Rulemaking File

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cc: Dean Kinnee

RECEIVED
JUL 29 2015
by EXECUTIVE DIRECTOR'S OFFICE
STATE BOARD OF EQUALIZATION

State of California
Office of Administrative Law

In re:
Board of Equalization

Regulatory Action:

Title 18, California Code of Regulations

Adopt sections: 474
Amend sections:
Repeal sections:

NOTICE OF APPROVAL OF REGULATORY ACTION

Government Code Section 11349.3

OAL Matter Number: 2015-0616-02

OAL Matter Type: Regular (S)

This rulemaking action adopts section 474 in Title 18 of the California Code of Regulations and establishes that, for purposes of determining a decline in the value of a petroleum refining property, for tax-assessment purposes, the land, improvements, and fixtures of such a property are rebuttably presumed to constitute a single appraisal unit, except when measuring a decline in value caused by disaster.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 10/1/2015.

Date: July 27, 2015

Dale P. Mentink
Senior Attorney

For: DEBRA M. CORNEZ
Director

Original: Cynthia Bridges
Copy: Richard Bennion

OFFICE OF ADMINISTRATIVE LAW
300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 323-6225 FAX (916) 323-6826

DEBRA M. CORNEZ
Director

MEMORANDUM

TO: Richard Bennion
FROM: OAL Front Desk
DATE: July 28, 2015
RE: Return of Rulemaking Materials
OAL Matter Number 2015-0616-02
OAL Matter Type Regular (S)

OAL hereby returns the rulemaking record your agency submitted for review regarding "Petroleum Refining Properties."

If this is an approved matter, it contains a copy of the regulation(s) stamped "ENDORSED APPROVED" by the Office of Administrative Law and "ENDORSED FILED" by the Secretary of State. The effective date of an approved regulation is specified on the Form 400 (see item B.5). **Beginning January 1, 2013**, unless an exemption applies, Government Code section 11343.4 states the effective date of an approved regulation is determined by the date the regulation is filed with the Secretary of State (see the date the Form 400 was stamped "ENDORSED FILED" by the Secretary of State) as follows:

(1) **January 1** if the regulation or order of repeal is filed on September 1 to November 30, inclusive.
(2) **April 1** if the regulation or order of repeal is filed on December 1 to February 29, inclusive.
(3) **July 1** if the regulation or order of repeal is filed on March 1 to May 31, inclusive.
(4) **October 1** if the regulation or order of repeal is filed on June 1 to August 31, inclusive.

If an exemption concerning the effective date of the regulation approved in this matter applies, then it will be specified on the Form 400. The Notice of Approval that OAL sends to the agency will include the effective date of the regulation. The history note that will appear at the end of the regulation section in the California Code of Regulations will also include the regulation's effective date. Additionally, the effective date of the regulation will be noted on OAL's web site after OAL posts the Internet Web site link to the full text of the regulation that is received from the agency. (Gov. Code, secs. 11343 and 11344.)

Please note this new requirement: Unless an exemption applies, Government Code section 11343 now requires:

1. Section 11343(c)(1): Within 15 days of OAL filing a state agency's regulation with the Secretary of State, the state agency is required to post the regulation on its Internet Web site in an easily marked and identifiable location. The state agency shall keep the regulation posted on its Internet Web site for at least six months from the date the regulation is filed with the Secretary of State.

2. Section 11343(c)(2): Within five (5) days of posting its regulation on its Internet Web site, the state agency shall send to OAL the Internet Web site link of each regulation that the agency posts on its Internet Web site pursuant to section 11343(c)(1).

OAL has established an email address for state agencies to send the Internet Web site link to for each regulation the agency posts. Please send the Internet Web site link for each regulation posted to OAL at postedregslink@oal.ca.gov.

NOTE ABOUT EXEMPTIONS. Posting and linking requirements do not apply to emergency regulations; regulations adopted by FPPC or Conflict of Interest regulations approved by FPPC; or regulations not subject to OAL/APA review. However, an exempt agency may choose to comply with these requirements, and OAL will post the information accordingly.

DO NOT DISCARD OR DESTROY THIS FILE

Due to its legal significance, you are required by law to preserve this rulemaking record. Government Code section 11347.3(d) requires that this record be available to the public and to the courts for possible later review. Government Code section 11347.3(e) further provides that "...no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of." See also the State Records Management Act (Government Code section 14740 et seq.) and the State Administrative Manual (SAM) section 1600 et seq. regarding retention of your records.

If you decide not to keep the rulemaking records at your agency/office or at the State Records Center, you may transmit it to the State Archives with instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. See Government Code section 11347.3(f).

Enclosures

STATE OF CALIFORNIA--OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

REGULAR

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-2014-1010-02	2015-0616-02S	

For use by Office of Administrative Law (OAL) only

2015 JUN 16 AM 10:59

OFFICE OF ADMINISTRATIVE LAW

NOTICE

REGULATIONS

ENDORSED - FILED
in the office of the Secretary of State of the State of California

JUL 27 2015

3:20 PM

AGENCY WITH RULEMAKING AUTHORITY
State Board of Equalization

AGENCY FILE NUMBER (If any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE

3. NOTICE TYPE	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
☐ Notice re Proposed Regulatory Action ☐ Other			

OAL USE ONLY	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE
	☐ Approved as Submitted ☐ Approved as Modified ☐ Disapproved/ Withdrawn	2014, 432	10/24/2014

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)
Petroleum Refining Properties

1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) **(Including title 26, if toxics related)**

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)

ADOPT
474

AMEND

REPEAL

TITLE(S)
~~81~~ 18

3. TYPE OF FILING

- ☒ Regular Rulemaking (Gov. Code §11346)
- ☐ Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)
- ☐ Emergency (Gov. Code, §11346.1(b))
- ☐ Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.
- ☐ Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
- ☐ Emergency Readopt (Gov. Code, §11346.1(h))
- ☐ File & Print
- ☐ Other (Specify) _____
- ☐ Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
- ☐ Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

- ☒ Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))
- ☐ Effective on filing with Secretary of State
- ☐ §100 Changes Without Regulatory Effect
- ☐ Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

- ☐ Department of Finance (Form STD. 399) (SAM §6660)
- ☐ Fair Political Practices Commission
- ☐ State Fire Marshal
- ☐ Other (Specify) _____

7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
Richard E. Bennion	(916) 445-2130	(916) 324-3984	rbennion@boe.ca.gov

8. **I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.**

SIGNATURE OF AGENCY HEAD OR DESIGNEE
Joann Richmond

DATE
June 15, 2015

TYPED NAME AND TITLE OF SIGNATORY
Joann Richmond, Chief, Board Proceedings Division

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUL 27 2015

Office of Administrative Law

Final Proposed Text of

California Code of Regulations, Title 18, Section

474, *Petroleum Refining Properties*

(All of the text below is proposed to be added to the California Code of Regulations)

474. Petroleum Refining Properties.

(a) The provisions of this rule apply to the valuation of the real property, personal property, and fixtures used for the refining of petroleum.

(b) General.

(1) The unique nature of property used for the refining of petroleum requires the application of specialized appraisal techniques designed to satisfy the requirements of article XIII, section 1, and article XIII A, section 2, of the California Constitution. To this end, petroleum refineries and other real and personal property associated therewith shall be valued pursuant to the principles and procedures set forth in this section.

(2) Notwithstanding any other provision in this section, any appropriate valuation method described in section 3 of title 18 of this code may be applied in the event of a change in ownership in a petroleum refining property.

(c) Definitions. For the purposes of this section:

(1) "Petroleum refining property" means any industrial plant, including real property, personal property, and fixtures, used for the refining of petroleum, as identified in Standard Industrial Classification (SIC) System Codes 2911 and 2992, or North American Industry Classification System (NAICS) Codes 32411 and 324191.

(2) "Appraisal unit" consists of the real and personal property that persons in the marketplace commonly buy and sell as a unit.

(d) Declines in Value. For the purposes of this section:

(1) Declines in value of petroleum refining properties will be determined by comparing the current lien date full value of the appraisal unit to the indexed base year full value of the same unit.

(2) The land, improvements, and fixtures and other machinery and equipment classified as improvements for a petroleum refining property are rebuttably presumed to constitute a single appraisal unit, except when measuring declines in value caused by disaster, in which case land shall constitute a separate unit.

(3) In rebutting this presumption, the assessor may consider evidence that:

(A) The land and improvements including fixtures and other machinery and equipment classified as improvements are not under common ownership or control and do not typically transfer in the marketplace as one economic unit; or,

(B) When the fixtures and other machinery and equipment classified as improvements are not functionally and physically integrated with the realty and do not operate together as one economic unit.

Note: Authority cited: Section 15606(c), Government Code. Reference: Article XIII Section 1, and Article XIII A, Section 2, California Constitution; Sections 51 and 110.1, Revenue and Taxation Code; and *Western States Petroleum Association v. Board of Equalization* (2013) 57 Cal.4th 401.

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653–7715. Please have the agency name and the date filed (see below) when making a request.

File# 2015–0612–01
BOARD OF ACCOUNTANCY
Disciplinary Guidelines

This regulatory action by the Board of Accountancy incorporates revised model disciplinary guidelines into section 98 of title 16 of the California Code of Regulations.

Title 16
AMEND: 98
Filed 07/23/2015
Effective 10/01/2015
Agency Contact: Pat Billingsley (916) 561–1782

File# 2015–0616–02
BOARD OF EQUALIZATION
Petroleum Refining Properties

This rulemaking action adopts section 474 in Title 18 of the California Code of Regulations and establishes that, for purposes of determining a decline in the value of a petroleum refining property, for tax–assessment purposes, the land, improvements, and fixtures of such a property are rebuttably presumed to constitute a single appraisal unit, except when measuring a decline in value caused by disaster.

Title 18
ADOPT: 474
Filed 07/27/2015
Effective 10/01/2015
Agency Contact: Richard Bennion (916) 445–2130

File# 2015–0616–01
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
Disclosure Requirements for Renewal of License

This rulemaking by the Board of Vocational Nursing and Psychiatric Technicians amends sections in Title 16 of the California Code of Regulations, for the purpose of updating the requirement regarding disclosure of convictions for violation of the law. Currently, traffic infractions not involving alcohol, dangerous drugs, or controlled substances under $300.00, do not need to be disclosed. This action amends that provision to exclude traffic infractions under $1,000.00.

Title 16
AMEND: 2517.5, 2575.5
Filed 07/27/2015
Effective 10/01/2015
Agency Contact: Rocio Llamas (916) 263–2042

File# 2015–0615–04
CALIFORNIA HORSE RACING BOARD
Jockey's Riding Fee

Through this regular rulemaking, the California Horse Racing Board (the "Board") is amending section 1632 in title 4 of the California Code of Regulations. Business and Professions Code section 16501, subdivision (b)(1), requires the scale of minimum jockey riding fees for losing mounts to be increased whenever the State minimum wage is increased by the percentage of that increase. As such, the Board is amending Section 1632 to adjust the non–winning jockey riding fee scale for losing mounts to reflect the California minimum wage increase of 12.5 percent that became effective July 1, 2014. Additionally, the Board is amending the non–winning jockey riding fee scale to reflect an increase of 12.5 percent for the second and third place mounts in races with a gross purse of $9,999 or less.

Title 4
AMEND: 1632
Filed 07/23/2015
Effective 10/01/2015
Agency Contact:
Nicole Lopes–Gravely (916) 987–3456

File# 2015–0622–05
CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE
CTCAC Regulations Implementing Federal and State LIHTC Laws

This action by the California Tax Credit Allocation Committee (Committee) amends section 10325 of title 4 of the California Code of Regulations on the application selection criteria for credit ceiling applications. This amendment is exempt from the procedural requirements of the Administrative Procedure Act and is effective upon adoption by the Committee pursuant to section 50199.17 of the Health and Safety Code

Title 4
AMEND: 10325
Filed 07/28/2015
Effective 06/10/2015
Agency Contact: Gina Ferguson (916) 651–7707

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Title 18. Public Revenue

Property Tax

Property Tax Rule 474 *Petroleum Refining Properties*

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4. Public Comment From Robert Cooney, Hand delivered on September 10, 2013
5. Chief Counsel Matters, Item J1, September 10, 2013
   - Chief Counsel Memo Dated August 28, 2013
   - Attachment 1, Letter Dated August 20, 2013
   - Attachment 2, Proposed repeal Text Rule 474
6. Reporter's Transcript Chief Counsel Matters, September 10, 2013
7. Estimate of Cost or Savings, October 15, 2014
8. Economic and Fiscal Impact Statements, October 14, 2014
9. Notice of Publications
   - Form 400 and Notice, Publication Date October 24, 2014
   - Email sent to Interested Parties, October 24, 2014
   - CA Regulatory Notice Register 2014, Volume No. 43-Z
10. Notice to Interested Parties, October 24, 2014

    The following items are exhibited:
    - Notice of Hearing
    - Initial Statement of Reasons
    - Proposed Text of Rule 474
    - Regulation History
11. Statement of Compliance
12. Public Comment, Michelle Schumacher, October 24, 2014
13. Public Comment Jeffrey Prang, Assessor, Office of the Assessor, County of Los Angeles, December 8, 2014
14. Public Comment David Twa, County Administrator, County of Contra Costa, December 15, 2014
15. Public Comment Donald L. Flessner, Executive Vice-President, Baker & O'Brien, Inc, December 16, 2014
16. Public Comment Gus Kramer, Assessor, Office of the Assessor, Contra Costa County, December 16, 2014

17. Public Comment Gina Rodriquez, Vice President Sales Tax Policy, California Taxpayers, Association, December 17, 2014

18. Public Comment Catherine H. Reheis-Boyd, President, Western States Petroleum Association, December 17, 2014

19. Reporter's Transcript, Item F3, December 18, 2014

20. Draft Minutes, December 18, 2014, and Exhibits

- Notice of Proposed Regulatory Action
- Initial Statement of Reasons
- Proposed Text of Rule 474
- Regulation History

VERIFICATION

I, Richard E. Bennion, Regulations Coordinator of the State Board of Equalization, state that the rulemaking file of which the contents as listed in the index is complete, and that the record was closed on June 15, 2015 and that the attached copy is complete.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

June 15, 2015

Richard E. Bennion
Regulations Coordinator
State Board of Equalization

Final Statement of Reasons for the Re-Adoption of California Code of Regulations, Title 18, Section 474, *Petroleum Refining Properties*

Update of the Information Contained in the Initial Statement of Reasons

The factual basis, specific purpose, and necessity for, the problem to be addressed by, and the anticipated benefit from the Board's re-adoption of California Code of Regulations, title 18, section (Rule) 474, *Petroleum Refining Properties,* are the same as provided in the initial statement of reasons. The Board anticipates that the re-adoption of Rule 474 will clarify the treatment of petroleum refinery property for purposes of measuring declines in value, and thereby benefit county assessors and the owners of petroleum refineries by promoting fairness and uniformity in the assessment of petroleum refinery property throughout the state.

The re-adoption of Rule 474 is not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Rule 474.

The Board did not rely on any data or any technical, theoretical, or empirical study, report, or similar document in proposing the re-adoption of Rule 474 that was not identified in the initial statement of reasons, or which was otherwise not identified or made available for public review prior to the close of the public comment period.

The Board held a public hearing on December 18, 2014, regarding the re-adoption of Rule 474. The Board received and considered public comments supporting the factual basis for the Board's re-adoption of Rule 474 and the Board's assessment of the economic impact of the re-adoption of Rule 474, which are quoted below. The Board also received and considered public comments opposing the re-adoption of Rule 474 and the Board's assessment of the economic impact of the re-adoption of Rule 474, which are responded to below. Most of the comments opposing the Board's re-adoption of Rule 474 are quoted in their entirety below. However, some of the comments, particularly some of the comments in the 15-page letter from Ms. Catherine H. Reheis-Boyd, are summarized or partially quoted below.

Page 8 of the initial statement of reasons provides that the Board received an August 20, 2013, letter from Sharon Moller, the Chief Deputy Assessor for the Los Angeles County Assessor's Office, and "[i]n the letter, Ms. Moller explained that the California Supreme Court's opinion in [*Western States Petroleum Association v. Board of Equalization* (2013) 57 Cal.4th 401 (hereafter *WSPA v. BOE*)], which upheld the substantive validity of Rule 474, but still invalidated the rule on procedural grounds, created an issue (or problem within the meaning of Gov. Code, § 11346.2, subd. (b)(1)) for county assessors in counties with petroleum refinery property as to:

- Whether petroleum refinery land, improvements, and fixtures constitute a single appraisal unit for determining declines in value, under [Revenue and Taxation

Code (RTC)] section 51 and the substantive policy expressed in Rule 474, because petroleum refineries are commonly bought and sold as a unit in the marketplace; or

- Whether petroleum refinery fixtures constitute a separate appraisal unit, as provided in Rule 461, subdivision (e) (hereafter Rule 461(e))."

Page 10 of the initial statement of reasons provides that the "Board determined that it is reasonably necessary to re-adopt Rule 474 for the specific purpose of addressing the issue (or problem) identified in Ms. Moller's August 20, 2013, letter by clarifying that petroleum refinery land, improvements, and fixtures are rebuttably presumed to constitute a single appraisal unit for determining declines in value because petroleum refineries are commonly bought and sold as a unit in the marketplace." And, the public comments in support of the Board's re-adoption of Rule 474 (quoted below) provide further support for the Board's determination that it is necessary to re-adopt Rule 474 to address the issue (or problem) identified in Ms. Moller's letter. Therefore, at the conclusion of the December 18, 2014, public hearing, the Board voted to re-adopt proposed Rule 474 without making any changes.

In addition, the public comments in support of the Board's re-adoption of Rule 474 provide further support for the Board's conclusion, on page 13 of the initial statement of reasons, "that persons in the marketplace still commonly buy and sell operable California petroleum refineries as a unit, just as they did when the Board first adopted Rule 474." And, the public comments opposing the re-adoption of Rule 474 do not provide any information that would tend to indicate that the marketplace for operable California petroleum refineries has substantially changed in any relevant way since the Board first voted to adopt Rule 474 in 2006 and since the California Supreme Court decided *WSPA v. BOE* in 2013.

Moreover, the public comments in support of the Board's re-adoption of Rule 474 provide further support for the Board's conclusion, on page 14 of the initial statement of reasons, that "the re-adoption of Rule 474 is fully consistent with the existing mandates of RTC section 51(d), and that there is nothing in the proposed re-adoption of Rule 474 that would significantly change how individuals and businesses, including county assessors and petroleum refinery owners, would generally behave due to the current provisions of RTC section 51(d) as interpreted by the California Supreme Court in *WSPA v. BOE*."

Furthermore, the factual basis has not changed for the Board's determinations on pages 14 and 15 of the initial statement of reasons that:

- "[T]he re-adoption of Rule 474 does not impose any costs on any persons, including businesses, in addition to whatever costs are imposed by RTC section 51(d) as interpreted by the California Supreme Court in *WSPA v. BOE*, and there is nothing in Rule 474 that would impact revenue";
- "The . . . re-adoption of Rule 474 will not have a measurable economic impact on individuals and business, including county assessors and petroleum refinery

owners, that is in addition to whatever economic impact the enactment of RTC section 51(d), as interpreted by the California Supreme Court in *WSPA v. BOE*, has and will have on individuals and businesses";

- "[T]he proposed re-adoption of Rule 474 is not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000";
- "[T]he proposed re-adoption of Rule 474 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California";
- "[T]he re-adoption of Rule 474 will not affect the benefits of Rule 474 to the health and welfare of California residents, worker safety, or the state's environment"; and
- "[T]he re-adoption of Rule 474 will not have a significant adverse economic impact on business."

And, the public comments in support of the Board's assessment of the economic impact of the re-adoption of Rule 474 provide further support for these determinations.

Finally, the Board included a statement on page 15 of the initial statement of reasons that "[t]he proposed re-adoption of Rule 474 may affect small businesses" because the Board had not conclusively determined that the re-adoption of Rule 474 could not possibly have some minor unforeseen effect on small business at the time the Board prepared the initial statement of reasons. However, no interested parties identified any impact the Board's re-adoption of Rule 474 would actually have on small business prior to the Board's re-adoption of Rule 474.

Public Comments in Support of Re-Adopting Rule 474, the Board's Response to the Recommendations that the Board Re-Adopt Rule 474 to Reduce Potential Litigation, and Discussion of the Comments Regarding the Application of the Rebuttable Presumption in Rule 474

Comments from Los Angeles County

The Board received a letter dated December 9, 2014, from Mr. Jeffrey Prang, Los Angeles County Assessor, in support of the Board's re-adoption of Rule 474 and the Board's assessment of the economic impact of re-adopting Rule 474. Mr. Prang's letter provides as follows:

> The Los Angeles County Assessor's Office wishes to reiterate its support for the State Board of Equalization's pursuit to re-adopt California Code of Regulations, title 18, section (Rule) 474, *Petroleum Refining Properties*. As the home of six of the eleven large petroleum refineries in the State of California, we advocate the Board's efforts to promote fairness and uniformity in the assessment of petroleum refineries in the State for the purpose of measuring declines in value.

Rule 474's original adoption was ruled procedurally invalid by the California Supreme Court in *WSPA v. BOE* solely because the Board failed to provide an adequate statement of economic impact as required by the Administrative Procedure Act. More importantly, the Court affirmed the policy enacted in Rule 474 that the performance of "decline-in-value" appraisals of petroleum refinery properties should be based on the unit that persons in the marketplace commonly buy and sell. This market based approach ensures that reductions in property values are measured according to fair market value.

Land, improvements and fixtures and other machinery and equipment classified as improvements for a petroleum refining property are rebuttably presumed to constitute a single appraisal unit for determining declines in value because petroleum refineries are commonly bought and sold as a unit in the marketplace. Rule 474 still allows assessors the flexibility to consider evidence that shows that land, improvements and fixtures did not transfer as an economic unit when such circumstances present themselves.

Rule 474 is consistent with current assessment practice being employed in the County of Los Angeles. The re-adoption of Rule 474 would clarify for county assessors that petroleum refinery land, improvements and fixtures constitute a single appraisal unit which is consistent with RTC section 51 (d) as opposed to petroleum refinery fixtures constituting a separate appraisal unit as provided in Rule 461.

Los Angeles County Assessor's Office has provided economic data to the Board to assist it in completing the economic impact assessment. We believe the Board's assessment as reflected in the Initial Statement of Reasons is in accordance with the APA and *WSPA v. BOE.* The study makes a reasoned estimate of all the cost impacts of the proposed rule on the affected parties.

