed the assessment appeals board's decision. However, the appellate court agreed with the plaintiff.

Harmony Gold U.S.A., Inc. v. County of Los Angeles (2019) 31 Cal.App.5th 820

The County Assessor made an erroneous change in ownership determination, resulting in increased taxes beginning in fiscal year 2007-08. Taxpayer filed an assessment appeal in 2011, based on section 51.5(a), which requires a County Assessor to correct a non-judgmental error in the base year value in any year the error is discovered, and requested refunds for all years affected by the erroneous determination. The county argued that pursuant to section 80, refunds were limited to a time period starting from the year in which the application was filed. The appellate court agreed with the county and trial court, holding that section 51.5(a) only governs non-judgmental errors to the base year value and differentiated it from section 80(a)(5), which governs the applicable refund's statute of limitations.

SSL Landlord, LLC v. County of San Mateo (2019) 35 Cal.App.5th 262

After the trial court remanded a tax refund action back to the county assessment appeals board to clarify its valuation, the taxpayer sought the award of attorneys' fees under sections 1611.6 and 5152. The trial court denied, and the taxpayer appealed. The appellate court affirmed the denial of attorney's fees under both statutes. Section 1611.6 was found inapplicable, as the assessment appeals board's determination was not done in an arbitrary or capricious way such that its findings were so deficient to support an allowance of attorney's fees. Similarly, section 5152 was

¹ All statutory references are to the Revenue and Taxation Code, unless otherwise provided.

found inapplicable because all three prerequisites had not been met as the court (1) had not allowed recovery of taxes, (2) did not find the assessment to be made in violation of the law or a Board of Equalization (BOE) rule, and (3) did not find that the assessor subjectively believed that a law or BOE rule was unconstitutional or invalid when assessing the property and failed to bring the requisite declaratory relief action.

The full text of these court cases may be viewed from the California Courts website at www.courts.ca.gov/opinions-slip.htm. If you have any questions regarding any of these court cases, please contact the County-Assessed Properties Division at 1-916-274-3350.

Sincerely,

/s/ David Yeung

David Yeung
Deputy Director
Property Tax Department

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