In conclusion, we support the re-adoption of Rule 474 which will assist assessors by clarifying the appraisal unit to be used when valuing petroleum refining properties for declines in value. This practice is consistent with what is observed in the marketplace and has been affirmed by the California Supreme Court. The economic impact assessment has been completed as required by the APA and *WSPA v. BOE.*

We appreciate the Board taking steps to proceed with the readopting of Rule 474. My Office stands ready to advocate in support of this action and to provide expert testimony in this process.

Mr. Albert Ramseyer, Deputy County Counsel for Los Angeles County, appeared at the public hearing on December 18, 2014, on behalf of Mr. Prang and provided the following

testimony in support of the Board's re-adoption of Rule 474:

> We support the proposed rule change. We believe it's consistent with good appraisal practice. The issue . . . is how should an assessor do a decline in value assessment of an oil refinery? And the rule provides, as we understand it, that decline in value assessment of an oil refinery should be done on a fair market value basis, consistent with how a refinery typically is bought and sold in the marketplace.
>
> Now, if a taxpayer comes before the assessor or the Assessment Appeals Board and can prove that -- that his refinery is actually being bought and sold in pieces, on a scrap basis, we would take that into consider[ation] in doing our decline in value assessment, or our . . . review.
>
> But typically, you know, our experience is that oil refineries are bought and sold as operating enterprises, as economic units. This rule is consistent with the actual -- actual transactions in the marketplace and -- and these properties should be appraised consistent with the market, consistent with how other taxpayers are typically assessed in . . . these circumstances. And so we strongly support the rule.
>
> Our office has worked with your staff to provide the economic data that's an input into the -- into the economic impact assessment. And frankly, that's a bit beyond our expertise. But on the substance, we strongly support the rule and we urge its adoption. (Transcript of Public Hearing, pp. 10-11.)

Comments from Contra Costa County

The Board received a letter dated December 16, 2014, from Mr. Donald Flessner, Executive Vice-President of Baker & O'Brien, Inc., in support of the Board's re-adoption of Rule 474. Mr. Flessner's letter provides as follows:

> I write in support of Property Tax Rule 474. My background includes more than 30 years of experience as a chemical engineer, as a commercial manager, and as a consultant in the petroleum refining industry. As reflected in my resume and accompanying experience list, which are attached to this letter, I spent over a decade working in refineries and learning various aspects of the refining business during my career in industry. Since that time, I have worked as a consulting expert in the petroleum refining, gas processing, and petrochemical industries. In this role, I have been involved in a variety of assignments involving the acquisition, privatization, and financing of petroleum refineries in the United States and abroad, and have served as an expert witness in

numerous litigation matters involving the refining and chemical process industries.

I am familiar with California property taxation and Rule 474 through my work for Contra Costa County. As a consultant for Contra Costa County, I have assisted the County in appraising the four refineries located there. I have also provided expert testimony to assist the County to defend against assessment appeals challenging the assessed value of taxable refinery property, among other services. I also have advised the County concerning the facts supporting the valuation of petroleum refineries, as provided by Rule 474.

The first fact that supports adoption of Rule 474 is that refineries are bought and sold as a single unit. During my career, I have reviewed the details of more than one hundred refinery sales and I only recall a handful of instances when a refinery's equipment has been sold separately from its land and improvements. Most, if not all of these sales, I would categorize as exigency sales that were not open market transactions or involved refineries that were no longer in operation. Due to this reality, there is little data to establish separate fair market values for refinery land, improvements and equipment.

The second significant fact supporting the necessity for Rule 474 is that buyers, sellers, and refinery operators are primarily interested in the income that is generated by the refinery. The income potential of a petroleum refinery is dictated by the installed processing equipment, which generally exceeds 80% of the total value of taxable property. However, because the fixtures at a refinery cannot contribute to income without the land on which they rest and, conversely, land at a refinery cannot produce income without the attached fixtures, income resulting from the refinery cannot be rationally allocated between these elements. In other words, the land, improvements and fixtures at refineries are physically and functionally integrated. For this reason, refinery operations planning, economic analysis, and management accounting do not allocate income to classes of assets, such as land, improvements, and equipment. Rather, income is measured and attributed to a refinery as a single economic unit.

As the income stream must be attributed to the refinery as a single unit, Rule 474 is necessary to value refineries under the income approach. In my experience, the income approach is used by buyers and sellers of refineries to establish the selling price in transactions. For purposes of determining assessed values, the income approach is often the preferred method for valuing refineries because sales comparisons are not always available and because many refineries in the United States have suffered significant depreciation or obsolescence that makes the cost approach

> unreliable. Not only is it appropriate to value refineries as a single appraisal unit under the income approach, but the justification for requiring a separate appraisal unit for fixtures in order to account for fixture depreciation does not exist under the income approach. This is because the refinery income stream and the resulting value account for a lower level of performance that would result from physical depreciation of a refinery's fixtures by wear and tear or obsolescence. In addition, the income approach accounts for costs of maintenance and replacement that refineries incur to mitigate the effects of physical depreciation and obsolescence.
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> In conclusion, Rule 474 reflects the realities of the marketplace. Moreover, the rebuttable presumption provided by Rule 474 does not foreclose a refinery owner from presenting evidence that a refinery's fixtures are not part of the same economic unit as the refinery's land and improvements, while recognizing that such exceptions are few and far between. In recognizing how refineries are bought and sold, Rule 474 can help ensure that the market value of refineries is evaluated in accordance with the practice in the marketplace for purposes of decline-in-value valuations.

Mr. Flessner also appeared at the public hearing on December 18, 2014, provided testimony regarding his qualifications, and provided the following testimony in support of the Board's re-adoption of Rule 474:

> As part of my work, I've advised Contra Costa County in the valuation of petroleum refineries located there. And . . . I have testified in four separate public hearings related to the assessed values of refineries in Contra Costa County as an industry expert.
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> In my work for the county, I have advised them that there are two facts that support the valuation of petroleum refineries as would be provided by Rule 474. The first fact is that refineries are bought and sold in the marketplace as single entire operations, as business enterprises, which include all of the land, fixtures, improvements, personal property that are required to operate the business. It's just the way things are done.
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> The second fact I've advised the county of is that buyers and sellers of refineries value these properties for their capacity to generate income. Beyond that, there is little concern for other things such as cost or other things like that.
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> The first fact is important because the true market value for operating refineries is established in the marketplace for the entire property. I've looked at more than a hundred refinery transactions that

> have occurred since the early 80s, and there are very few examples where the refinery has not been sold as a single economic unit.
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> And when I look at those exceptions, what I find is that they're often exigency sales which were not either open market transactions or involved refineries that were no longer in operation and were being sold for salvage. For this reason, there is little market data to independently establish the fair market value for land, improvements and equipment that is used in petroleum refineries.
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> The second fact that I mentioned is important because income generated by a refinery is measured and attributed to the single economic unit. The income potential of a refinery is dictated by the installed processing equipment which generally exceeds more than 80 percent of the taxable property.
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> In operating a refinery, the most basic processing and investment decisions, such as what kind of crude oil to buy and how much gasoline or diesel fuel to produce, are evaluated based upon all of the equipment at the refinery, operating and working together in a planned [manner], in order to maximize income from the property.
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> For these reasons when I look at refinery economic planning, economic analysis and management accounting practices in the United States and around the world, there's just no activities that they undertake that measure or attribute income separately to land, improvements, fixtures or personal property.
>
> [¶] . . . [¶]
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> I've reviewed the conclusions with respect to the economic impact analysis that was presented in the Board's statement. And from the basis of an industry background, I agree with the Board's conclusions.
>
> Based on my experience in Contra Costa County, I agree that Rule 474 does not materially change the treatment of petroleum refineries under the RTC section 51(d). And based on my experience in the industry, I agree that Rule 474 will have no material impact on the petroleum refinery industry with respect to jobs, its competitive position with respect to other locations, or the ability of these businesses in the state of California to survive. (Transcript of Public Hearing, pp. 18-21.)

The Board received a letter dated December 16, 2014, from Mr. Gus Kramer, Contra Costa County Assessor, in support of the Board's re-adoption of Rule 474. Mr. Kramer's letter provides as follows:

I am the Assessor of Contra Costa County and have held this position for the past 20 years. During that time, I have become quite familiar with the valuation of refineries. I annually oversee the appraisal of four major petroleum refineries located in Contra Costa County and I have testified at hearings concerning their valuation.

I write in support of the readoption of Property Tax Rule 474. Rule 474 ensures fair and uniform taxation of petroleum refineries based on the concept of fair market value. As explained in the letter of Donald Flessner, a refinery, including land, buildings, tanks, machinery and equipment, is a collection of assets that functions together as a single unit to produce petroleum products. As also explained, such a property is valued and sold as a single integrated operating unit in any sale that is an open market nonexigency sale. Thus, an entire refinery generally is a single appraisal unit within the meaning of Revenue and Taxation Code section 51(d) and Rule 324(b). However, in those infrequent instances when land, improvements and fixtures [do] not transfer as an economic unit, Rule 474 permits assessors to separately value fixtures from land and improvements upon a proper showing.

Currently, several of the refineries in Contra Costa are valued under Proposition 8, as shown in the economic data that my office has provided to the Board to assist it in completing the economic impact assessment. Reenactment of Rule 474 is important to advance accurate assessment of the refineries. When petroleum refinery property is valued as a single appraisal unit, land, improvements and fixtures are jointly assessed under the lower of the collective fair market value or factored base year value for these assets. If these assets were not valued as a single unit, fixtures could be valued at their fair market value, while land and improvements are valued at their factored base year value, to create artificially low valuations that are inconsistent with the marketplace. Valuation of petroleum refinery property as a single appraisal unit also results in more accurate assessments because fixture depreciation can be offset by appreciation in land and improvements, reflecting the reality that refineries are generally bought and sold as a single unit.

For these reasons, and because the readoption of Rule 474 will assist assessors in clarifying the appraisal unit to be used when valuing petroleum refining properties for declines in value, I respectfully request that the Board reenact Rule 474.

The Board received a letter dated December 15, 2014, from Mr. David Twa, County Administrator for Contra Costa County, in support of the Board's re-adoption of Rule 474. Mr. Twa's letter provides as follows:

Contra Costa County respectfully requests that the Board of Equalization readopt Property Tax Rule 474, relating to the assessment of petroleum refineries. Four refineries are located in Contra Costa County. The County is charged with the valuation and taxation of the refineries, as well as the apportionment of the resulting property tax revenues to the County's public agencies. Rule 474 follows core principles of real property taxation in California and provides a necessary foundation for the proper taxation of refineries.

Rule 474 rebuttably presumes that a refinery constitutes a single appraisal unit based on evidence provided to the SBE that refineries are sold as a single unit in the marketplace. However, a refinery's fixtures may be valued separately if evidence is presented that (1) the fixtures "do not typically transfer in the marketplace" with the remainder of a refinery, or (2) that the fixtures are not functionally and physically integrated with the remainder of a refinery.

As the California Supreme Court recently confirmed, Rule 474 is in accord with constitutional and statutory authority. *(Western States Petroleum Association* v. *State Board of Equalization* (2013) 57 Cal. 4th 401 , 423 [*"Rule 474* is consistent with th[e] principle" that "appraisal of real property in the declining value context [should] reflect its 'full cash value' - that is, the value 'property would bring if exposed for sale in the open market.'"]). For valuation purposes, the proper appraisal unit is the collection of assets that persons in the marketplace normally buy and sell as a single unit. Revenue and Taxation Code section 51, which defines a taxable unit of real property, follows this tenet:

> For purposes of this section, ***"real property" means that appraisal unit that persons in the marketplace commonly buy and sell as a unit,*** or that is normally valued separately.

Rule 474 is consistent with property tax valuation principles set in the California Constitution, which require such valuations to be made on a fair market value basis. (Cal. Const., art. XIII, § 1 & art. XIII A, § 2; see also Rev. & Tax. Code, § 110(a) ["'full cash value' or 'fair market value' means the amount of cash or its equivalent that property would bring if exposed for sale in the open market . . . ."]).

If Rule 474 is not adopted, it might be claimed that land and improvements should be artificially separated in performing a refinery decline-in-value analysis under Rule 461(e). Such an approach would potentially result in a "tax windfall" for refinery owners because "account[ing] for fixture depreciation separately when land and fixtures are actually bought and sold as a single unit would allow the owner to

claim a reduction in real property value that is economically fictitious." *Western States Petroleum Association v. State Board of Equalization* (2013) 57 Cal. 4th 401, 423.

Rule 474 is also necessary to permit local assessors to carry out their duties without the risk of litigation or potential liability for taxpayer's attorney's fees under Revenue & Taxation Code section 538. Rule 46l(e) provides for the separate assessment of fixtures from land and improvements for decline-in-value appraisals. As explained above, interpreting Rule 461(e) to require fixtures to be a separate appraisal unit in every instance fails to conform to the constitutional and statutory requirement that an appraiser value a property as it would be valued by buyers and sellers in the marketplace. Yet, without Rule 474 in place, it might be claimed that assessors err in separately valuing fixtures from land and improvements. Rule 474 resolves any such confusion by clarifying that petroleum refineries should be valued first and foremost in accordance with the constitutional principle of full market value.

For these reasons, we respectfully request that the Board reenact Rule 474.

Ms. Rebecca Hooley, Deputy County Counsel for Contra Costa County, appeared at the public hearing on December 18, 2014, and provided the following testimony in support of the Board's re-adoption of Rule 474:

In Contra Costa County we have four refineries. And in valuing these refineries, we primarily rely on the income approach for performing decline [in] value valuations.

As mentioned by Mr. Flessner, income is generated by an integrated refinery unit comprised of land, improvements and fixtures. For this reason our valuation of refineries are, and have been, including the data submitted to the Board for the Board's economic impact analysis, consistent with Revenue and Taxation Code section 51(d) and the California Constitution as set forth in the Supreme Court's decision.

Although we are in compliance with Revenue and Taxation Code section 51(d), Rule 474 remains necessary. As shown by the letter submitted by WSPA, and which I first saw this morning, refinery owners continue to contend that refineries should be entitled to the lowest possible value by using a separate appraisal unit for land, fixtures and improvements. This creates an artificial value not seen in the marketplace, where in reality refineries are bought and sold as a single unit.

Contra Costa County has recently been through nine years of appeals and litigation relating to the value of a refinery. The refinery requested a refund of hundreds of millions of dollars from our county, and

> one of their main contentions was that their refineries should be valued as separate appraisal units.
>
> With Rule 474 in place, much of this litigation could have been avoided and its re-enactment can help avoid such costly and unnecessary litigation in the future. For these reasons and the other reasons submitted by Contra Costa County, I ask the Board to re-enact Rule 474. (Transcript of Public Hearing, pp. 21-23.)

Mr. Peter Yu, Principal Appraiser of the Business Division for the Contra Costa County Assessor's Office, appeared at the public hearing on December 18, 2014, and provided the following testimony in support of the Board's assessment of the economic impact of re-adopting Rule 474:

> In my opinion, most of the taxable value of a refinery rests on its fixtures. And so the economic impact of treating a petroleum refinery as one appraisal unit versus separate appraisal units for fixtures and land and improvements is essentially the difference between the Proposition 13 and Proposition 8 values of the land and improvements appraisal unit because the fixtures valued under both scenarios would have been the main value component and assessed at the lower of Prop 13 versus Prop 8, in accordance to Revenue and Taxation Code section 51.
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> Since the total value of land improvements appraisal unit is, on average, less than 20 percent of the total refinery value under Prop 13 or Prop 8, the overall economic impact as researched by the Board staff will not be large and, therefore, conclusively indicates that there will be minimal economic impact caused by the re-adoption of Rule 474.
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> Finally, I believe any future fair market values of a refinery valued as a single appraisal unit . . . determined under accepted appraisal methods will be fully utilized and considered under Rule 474. (Transcript of Public Hearing, pp. 23-24.)

Response to Mr. Twa's and Ms. Hooley's Recommendations that the Board Re-Adopt Rule 474 to Reduce Potential Litigation and Discussion of Mr. Flessner's and Mr. Kramer's Comments Regarding the Application of the Rebuttable Presumption in Rule 474

In *WSPA v. BOE*, the California Supreme Court expressly considered whether or not to address the Western State Petroleum Association's (WSPA's) substantive grounds for challenging the validity of Rule 474 after the Court determined that the rule was procedurally invalid under the Administrative Procedure Act (ch. 3.5 of pt. 1 of div. 3 of tit. 2 (commencing with § 11340) of the Gov. Code) (APA). The Court said that:

> We note that "[o]rdinarily, when an appellate court concludes that affirmance of the judgment is proper on certain grounds it will rest its

> decision on those grounds and not consider alternative grounds which may be available. [Citations.] [¶] However, appellate courts depart from this general rule in cases where the determination is of great importance to the parties and may serve to avoid future litigation [citations], or where the issue presented is of continuing public interest and is likely to recur. [Citation.])" ([Citations.]) Here, although the rule's procedural deficiency is a sufficient basis for affirming the Court of Appeal's judgment, our consideration of the substantive ground for invalidating the rule is warranted. The issue presents a question of law, it has been thoroughly briefed, and it is a matter of considerable importance to the parties and to the public. (*WSPA v. BOE*, p. 409.)

In *WSPA v. BOE*, the California Supreme Court expressly held that Rule 474 was substantively valid based upon the following "straightforward reading of section 51(d)" (*WSPA v. BOE*, p. 417):

> [S]ection 51(d) states: "for purposes of this section, 'real property' means that appraisal unit that persons in the marketplace commonly buy and sell as a unit, or that is normally valued separately." By its terms, the statute provides two alternative methods of determining the appraisal unit that constitutes taxable real property: it is either (1) a unit "that persons in the marketplace commonly buy and sell as a unit" or (2) a unit "that is normally valued separately." Rule 474 applies the first method to petroleum refinery property. (*WSPA v. BOE*, p. 417.)

In *WSPA v. BOE*, the California Supreme Court also expressly stated that:

> For property whose fixtures are typically sold separately in the open market, fixtures are properly treated as a separate appraisal unit, and fixture depreciation may be independently recognized. But when land and fixtures are typically sold as a single unit, they are properly treated as a single appraisal unit, even if fixture depreciation is offset by land appreciation or otherwise reduced by valuing land and fixtures together. . . . To account for fixture depreciation separately when land and fixtures are actually bought and sold as a single unit would allow the owner to claim a reduction in real property value that is economically fictitious, resulting in a tax windfall. Neither California Constitution, article XIII A nor section 51 nor traditional appraisal practices require the unit of appraisal to be defined in a manner that maximizes the depreciation of fixtures in contravention of economic reality. To the contrary, the law and consistent practice have long required appraisal of real property in the declining value context to reflect its "full cash value"—that is, the value "property would bring if exposed for sale in the open market." (§§ 51(a)(2), 110.) Rule 474 is consistent with this principle. (*WSPA v. BOE*, p. 423.)

In addition, in Justice Kennard's concurring and dissenting opinion in *WSPA v. BOE*, Justice Kennard said that she agreed with the majority that Rule 474 was substantively valid because "Rule 474 correctly interprets [section 51(d)] . . . ." (*WSPA v. BOE*, p. 432.) Justice Kennard also expressly said that "it is section 51(d), not Rule 474, that provides the governing substantive standard. With or without Board rules elucidating the application of section 51(d) to specific types of property, section 51(d) adequately defines 'real property' and can be applied to various types of real property, including petroleum refinery properties, on a case-by-case basis. In other words, even without a rule on point, the Legislature's statutory definition of 'real property' is, by itself, a fully enforceable legal standard." (*WSPA v. BOE*, p. 435.)

As a result, the California Supreme Court decided to provide its own binding substantive interpretation of how section 51(d) applies to the valuation of petroleum refinery property for purposes of measuring declines in value because the Court specifically recognized that it is an important question of California law and the Court intended to avoid further litigation between WSPA, the Board, and county assessors regarding the issue. The Court expressly found that section 51(d) requires petroleum refinery property to be valued as a single appraisal unit for purposes of measuring declines in value when persons in the marketplace actually buy and sell refinery property as a unit because the appraisal of refinery property in the declining value context must reflect the value the "property would bring if exposed for sale in the open market." The Court also expressly found that it is important for county assessors to apply its interpretation of section 51(d) to petroleum refinery property, under such circumstances, in order to prevent an unintended "tax windfall."

Therefore, based upon a straightforward reading of *WSPA v. BOE*, the California Supreme Court intended for its interpretation of RTC section 51(d) to establish a binding precedent. The Court intended for that binding precedent to take effect immediately to prevent the unintended "tax windfall" and avoid future litigation. And, the Court gave no indication that it intended for county assessors to delay their implementation of the Court's interpretation of section 51(d) and allow the unintended tax windfall to continue for any reason, including bringing a declaratory relief action against the Board, under RTC section 538,[1] to establish that Rule 461(e) does not apply to the valuation of petroleum refinery property for decline in value purposes when persons in the marketplace actually buy and sell refinery property as a unit.

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[1] RTC section 538, subdivision (a), provides that "If the assessor believes that a specific provision of the Constitution of the State of California, of this division, or of a rule or regulation of the board is unconstitutional or invalid, and as a result thereof concludes that property should be assessed in a manner contrary to such provision, or the assessor proposes to adopt general interpretation of a specific provision of the Constitution of the State of California, or this division, or of a rule or regulation of the board, that would result in a denial to five or more assessees in that county of an exemption, in whole or in part, of their property from property taxation, the assessor shall, in lieu of making such an assessment, bring an action for declaratory relief against the board under Section 1060 of the Code of Civil Procedure. The court shall allow intervention in such action by potential assessees and other assessors under Section 387 of the Code of Civil."

Furthermore, the California Supreme Court has previously held that a Board regulation that conflicts with the California Supreme Court's interpretation of a statute exceeds the Board's rulemaking authority and is invalid. (See, e.g., *Preston v. State Board of Equalization* (2001) 25 Cal. 4th 197, 219 [holding that provisions in Regulation 1540 are invalid because they conflict with the Court's interpretations of sections 6011 and 6012].) And, the California Supreme Court has expressly held that when a petroleum refinery's "land and fixtures are typically sold as a single unit, they are properly treated as a single appraisal unit, even if fixture depreciation is offset by land appreciation or otherwise reduced by valuing land and fixtures together." (*WSPA v. BOE*, p. 423.) Therefore, the courts would likely hold that the application of Rule 461(e) to petroleum refinery property is invalid when persons in the marketplace actually buy and sell refinery property as a unit because, under such circumstances, Rule 461(e)'s application to petroleum refinery property would restrict county assessors' statutory authority under section 51(d), as interpreted by the California Supreme Court in *WSPA v. BOE*, and result in what the California Supreme Court called an "economically fictitious" unintended "tax windfall." (*WSPA v. BOE*, p. 423.) And, as such, Rule 461(e), by itself, cannot provide a legal basis for prohibiting a county assessor from currently finding, in accordance with section 51(d), as interpreted by the California Supreme Court in *WSPA v. BOE*, that petroleum refining property constitutes a single appraisal unit for measuring declines in value when substantial evidence indicates that petroleum refining property is currently bought and sold as a single unit in the marketplace.

Moreover, the provisions of RTC section 538 are enforced through the application of RTC section 5152, which provides as follows:

> In an action in which the recovery of taxes is allowed by the court, if the court finds that the void assessment or void portion of the assessment was made in violation of a specific provision of the Constitution of the State of California, of this division, or of a rule or regulation of the board, and the assessor should have followed the procedures set forth in Section 538 in lieu of making the assessment, the plaintiff shall be entitled to reasonable attorney's fees as costs in addition to the other allowable costs. This section is ancillary only, and shall not be construed to create a new cause of action nor to be in lieu of any other provision of law.

In *Prudential Insurance Company of America v. City and County of San Francisco* (1987) 191 Cal.App.3d 1142, 1159 (hereafter *Prudential*), the California Court of Appeal interpreted RTC section 5152 as only "entitling litigants to attorney fees upon a showing either of an erroneous assessment on taxable property or an assessment on nontaxable property," not just a mere showing that an assessor did not follow a statute or regulation without first bringing a declaratory relief action against the Board under RTC section 538. And, in *Phillips Petroleum Company v. County of Lake* (1993) 15 Cal. App. 4th 180, 197, the Court of Appeal reviewed its interpretation of RTC section 5152 in *Prudential* and stated that its *Prudential* "opinion makes it clear that to justify an award of attorney fees it is essential that the flawed assessment result from the assessor's erroneous belief that a particular provision, rule or regulation is unconstitutional or invalid."

Here, the California Supreme Court has expressly held that when a petroleum refinery's "land and fixtures are typically sold as a single unit, they are properly treated as a single appraisal unit, even if fixture depreciation is offset by land appreciation or otherwise reduced by valuing land and fixtures together." (*WSPA v. BOE*, p. 423.) Therefore, there would be no basis to award attorney's fees to a litigant whose petroleum refinery was properly valued as one appraisal unit, pursuant to the California Supreme Court's interpretation of RTC section 51(d) in *WSPA v. BOE*. In addition, there is no basis to conclude that the county assessors are required to bring a declaratory relief action against the Board, under RTC section 538, to establish that Rule 461(e) does not apply to the valuation of petroleum refinery property for decline in value purposes when persons in the marketplace actually buy and sell refinery property as a unit. This is because the Board has already agreed that Rule 461(e) does not apply to the valuation of petroleum refinery property for decline in value purposes when persons in the marketplace actually buy and sell refinery property as a unit, as evidenced by the Board's initial adoption of Rule 474, the Board's defense of Rule 474 in its prior litigation with WSPA, and the Board's initiation of the rulemaking process to re-adopt Rule 474 after it was invalidated on procedural grounds.

However, Ms. Reheis-Boyd's letter and Mr. Craig A. Becker's testimony (discussed below) indicate that WSPA continues to believe that Rule 461(e) generally applies to petroleum refinery property, even though WSPA does not seem to be continuing to dispute the fact that petroleum refineries are commonly bought and sold as a unit in the marketplace. And, Ms. Reheis-Boyd's letter and Mr. Becker's testimony indicate that WSPA will not agree that petroleum refinery land, improvements, and fixtures may constitute a single appraisal unit for determining declines in value, under RTC section 51(d), until the Board re-adopts Rule 474 in compliance with the APA's requirements. Therefore, the Board agrees with Mr. Twa's comment that it is necessary for the Board to re-adopt Rule 474 "to permit local assessors to carry out their duties without the risk of litigation or potential liability for taxpayer's attorney's fees under [RTC] section 538." The Board also agrees with Ms. Hooley's comment that the Board's re-adoption of Rule 474 "can help avoid . . . costly and unnecessary litigation in the future."

Finally, the Board agrees with Mr. Flessner's comment that "the rebuttable presumption provided by Rule 474 does not foreclose a refinery owner from presenting evidence that a refinery's fixtures are not part of the same economic unit as the refinery's land and improvements." The Board also agrees with Mr. Kramer's comment that "in those infrequent instances when land, improvements and fixtures [do] not transfer as an economic unit, Rule 474 permits assessors to separately value fixtures from land and improvements upon a proper showing." Therefore, the Board's re-adoption of Rule 474's *rebuttable* presumption that petroleum refinery property constitutes a single appraisal unit for measuring declines in value is also necessary to avoid unnecessary future litigation regarding the proper appraisal unit when there is evidence to establish that a petroleum refinery's fixtures are required to be valued as a separate appraisal unit under RTC section 51(d).

Public Comments Opposing the Re-Adoption of Rule 474 and the Board's Responses to the Public Comments Opposing the Re-Adoption of Rule 474

Email from Ms. Schumacher

The Board received an email on October 24, 2014, from Ms. Michelle Schumacher. Ms. Schumacher's email quotes the text of subdivision (d)(2) of Rule 474 and states that:

> I am very concerned with the preferential treatment that refineries are being given - this is NOT acceptable - make the taxation fair - tired of this and tired of having special interests and special rules that allows for the oil industry to not have to own up as the rest of us do regarding taxes.
>
> In addition due to the toxic nature of their business they should actually be paying more.

Response to Ms. Schumacher's Email

RTC section 51(d) provides that "'real property' means that appraisal unit that persons in the marketplace commonly buy and sell as a unit, or that is normally valued separately." The Board has determined, based upon all of the information in the rulemaking file, that petroleum refineries are commonly bought and sold as a unit in the marketplace. Therefore, as explained in the initial statement of reasons, county assessors are currently authorized by RTC section 51(d), as interpreted by the California Supreme Court in *WSPA v. BOE*, to determine that petroleum refinery property (land, improvements, and fixtures) constitutes a single appraisal unit for measuring declines in value, unless there is evidence to establish that some or all of a refinery's fixtures should be valued as a separate appraisal unit because those fixtures are not commonly bought and sold as a unit with the refinery's land and improvements.

As explained in the initial statement of reasons, the Board has determined, based upon all the information in the rulemaking file, that it is reasonably necessary to re-adopt Rule 474 to:

- Clarify that petroleum refinery land, improvements, and fixtures are rebuttably presumed to constitute a single appraisal, under RTC section 51(d), because petroleum refineries are commonly bought and sold as a unit in the marketplace; and
- Petroleum refinery fixtures do not constitute a separate appraisal unit, as provided in Rule 461(e), unless there is evidence to establish that some or all of a refinery's fixtures should be valued as a separate appraisal unit because those fixtures are not commonly bought and sold as a unit with the refinery's land and improvements.

The Board has determined that Rule 474 is fully consistent with the existing mandates of RTC section 51(d), and that there is nothing in the proposed re-adoption of Rule 474 that

would significantly change how individuals and businesses, including county assessors and petroleum refinery owners, would generally behave due to the current provisions of RTC section 51(d), as interpreted by the California Supreme Court in *WSPA v. BOE*. And, the Board anticipates that the re-adoption of Rule 474 will clarify the treatment of petroleum refinery property for purposes of measuring declines in value, and thereby benefit county assessors and the owners of petroleum refineries by promoting fairness and uniformity in the assessment of petroleum refinery property throughout the state.

Also, as explained in the initial statement of reasons and above, the California Supreme Court has concluded that "Rule 474's market-based approach to determining the proper appraisal unit for petroleum refinery property ensures that reductions in property values are measured according to fair market value." (*WSPA v. BOE*, pp. 416-417.) The Court also said that "[t]o account for fixture depreciation separately when land and fixtures are actually bought and sold as a single unit would allow the owner to claim a reduction in real property value that is economically fictitious, resulting in a tax windfall. Neither California Constitution, article XIII A nor section 51 nor traditional appraisal practices require the unit of appraisal to be defined in a manner that maximizes the depreciation of fixtures in contravention of economic reality. To the contrary, the law and consistent practice have long required appraisal of real property in the declining value context to reflect its 'full cash value'—that is, the value 'property would bring if exposed for sale in the open market.' (§§ 51(a)(2), 110.)" (*WSPA v. BOE*, p. 423.) Therefore, the Board has determined that Rule 474 is fair because it is fully consistent with the existing mandates of RTC section 51(d), as interpreted by the California Supreme Court in *WSPA v. BOE,* and the Board does not agree that Rule 474 provides preferential treatment to petroleum refinery property.

Letter from Ms. Gina Rodriquez

The Board received a letter dated December 17, 2014, from Ms. Gina Rodriquez, Vice President of State Tax Policy for the California Taxpayers Association (CalTax), which requested that the Board reject the re-adoption of Rule 474 and alleged that the Board failed to comply with the APA in assessing the economic impact of the re-adoption of Rule 474. Ms. Rodriquez letter provides as follows:

> In considering the re-adoption of Rule 474, CalTax is interested in preserving the integrity of the Administrative Procedures Act (APA), Government Code §§11346.2(b)(5)(A), 11346.3 and 11346.5(a)(8), as well as the California Supreme Court's directive in *Western States Petroleum Assn. v. Board of Equalization* (2013) 57 Cal.4th 401 (2013), which determined that the original Rule 474 was invalid due to its lack of an economic impact analysis.
>
> CalTax has significant concerns about re-adoption of Rule 474, including the Board's failure to follow the APA rules and to comply with Government Code §§11346.2(b)(5)(A), 11346.3 and 11346.5(a)(8). Until the Board has substantially complied with these statutory and regulatory

requirements, the Board must reject Rule 474's re-adoption, and the rule must continue to be found invalid.

Pursuant to Government Code §11346.3(a), the Board must address as part of its economic impact analysis the potential for adverse economic impact. This requires the agency to base the regulation on adequate information regarding the need for, and consequences of, the proposed rule; and to "consider the proposal's impact on business, with consideration of industries affected including the ability of California businesses to compete with businesses in other states."

The Board's proposed economic impact analysis fails to assess: whether and to what extent the proposed rule will affect the creation or elimination of jobs within the state; the creation of new businesses or the elimination of existing businesses within the state; the expansion of businesses currently doing business within the state; and the benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.

The Supreme Court set a clear mandate on the Board for its regulations to satisfy the APA. However, the Board's proposed economic impact analysis fails to make a reasoned estimate of all the cost impacts of the rule on affected parties. The Board's economic impact analysis does not consider the full economic impact of the rule, and, therefore, does not comply with the Supreme Court's mandate. For these reasons, the Board should reject proposed Rule 474.

Responses to Letter from Ms. Gina Rodriquez

Board staff responded to the comments in Ms. Rodriquez's December 17, 2014, letter during the public hearing on December 18, 2014. Staff explained that:

In [*WSPA v. BOE*], the California Supreme Court concluded that [Rule 474] was substantively valid because petroleum refineries are commonly bought and sold as a unit and the presumption in the rule is consistent with Revenue and Taxation Code section 51(d) which defines real property as the appraisal unit that persons in the marketplace commonly buy and sell as a unit.

However, the court invalidated the rule on procedural grounds because the court concluded that the Board did not properly assess the economic impact . . . of the rule under the [APA]. This was because the Board based its entire assessment on a revenue estimate and the court found that the Board could not explain why the . . . methodology used in the revenue estimate was a valid or reasonable way to estimate the amount of fixture depreciation that would be offset by appraising land and fixtures as a single appraisal unit.

Therefore, staff has performed a new evaluation of the economic impact of re-adopting Rule 474. Staff has determined that currently assessors may treat petroleum refining property as one appraisal unit under section 51(d) as interpreted by the California Supreme Court; Rule 474 does not materially change the treatment of petroleum refinery property under section 51(d); and that there is no economic impact from the re-adoption of Rule 474 that is in addition to the economic impact of section 51(d).

In addition, staff has clearly explained the methodology used to assess the economic impact of the re-adoption of Rule 474 in the initial statement of reasons[2] and staff believes that the . . . methodology is reasonable. (Transcript of Public Hearing, pp. 5-6.)

[¶] . . . [¶]

[T]he Board received a written comment from Gina Rodriquez, Vice President of Tax Policy for the California Taxpayers Association, which requested that the Board reject the rule because the Board failed to follow the APA and comply with Government Code sections 11346.2 subdivision (b)(5)(A), 11346.3 and 11346.5 subdivision (a)(8).

Therefore, staff reviewed all of the rulemaking documents and confirmed that the economic impact assessment complies with Government Code section . . . 11346.2 subdivision (b)(5)(A) because it clearly identifies the facts, evidence, documents, testimony and other evidence supporting the initial determination that the re-adoption of Rule 474 will not have a significant adverse economic impact on business.

The economic impact assessment complies with the applicable provisions of Government Code section 11346.3 subdivision (b) because pages 14 and 15 of the initial statement of reasons expressly provide that due to the current application of section 51(d), the re-adoption of Rule 474 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand businesses in the State of California; and that the re-adoption of . . . Rule 474 will not affect the benefits of the rule to the health and welfare of California residents, worker safety, or the state's environment because Rule 474 does not regulate the health and welfare of California residents, worker safety, or the state's environment.

And the economic impact assessment complies with Government Code section 11346.5 subdivision (a)(8) because page 8 of the Board's notice contains the declaration that the Board has made an initial

[2] See pages 13 and 14 of the initial statement of reasons.

determination that the re-adoption of proposed Rule 474 will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

And the initial statement of reasons provides the facts, evidence, documents, testimony, or other evidence upon which the Board relies to support its initial determination.[3] (Transcript of Public Hearing, pp. 7-8.)

Ms. Reheis-Boyd's Letter & Mr. Becker's Testimony on Behalf of WSPA

Letter from Ms. Reheis-Boyd

The Board received a letter dated December 17, 2014, from Ms. Reheis-Boyd, President of WSPA, which provided WSPA's comments regarding the Board's re-adoption of Rule 474. The first page of the letter states that "WSPA opposes Rule 474 because the Board failed to comply with the requirements under the Administrative Procedures Act ('APA'), Gov. Code §§ 11346.2(b)(5)(A), 11346.3 and 11346.5(a)(8)." It states that, in *WSPA v. BOE*, the California Supreme Court held that the Board's initial adoption of Rule 474 was procedurally invalid because "the Board failed to assess the economic impact of Rule 474 and thus the Board's initial determination that the rule would not have a significant adverse economic impact on business did not substantially comply with the APA. Specifically, the Court held that the Board's assessment was inadequate because it failed to make a reasoned estimate of all the cost impacts of the rule on the affected parties." It also provides WSPA's opinion that "the Board failed to rectify these deficiencies in its newest version of the proposed rule."

The second page of Ms. Reheis-Boyd's letter summarizes provisions of article XIII A of the California Constitution, RTC section 51, and Rule 461, and then explains that: "As an exception to the basic rule in Rule 461(e) that fixtures must be treated as a separate appraisal unit from land and improvements, the Board adopted Rule 474 in 2007. Rule 474 established a separate, specific rule for the assessment of petroleum refining properties. Rule 474(d)(2) provided that for petroleum refining properties, land, improvements and fixtures are rebuttably presumed to be one appraisal unit. Accordingly, declines in value in fixtures due to depreciation would not be allowed to the extent that they were offset by increases in the fair market value of land and improvements." The third and fourth pages of Ms. Reheis-Boyd's letter summarize provisions of the APA, specifically Government Code sections 11346.2, 11346.3, subdivisions (a) and (b), 11346.5, subdivisions (a) and (c), and 11350, subdivision (b)(2).

The fourth and fifth pages of Ms. Reheis-Boyd's letter contain the following summary of the California Supreme Court's holding in *WSPA v. BOE* that the Board's assessment of the economic impact of the Board's initial adoption of Rule 474 was inadequate:

[3] See page 10 of the initial statement of reasons.

Despite the leeway and deference given to agencies, the Supreme Court found the Board's initial determination that Rule 474 would not have a significant adverse impact on business failed to substantially comply with the APA requirement that the Board *actually assess* the potential adverse economic impact on businesses based on the facts. An agency must *actually assess* the potential adverse economic impact on California businesses and individual businesses, which calls "for an evaluation based on facts." *(Western States Petroleum,* 57 Cal. 4th at 428, citing *California Assn. of Medical Products Suppliers v. Maxwell-Jolly,* 199 Cal. App. 4th 286 *(Maxwell-Jolly).)*

The Supreme Court upheld the trial court's finding that the Board had not adequately estimated the increased taxes that would result from treating refineries as a single appraisal unit for decline in value purposes. *(Western States Petroleum,* 57 Cal. 4th at 430.) As noted above, the principal effect of Rule 474 and its combining of land and improvements with fixtures as a single appraisal unit is to allow the erosion of fixture fair market value beneath fixture adjusted base year value to be assessed to the extent land and building values had appreciated above their adjusted base year values. The potential land appreciation that would now be subject to property tax is limited to the extent fixture value has fallen below its adjusted base year value. The trial court held that the economic impact statement required an accurate measure of these potential assessment increases and that "as a theoretical matter, surely there should be some quantification of the effect of depreciation of fixtures on assessed value." *(Ibid.)* Since the Board had not provided an accurate estimate of refinery fixture depreciation (indeed it provided no estimate at all), the Supreme Court summarily affirmed the trial court, rejecting the Board's analysis because it:

> [F]ailed to provide "an economic impact based on data concerning fixture depreciation on assessed values" and thus "leaves a reader without an understanding of what the taxes on a representative refinery would have been under the formerly applicable Rule 461(e), and what the taxes would be under the new rule 474(d)(2)." *(Ibid.*, quoting the Court of Appeal.)

The Supreme Court agreed with the trial court and Court of Appeal because the Board did not explain how its analysis was a "valid or reasonable way to estimate the amount of fixture depreciation that would be offset by appraising land and fixtures as a single unit." (*Ibid.*) The Supreme Court stated further, "[E]ven if the Board's prediction of future land appreciation were correct, the Board's calculation failed to consider

> prior land appreciation and the full tax impact that would occur if land were valued at actual market value rather than adjusted base year value."[4]
>
> The Supreme Court clearly enunciated the standard the Board must satisfy: The Board's estimate must consider prior land appreciation and quantify the amount of fixture depreciation that would be offset by the land appreciation if land were assessed at its actual market value (under Rule 474) instead of its adjusted base year value (under Rule 461(e)). Then, the estimate must calculate the full property tax impact that would occur under each scenario. By failing to meet these standards, the Supreme Court concluded that the Board failed to make a reasoned estimate of all cost impacts of the rule on affected parties.
>
> In light of the Supreme Court's *Western States Petroleum* decision, Rule 474 was invalidated. However, shortly thereafter the Board initiated the rulemaking process to re-adopt Rule 474.

The fifth page of Ms. Reheis-Boyd's letter provides WSPA's opinion that the Board's assessment of the economic impact of the re-adoption of Rule 474 "ignored all prior law, including fully ignoring Rule 461(e)." The fifth and sixth pages of Ms. Reheis-Boyd's letter provide the following quotes from three sentences, selected from three paragraphs in the Board's assessment of the economic impact of the re-adoption of Rule 474 on pages 13 and 14 of the initial statement of reasons:

> Board staff determined that, in the absence of Rule 474, county assessors are currently authorized by RTC section 51(d), as interpreted by the California Supreme Court in *WSPA v. BOE,* to determine that petroleum refinery property (land, improvements, and fixtures) constitutes a single appraisal unit for measuring declines in value when persons in the marketplace commonly buy and sell refinery property as a unit.
>
> [...]
>
> Therefore, Board staff concluded that the re-adoption of Rule 474 is fully consistent with the existing mandates of RTC section 51(d), and that there is nothing in the proposed re-adoption of Rule 474 that would significantly change how individuals and businesses, including county assessors and petroleum refinery owners, would generally behave due to the current provisions of R TC section 51(d) as interpreted by the California Supreme Court in *WSPA v. BOE.*
>
> As a result, the Board has determined that the re-adoption of Rule 474 does not impose any costs on any persons, including businesses, in

[4] The California Supreme Court's complete discussion of the Board's assessment of the economic impact of its initial adoption of Rule 474 is on pages 429 to 431 of *WSPA v. BOE*, and the Board included relevant quotes from the Court's discussion on pages 7 and 8 of the initial statement of reasons.

> addition to whatever costs are imposed by RTC section 51 (d) as interpreted by the California Supreme Court in *WSPA v. BOE,* and there is nothing in Rule 474 that would impact revenue.

Then, the sixth page of Ms. Reheis-Boyd's letter states that "[t]his fails to comply with the APA and the clear mandate from the Supreme Court that the Board make an initial *actual assessment* of the economic impact of Rule 474." The sixth page of Ms. Reheis-Boyd's letter states that "the Board does not believe" that "assessors are already authorized to assess the land, improvements and fixtures of petroleum refining properties as a single appraisal unit for decline in value purposes under RTC § 51(d)" and, even if the Board did, then "[i]n effect, the Board is arguing that Rule 474 is unnecessary because the rule it establishes is already provided for by statute under RTC § 51(d)." The sixth page of Ms. Reheis-Boyd's letter also states that "[u]nder this argument, no property tax regulation would ever impose a cost because it could always be deemed to be consistent with its underlying authorizing statute" and states that the Board agreed that Rule 474 represented a substantive change in the Board's interpretation of section 51(d) at the time it was first adopted by the Board.

The sixth and seventh pages of Ms. Reheis-Boyd's letter provide as follows:

> . . . Just because the Supreme Court held that the prior Rule 474 was *substantively* valid as an appropriate interpretation of RTC § 51(d) and consistent with Proposition 13 does not mean that Rule 474 was not a change in the prior regulatory interpretation of Rule 461(e). Accordingly the Supreme Court was correct in demanding that the Board quantify the additional tax revenue that would be collected as result of Rule 474 [as] well as the additional costs imposed as compared to a world without Rule 474.
>
> To that point, it is clear from the Supreme Court that the requisite comparison for economic impact is to compare the costs to businesses without the regulation to the costs to businesses with the regulation. Without Rule 474, Rule 461(e) states, without equivocation, that for purposes of calculating declines in value, "fixtures and other machinery and equipment classified as improvements constitute a separate appraisal unit." There is no other specific rule applicable to petroleum refining property. The Supreme Court clearly endorsed the trial court's view that the Board is required to calculate the increased taxes, taking into consideration the effect of fixture depreciation on assessed values. *(Western States Petroleum,* 57 Cal. 4th at 430.) In addition, the Supreme Court agreed with the Court of Appeal's holding that the Board must calculate the difference in taxes on refineries using Rule 461(e) and the new proposed Rule 474, stating that the Board's analysis in the first adoption of Rule 474 "'leaves a reader without an understanding of what the taxes on a representative refinery would have been under the formerly applicable Rule 461(e), and what the taxes would be under the new rule

> Rule 474(d)(2).'" (*Ibid.*) Thus, the Board' s comparison of the effect of its proposed Rule 474 to the costs on business under RTC § 51(d) is not the correct comparison, and thus the statement that the rule imposes no costs fails to satisfy the APA requirement that the agency *actually assess* the potential adverse economic impacts of a proposed regulation.

The seventh page of Ms. Reheis-Boyd's letter acknowledges that the Board "sought data regarding market values and adjusted base year values of refineries from the county assessors through the California Assessors' Association, for tax years 2009 through 2013" so that the Board could "accurately compare the total assessed value of [each] petroleum refinery when its fixtures are valued as a separate appraisal unit under Rule 461(e) and valued as part of the same appraisal unit with land and improvements under Rule 474," as explained in the initial statement of reasons. It also acknowledges that the Board was able to obtain "the information [for] 10 refineries" and that the Board included both the "data and its analysis of the data" for the ten refineries in Attachment F to the initial statement of reasons. However, the seventh page of Ms. Reheis-Boyd's letter also states that the Board's analysis "failed to comport with the [California] Supreme Court's mandate." In addition, the eighth page of the letter provides that this is because "the Supreme Court mandate requires[that] the Board's estimates must use data that is accurate." WSPA's opinion is that the data the Board obtained from the county assessors "substantially overstated" the fair market value of the refineries' fixtures. And, as a result, WSPA's opinion is that the Board's analysis of the data "greatly understate[s] the depreciation in fixture value underneath their respective base year values," does not accurately determine how much "depreciation would be offset by land appreciation," and "would leave 'a reader with without an understanding of what the taxes on a representative refinery would have been under' Rule 461(e) compared to what they would be under the proposed Rule 474."

The eighth page of Ms. Reheis-Boyd's letter states that WSPA was "able to match the Board's 10 Refineries A through J [from Attachment F to the initial statement of reasons] to their owners" and found that "the 10 refineries that the Board used for its analysis and set forth in Attachment F are all within Los Angeles and Contra Costa County." The eighth page of the letter provides WSPA's opinion that "the best standard measure for refinery value is fair market value per 'complexity barrel.' The value of a refinery is proportional to its complexity times its crude capacity, or complexity-barrels." The eighth page of the letter states that "[t]he complexity barrels of refining capacity figure for each refinery is public information" (without identifying the source of the information), and states that "Exhibit 1 [to the letter] shows the range of Board values per complexity barrel of the 10 refineries analyzed," without identifying nine of the ten refineries or the complexity factors WSPA used to make its calculations. In addition, Exhibit 1 to the letter provides one unchanging "Complexity Barrels of Refinery Capacity" number for each of the 10 refineries. Exhibit 1 provides "Low" and "High" "Board Determined Fair Market Values of Fixtures" for each of the ten refineries from "2009 to 2013," which correspond to the lowest and highest "market values" for fixtures for each refinery, in the county assessor-provided data set forth in Attachment F to the

initial statement of reasons.[5] And, Exhibit 1 provides "Low" and "High" "Board Determined Fair Market Values Per Complexity Barrel of Refinery Capacity" for each of the ten refineries from "2009 to 2013," which WSPA calculated by dividing each refinery's low and high fixture values by each refinery's listed "Complexity Barrels of Refinery Capacity" number. As a result, Exhibit 1 provides the following "Low" and "High" "Board Determined Fair Market Values Per Complexity Barrel of Refinery Capacity" for Refineries A through J from 2009 to 2013:

	Low	High
Refinery A	$446	$619
Refinery B	$463	$665
Refinery C	$697	$919
Refinery D	$541	$588
Refinery E	$475	$1,136
Refinery F	$344	$1,489
Refinery G	$431	$810
Refinery H	$315	$413
Refinery I	$384	$490
Refinery J	$281	$719

Then, the eighth and ninth pages of Ms. Reheis-Boyd's letter state that the low and high Board Determined Fair Market Values Per Complexity Barrel of Refinery Capacity "range from $281 for Refinery J in one year, up to $1,489 for Refinery F in another year. As repeated here below, these values are all over the place, and ought to be within a consistent, tight range, especially because the 10 refineries that the Board used for its analysis and set forth in *Attachment F* are all within Los Angeles and Contra Costa County. [Table of "Board Determined Fair Market Values Per Complexity Barrel of Refinery Capacity" from Exhibit 1 omitted.] Because there are such wild variances in the values per complexity barrel in the Board's data and analysis, it is clear that the Board's estimates of fair market value of the fixtures at the refineries in *Attachment F* to the *Initial Statement* are badly flawed. There is no reasonable reason why these figures would be so wildly different."

The ninth page of Ms. Reheis-Boyd's letter identifies Refinery A in Attachment F to the Board's initial statement of reasons as the "Carson" refinery, which was included in the "June 2013 sale of BP's Carson, California refinery and related logistics and marketing assets in the region to Tesoro Corporation for approximately $2.4 billion," discussed in the Board's initial statement of reasons and BP's June 2013 press release, which was included as Attachment E to the initial statement of reasons. The ninth page of the letter concludes, based upon Tesoro Corporation's "Annual Statement on Form 10-K filed with the U.S. Securities and Exchange Commission for the fiscal year ending December 31, 2013" (hereafter Form 10-K), that Tesoro purchased the Carson refinery and other "non-

[5] For example, the low and high fixture values for Refinery A in Exhibit 1 are the 2013 fixture market value of $1,359,876,090 and the 2010 fixture market value of $1,887,388,187 for Refinery A in Attachment F, respectively.

refinery" assets in the June 2013 transaction, and Tesoro Corporation subsequently "sold the non-refinery assets to a related entity." The ninth page of the letter also concludes, apparently based on BP's June 2013 press release, that "[t]he amount Tesoro Corporation paid for all of the assets, including the non-refinery assets, was $1.075 billion *total for the entire bundle*." The ninth page of the letter also states that "[c]learly the non-refinery assets have value, which means that the value of the refinery assets alon[e] is less than the $1.075 billion Tesoro paid for *all of the assets*." And, the tenth page of Ms. Reheis-Boyd's letter states that the "Board estimated a fair market value of the Refinery A *fixtures alone* in 2013 at $1.360 billion (and the entire refinery including land, plus all the non-refinery assets, sold for $1.075 billion)."

The ninth and tenth pages of Ms. Reheis-Boyd's letter provide that, even assuming "for the sake of argument only" that the Carson refinery's value was $1.075 billion, "and allocating 89 percent to the fixtures and 11 percent to the land . . ., that means that the value of Refinery A [fixtures] on a complexity barrel basis was $313 [footnote omitted] in 2013," using the Complexity Barrels of Refinery Capacity number for Refinery A from Exhibit 1. Then, the tenth page states that the "$313 value per complexity barrel is significantly below the Board's refinery A low-to-high range of $446-619 per complexity barrel shown on Exhibit 1." It also states that "It is clear that the $313 is only higher than two values, the value for refinery J from 2010, and Refinery H from 2013.[6] Of course, once the non-refinery values are removed from the Tesoro Acquisition $1.075 billion total purchase price, clearly the Carson refinery market value per complexity barrel would be lower than all of the Board's estimates, *for all 10 refineries, in all five years*. Some of the Board estimates are two to four times the $313 figure before removing the non-refinery assets. This demonstrates how unrealistic and unreasonable the Board's estimates are. The best evidence of the fair market value of a California refinery is the Carson refinery, as established through the June 2013 sale, and *all* of the Board's estimates exceed that value by significant margins."

Exhibit 2 to Ms. Reheis-Boyd's letter provides one unchanging "Crude Barrels of Refinery Capacity" number for each of the 10 refineries listed in Attachment F to the initial statement of reasons, without identifying nine of the ten refineries or providing the source(s) for the numbers. For example, without explanation, Exhibit 2 uses "252,000" crude barrels of refinery capacity for Refinery A, which WSPA has identified as the Carson refinery, but does not use the 240,000 barrel per day capacity for the Carson refinery referred to in the history of California's petroleum refineries from the Energy Almanac, included as Attachment B to the initial statement of reasons, and does not use the 266,000 barrel per day capacity for the Carson refinery referred to in BP's June 2013 press release, included as Attachment E to the initial statement of reasons. Exhibit 2 provides the same "Low" and "High" "Board Determined Fair Market Values of Fixtures" for each of the ten refineries from "2009 to 2013," which are provided in Exhibit 1 to the letter. Exhibit 2 also provides "Low" and "High" "Board Determined Fair Market Values of Fixtures Per Crude Barrel of Refinery Capacity" for each of the

[6] Exhibit 1 to Ms. Reheis-Boyd's letter provides "Low" and "High" "Board Determined Fair Market Values Per Complexity Barrel of Refinery Capacity" of "$315" and "$413" for Refinery H. So, it does not appear that "$313" is higher than the values for Refinery H.

ten refineries from "2009 to 2013," which WSPA calculated by dividing each refinery's low and high fixture values by each refinery's listed Crude Barrels of Refinery Capacity number.

WSPA's "low" and "high" "Board Determined Fair Market Values of Fixtures Per Crude Barrel of Refinery Capacity" numbers from Exhibit 2 are also set forth on the tenth and eleventh pages of Ms. Reheis-Boyd's letter. However, it should be noted that the high and low numbers provided in the letter are not consistent with the high and low numbers provided in Exhibit 2 for Refinery A and the low number provided in Exhibit 2 for Refinery J, and that the high and low numbers provided in Exhibit 2 are the correct quotients. The eleventh page of Ms. Reheis-Boyd's letter also states that "[u]sing the Carson refinery as a good example again to demonstrate how overstated the Board's estimates are, even if the entire $1.075 [billion] purchase price figure were used to determine fair market value per barrel of refining capacity, the figure would be $3,800 [footnote omitted]. Compare this (which again includes all of the non-refinery assets) to the Board's estimates of per barrel of capacity fair market values of fixtures for the 10 refineries on Exhibit 2." In addition, the eleventh page of the letter states that "the Board's estimates of all of the other nine refineries [besides Refinery A] are all inconsistent with the arm's length, market-based value of California refineries on a per barrel of capacity basis."

The eleventh page of Ms. Reheis-Boyd's letter further provides that, "[e]ven if we simply look at the overall fair market values the Board ascribed to all of the refineries for lien date 2013 (land, improvements and fixtures combined), and compare them to the Carson refinery, it is clear that the Board's figures are wildly overstated." The eleventh page of the letter provides a list entitled "Board's Overall Fair Market Value Estimates for Lien Date 2013 from Attachment F." And, the list provides the following total combined 2013 current market values for fixtures, land, and improvements for Refineries A through I, and the total combined 2012 current market values for fixtures, land, and improvements for Refinery J, from the county assessor-provided data set forth in Attachment F to the Board's initial statement of reasons:

Refinery A	$1,533,355,051 (the Carson refinery)
Refinery B	$1,766,347,425
Refinery C	$1,362,773,677
Refinery D	$1,292,007,019
Refinery E	$1,821,953,554
Refinery F	$1,368,262,574
Refinery G	$1,318,591,387
Refinery H	$624,523,309
Refinery I	$924,198,374
Refinery J	$ 3,722,232,049 (2012)

The eleventh and twelfth pages of the letter also state that:

> The Carson refinery sold in June 2013 along with a bundle of non-refinery assets for a total purchase price of $1.075 billion. That total purchase price for *all of the assets* is lower than eight of the 10 Board-derived total refinery fair market values for 2013 (and 2012 for Refinery J, since 2013 data was not provided). Given that the Carson refinery is one of the largest refineries in California in terms of refinery capacity in complexity barrels and in overall crude barrel refining capacity, it makes absolutely no sense that all of the other Board determined fair market values would exceed the arm's-length sales price value of the Carson refinery. And certainly when the non-refinery assets are removed from the $1.075 billion purchase price, it is clear that *all* of the Board's fair market value estimates exceed the actual Carson refinery fair market value as of the sale date.
>
> The point is that the Tesoro Acquisition provides a supportable fair market value measure of a quality, well-equipped refinery that is well-located in a metropolitan area with significant demand for its product. Given these enormous variances in value, it is difficult for the Board to argue that its estimates are reasonable. In fact, the Board's failure to adequately estimate the true magnitude of fixture depreciation is exactly the error the Supreme Court concluded was the fatal flaw in the Board economic analysis in the first version of Rule 474. (See *Western States Petroleum*, 57 Cal. 4th at 430.)

The twelfth page of Ms. Reheis-Boyd's letter refers to the Board's use of "past data to estimate the future impact of Rule 474" as a "misjudgment." The twelfth and thirteenth pages of Ms. Reheis-Boyd's letter discuss a simple example, provided as an attachment to the letter, to illustrate the effect of different data on the Board's calculations. In the example, WSPA assumes that a hypothetical refinery has fixtures with an adjusted base year value of $200 million and a fair market value of $50 million, and land with a base year value of $25 million and a fair market value of $175, so that all of the hypothetical $150 million of depreciation in the fixtures can be offset by the hypothetical $150 million of appreciation in the land if the hypothetical refinery's property is valued as one appraisal unit. WSPA assumes that the Board has incorrectly determined that the fair market value of the hypothetical refinery's fixtures is $150 million and, as a result, the Board has incorrectly determined that only $50 million of fixture depreciation can be offset by the $150 million of land appreciation if the hypothetical refinery's property is valued as one appraisal unit, and that the offsetting has a "property tax cost" of "approximately $500,000 (one percent of $50 million)." And, WSPA assumes that the Board should have correctly concluded that all of the $150 million of fixture depreciation can be offset by the $150 million of land appreciation if the hypothetical refinery's property is valued as one appraisal unit, and that the offsetting would have a "property tax cost" of "approximately $1,500,000 (one percent of $150 million)." On the thirteenth page of the letter, WSPA concludes that "the incremental assessed value produced by Rule 474 using an accurate measure of the fixture value is $150 million instead of $50 million in this example. The incremental property tax collected from the refinery would

be $1.5 million, three times the incremental tax effect produced by the Board's overstated fixture value."

The thirteenth page of Ms. Reheis-Boyd's letter states that: "As further evidence that the Board's estimates of fixture fair market value are greatly overstated are the multiple cases where the Board's purported fixture fair market values on a particular refinery exceed that refinery's fixture Proposition 13 adjusted base year value (the fixture cost when newly added adjusted annually by the Proposition 13 inflation factor). (See *Initial Statement. Attachment F:* Page 1-Refinery E for 2009 and 2012; Page 2-Refinery F for 2009 and 2012, Refinery G for 2009, Refinery I for 2009 and 2010, and Refinery J for 2012.) This is obviously incorrect. As any appraiser would confirm, industrial fixtures lose significant value as soon as they start production. Thus, it is nearly impossible for industrial fixtures to ever have a fair market value in excess of their adjusted base year value. Yet, the Board's flawed analysis contains multiple examples of the implausible conclusion that refinery fixtures actually *appreciate in value*."

The thirteenth page of Ms. Reheis-Boyd's letter also states that: "Here, in the present proposal, the Board's initial economic impact assessment uses data from *only 10 of the 20 major refineries,* and thus it continues to draw its conclusion from only half of the available data. WSPA believes that the Supreme Court would continue to question the validity of the Board's conclusions as to the statewide impact of Rule 474 since the Board's analysis continues to be based on data from only half of the California refineries."

Finally, the fourteenth page of Ms. Reheis-Boyd's letter states that:

> WSPA believes that the Board failed to [properly] comply with the APA provision set out in Gov. Code§ 11346.3(b)(l), which requires the Board' s economic impact assessment to assess whether and to what extent Rule 474 would affect (i) the creation or elimination of jobs in California; (ii) the creation of new businesses or the elimination of existing businesses within California; (iii) the expansion of businesses currently doing business in California; and (iv) the benefits of the rule to the health and welfare of California residents, worker safety, and the California environment. WSPA believes that to comply with this requirement, it is not enough for the Board to say, perfunctorily, that Rule 474 would not have an impact on any of these matters.

Mr. Becker's Testimony

Mr. Becker, an attorney for Pillsbury Winthrop Shaw Pittman, LLP, appeared at the public hearing on December 18, 2014, and provided the following testimony opposing the Board's re-adoption of Rule 474 on behalf of WSPA:

> Well, first of all, let's be straight about what's going on here. This is a real change. Prior to 474 -- or I should say prior to the proposed Rule

474, industrial manufacturing operations had land and fixtures assessed separately under 461(e); that was the law.

The Supreme Court recognizes that in their decision when they say "any attempt to change the law under Rule 474 is quasi legislative and a change." They go on to say that the Board has the power to make that change. We regrettably disagree with that conclusion by the Supreme Court, but nevertheless, the Supreme Court said it.

The fact is the Supreme Court starts this analysis by saying that the current law is 461(e). Absent 474, we value fixtures separately from land and buildings. And we do that not just for refineries, we do that for all industrial operations, all manufacturing operations.

474 singles out refineries for a special rule. It singles them out for a special rule. Now regrettably, the Supreme Court said we can do that.

So basically what we're here for today is we're going to argue that the economic impact statement is inaccurate. It's inaccurate and unacceptable and will destine Rule 474 to being failing -- to fail again before the Supreme Court.

Now why is that the case? I guess to help the Board understand my argument, I'd ask you to turn to the last page of the WSPA submission where we talk about what's really going on here. And what's really going on here is Rule 474 allows fixture depreciation to be subject to property tax.

So when fixtures depreciate beneath the base year value -- as in refineries they almost certainly will because it's an industrial operation where fixtures are used up in the process of making oil and gas products -- that decline in value currently, under 461(e), cannot be taxed. You have to go to the fair market value.

474 says I can grab that decline in value and tax it to the extent of land depreciation. Okay. We got to measure that. We got to measure that accurately to tell the economic impact of what's going on here.

Now, [Board staff] made an attempt at that, but it's not a very accurate one. When you look at what they've done and how they've come up with those numbers, those numbers are far in excess -- the fair market value numbers they came up with are far in excess of market values. And because they're in excess of market values, in measuring the spread, the extra spread between base year value and market value that can be captured, they've minimized the tax impact. Because the fair market

value of refinery fixtures is actually much, much lower, the tax impact is much broader of allowing that depreciation to be taxed.

The principal evidence we present for this -- you didn't even have to look far for it -- it was in the Board's economic impact statement that they presented. It's the recent sale, in June of 2013, of the . . . the BP Carson refinery . . . to Tesoro. That refinery sold for a billion dollars. It's not $2.4 billion as is noted in some of the Board's materials, but for a billion dollars, a billion 75 million. The remaining amount was for inventories which are not taxed.

But beyond that, that billion 75 included much, much more than the refinery. It included marine terminals. It included service stations. It included trade names.

Actually, when you think about this transaction, those items, those other items are the vast majority of this transaction. So really, the refinery value is a minor fraction of that billion dollars.

Nevertheless, let's look at that billion dollars because we have that as an objective number to look at. When you look at that billion dollars in relation to crude capacity of this refinery, it produces a value of $3800 per barrel of crude capacity.

Now, I ask you to go to Exhibit 2 of what WSPA presented. These are the numbers that the Board presents as their estimates of fair market value. They go from a low of, I think, $5400 per barrel of crude capacity for the Carson refinery to $20,000 per barrel of crude capacity. This is what they're saying the fair market values are of these fixtures in the face of a recent transaction, for a number at $3800 which is vastly below this. And that $3800 is vastly overstated because it includes tons of other assets.

That $3800 we expect could go well beneath a thousand dollars. So we're talking about a spread here in fair market value that the Board presented from numbers as high as $20,000 per crude capacity down to a thousand dollars.

And because of that spread, because of that spread and that high number that's on this analysis, we believe they have greatly understated the amount of extra assessment that these refineries will be subject to.

The spread again that these refineries will be subject to is the base -- the base year value against the fair market value. And if you overstate that fair market value, that tax effect of that spread is going to be minimized. And their analysis is based on that minimal spread.

> That's what we're unhappy about. We're, of course, unhappy about Rule 474 because the refineries don't like being singled out differently from other industrial operations; that's not fair. But despite that, we're even -- we're equally unhappy about the fact that the economic impact statement has understated, greatly understated the true cost of this measure. And therefore, the analysis that says there's no jobs effect, there's no economic effect, there's no effect on California industry, all of that extra money is going to be taken away from refinery production activities and . . . not able to go into the free enterprise system.
>
> So there is an economic effect that's much greater than what the Board's analysis is saying. And, therefore, we respectfully submit that the economic impact statement is flawed and cannot be accepted. (Transcript of Public Hearing, pp. 11-16.)

When asked whether or not WSPA thought additional dialogue and discussion would actually be helpful in reaching a conclusion that WSPA would be satisfied with, Mr. Becker added that:

> I guess a couple of things that I think we got to get a perspective on here. Since Prop 13 was adopted in 1978, industrial manufacturing facilities of all kinds have had fixtures treated separately from land and buildings. Okay. 461(e) is the law now. Absent adoption of 474, it remains the law.
>
> Okay. We can talk about what kind of regulation you can or cannot adopt. I don't disagree that the Supreme Court regrettably said you could adopt this regulation. Okay. But, one, it's not the law now. You can't do this now. Okay.
>
> So this is a change. It is a major change for which refineries are being singled out. We find that problematic.
>
> Okay. Number two, we think the economic impact statement that is sitting with you right now is badly flawed. (Transcript of Public Hearing, pp. 31 and 32.)

When asked if WSPA would provide any input to help correct the perceived errors in the Board's assessment of the economic impact of the re-adoption of Rule 474, Mr. Becker responded that:

> I would relate to you a conversation I had with one of our members in advance of this hearing where we talked about this topic. And he said, it seems to me that Rule 474 is taking tax money from me. And . . . if the Board is asking me if I'm going to open the door and help them take tax money from me, I don't know that I'm very excited about that.

> . . . I mean, I don't know how to answer that. I'd have to pay – we'd have to solicit our members to talk about that. But we - - see this as wrong. We see the economic impact statement that there's wrong. We gave information today why it's wrong. We will continue to believe it's wrong. It's a - - it's a massive change, isolating refineries. We think it's wrong, and we think the economic impact statement's wrong. (Transcript of Public Hearing, pp. 32 and 33.)

During the public hearing, Board staff said that Mr. Becker's testimony indicated that WSPA still thinks the law currently requires petroleum refinery fixtures to be appraised separately for purposes of measuring declines in value, that WSPA still wants to litigate the substance of what RTC section 51(d) says, and staff does not believe that further discussion would lead to agreement between staff and WSPA that county assessors can currently value petroleum refinery fixtures as part of the same appraisal unit with its land and improvements under RTC section 51(d). (Transcript of Public Hearing, pp. 37 and 38.) Board staff also said that when WSPA has attacked the specific numbers in the Board's economic impact assessment, both in Ms. Reheis-Boyd's letter and in Mr. Becker's testimony, their comments are kind of misdirecting the Board because they are attacking the county assessors' values, the Board would have to value all of the refineries as of all the different lien dates to determine whether the county assessors' values were correct, and the APA does not require the Board to independently value all of California's petroleum refineries. (Transcript of Public Hearing, p. 38.) Mr. Becker responded to Board staff's comments by saying:

> First of all, the Supreme Court's very clear that Rule 474 is a change. Okay. Let's -- let's – let's let that stand. So this is a change.
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> Secondly, we're using a market transaction, the last one that's available actually, to show why all of their fair market value numbers are overstated and, therefore, that they understate the tax effect.
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> That -- that market transaction was something that was included in [staff's] materials. [Staff] didn't do any analysis of it. The analysis of it that we did and submitted today shows that their numbers have problems. (Transcript of Public Hearing, pp. 40-41.)

When asked if there were any examples of negative economic impact from the re-adoption of Rule 474, Mr. Becker responded that:

> Well, let -- let me answer your question this way: The Supreme Court was very clear that what the Board of Equalization did not do the first time around was accurately measure the depreciation and fixtures, accurately measure the spread between base year value and fair market value.

> And that number actually -- you know, obviously requires a solid number of fair market value for the fixtures. And our presentation was directed exactly [at] what the Supreme Court said it need[ed] to be done; which is, you need an accurate number for the fair market value of the fixtures. (Transcript of Public Hearing, p. 44.)

Finally, when asked what other values Board staff should have used besides the county assessors' values, Mr. Becker responded that the Board should use the numbers from the "Tesoro transaction" and the "billion 75 million" sales price of "BP's assets" as a unit. (Transcript of Public Hearing, p. 46.) And, Mr. Becker explained further that:

> It -- my argument in using this data point, Chairman Horton, is toward the economic impact statement. That the economic impact statement, per the Supreme Court's directive, needs to accurately measure the spread between base year value and fair market value. Because that's ultimately the potential that can be taxed. And that's extra tax an industry will bear.
>
> That has to be accurately done. And that's not been accurately done because this data point -- the only market data point in all this analysis is monumentally below even the lowest data point. The spread is far wider than they're saying. (Transcript of Public Hearing, p. 47.)

Responses to Ms. Reheis-Boyd's Letter & Mr. Becker's Testimony on Behalf of WSPA

Responses to Comments Regarding the Effect of the Re-Adoption of Rule 474

As explained by the California Supreme Court in its *WSPA v. BOE* opinion, Rule 324, *Decision*, currently defines the term "appraisal unit" to mean "'a collection of assets that functions together, and that persons in the marketplace commonly buy and sell as a single unit or that is normally valued in the marketplace separately from other property . . . .'" (*WSPA v.* BOE, p. 411 [quoting Rule 324, subd. (b)].) As explained in *WSPA v. BOE*, the Board adopted the provisions of Rule 461(e), "[i]n the wake of Proposition 13 and Proposition 8" and before RTC section 51 was enacted (and then subsequently amended to include its current definition of "real property")[7] to establish a broad rule "applicable to most real property used for manufacturing" that:

> Declines in value will be determined by comparing the current lien date full value of the appraisal unit to the indexed base year full value of the same unit for the current lien date. Land and improvements constitute an appraisal unit except when measuring declines in value caused by disaster, in which case land shall constitute a separate unit. For purposes of this

[7] Rule 461's reference note refers to "Article XIII A, Sections 1 and 2, California Constitution," but does not refer to RTC section 51.

> subdivision,[8] fixtures and other machinery and equipment classified as improvements constitute a separate appraisal unit. (*WSPA v.* BOE, p. 411.)

This is because persons in the marketplace commonly did and still commonly do buy and sell most land and improvements as a single unit, but persons in the marketplace did not commonly and still do not commonly buy and sell most fixtures as part of the same unit with land and improvements.

Also, as explained in *WSPA v. BOE*, "[i]n September 2006, the Board voted three to two to adopt Rule 474[9] to address 'the valuation of the real property, personal property, and fixtures used for the refining of petroleum.'" (WSPA v. BOE, p. 411.) Rule 474, subdivision (d)(2), provided that "*The land, improvements, and fixtures and other machinery and equipment classified as improvements for a petroleum refining property are rebuttably presumed to constitute a single appraisal unit.*" (WSPA v. BOE, p. 412.) "Before [initially] adopting Rule 474[:]

> [T]he Board held a hearing at which several public officials testified in favor of the rule. Typical was the testimony of Rick Auerbach, the Los Angeles County Assessor, who stated that in his experience "refineries in California . . . are bought and sold as a unit. . . . I am not aware of one that has not been sold as a unit. If we have a case where there is the potential for a refinery to be dismantled and sold–where the fixtures are sold separately, the proposed rule is a rebuttable presumption and we would take that into account. And we would value the fixtures separately."
>
> The Board concluded in its final statement of reasons before adopting the rule that "sufficient evidence in the rulemaking record exists to determine that proposed Rule 474 is necessary to obtain assessments more accurately reflecting how petroleum refinery properties would actually trade in the marketplace. . . . At the June 27, 2006 Property Tax Committee meeting, Thomas Parker, Deputy County Counsel, Sacramento County; Rick Auerbach, Los Angeles County Assessor and President of the California Assessor's Association; Lance Howser, Chief Assessor, Solano County; and Robert Quon, Director of Major Appraisals for the Los Angeles County Assessor's office, all testified that refineries are in fact bought, sold, and valued as a single unit. In the same meeting, Mr. Auerbach testified that refineries are different from other heavily-fixtured manufacturing industries such as breweries, canneries, and amusement parks and toy manufacturing. Refineries are unique in that up to 80 percent of their values are contained in the fixtures and because the land and fixtures are so integrated, it is difficult to physically separate the

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[8] The Board amended Rule 461(e) to replace "subsection" with "subdivision," but has not made any substantive amendments to Rule 461(e) since its adoption.

[9] Prior to its repeal in 2013, Rule 474's reference note referred to "Article XIII Section 1, and Article XIII A, Section 2, California Constitution; Sections 51 and 110.1, Revenue and Taxation Code."

> fixtures from the land. Further, the land and fixtures are also so economically integrated that a buyer normally would not, in a fair market transaction, purchase the land separately from the fixtures or the fixtures separately from the land. [¶] Since petroleum refineries are bought and sold as a unit consisting of land and fixtures, to value the fixtures separate and apart from the land may result in assessed values either below or above fair market value in violation of Propositions 8 and 13." (*WSPA v. BOE*, p. 413.)

And, "[p]etroleum refinery property was covered by Rule 461(e) until the Board's [initial] adoption of Rule 474." (*WSPA v. BOE*, p. 411.) Therefore, the Board agrees with the California Supreme Court that the Board's initial adoption of Rule 474, in 2006, was intended to change the way the Board's rules apply when measuring declines in value of petroleum refinery property. The Board also agrees with the California Supreme Court that the change was based upon evidence that refineries are commonly bought and sold as a unit in the marketplace, and the Board's determination that Rule 474 is necessary to obtain assessments more accurately reflecting how petroleum refinery properties would actually trade in the marketplace. And, the Board agrees that after its initial adoption in 2006, Rule 474 was a new rule with general application to petroleum refineries, which both interpreted RTC section 51(d) and limited the application of Rule 461(e).

In August 2013, the California Supreme Court held that Rule 474 was procedurally invalid under the APA so that it no longer had the force and effect of law. Therefore, the Board subsequently repealed Rule 474 pursuant to Rule 100, effective October 30, 2013, in order to clarify its rules, and Rule 474 has no effect on how county assessors measure declines in value of petroleum refinery property today.

In August 2013, the California Supreme Court also addressed the substantive validity of repealed Rule 474, which necessarily required an analysis of the proper appraisal unit to be used to measure declines in value of petroleum refinery property, based upon current California property tax law, including RTC section 51(d) and Rule 324, as applied to the general marketplace for petroleum refineries. The Court addressed the substantive validity of repealed Rule 474 because the Court found that it presented "a question of law, it ha[d] been thoroughly briefed, and it is a matter of considerable importance to the parties and to the public." (*WSPA v. BOE*, p. 409.) And, the Court expressly held that Rule 474 was substantively valid based upon the following "straightforward reading of section 51(d)" (*WSPA v. BOE*, p. 417):

> [S]ection 51(d) states: "for purposes of this section, 'real property' means that appraisal unit that persons in the marketplace commonly buy and sell as a unit, or that is normally valued separately." By its terms, the statute provides two alternative methods of determining the appraisal unit that constitutes taxable real property: it is either (1) a unit "that persons in the marketplace commonly buy and sell as a unit" or (2) a unit "that is

> normally valued separately." Rule 474 applies the first method to petroleum refinery property." (*WSPA v. BOE*, p. 417.)

The California Supreme Court also expressly stated that:

> For property whose fixtures are typically sold separately in the open market, fixtures are properly treated as a separate appraisal unit, and fixture depreciation may be independently recognized. But when land and fixtures are typically sold as a single unit, they are properly treated as a single appraisal unit, even if fixture depreciation is offset by land appreciation or otherwise reduced by valuing land and fixtures together. . . . To account for fixture depreciation separately when land and fixtures are actually bought and sold as a single unit would allow the owner to claim a reduction in real property value that is economically fictitious, resulting in a tax windfall. Neither California Constitution, article XIII A nor section 51 nor traditional appraisal practices require the unit of appraisal to be defined in a manner that maximizes the depreciation of fixtures in contravention of economic reality. To the contrary, the law and consistent practice have long required appraisal of real property in the declining value context to reflect its "full cash value"—that is, the value "property would bring if exposed for sale in the open market." (§§ 51(a)(2), 110.) (*WSPA v. BOE*, p. 423.)

In addition, in Justice Kennard's concurring and dissenting opinion in *WSPA v. BOE*, Justice Kennard said that she agreed with the majority that Rule 474 was substantively valid because "Rule 474 correctly interprets [section 51(d)] . . . ." (*WSPA v. BOE*, p. 432.) Justice Kennard also expressly said that "it is section 51(d), not Rule 474, that provides the governing substantive standard. With or without Board rules elucidating the application of section 51(d) to specific types of property, section 51(d) adequately defines 'real property' and can be applied to various types of real property, including petroleum refinery properties, on a case-by-case basis. In other words, even without a rule on point, the Legislature's statutory definition of 'real property' is, by itself, a fully enforceable legal standard." (*WSPA v. BOE*, p. 435.)

As a result, in August 2013, the California Supreme Court provided its own substantive interpretation of how California property tax law applies to the valuation of petroleum refinery property for purposes of measuring declines in value in order to avoid further litigation between WSPA, county assessors, and the Board regarding the issue. The Court held that, under the Court's interpretation of California property tax law, particularly RTC section 51(d), it is necessary to value petroleum refinery property as a single appraisal unit for purposes of measuring declines in value when persons in the marketplace actually buy and sell petroleum refinery property as a unit because the appraisal of petroleum refinery property in the decline in value context must reflect the value the property would bring if exposed for sale in the open market. The Court also found that it is important for county assessors to apply its interpretation of section 51(d) to petroleum refinery property, under such circumstances, in order to prevent an

unintended "tax windfall." Therefore, the Court intended for its interpretation of RTC section 51(d), as applied to the current marketplace for petroleum refineries, to establish a binding precedent to take effect immediately to prevent an unintended "tax windfall." The Court gave no indication, express or otherwise, that it intended to prohibit county assessors from assessing petroleum refinery property in a manner that is consistent with the Court's interpretation of section 51(d), until such time as the Board re-adopted Rule 474.

In addition, valuing petroleum refinery property as one "appraisal unit" is consistent with Rule 324 (quoted above) when substantial evidence indicates that petroleum refinery property is currently bought and sold as a single unit in the marketplace. Also, as explained above, the California Supreme Court has held that a Board regulation that conflicts with the Court's interpretation of a statute exceeds the Board's rulemaking authority and is invalid. So, Rule 461(e) cannot provide a legal basis for prohibiting a county assessor from finding, based upon current California property tax law, including RTC section 51(d) and Rule 324, as interpreted by the California Supreme Court in *WSPA v. BOE*, that petroleum refining property constitutes a single appraisal unit for measuring declines in value when substantial evidence indicates that petroleum refinery property is currently bought and sold as a single unit in the marketplace.

The initial statement of reasons explains that the Board confirmed that persons in the marketplace still commonly buy and sell operable California petroleum refineries as a unit prior to proposing to re-adopt Rule 474. (Initial Statement of Reasons, pp. 11-13.) It explains that Board staff determined how the re-adoption of Rule 474 might change (or effect) the current assessment of petroleum refining property and thereby have an economic impact on county assessors and the California petroleum refining industry in accordance with the APA. (Initial Statement of Reasons, p. 13.) It also explains that:

> Board staff determined that, in the absence of Rule 474, county assessors are currently authorized by RTC section 51(d), as interpreted by the California Supreme Court in *WSPA v. BOE*, to determine that petroleum refinery property (land, improvements, and fixtures) constitutes a single appraisal unit for measuring declines in value when persons in the marketplace commonly buy and sell refinery property as a unit. Therefore, Board staff determined that, as a result, county assessors are currently required to monitor the market for petroleum refinery property. However, in the absence of substantial changes in the California petroleum refinery market (discussed above), it is also currently reasonable for a county assessor to generally value petroleum refinery property as a single appraisal unit, for purposes of measuring declines in value, and rely on each petroleum refinery owner to produce evidence, when available, to establish that some or all of its refinery's fixtures should be valued as a separate appraisal unit because those fixtures are not commonly bought and sold as a unit with the refinery's land and improvements.

Board staff determined that the re-adoption of Rule 474 does not materially change the treatment of petroleum refinery property under RTC section 51(d) as interpreted by the California Supreme Court in *WSPA v. BOE*. Instead, the re-adoption of Rule 474 has the effect of clarifying that, based upon the California petroleum refinery market (discussed above):

- "The land, improvements, and fixtures and other machinery and equipment classified as improvements for a petroleum refining property are rebuttably presumed to constitute a single appraisal unit" for purposes of determining declines in value because doing so is generally consistent with RTC section 51(d) as interpreted by the California Supreme Court in *WSPA v. BOE*; and
- Rule 461(e)'s provisions providing that "fixtures and other machinery and equipment classified as improvements constitute a separate appraisal unit" for purposes of determining declines in value do not apply to petroleum refinery property, unless there is evidence that treating specific fixtures as a separate appraisal unit would be consistent with RTC section 51(d) as interpreted by the California Supreme Court in *WSPA v. BOE*.

In addition, Board staff determined that, after the re-adoption of Rule 474, a county assessor would still need to continue to monitor the market for petroleum refinery property because Rule 474 does not supersede RTC section 51(d) and because the presumption in Rule 474 is rebuttable. Staff determined that, after the re-adoption of Rule 474 and in the absence of substantial changes in the California petroleum refinery market, county assessors could continue to generally value petroleum refinery property (land, improvements, and fixtures) as a single appraisal unit. Board staff also determined that, after the re-adoption of Rule 474 and in the absence of substantial changes in the California petroleum refinery market, county assessors could continue to rely on each petroleum refinery owner to produce evidence to establish that some or all of its refinery's "fixtures" should be valued as a separate appraisal unit because those fixtures are not commonly bought and sold as a unit with the refinery's land and improvements, when available. Therefore, Board staff concluded that the re-adoption of Rule 474 is fully consistent with the existing mandates of RTC section 51(d), and that there is nothing in the proposed re-adoption of Rule 474 that would significantly change how individuals and businesses, including county assessors and petroleum refinery owners, would generally behave due to the current provisions of RTC section 51(d) as interpreted by the California Supreme Court in *WSPA v. BOE*. (Initial Statement of Reasons, pp. 13-14.)

Therefore, the Board has correctly and properly concluded that county assessors are required to follow the California Supreme Court's binding precedential opinion regarding the proper appraisal unit to be used to measure declines in value of petroleum refinery

property, based upon current California property tax law, including RTC section 51(d) and Rule 324, as applied to the general marketplace for petroleum refineries, which the Court provided after the Board's initially adopted Rule 474. The Board has correctly concluded that Rule 474 is fully consistent with the California Supreme Court's binding precedential opinion. And, the Board has correctly concluded that, due to the California Supreme Court's binding precedential opinion, the Board's re-adoption of Rule 474 does not substantially change the valuation of petroleum refinery property for purposes of measuring declines in value, as did the Board's initial adoption of Rule 474. Instead, the Board's current re-adoption of Rule 474 has the effect of clarifying that, based upon the California petroleum refinery market (discussed above):

- "The land, improvements, and fixtures and other machinery and equipment classified as improvements for a petroleum refining property are rebuttably presumed to constitute a single appraisal unit" for purposes of determining declines in value because doing so is generally consistent with RTC section 51(d) as interpreted by the California Supreme Court in *WSPA v. BOE*; and
- Rule 461(e)'s provisions providing that "fixtures and other machinery and equipment classified as improvements constitute a separate appraisal unit" for purposes of determining declines in value do not apply to petroleum refinery property, unless there is evidence that treating specific fixtures as a separate appraisal unit would be consistent with RTC section 51(d) as interpreted by the California Supreme Court in *WSPA v. BOE*.

And, the Board disagrees with Ms. Reheis-Boyd's letter and Mr. Becker's testimony to the extent they:

- Assert that Rule 461(e) still generally applies to the valuation of petroleum refinery property when persons in the marketplace commonly buy and sell petroleum refinery property as a unit;
- Assert that the California Supreme Court's binding precedential opinion regarding the proper appraisal unit to be used to measure declines in value of petroleum refinery property, based upon current California property tax law, including RTC section 51(d) and Rule 324, as applied to the general marketplace for petroleum refineries, does not currently apply to the valuation of petroleum refinery property; and
- Conclude that the re-adoption of Rule 474 substantially changes the valuation of petroleum refinery property for purposes of measuring declines in value, as did the Board's initial adoption of Rule 474.

Further, as provided on page 8 of the initial statement of reasons, the Board received a letter dated August 20, 2013, from Ms. Moller, in which she explained that "the California Supreme Court's opinion in *WSPA v. BOE*, which upheld the substantive validity of Rule 474, but still invalidated the rule on procedural grounds, created an issue

(or problem within the meaning of Gov. Code, § 11346.2, subd. (b)(1)) for county assessors in counties with petroleum refinery property as to:

- Whether petroleum refinery land, improvements, and fixtures constitute a single appraisal unit for determining declines in value, under RTC section 51 and the substantive policy expressed in Rule 474, because petroleum refineries are commonly bought and sold as a unit in the marketplace; or
- Whether petroleum refinery fixtures constitute a separate appraisal unit, as provided in Rule 461, subdivision (e) . . . ."

"In the letter, Ms. Moller also requested that the Board initiate the rulemaking process to re-adopt Rule 474 to clarify that petroleum refinery land, improvements, and fixtures are rebuttably presumed to constitute a single appraisal unit for determining declines in value." (Initial Statement of Reasons, p. 9.) In addition, the Board received a written statement from Robert Cooney, Appraiser Specialist with the Los Angeles County Assessor's Office, which requested that the Board re-adopt Rule 474 to "codify a practice already employed by the County of Los Angeles." (Initial Statement of Reasons, p. 9.) Therefore, even though the adoption of Rule 474 does not substantially change the valuation of petroleum refinery property for purposes of measuring declines in value, the Board correctly determined in the initial statement of reasons that "it is reasonably necessary to re-adopt Rule 474 for the specific purpose of addressing the issue (or problem) identified in Ms. Moller's August 20, 2013, letter by clarifying that petroleum refinery land, improvements, and fixtures are rebuttably presumed to constitute a single appraisal unit for determining declines in value because petroleum refineries are commonly bought and sold as a unit in the marketplace." (Initial Statement of Reasons, p. 10.) Also, Mr. Twa's and Ms. Hooley's recommendations that the Board re-adopt Rule 474 to *reduce potential litigation* (discussed above) provide further support for the Board's determination that it is reasonably necessary to clarify the Board's rules regarding the proper appraisal unit for measuring declines in value of petroleum refinery property.

Furthermore, the Board has not based its assessment of the economic impact of the re-adoption of Rule 474 on the assertion that property tax rules that are consistent with existing statutes can "never" impose costs. Instead, the Board has reasonably concluded that its re-adoption of Rule 474 does not substantially change the valuation of petroleum refinery property for purposes of measuring declines in value, as did the Board's initial adoption of Rule 474, based upon all the current facts and circumstances. This is because Rule 474 simply provides that petroleum refinery property is rebuttably presumed to be a single appraisal unit. This is because, since the Board's initial adoption of Rule 474, the California Supreme Court has:

- Held that, under the Court's interpretation of California property tax law, particularly RTC section 51(d), it is necessary to value petroleum refinery property as a single appraisal unit for purposes of measuring declines in value when persons in the marketplace actually buy and sell petroleum refinery property as a unit because the appraisal of refinery property in the decline in value context

must reflect the value the property would bring if exposed for sale in the open market;

- The Court has said that it is important for county assessors to apply its interpretation of RTC section 51(d) to petroleum refinery property, under such circumstances, in order to prevent an unintended tax windfall; and
- The Court has held that Rule 474 is consistent with RTC section 51(d).

This is also because, in the initial statement of reasons, the Board determined that, "in the absence of Rule 474, county assessors are currently authorized by RTC section 51(d), as interpreted by the California Supreme Court in *WSPA v. BOE*, to determine that petroleum refinery property (land, improvements, and fixtures) constitutes a single appraisal unit for measuring declines in value when persons in the marketplace commonly buy and sell refinery property as a unit." (Initial Statement of Reasons, p. 13.) The Board also determined that "the re-adoption of Rule 474 does not materially change the treatment of petroleum refinery property under RTC section 51(d) as interpreted by the California Supreme Court in *WSPA v. BOE*." (Initial Statement of Reasons, p. 14.) Therefore, there is not a material difference in the economic impact of a county assessor determining that petroleum refinery property (land, improvements, and fixtures) constitutes a single appraisal unit for measuring declines in value, under RTC section 51(d) or Rule 474 (after it is re-adopted and effective), when persons in the marketplace commonly buy and sell refinery property as a unit, as the Board confirmed that they currently do. In addition, neither Ms. Reheis-Boyd's letter nor Mr. Becker's testimony identify any specific economic impact from county assessors applying Rule 474, instead of applying the California Supreme Court's binding precedential opinion regarding the proper appraisal unit to be used to measure declines in value of petroleum refinery property, under current California property tax law, including RTC section 51(d), to determine the proper appraisal unit to measure declines in value of petroleum refinery property. Therefore, the Board has adequately and correctly assessed the economic impact of the re-adoption of Rule 474.

Responses to Comments Regarding the Board's Analysis of the Tax Effect of Treating Petroleum Refinery Property as One Appraisal Unit

First, pages seven and eight of the initial statement of reasons explain that the Board previously determined that its initial adoption of Rule 474, in 2006, changed the valuation of petroleum refinery property. At the time, the Board estimated that the initial adoption of Rule 474 would result in at least a $140 million annual increase in the assessed value of all of California's petroleum refineries and at least a $1.4 million increase in the taxes paid by the refineries' owners. And, the California Supreme Court invalidated the Board's initial adoption of Rule 474 on procedural grounds because the Court agreed with the trial court and Court of Appeal that the Board could not explain why its 2006 calculation of the tax effect of the Board's initial adoption of Rule 474 represented "'empirically or conceptually, a valid or reasonable way to estimate the amount of fixture depreciation that would be offset by appraising land and fixtures as a single unit.' (*WSPA v. BOE*, p. 430.); and '[T]he Board's calculation failed to consider prior land appreciation and the full tax impact that would occur if land were valued at actual market value rather than adjusted base year value.' (*Ibid.*)" (Initial Statement of Reasons, p. 8

[quoting *WSPA v. BOE*].) Therefore, as part of the re-adoption of Rule 474, the Board made a significant effort to determine the "tax effect" of valuing California's petroleum refineries' fixtures as part of the same appraisal unit with their land and improvements under RTC section 51(d) and Rule 474, instead of valuing the fixtures as a separate appraisal unit under Rule 461(e), the Board included its actual calculations of the tax effect in Attachment F to the initial statement of reasons, and the Board summarized its findings from those calculations in the initial statement of reasons.

However, the Board has correctly determined that the re-adoption of Rule 474 does not substantially change the valuation of petroleum refinery property for purposes of measuring declines in value under current California property tax law, including RTC section 51(d) and Rule 324, as interpreted by the California Supreme Court in *WSPA v. BOE*, as explained above. So, the re-adoption of Rule 474 will not change the assessed value of any California petroleum refinery or increase the taxes paid by any California petroleum refinery owner under current law. And, the "tax effect" shown in the calculations in Attachment F to the initial statement of reasons and discussed in the initial statement of reasons is not an economic impact caused by the Board's re-adoption of Rule 474 within the meaning of the APA.

Second, the initial statement of reasons explains that:

> Although the Board has determined that there is no economic impact associated with the re-adoption of Rule 474 due to the mandates of RTC section 51(d), the Board is aware that fixture depreciation[10] can be offset by appreciation[11] in land and improvements when petroleum refinery property (land, improvements, and fixtures) is valued as a single appraisal unit, as the California Supreme Court indicated in *WSPA v. BOE*. Therefore, the Board recognizes that there is sometimes an increase in the total assessed value of petroleum refinery property when fixtures are valued as part of the same appraisal unit with land and improvements under RTC section 51(d) and Rule 474, instead of valued as a separate appraisal unit under Rule 461(e). The Board also recognizes that property taxes increase by one percent of each increase in assessed value.
>
> As a result, Board staff determined that it needed to obtain the available data regarding the market values and adjusted base year values for petroleum refinery land, improvements, and fixtures so that Board staff could accurately compare the total assessed value of a petroleum refinery when its fixtures are valued as a separate appraisal unit under Rule 461(e) and valued as part of the same appraisal unit with land and improvements under Rule 474. Therefore, Board staff contacted the California Assessors' Association and requested that the county assessors provide

[10] In this context, fixture "depreciation" is measured by subtracting market value from adjusted base year value.

[11] In this context, "appreciation" in land and improvements is measured by subtracting adjusted base year value from market value.

> Board staff with the available data for 2009 through 2013 without identifying specific petroleum refineries. In response, the California Assessors' Association provided all of the data for nine petroleum refineries for 2009-2013, and all the data for one additional petroleum refinery for 2009-2012, including many of California's largest refineries.

The initial statement of reasons also explains that "Board staff subsequently reviewed the available data" and "determined what the assessed values would be for 2009 through 2013, under RTC section 51(d) and Rule 474, and under Rule 461(e), for each of the 10 California petroleum refineries for which data" was available. And, Board staff determined that "the data did not indicate that valuing petroleum refinery fixtures as part of the same appraisal unit with land and improvements under RTC section 51(d) and Rule 474, instead of valuing fixtures as a separate appraisal unit under Rule 461(e), has a consistent tax effect in any given year or from year-to-year."

The initial statement of reasons further explains that, based upon the available data:

> [Board] staff determined that the owners of one of the 10 refineries would not pay higher property taxes under RTC section 51(d) and Rule 474, than under Rule 461, in any of the five years. [Footnote omitted.] Staff also determined that the owners of nine of the 10 refineries would pay higher property taxes under RTC section 51(d) and Rule 474, than under Rule 461, in at least two of the five years. Specifically, staff determined that:
>
> - The owners of two of the 10 refineries would pay higher property taxes under RTC section 51(d) and Rule 474, than under Rule 461, in two of the five years;
> - The owners of two of the 10 refineries would pay higher property taxes under RTC section 51(d) and Rule 474, than under Rule 461, in three of the five years;
> - The owners of three of the 10 refineries would pay higher property taxes under RTC section 51(d) and Rule 474, than under Rule 461, in four of the five years; and
> - The owners of two of the 10 refineries would pay higher property taxes under RTC section 51(d) and Rule 474, than under Rule 461, in all five years. [Footnote omitted.]
>
> In addition, Board staff determined that the owners of 9 of the 10 refineries would collectively pay the following additional property taxes for 2009 through 2013 if their refineries were valued under RTC section 51(d) and Rule 474, rather than under Rule 461, and determined that the additional taxes represented the following percentage increases in their collective property taxes for each year:

2009:	$4,633,805	2.78%
2010:	$5,221,876	3.79%

2011:	$5,159,918	3.46%
2012:	$4,045,140	2.52%
2013:	$2,816,552	2.40% [Footnote omitted]

Ms. Reheis-Boyd's letter states that WSPA was able to determine that all 10 of the petroleum refineries the Board analyzed are "within Los Angeles and Contra Costa County" (Ms. Reheis-Boyd's Letter, p. 8), which are the two counties that contain 9 of California's 10 largest petroleum refineries based upon their refining capacity as shown in the table from the "Energy Almanac" published by the California Energy Commission, included in the initial statement of reasons. Ms. Reheis-Boyd's letter states that WSPA was "able to match the Board's 10 Refineries A through J to their owners." (Ms. Reheis-Boyd's Letter, p. 8.) Ms. Reheis-Boyd's letter also states that WSPA was able to specifically determine that the "Carson refinery is 'refinery A' on the attachment F" (Ms. Reheis-Boyd's Letter, p. 9), and the Carson refinery is among the three largest refineries in California based upon their refining capacity as shown in the table from the "Energy Almanac," included in the initial statement of reasons.

Furthermore, Exhibit 2 to Ms. Reheis-Boyd's letter indicates that WSPA determined that all 10 of the refineries for which data was available had at least 100,000 crude barrels of capacity. And, the table from the "Energy Almanac," included in the initial statement of reasons, shows that there were only 9 refineries in California with crude oil capacity of at least 100,000 barrels per day as of October 2012.

The analysis provided in the initial statement of reasons clearly indicates the Board has made a reasoned effort to initially assess the effect of valuing all of California's petroleum refineries' fixtures as part of the same appraisal unit with the petroleum refineries' land and improvements under RTC section 51(d) and Rule 474, instead of valuing the fixtures as a separate appraisal unit under Rule 461(e), for a five year period. The Board used an empirically and conceptually valid and reasonable way to estimate the amount of fixture depreciation that would be offset by appraising petroleum refinery land, improvements, and fixtures as a single appraisal unit using the available data for 10 petroleum refineries, which Ms. Reheis-Boyd's letter and the Energy Almanac indicate included 8 of California's 9 largest refineries, which are located in Los Angeles and Contra Costa Counties. The Board's calculations specifically considered prior land and improvement appreciation and the full tax impact of offsetting fixture depreciation against land and improvement appreciation for all of the 10 refineries for which data was available and did so for a five-year period as to nine of the refineries and for a four-year period for the remaining refinery. Therefore, contrary to Ms. Reheis-Boyd and Mr. Becker's assertions, the Board's calculations provide a reader with an understanding of what the taxes on a representative refinery would have been under the formerly applicable Rule 461(e) and what the taxes would be under RTC section 51(d) and new Rule 474 based upon evidence that was identified in the initial statement of reasons. And, the Board's calculations, in Attachment F to the initial statement of reasons, provide readers with a valid and reasonable way to make their own estimates of the amount of fixture depreciation that would be offset by valuing a petroleum refinery's fixtures as part of the same appraisal unit with the petroleum refinery's land and improvements under

RTC section 51(d) and Rule 474, instead of valuing the fixtures as a separate appraisal unit under Rule 461(e).

Third, the Board was not able to make an estimate of the amount of fixture depreciation that would be annually offset by appraising all of California's petroleum refineries' land, improvements, and fixtures as a single appraisal unit or the annual tax effect of offsetting all of the refineries' fixture depreciation against their land and improvement appreciation. This is because the California Assessors' Association did not provide the Board with data for all of California's petroleum refineries and the available data did not indicate that valuing petroleum refinery fixtures as part of the same appraisal unit with land and improvements under RTC section 51(d) and Rule 474, instead of valuing fixtures as a separate appraisal unit under Rule 461(e), has a consistent tax effect in any given year or from year-to-year, as explained in the initial statement of reasons. Also, there is nothing in Ms. Reheis-Boyd's letter or Mr. Becker's testimony to indicate that the Board misanalysed the available data in this regard. And, Ms. Reheis-Boyd's letter and Mr. Becker's testimony do not identify a reasonable methodology the Board could have used to estimate the amount of fixture depreciation that would be annually offset by valuing all of California's petroleum refineries' land, improvements, and fixtures as a single appraisal unit or the annual tax effect of offsetting all of the refineries' fixture depreciation against their land and improvement appreciation based upon the available data.

Fourth, the Board assesses pipelines, flumes, canals, ditches, and aqueducts lying within two or more counties, property, except franchises, owned or used by regulated railway, telegraph, or telephone companies, car companies operating on railways in the state, and companies transmitting or selling gas or electricity, and electric generation facilities with a generating capacity of 50 megawatts or more that are owned or operated by an electrical corporation (collectively "state-assessed property") under section 19 of Article XIII of the California Constitution and RTC sections 721 and 721.5. Therefore, the Board did have the resources and expertise to determine what the assessed values would be for 2009 through 2013, under RTC section 51(d) and Rule 474, and under Rule 461(e), for each of the 10 California petroleum refineries for which data was available. However, all taxable property, except state-assessed property, is assessed by the *county assessors* under RTC section 404, including petroleum refinery property. As a result, the Board does not have experience directly valuing petroleum refinery property, it does not have its own historical data regarding the market values and adjusted base year values for the land, improvements, and fixtures for California's petroleum refineries, and it does not currently have the resources, expertise, or the tax and other financial information needed to accomplish the substantial task of independently determining the market values and adjusted base year values for the land, improvements, and fixtures for all of California's petroleum refineries on any lien date, much less multiple lien dates.

Also, taxpayers' property tax and related financial information is confidential. (See, e.g., Gov. Code, §§ 15619 and 15641 prohibiting the Board from disclosing information regarding the "business affairs of any company that . . . is not required by law to be reported to the Board" and prohibiting the Board from disclosing "appraisal data"

obtained during surveys of county assessors' assessment practices, respectively. See, also, RTC, § 451 providing that "[a]ll information requested by the assessor or furnished in the property statement shall be held secret by the assessor.") The APA does not expressly protect this type of confidential taxpayer information from being publicly disclosed when it is provided to an agency as part of a comment on a proposed regulation. Instead, the APA requires agencies to maintain a rulemaking file and make the rulemaking file available to the public for inspection and copying during regular business hours. (Gov. Code, § 11347.3, subd. (a).) And, as relevant here, the APA expressly requires the rulemaking file to include:

- "All data and other factual information, any studies or reports, and written comments submitted to the agency in connection with the adoption, amendment, or repeal of the regulation"; and
- "All data and other factual information, technical, theoretical, and empirical studies or reports, if any, on which the agency is relying in the adoption, amendment, or repeal of a regulation, including any economic impact assessment or standardized regulatory impact analysis as required by Section 11346.3." (Gov. Code, § 11347.3, subd. (b)(6) and (7).)

In addition, the Board had no reason to expect that petroleum refinery owners would provide data to support the Board's re-adoption of a rule they generally oppose. Therefore, the Board did not directly solicit confidential information from or about specific taxpayers that the APA could require to be disclosed to the public.

Instead of directly soliciting confidential information from or about specific taxpayers, the Board determined that it would be more reasonable for the Board to contact the California Assessors' Association and request that the California Assessors' Association:

- Collect the county assessors' available historical data regarding the market values and adjusted base year values for the land, improvements, and fixtures for California's petroleum refineries for 2009 through 2013;
- Aggregate the data provided by the county assessors; and
- Provide the aggregated data to the Board without identifying specific petroleum refineries.

That way, the Board could obtain the historical data it needed to determine the "tax effect" of valuing California's petroleum refineries' fixtures as part of the same appraisal unit with their land and improvements under RTC section 51(d) and Rule 474, instead of valuing the fixtures as a separate appraisal unit under Rule 461(e), without having to unnecessarily publicly disclose the specific taxpayers to which the data relates or rely on petroleum refinery owners to provide data to support the re-adoption of a rule they generally oppose.

Furthermore, the Board did provide copies of the initial statement of reasons, including the Board's economic impact assessment, and the attachments to the initial statement of reasons to CalTax and WSPA on September 12, 2014, and gave them an opportunity to

review the documents and provide input to the Board before the Board started the formal rulemaking process to re-adopt Rule 474. However, after reviewing the documents, CalTax and WSPA did not submit data the Board could use to determine the tax effect of valuing California's petroleum refineries' fixtures as part of the same appraisal unit with their land and improvements under RTC section 51(d) and Rule 474, instead of valuing the fixtures as a separate appraisal unit under Rule 461(e). The Board also published a notice on October 24, 2014, that generally solicited public comments regarding the Board's proposed re-adoption of Rule 474 in accordance with the APA, which gave all the interested parties, including CalTax and WSPA, an opportunity to submit such data. However, CalTax's comments in response to the notice did not provide any data (as discussed above). And, WSPA's comments in response to the notice, both in Ms. Reheis-Boyd's letter, which was submitted the day before the December 18, 2014, public hearing, and in Mr. Becker's testimony the following day, did not provided any usable data (as discussed below).

Fifth, the APA requires the proposed adoption of a new regulation, such as Rule 474, to be based upon "adequate information" and the APA requires an agency to consider information supplied by interested parties in proposing and adopting a new regulation. (Gov. Code, §§ 11346.3, subd. (a)(1) & (2), and 11346.9, subd. (a)(3)-(5).) The APA does not expressly mandate that a state agency independently value county-assessed property. The APA does not expressly require a state agency to independently verify data provided by interested parties, such as the California Assessors' Association. And, the Board disagrees with Ms. Reheis-Boyd's letter and Mr. Becker's testimony to the extent they suggest that the California Supreme Court's opinion in WSPA v. BOE interprets the APA as requiring a state agency to independently value county-assessed property or verify data provided by interested parties under the current circumstances where the value or other data does not relate to the "economic impact" of the Board's proposed regulatory action within the meaning of the APA.

Sixth, as explained in the initial statement of reasons and in this final statement of reasons, the Board's re-adoption of Rule 474 is based upon adequate information. The Board carefully considered all the information provided by all the interested parties regarding the Board's re-adoption of Rule 474, including the historical data provided by the California Assessors' Association. The Board had no reason to question the accuracy of the historical data the California Assessors' Association provided at the time that the Board prepared its initial statement of reasons. Ms. Reheis-Boyd's letter did not provide other data regarding the specific market values and adjusted base year values for any specific California petroleum refinery's land, improvements, and fixtures, as of a specific valuation date, that the Board could use to compare the total assessed value of an actual petroleum refinery when its fixtures are valued as a separate appraisal unit and valued as part of the same appraisal unit with its land and improvements. Mr. Becker's testimony did not indicate that WSPA would be likely to provide such data, even if the Board delayed the re-adoption of Rule 474 in order to give WSPA additional time to do so. And, as discussed further below, neither Ms. Reheis-Boyd's letter nor Mr. Becker's testimony were sufficient to establish that there are significant errors throughout "all" of the data provided by the California Assessors' Association, as they claim. Therefore,

there initially was and there still currently is no data available, other than the historical data provided by the California Assessors' Association, that the Board can reasonably use to compare the total assessed value of one or more actual petroleum refineries when their fixtures are valued as a separate appraisal unit and valued as part of the same appraisal unit with their land and improvements. And, it is still reasonable to conclude that the Board's analysis of all the historical data provided by the California Assessors' Association does provide a reader with a sufficient understanding of what the taxes on a representative refinery would have been under the formerly applicable Rule 461(e) and what the taxes would be under current RTC section 51(d) and new Rule 474.

In addition, Mr. Flessner's letter in support of the Board's re-adoption of Rule 474 explains that there is little data for county assessors to use to establish separate fair market values for refinery land, improvements and equipment. It explains that the buyer and seller of a refinery are primarily interested in the income that is generated by the refinery, as a whole. It also explains that the income potential of a petroleum refinery is dictated by the installed processing equipment, however, because the land, improvements, and fixtures at refineries are physically and functionally integrated income resulting from the refinery cannot be easily allocated between these elements. For this reason, refinery operations planning, economic analysis, and management accounting do not allocate income to classes of assets, such as land, improvements, and equipment, rather, income is measured and attributed to a refinery as a single economic unit.

Furthermore, Mr. Flessner's letter explains that it is necessary to value refineries under the income approach because the income approach is used by buyers and sellers of refineries to establish the selling price in transactions. It explains that the justification for requiring a separate appraisal unit for fixtures in order to account for fixture depreciation[12] does not exist under the income approach. This is because the refinery income stream and the resulting value already account for a lower level of performance that would result from physical depreciation of a refinery's fixtures by wear and tear or obsolescence. In addition, the income approach accounts for costs of maintenance and replacement that refineries incur to mitigate the effects of physical depreciation and obsolescence. Therefore, there is a factual basis to conclude that the Board could only reasonably and independently verify (or audit) all the historical data provided by the California Assessors' Association regarding the 10 refineries included in Attachment F to the Board's initial statement of reasons if the Board was able to:

1. Identify each of the refineries;
2. Obtain sufficiently detailed information regarding each of the same California refineries' income, expenses, assets, and adjusted base year values as of the 2009 through 2013 lien dates;
3. Compute the present worth of each refinery's future income stream, under the income approach prescribed by Rule 8, *The Income Approach to Value*, and explained by Assessors' Handbook Sections 501, *Basic Appraisal*, and 502, *Advanced Appraisal*, as of each lien date; and

[12] In this context, fixture "depreciation" refers to the physical deterioration or obsolescence of a fixture.

4. Allocate each refinery's value, as of each lien date, to each refinery's land, improvements, and fixtures.

However, the Board does not have sufficiently detailed information or resources to independently verify the data provided by the California Assessors' Association. Although the petroleum refinery owners' have their own data, Mr. Becker's testimony indicated that WSPA would be unlikely to provide such data, even if the Board delayed the re-adoption of Rule 474 in order to give WSPA additional time to do so. And, Mr. Becker's testimony provides good reason to conclude that WSPA would still continue to maintain that the Board's refinery values or allocated land, improvement, and fixture values, or both are "wrong," even if the Board did have sufficient information and resources and did independently verify the data provided by the California Assessors' Association. Therefore, under these circumstances, the Board does not agree that the Board was required to independently verify the data provided by the California Assessors' Association either before or after proposing to re-adopt Rule 474 in order to substantially comply with APA.

Seventh, in the initial statement of reasons, the Board referred to the June 2013 sale of BP's Carson, California refinery and related logistics and marketing assets in the region to Tesoro Corporation as an example of a recent sale of an entire refinery as a unit. However, the Board had no basis to identify any of the petroleum refineries included in Attachment F to the Board's initial statement of reasons, including Refinery A in Attachment F, when Board staff assessed the effect of valuing California's petroleum refineries' fixtures as part of the same appraisal unit with the petroleum refineries' land and improvements under RTC section 51(d) and Rule 474, instead of valuing the fixtures as a separate appraisal unit under Rule 461(e), using the historical data provided by the California Assessors' Association. And, the Board had no basis to determine that Refinery A in Attachment F to the Board's initial statement of reasons was the same Carson refinery included in the June 2013 sale prior to receiving Ms. Reheis-Boyd's letter the day before the December 18, 2014, public hearing. Therefore, even assuming that Refinery A is the Carson refinery (as stated in Ms. Reheis-Boyd's letter), the Board could not have used the June 2013 sale to verify the accuracy of the data the California Assessors' Association provided for Refinery A before the Board performed its assessment of the effect of valuing California's petroleum refineries' fixtures as part of the same appraisal unit with the petroleum refineries' land and improvements under RTC section 51(d) and Rule 474, instead of valuing the fixtures as a separate appraisal unit under Rule 461(e), for a five year period, using the historical data provided by the California Assessors' Association.

Eight, under Rule 8, the present worth of a specific petroleum refinery's future income stream depends upon the size, shape, and duration of the estimated stream. Therefore, the value of a specific petroleum refinery, under the income approach, depends upon a number of factors that increase and decrease the size, shape, and duration of its future income stream, as of a specific valuation date. These factors include, but are not limited to, fluctuations in:

- The cost of the petroleum refinery's crude oil;
- The cost of producing its specific combination of petroleum products;
- The amount of each specific petroleum product produced; and
- The prices for the specific combinations and amounts of petroleum products the refinery produces.

Also, changes in market conditions do not necessarily have the same effect on all of California's petroleum refineries due to a number of factors, such as variations in each refinery's production potential during the year and from year-to-year, the source(s) and quality of each refinery's crude oil, and the size of each refinery relative to the other refineries (economies of scale). As a result, the value of a specific petroleum refinery, as determined under the income approach, will generally fluctuate from one valuation date to another, and the fluctuation may not necessarily be consistent with the fluctuations in the values of other refineries on the same valuation dates.

The actual sales price (or total consideration) paid solely for the Carson refinery in the June 2013 sale of BP's Carson refinery and related logistics and marketing assets in the region to Tesoro Corporation would be evidence of how BP (the seller) and Tesoro Corporation (the buyer) valued the Carson refinery in June 2013. And, assuming the sale was truly an open market transaction, that June 2013 value could be "used" as an indicator of the Carson refinery's value on the January 1, 2013, lien date, under the comparable sales approach, because RTC section 402.5's prohibition against using comparable sales that are not "near in time to the valuation date," meaning "any sale more than 90 days after the valuation date," to value property under the comparable sales approach, does not apply to a sale of the subject property itself, as provided in Rule 324, subdivision (d).

However, BP's June 2013 sales of the Carson refinery and related logistics and marketing assets in the region may not have been an "open market" transaction that can be used to reliably establish the "actual value" of property under Rule 2, *The Value Concept*. This is because BP's divestment of the Carson refinery and related logistics and marketing assets in the region was the last step BP *needed* to take to complete the strategic refocusing of its United States fuels portfolio, as explained in BP's press release (included as Attachment E to the initial statement of reasons). And, Tesoro Corporation appears to have been in a unique position to take advantage of BP's desire to complete the strategic refocusing of its business because the Carson refinery is adjacent to Tesoro Corporation's Wilmington refinery, Tesoro Corporation planned to integrate the two refineries, and Tesoro Corporation expected to realize significant operational synergies from the integration, as indicated in Tesoro Corporation's Form 10-K referred to in Ms. Reheis-Boyd's letter. Therefore, it is possible that the price paid solely for the Carson refinery in the June 2013 sale may not establish the actual value of the Carson refinery in accordance with Rule 2.

Also, the June 2013 sale of BP's Carson refinery and related logistics and marketing assets in the region to Tesoro Corporation was part of a larger bundled transaction. The available information regarding the sale of BP's Carson refinery and related logistics and

marketing assets in the region to Tesoro Corporation, including Tesoro Corporation's Form 10-K referred to in Ms. Reheis-Boyd's letter, is somewhat general and does not contain the detail necessary to determine exactly what consideration Tesoro Corporation paid solely for the Carson refinery. The available information regarding the June 2013 sale does not allocate any of the 2013 sales price paid for the Carson refinery and related logistics and marketing assets in the region to the refinery's land, improvements, and fixtures. And, the available information regarding the June 2013 sale does not indicate whether and to what extent the internal and external factors affecting the Carson refinery's value, under both the comparable sales approach and the income approach, changed between the January 1, 2013, lien date and the June 2013 sale. Therefore, even assuming that Refinery A in Attachment F to the initial statement of reasons is the Carson refinery, the available information regarding the June 2013 sale is insufficient for the Board to precisely and independently determine the value of Refinery A on the January 1, 2013 lien date, under the comparable sales approach, much less allocate that value to Refinery A's land, improvements, and fixtures. And, the available information regarding the June 2013 sale is insufficient to value Refinery A, under the income approach, or verify the accuracy of values determined for Refinery A, under the income approach.

In addition, on page 9 of her letter, Ms. Reheis-Boyd recognizes that Tesoro Corporation purchased a bundle of assets, including the Carson refinery, as part of the June 2013 sale, and she suggests that the sales price of the refinery can be determined by subtracting the price at which "Tesoro Corporation [subsequently] sold the non-refinery assets to a related entity" from the "$1.075 billion" of "cash proceeds" BP's press release indicates that it received for all the "assets." However, the Board does not agree that the approach recommended in Ms. Reheis-Boyd's letter and reiterated in Mr. Becker's testimony is appropriate.

This is because the June 2013 sale was a complex, bundled transaction, and it would not be reasonable to rely solely on the amount of "cash proceeds" reported in BP's press release to determine the total consideration paid for the assets. This is because related party transactions, such as Tesoro Corporation's sale of the non-refinery assets, are not generally the type of "open market" transactions that can be used to reliably establish the "actual value" of property under Rule 2. And, even if the related party sale at issue did establish the "actual value" of property, page 39 of Tesoro Corporation's Form 10-K indicates that the sale at issue occurred in December 2013, which means that the sale was not near in time to the June 2013 sale, much less the January 1, 2013, lien date. Therefore, the information the Board currently has available regarding the June and December 2013 sales is not adequate to precisely determine the value of the Carson refinery on the January 1, 2013, lien date. And, as a result, the information the Board currently has available regarding the June 2013 sale does not conclusively establish that the 2013 Refinery A data provided by the California Assessors' Association is inaccurate, even assuming that Refinery A is the Carson refinery.

Moreover, the June 2013 sale is less near in time to the 2009 through 2012 lien dates than it is to the January 1, 2013, lien date. So, even assuming the Board knew the actual sales price paid solely for the Carson refinery in the June 2013 sale and that the Carson

refinery was Refinery A, the Board still could not reasonably use the June 2013 sales price, by itself, to determine the values of the Carson refinery on the 2009 through 2012 lien dates or verify whether the data provided by the California Assessors' Association for Refinery A for the 2009 through 2012 lien dates is inaccurate. And, the actual sales price paid solely for the Carson refinery in the June 2013 sale, even if known, could not reasonably be used, by itself, to value Refineries B through J in Attachment F to the initial statement of reasons for any lien date. Therefore, the information the Board currently has available regarding the June 2013 sale does not establish that the data regarding Refinery A for the 2009 through 2012 lien dates and Refineries B through J for the 2009 through 2013 lien dates provided by the California Assessors' Association is "wrong," as suggested in Ms. Reheis-Boyd's letter and Mr. Becker's testimony.

Ninth, a petroleum refinery's capacity to produce petroleum products, as measured in crude barrels of oil per day, is a factor that is relevant to measuring the size and therefore the value of that refinery. However, the income being derived from a specific petroleum refinery and the value of the refinery that can be derived from that income, under the income approach, is not solely dependent on the refinery's capacity to produce petroleum products, as measured in crude barrels of oil per day. Therefore, the capacity of a refinery, measured in crude barrels of oil per day, by itself, is not sufficient to establish the value of that refinery on a particular valuation date, and dividing a particular amount by a refinery's capacity, as measured in crude barrels of oil per day, by itself, does not establish whether the amount represents the refinery's value on a particular valuation date.

In addition, the information from the Energy Almanac, included in Attachment A to the initial statement of reasons, explains that "[e]ach day approximately two million barrels (a barrel is equal to 42 U.S. gallons) of petroleum are processed [by California's petroleum refineries] into a variety of products, with gasoline representing about half of the total product volume." The California specific information from the United States Energy Commission, included in Attachment D to the initial statement of reasons, shows that there were fluctuations in the actual production of petroleum products at California's petroleum refineries from 2009 to 20013. And, the Board is aware that the market prices for crude oil and the petroleum products that a petroleum refinery can produce from crude oil are volatile, and have changed from 2009 through 2013. Therefore, information regarding Refineries A through J's "income streams" on the 2009 through 2013 lien dates (i.e., information about each petroleum refinery's actual production volumes, the types and quantities of products being produced, and the fluctuating market values of those products during the relevant periods) would be more useful in determining the refineries' values, than the refineries' capacity to produce petroleum products, as measured in crude barrels of oil per day. And, dividing each petroleum refinery's low and high values during a five-year period, as provided by the California Assessors' Association, by a stagnant crude barrels of refinery capacity number, only illustrates that the values of the refineries fluctuated somewhat, which is obvious from looking at the values themselves. It does not tend to indicate whether the fluctuations in the values provided by the California Assessors' Association reflect fluctuations in the refineries' income streams.

Furthermore, neither Ms. Reheis-Boyd's letter nor Mr. Becker's comments identify any of the refineries included in Exhibit 2 to Ms. Reheis-Boyd's letter, other than the Carson refinery. So, neither Ms. Reheis-Boyd's letter nor Mr. Becker's comments enable the Board to verify whether Exhibit 2 uses the correct crude barrels of refinery capacity number for each refinery. Also, Exhibit 2 to Ms. Reheis-Boyd's letter provides that "252,000" is the crude barrels of refinery capacity (per day) number for Refinery A, which the letter identifies as the Carson refinery. However, it is not clear what source this number was derived from. The information from the Energy Almanac, included in Attachment A to the initial statement of reasons, provides that the Carson refinery's crude oil capacity is 240,000 barrels per day and BP's press release regarding the June 2013 sale of the Carson refinery and related logistics and marketing assets in the region to Tesoro Corporation indicates that the Carson refinery's crude oil capacity is 266,000 barrels per day (the same as p. 4 of Tesoro Corporation's Form 10-K). Therefore, the Board is not certain that any of the calculations provided in Exhibit 2 to Ms. Reheis-Boyd's letter are reliable.

Tenth, the Board is aware of the Nelson Complexity Index (NCI), which W.L. Nelson developed to compare the costs of various process units, to the cost of a crude distillation unit. The index is an attempt to quantify the relative cost of a refinery based on the added cost of various process units. A complexity factor of 1 is assigned to the distillation unit, and the index rates all other process units' complexity factors in terms of their cost relative to this unit. For example, a unit that costs three times as much as a distillation unit would have a factor of 3. The total complexity rating of a refinery is calculated by multiplying the complexity factor for each downstream unit by the percentage of crude oil it processes, then totaling these individual factors.

The complexity factor valuation approach is essentially a cost-based methodology for measuring refinery value that uses a proxy for unit costs, which is a refinery's complexity factor multiplied by its production capacity. The complexity factor approach is used in the industry to derive a market "indicator" of value per unit of cost. However, the complexity factor approach has limitations. For example, the complexity factor approach ignores costs associated with non-production units, such as storage tanks, it ignores variations in costs of production based upon economies of scale, and it does not take into account how much of a refinery's production capacity is able to be utilized and is actually being utilized at a given time.

The complexity factor approach is also dependent on the level of detail used to quantify a refinery's process units, and quantify the percentage of the refinery's total crude oil capacity represented by each process. Also, the amounts actually paid for refineries measured in barrels per day of capacity adjusted for complexity fluctuate from year-to-year due to a number of market factors. Therefore, a refinery's complexity factor, at any given time, has to be determined by quantifying the refinery's process units at that time. A refinery's complexity factor can change if its process units change. And, the complexity factor valuation approach only produces an educated guess about a refinery's value, under the cost-approach, on a specific valuation date. (See, e.g., Daniel Johnston's March 18, 1996, article published on the Oil & Gas Journal's website, entitled "Refining

Report Complexity index indicates refinery capability, value," for general information about the NCI and the complexity factor valuation approach.)

In addition, the income being derived from a specific petroleum refinery and the value of the refinery that can be derived from that income, under the income approach, is not solely dependent on the refinery's capacity to produce petroleum products, as measured in crude barrels of oil per day as adjusted for complexity. And, there is no evidence to establish that the complexity factor valuation approach is more reliable than the income approach to accurately determine the value of an operating petroleum refinery on a specific valuation date. Therefore, the capacity of a refinery, measured in crude barrels of oil per day as adjusted for complexity, by itself, is not sufficient to conclusively establish the value of that refinery on a particular valuation date or to show that a value for that refinery, determined under the income approach, is "wrong," as suggested in Ms. Reheis-Boyd's letter.

As previously explained, information regarding Refineries A through J's "income streams" on the 2009 through 2013 lien dates would be more useful in determining the refineries' values, than the refineries' capacity to produce petroleum products, as measured in crude barrels of oil per day as adjusted for complexity. And, dividing each petroleum refinery's low and high fixture values (not total values) during a five-year period, as provided by the California Assessors' Association, by a stagnant crude barrels of refinery capacity number adjusted for complexity, only illustrates that the fixture values fluctuated somewhat, which is obvious from looking at the values themselves. It does not prove that there were no fluctuations in the refineries' income streams and total values, particularly because the complexity factor approach does not account for a number of variables that make each refinery unique and affect each refinery's income stream, and, as a result, it cannot reliably establish that the high and low fixture values are inaccurate. In fact, differences resulting from dividing the same petroleum refinery's low and high fixture values during a five-year period, by a stagnant crude barrels of refinery capacity number adjusted for complexity, may actually indicate that the stagnant number is inaccurate for the low period, the high period, or both periods because there were in fact fluctuations in the refineries' capacities to produce petroleum products, as measured in crude barrels of oil per day as adjusted for complexity.

Furthermore, neither Ms. Reheis-Boyd's letter nor Mr. Becker's comments identify any of the refineries included in Exhibit 1 to Ms. Reheis-Boyd's letter, other than the Carson refinery. They do not identify any of the refineries' refining processes, they do not quantify the refineries' process units, they do not identify the NCI factors assigned to the refineries' various processes, and they do not identify the percentage of each refinery's total crude oil capacity represented by each of the refinery's processes. So, neither Ms. Reheis-Boyd's letter nor Mr. Becker's comments enable the Board to verify whether Exhibit 1 uses the correct crude barrels of refinery capacity number for each refinery (as previously discussed) or the correct complexity number as a multiplier for each refinery to determine each refinery's complexity barrels of refinery capacity number as of any lien date. Therefore, the Board is not certain that any of the calculations provided in Exhibit 1 to Ms. Reheis-Boyd's letter are reliable and that they accurately account for all the

differences in the refineries' complexity. And, Exhibit 1 does not establish that all the data regarding Refineries A through J for the 2009 through 2013 lien dates provided by the California Assessors' Association is "wrong," as suggested in Ms. Reheis-Boyd's letter.

Eleventh, when valuing a petroleum refinery under the income approach prescribed by Rule 8, subdivision (c):

> The amount to be capitalized is the net return which a reasonably well informed owner and reasonably well informed buyers may anticipate on the valuation date that the taxable property existing on that date will yield under prudent management and subject to such legally enforceable restrictions as such persons may foresee as of that date. Net return, in this context, is the difference between gross return and gross outgo. Gross return means any money or money's worth which the property will yield over and above vacancy and collection losses, including ordinary income, return of capital, and the total proceeds from sales of all or part of the property. Gross outgo means any outlay of money or money's worth, including current expenses and capital expenditures (or annual allowances therefor) required to develop and maintain the estimated income. Gross outgo does not include amortization, depreciation, or depletion charges, debt retirement, interest on funds invested in the property, or rents and royalties payable by the assessee for use of the property. . . .

Mr. Flessner's letter correctly explains that "the justification for requiring a separate appraisal unit for fixtures in order to account for fixture depreciation does not exist under the income approach. This is because the refinery income stream and the resulting value account for a lower level of performance that would result from physical depreciation of a refinery's fixtures by wear and tear or obsolescence. In addition, the income approach accounts for costs of maintenance and replacement that refineries incur to mitigate the effects of physical depreciation and obsolescence."

When valuing a petroleum refinery under the reproduction or replacement cost approach prescribed by subdivision (e) of Rule 6, *The Reproduction and Replacement Cost Approaches to Value*, reproduction or replacement cost new of depreciable assets is reduced for physical deterioration and other forms of depreciation or obsolescence. And, it is generally the case that once a depreciable asset is placed in service, the fair market value of the asset is less than the asset's reproduction or replacement cost new, as determined under the reproduction or replacement cost approach, which treats depreciable assets as a separate appraisal unit.

Neither Ms. Reheis-Boyd's letter nor Mr. Becker's testimony provide any basis to conclude that the refinery market values in the data provided by the California Assessors' Association were determined using the reproduction or replacement cost approach. Instead, Mr. Flessner's letter and other comments, Ms. Hooley's comments, and Mr. Yu's comments indicate that the market values of the Contra Costa County refineries included

in the data provided by the California Assessors' Association were determined by using the income approach, not the replacement cost new approach. And, their comments make it likely that the market values of the other refineries included in Attachment F to the initial statement of reasons were determined using the same approach. Therefore, it does not seem likely that fixture "depreciation," meaning physical deterioration and other forms of depreciation or obsolescence, was part of the calculations of the refinery market values included in Attachment F to the initial statement of reasons. Instead, it seems much more likely that each refinery's total market value, as of each lien date, was determined using the income approach, and then each refinery's total market value was allocated to its land, improvements, and fixtures as of the same lien date. As a result, a reasonable person would want to review the way each refinery's total market value was determined under the income approach for each specific lien date at issue and how each refinery value was allocated to each refinery's fixtures as of the same lien dates in order to determine whether the allocated fixture values were accurate. Thus, it is not reasonable to conclude that any of the refineries' fixture market values included in Attachment F to the initial statement of reasons are "wrong" solely because the fixture's market values exceed their adjusted base year values.

Twelfth, the use of inaccurate data will affect the accuracy of any calculation. However, as explained above, neither Ms. Reheis-Boyd's letter nor Mr. Becker's testimony, provide a concrete factual basis to establish that there are significant or substantial errors in any of the data provided by the California Assessors' Association included in Attachment F to the initial statement of reasons, much less establish that there are pervasive errors throughout the data.

Moreover, the hypothetical "depreciation" example discussed on page 12 of Ms. Reheis-Boyd's letter and the attachment to the letter is overly simplistic and, as a result, it exaggerates the overall effect of understating fixture depreciation (as measured by subtracting fair market value from adjusted base year value) when determining the difference between valuing a petroleum refinery's land, improvements, and fixtures as part of the same appraisal unit, and valuing the refinery's fixtures as a separate appraisal unit. This is because the example assumes that there is sufficient land appreciation to offset all of the fixture depreciation when land and fixtures are valued as part of the same appraisal unit. However, the extent of land and improvement appreciation varies from refinery to refinery. A refinery would have to have more appreciation in its land and improvements (as measured by fair market value minus adjusted base year value), than it has "assessor-determined" depreciation in its fixtures for an understatement of the assessor-determined depreciation to have any tax effect. And, the extent of the additional appreciation in the refinery's land and improvements, if any, would limit the tax effect of understating the assessor-determined depreciation.

For example, Refineries H and I in Attachment F to the initial statement of reasons both had assessor-determined depreciation in their fixtures for 2013. However, neither refinery had appreciation in its land and improvements for 2013. So, there was no difference in the values of the refineries when their land, improvements, and fixtures were valued as one appraisal unit or their fixtures were valued as a separate appraisal unit

for 2013. And, if Refinery H's and I's fixture depreciation was double or quadrupled for 2013, it would lower the total values of the refineries and the refineries' taxes, by the same amounts, regardless of whether the refineries' land, improvements, and fixtures were valued as one appraisal unit or their fixtures were valued as a separate appraisal unit for 2013. So, the hypothetical "depreciation" example in Ms. Reheis-Boyd's letter does not accurately convey the tax effect of understating the assessor-determined depreciation when determining the difference between valuing a petroleum refinery's land, improvements, and fixtures as part of the same appraisal unit, and valuing the refinery's fixtures as a separate appraisal unit.

Mr. Walt Turville's Testimony on Behalf of Chevron

Mr. Walt Turville, Senior Property Tax Representative for Chevron, appeared at the public hearing on December 18, 2014, and provided the following testimony opposing the Board's re-adoption of Rule 474:

> I'm trying to appeal to the Board's sensibilities as -- you know, in the name of the State Board of Equalization is the word "equalization" which . . . you're charged with protecting taxpayers' rights throughout the land of California, to make sure they're treated equally and fairly under the law.
>
> Well, 474 on its face simply is stripping away one taxpayer's group's right for protection under Prop 13. And I -- I can't understand why that would even be something you'd want to do in the sense of equalization throughout all taxpayers.
>
> So the assessors already have the opportunity to value property -- or refineries as a whole, as if bought and sold. They already do the cost approach, the income approach and the sales/market approach. And in doing so, they -- they value as one unit anyway.
>
> It all comes down to how that value [gets] to the roll. And 461 was promulgated years ago and gives them a road map of how to do that and make sure that each taxpayer, each refinery, gets that Prop 13 protection.
>
> And specifically, especially on land and improvements which deserve to have that protection. 474 strips that away. And, to me, that just seems grossly unfair, and I appeal to your sensibilities as a Board to not allow that to happen and not promulgate a rule that really isn't necessary to allow the assessors to value a refinery as a whole.
>
> They always do. They always have. It's how it gets to the roll, how it gets -- value gets allocated back to the roll. And 461 tells them how to do that and how to do that fairly. And I appeal to you to ask them to -- to actually take that approach with refinery valuations.

Response to Mr. Turville's Testimony on Behalf of Chevron

The Board agrees with the California Supreme Court that Rule 474 is consistent with existing California law, including article XIII A of the California Constitution and the RTC, and that valuing a petroleum refinery's fixtures, separate from its land and improvements under Rule 461(e) sometimes results in fictitious tax windfall. Therefore, the Board does not agree with Mr. Turville that it is necessarily "fair" to apply Rule 461(e) to petroleum refinery property or that it is somehow "unfair" to re-adopt Rule 474 or that the re-adoption of Rule 474 strips away the protections of Proposition 13, which are incorporated into article XIII A of the California Constitution and the RTC, or that the adoption of Rule 474 is unnecessary.

No Mandate on Local Agencies or School Districts

The Board has determined that the re-adoption of Rule 474 does not impose a mandate on local agencies or school districts.

Determinations Regarding Alternatives

Ms. Reheis-Boyd's letter and Mr. Becker's and Mr. Turville's testimony opposed the adoption of Rule 474, but did not identify any alternative to adopting Rule 474 that would effectively accomplish the objective of the rule. Therefore, no reasonable alternatives have been identified and brought to the Board's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

As a result, by its motion on December 18, 2014, the Board determined that no alternative to the proposed re-adoption of Rule 474 would be more effective in carrying out the purpose for which the rule is proposed, would be as effective and less burdensome to affected private persons than the re-adopted rule, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

The Board did not reject any reasonable alternatives to the proposed re-adoption of Rule 474 that would lessen any adverse impact the proposed amendments may have on small business.

Updated Informative Digest for the State Board of Equalization's
Re-Adoption of California Code of Regulations,
Title 18, Section 474, *Petroleum Refining Properties*

The State Board of Equalization (Board) held a public hearing regarding the proposed re-adoption of California Code of Regulations, title 18, section (Rule) 474, *Petroleum Refining Properties*, on December 18, 2014. At the conclusion of the public hearing, the Board voted to re-adopt Rule 474 without making any changes.

The Board received a letter dated December 9, 2014, from Mr. Jeffrey Prang, Los Angeles County Assessor, in support of the Board's re-adoption of Rule 474 and the Board's assessment of the economic impact of re-adopting Rule 474. The Board received a letter dated December 15, 2014, from Mr. David Twa, County Administrator for Contra Costa County, in support of the Board's re-adoption of Rule 474. The Board received a letter dated December 16, 2014, from Mr. Gus Kramer, Contra Costa County Assessor, in support of the Board's re-adoption of Rule 474. The Board received a letter dated December 16, 2014, from Mr. Donald Flessner, Executive Vice-President of Baker & O'Brien, Inc., in support of the Board's re-adoption of Rule 474. Mr. Albert Ramseyer, Deputy County Counsel for Los Angeles County, appeared at the public hearing on December 18, 2014, on behalf of Mr. Prang and provided testimony in support of the Board's re-adoption of Rule 474. Ms. Rebecca Hooley, Deputy County Counsel for Contra Costa County, appeared at the public hearing on December 18, 2014, and provided testimony in support of the Board's re-adoption of Rule 474. Mr. Peter Yu, Principal Appraiser of the Business Division for the Contra Costa County Assessor's Office, appeared at the public hearing on December 18, 2014, and provided testimony in support of the Board's assessment of the economic impact of re-adopting Rule 474. And, Mr. Flessner also appeared at the public hearing on December 18, 2014, and provided testimony in support of the Board's re-adoption of Rule 474. Their public comments in support of the Board's re-adoption of Rule 474 are quoted in the final statement of reasons.

Also, the Board's response to Mr. Twa's and Ms. Hooley's recommendations that the Board re-adopt Rule 474 to reduce potential litigation and a discussion of Mr. Flessner's and Mr. Kramer's comments regarding the application of the rebuttable presumption in Rule 474 are included in the final statement of reasons. And, the Board's response to Mr. Twa's and Ms. Hooley's recommendations discusses the application of Revenue and Taxation Code (RTC) sections 538 and 5152, which were not discussed in the informative digest included in the Board's notice proposing the re-adoption of Rule 474 because neither RTC section directly relates to the proposed re-adoption of Rule 474.

The Board received an email on October 24, 2014, from Ms. Michelle Schumacher, which indicated that Ms. Schumacher opposes the re-adoption of Rule 474 because she believes it provides "preferential treatment" to the oil industry. The Board received a letter dated December 17, 2014, from Ms. Gina Rodriquez, Vice President of State Tax Policy for the California Taxpayers Association (CalTax), which requested that the Board

reject the re-adoption of Rule 474 and alleged that the Board failed to comply with the Administrative Procedure Act (ch. 3.5 of pt. 1 of div. 3 of tit. 2 (commencing with § 11340) of the Gov. Code) (APA) in assessing the economic impact of the re-adoption of Rule 474. The Board received a letter dated December 17, 2014, from Ms. Catherine H. Reheis-Boyd, President of the Western States Petroleum Association (WSPA), which opposed the Board's re-adoption of Rule 474 and alleged that the Board failed to comply with the APA and the California Supreme Court's mandates in *Western States Petroleum Association v. Board of Equalization* (2013) 57 Cal.4th 401 (hereafter *WSPA v. BOE*) in assessing the economic impact of re-adopting Rule 474. Mr. Craig A. Becker, an attorney for Pillsbury Winthrop Shaw Pittman, LLP, appeared at the public hearing on December 18, 2014, and provided testimony opposing the Board's re-adoption of Rule 474 on behalf of WSPA. Also, Mr. Walt Turville, Senior Property Tax Representative for Chevron, appeared at the public hearing on December 18, 2014, and provided testimony opposing the Board's re-adoption of Rule 474.

Most of the comments opposing the Board's re-adoption of Rule 474 are quoted in their entirety in the final statement of reasons. However, some of the comments opposing the Board's re-adoption of Rule 474, particularly some of the comments in the 15-page letter from Ms. Reheis-Boyd, are summarized or partially quoted in the final statement of reasons. Also, all of the comments opposing the Board's re-adoption of Rule 474 are responded to in the final statement of reasons, and the responses to Ms. Reheis-Boyd letter and Mr. Becker's testimony discuss the application of RTC section 402.5, Rule 2, *The Value Concept*, Rule 6, *The Reproduction and Replacement Cost Approaches to Value*, and Rule 8, *The Income Approach to Value*, which were not discussed in the informative digest included in the notice proposing the re-adoption of Rule 474 because neither the RTC section nor the rules directly relate to the proposed re-adoption of Rule 474.

There have not been any changes to the applicable laws or the effect of, the objective of, and anticipated benefit from the proposed re-adoption of Rule 474 that were not described in the informative digest included in the notice of proposed regulatory action. The informative digest included in the notice of proposed regulatory action provides:

> Summary of Existing Laws and Regulations
>
> *Initial Adoption of Rule 474*
>
> The Board previously adopted Rule 474. In *WSPA v. BOE*, the California Supreme Court provided the following summary of the applicable property tax laws as they existed prior to the Board's initial adoption of Rule 474 and the effect of the initial adoption of Rule 474:
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>> Article XIII, section 1 of the California Constitution declares that "[a]ll property is taxable and shall be assessed at the same percentage of fair market value." (Cal. Const., art. XIII, § 1, subd. (a).) Proposition 13, an initiative measure enacted in June 1978,

added article XIII A to the California Constitution and changed the taxation of real property by replacing "the fair market valuation standard with that of acquisition value." (*Roy E. Hanson, Jr. Mfg. v. County of Los Angeles* (1980) 27 Cal.3d 870, 873 [167 Cal. Rptr. 828, 616 P.2d 810].) Article XIII A, section 2 provides that all real property, except for property acquired prior to 1975, shall be assessed and taxed at its value on the date of acquisition, subject to a 2 percent maximum annual inflationary increase. (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 235 [149 Cal. Rptr. 239, 583 P.2d 1281].) This is sometimes referred to as the indexed or adjusted base year value. (See Bd. of Equalization, Assessors' Handbook, Section 501, Basic Appraisal (2002 rev.) appen. A, Assessment Pre- and Post-Proposition 13, p. 137.)

Proposition 13 did not address how real property should be assessed and taxed when its market value declines instead of appreciates. To address this issue, California voters passed Proposition 8 in November 1978. Proposition 8 amended article XIII A so that it now reads: "The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction, or may be reduced to reflect substantial damage, destruction, or other factors causing a decline in value." (Cal. Const., art. XIII A, § 2, subd. (b).) In other words, when the value of real property declines to a level below its adjusted base year value under Proposition 13, the value of the property is determined according to its actual fair market value.

The Legislature formed a task force to study the implementation of the new real property tax system mandated by Proposition 13 and Proposition 8. In January 1979, the task force submitted a report and recommendations to the Assembly Committee on Revenue and Taxation, officially titled Report of the Task Force on Property Tax Administration (hereafter Task Force Report). (See *Pacific Southwest Realty Co. v. County of Los Angeles* (1991) 1 Cal.4th 155, 161 [2 Cal. Rptr. 2d 536, 820 P.2d 1046].) The Task Force Report has been recognized as a statement of legislative intent for purposes of interpreting the statutes enacted to implement Proposition 13 and Proposition 8. (See, e.g., *Auerbach v. Assessment Appeals Bd. No. 1* (2006) 39 Cal.4th 153, 161 [45 Cal. Rptr. 3d 774, 137 P.3d 951].)

The report recommended that "the assessed value of real property be the lesser of the Prop. 13 base value compounded annually by

2% or full cash value. These changes will be measured by that appraisal unit which is commonly bought and sold in the market, or which is normally valued separately." (Task Force Rep., *supra*, at p. 29.) Revenue and Taxation Code section 51 was subsequently amended to incorporate the task force recommendations. (All further statutory references are to the Revenue and Taxation Code unless otherwise specified.) Section 51, subdivision (a) (hereafter section 51(a)) provides that "the taxable value of real property shall . . . be the lesser of: [¶] (1) Its base year value, compounded annually since the base year by an inflation factor . . ." not to exceed 2 percent per year, or "(2) Its full cash value, as defined in Section 110, as of the lien date, taking into account reductions in value due to damage, destruction, depreciation, obsolescence, removal of property, or other factors causing a decline in value." Section 110, subdivision (a) defines the term "full cash value," synonymously with the term "fair market value," as "the amount of cash or its equivalent that property would bring if exposed for sale in the open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other, and both the buyer and the seller have knowledge of all of the uses and purposes to which the property is adapted and for which it is capable of being used, and of the enforceable restrictions upon those uses and purposes."

Most significantly for this case, the term "real property" under section 51, subdivision (d) (hereafter section 51(d)) is defined as "that appraisal unit that persons in the marketplace commonly buy and sell as a unit, or that is normally valued separately." This definition echoes almost verbatim the definition recommended by the Task Force Report. The statute does not further define "appraisal unit," but the term is defined by regulation as "a collection of assets that functions together, and that persons in the marketplace commonly buy and sell as a single unit or that is normally valued in the marketplace separately from other property . . . ." (Cal. Code Regs., tit. 18, § 324.)

In the wake of Proposition 13 and Proposition 8, and shortly before the enactment of section 51, the Board promulgated and then amended rule 461, a regulation applicable to most real property used for manufacturing. (Cal. Code Regs., tit. 18, § 461 (Rule 461).) Rule 461, subdivision (e) (hereafter Rule 461(e)) provides: "Declines in value will be determined by comparing the current lien date full value of the appraisal unit to the indexed base year full value of the same unit for the current lien date. Land and improvements constitute an appraisal unit except when measuring declines in value caused by disaster, in which case land shall

constitute a separate unit. For purposes of this subdivision, fixtures and other machinery and equipment classified as improvements constitute a separate appraisal unit."

At the same time that it adopted Rule 461(e)'s classification of fixtures as "a separate appraisal unit," the Board adopted two exceptions to this rule for certain types of industrial property where land and fixtures were valued as a single unit in the marketplace: Rule 468, which applies to oil and gas properties, and Rule 469, which applies to mining properties. (See Cal. Code Regs., tit. 18, §§ 468, subd. (c)(6) (Rule 468), 469, subd. (e)(2)(C) (Rule 469).) Rule 473, adopted in 1995, similarly treats land and fixtures on geothermal properties as a single appraisal unit. (Cal. Code Regs., tit. 18, § 473(e)(4)(C) (Rule 473).) Petroleum refinery property was covered by Rule 461(e) until the Board's adoption of Rule 474.

In September 2006, the Board voted three to two to adopt Rule 474 to address "the valuation of the real property, personal property, and fixtures used for the refining of petroleum." (Rule 474, subd. (a).) Subdivision (b)(1) of Rule 474 states that "[t]he unique nature of property used for the refining of petroleum requires the application of specialized appraisal techniques designed to satisfy the requirements of article XIII, section 1, and article XIII A, section 2, of the California Constitution. To this end, petroleum refineries and other real and personal property associated therewith shall be valued pursuant to the principles and procedures set forth in this section." Rule 474, subdivision (c)(2) states that "'[a]ppraisal unit' consists of the real and personal property that persons in the marketplace commonly buy and sell as a unit." Most pertinent here, subdivision (d) states that "[f]or the purposes of this section: [¶] (1) Declines in value of petroleum refining properties will be determined by comparing the current lien date full value of the appraisal unit [(i.e., its value in an open market transaction)] to the indexed base year full value of the same unit [(i.e., its Proposition 13 value)]. [¶] (2) *The land, improvements, and fixtures and other machinery and equipment classified as improvements for a petroleum refining property are rebuttably presumed to constitute a single appraisal unit* . . . . [¶] (3) In rebutting this presumption, the assessor may consider evidence that: [¶] (A) The land and improvements including fixtures and other machinery and equipment classified as improvements are not under common ownership or control and do not typically transfer in the marketplace as one economic unit; or, [¶] (B) When the fixtures and other machinery and equipment classified as improvements are not functionally and physically integrated with

> the realty and do not operate together as one economic unit." (Rule 474, subd. (d); italics added [in original opinion].)
>
> [¶] . . . [¶]
>
> In November 2007, the Office of Administrative Law approved the regulation, and it became effective in December 2007. (*WSPA v. BOE*, pp. 409-413.)

History Regarding WSPA v. BOE

In *WSPA v. BOE*, the California Supreme Court also explained that in December 2008, the Western States Petroleum Association (WSPA) filed a complaint challenging the validity of Rule 474 and seeking a declaration that the Board violated the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.) in adopting the rule. (WSPA v. BOE, pp. 413-414.) And, "[i]n October 2009, the Board and WSPA filed cross-motions for summary judgment. WSPA argued that Rule 474 violates section 51(d) and California Constitution, article XIII A, and that the Board failed to provide an adequate statement of economic impact as required by the APA. The trial court granted WSPA's summary judgment motion on both grounds, and the Court of Appeal affirmed on both grounds" before the California Supreme Court granted review. (*WSPA v. BOE*, p. 414.)

As explained in more detail in the initial statement of reasons, the California Supreme Court disagreed with all of WSPA's arguments as to why Rule 474 violates RTC section 51, subdivision (d) (hereafter section 51(d)), and California Constitution, article XIII A. The Court specifically concluded that "Rule 474's market-based approach to determining the proper appraisal unit for petroleum refinery property ensures that reductions in property values are measured according to fair market value. Thus, Rule 474 appears consistent with articles XIII and XIII A." (*WSPA v. BOE*, pp. 416-417.) Furthermore, the California Supreme Court specifically concluded that "Rule 474 is also consistent with section 51(d)." (*WSPA v. BOE*, p. 417.) The Court said that "[b]y its terms, the statute provides two alternative methods of determining the appraisal unit that constitutes taxable real property: it is either (1) a unit 'that persons in the marketplace commonly buy and sell as a unit' or (2) a unit 'that is normally valued separately.' Rule 474 applies the first method to petroleum refinery property." (*WSPA v. BOE*, p. 417.)

Although the California Supreme Court held that Rule 474 was substantively valid in *WSPA v. BOE*, the Court still concluded that the Board's adoption of Rule 474 was procedurally invalid under the APA. (*WSPA v. BOE*, pp. 408-409.) The Court held that the Board did not properly assess the economic impact of Rule 474 and that the Board's

initial determination that Rule 474 would not have a significant adverse economic impact on businesses did not substantially comply with the APA (Gov. Code, §§ 11346.2, subd. (b)(5)(A), 11346.3, 11346.5, subd. (a)(8)) because:

- "The Board relied on a 2006 document titled 'Revenue Estimate' concerning proposed Rule 474. According to the document, which was prepared by Board staff, WSPA reported that there are 20 major refineries located in California, with five in Los Angeles County and four in Contra Costa County. (Bd. of Equalization, Revenue Estimate, Issue No. 6-001 (June 7, 2006) p. 2.) County data indicated that the total assessment in these two counties was over $ 14 billion, with about 80 percent of that value enrolled as fixtures. Projecting figures statewide, the Board staff estimated that there was $ 32 billion of refinery property, of which $ 25 billion consisted of fixtures and $ 7 billion in land and nonfixture improvements. To 'conservatively estimate' the incremental amount of taxable assessed value resulting from the proposed rule, the Board staff multiplied the $ 7 billion in land value by a 2 percent appreciation factor to conclude that Rule 474 would yield 'at least $ 140 million' in additional assessed value. (Revenue Estimate, at p. 3.) The Board staff then multiplied $ 140 million by the 1 percent tax on real property permitted under article XIII A to arrive at $ 1.4 million as the annual estimated revenue effect of Rule 474, while acknowledging that '[t]he actual revenue effect could be considerably higher or lower depending on the number of properties [affected] and the actual amount of offsetting values.' (Revenue Estimate, at p. 3.) Based on these calculations, the Board concluded that Rule 474 'will not have a significant adverse economic impact on businesses.'" (*WSPA v. BOE*, pp. 429-430.);
- The Court concluded that "[e]ven assuming the Board could reasonably project $ 32 billion as the total value of 20 refineries statewide based on data showing $ 14 billion as the total value of nine refineries in two counties, the Board's analysis offers no explanation why multiplying $ 7 billion in land value by a 2 percent appreciation factor is, empirically or conceptually, a valid or reasonable way to estimate the amount of fixture depreciation that would be offset by appraising land and fixtures as a single unit." (*WSPA v. BOE*, p. 430.); and
- "[T]he Board's calculation failed to consider prior land appreciation and the full tax impact that would occur if land were valued at actual market value rather than adjusted base year value." (*Ibid.*)

<u>Effect, Objective, and Benefit of the Proposed Re-Adoption of Rule 474</u>

During the Board's September 10, 2013, meeting, the Board considered a Chief Counsel Memorandum dated August 28, 2013. In the Chief Counsel Memorandum, Board staff explained that the Board adopted Rule 474 on September 27, 2006, to clarify that, consistent with California Constitution article XIII, section 1, article XIII A (which contains Proposition 13 as amended by Proposition 8), RTC section 51, and Rules 461, *Real Property Value Changes*, and 324, *Decision*, refinery property consisting of land, improvements, and fixtures is rebuttably presumed to be a single appraisal unit in determining Proposition 8 declines in value below the Proposition 13 adjusted base year value for property tax valuation purposes. In the Chief Counsel Memorandum, Board staff also explained that the California Supreme Court held that Rule 474 was substantively valid in *WSPA v. BOE*. However, nevertheless, the Court also invalidated Rule 474 on procedural grounds, finding that the Board failed to provide an adequate assessment of the rule's economic impact during the rulemaking process as required by the APA. In particular, the Supreme Court held that Rule 474 is procedurally deficient because the Board did not make a reasoned estimate of all the cost impacts of the rule on affected parties. Therefore, in the memorandum, Board staff requested the Board's authorization to repeal Rule 474 pursuant to California Code of Regulations, title 1, section 100 (Rule 100). Board staff also requested the Board's authorization to initiate the rulemaking process to re-adopt Rule 474 following the APA's regular notice and public hearing process after Board staff reassessed the economic impact of Rule 474 on affected businesses in accordance with the APA and *WSPA v. BOE*.

Therefore, at the conclusion of the Board's discussion of the Chief Counsel Memorandum dated August 28, 2013, during its meeting on September 10, 2013, the Board Members unanimously voted to authorize staff to repeal Rule 474 pursuant to Rule 100, and initiate the rulemaking process to re-adopt Rule 474 after Board staff reassessed the economic impact of Rule 474 in accordance with the APA and *WSPA v. BOE*. The Board determined that it is reasonably necessary to re-adopt Rule 474 to have the effect and accomplish the objective of clarifying that petroleum refinery land, improvements, and fixtures are rebuttably presumed to constitute a single appraisal unit for determining declines in value because petroleum refineries are commonly bought and sold as a unit in the marketplace. The Board anticipates that the re-adoption of Rule 474 will clarify the treatment of petroleum refinery property for purposes of measuring declines in value, and thereby benefit county assessors and the owners of petroleum refineries by promoting fairness and uniformity in the assessment of petroleum refinery property throughout the state.

The Board subsequently repealed Rule 474 pursuant to Rule 100, effective October 30, 2013. However, regardless of the repeal of Rule 474, county assessors are still authorized to determine that refinery property (land,

improvements, and fixtures) constitutes a single appraisal unit for measuring declines in value when persons in the marketplace commonly buy and sell refinery property as a unit, in accordance with RTC section 51(d) as interpreted by the California Supreme Court in *WSPA v. BOE* (discussed above).

In addition, Board staff has reassessed the economic impact of Rule 474 in accordance with the APA and *WSPA v. BOE*. Staff's economic impact assessment is included in the initial statement of reasons, and the results of staff's assessment are provided below.

The Board has performed an evaluation of whether Rule 474 is inconsistent or incompatible with existing state regulations and determined that the proposed rule is not inconsistent or incompatible with existing state regulations. This is because proposed Rule 474 is the only state regulation that specifically prescribes the appraisal unit for determining declines in value of petroleum refining properties. The Board has also determined that there are no comparable federal regulations or statutes to proposed Rule 474.

CalTax℠
Established 1926

September 6, 2013

Joann Richmond, Chief
Board Proceedings Division
Board of Equalization
450 N Street
Sacramento, CA 95814
Transmitted via e-mail at joann.richmond@boe.ca.gov

Ms. Richmond,

Property Tax Rule 474, *Petroleum Refining Properties*, is on the State Board of Equalization's agenda (Item J1) for September 10 as an action item. Board staff will be requesting approval from the Board to repeal and initiate the rulemaking process to readopt Rule 474. On August 5, 2013, the California Supreme Court held in *WSPA v. BOE* that Rule 474 is invalid.

CalTax respectfully requests that the Board deny the request to initiate the rulemaking process, and, instead refer the item to an interested parties' process.

CalTax wishes to ensure that Board staff provide an adequate assessment of Rule 474's economic impact during the formal rulemaking process; and to ensure that the staff make a reasoned estimate of all cost impacts of the rule on affected parties. This would include addressing the need for evidence from assessors showing that refineries, including fixtures, are commonly sold in the marketplace as a unit. Therefore, to address these issues, CalTax believes that one of the first steps should be a meeting with interested parties.

Thank you for disseminating this letter to the board members, executive director and chief counsel.

Sincerely,

Teresa Casazza

President, California Taxpayers Association

cc: The Honorable Jerome Horton, Chair
The Honorable Michelle Steel, Vice Chair
The Honorable Betty Yee, Member
The Honorable George Runner, Member
The Honorable John Chiang, State Controller
Marcy Jo Mandel, Deputy State Controller
Cynthia Bridges, Executive Director
Randy Ferris, Chief Counsel

CALIFORNIA TAXPAYERS ASSOCIATION
1215 K Street, Suite 1250 • Sacramento, CA 95814 • (916) 441-0490 • www.caltax.org

Good () ladies and gentleman of the Board.

My name is Robert Cooney. I am an Appraiser Specialist with the Los Angeles County Assessor's Office.

I have been involved with refinery valuations for the last eight years. In that time, I have become something of a specialist in the application of the Sales Comparison Approach to refinery valuations. I have spoken or am scheduled to speak to groups such as the SAA, IAAO, and the most recent WSPA Conference on refinery and oil valuation. I have interacted with staff from the other two counties with large refinery properties, as well as every owner of a large refinery in California and their representatives.

We at the County of Los Angeles are strongly in favor of the repeal and re-initiation of the Rule 474 rulemaking process.

The purpose of Rule 474 is, from our point of view, to codify a practice already employed at the County of Los Angeles. In my time at the County, we have always viewed these properties as the market does, with land, improvement, and fixture operating as a unit. This is not a novel practice, though it is a contraversion of the typical rebuttable presumption that land and improvement are bought and sold and therefore valuable separately from fixtures. Passage of this rule allows us to continue to operate in harmony with market realities for refinery properties without having to overcome the rebuttable presumption each time these matters appear before an Assessment Appeals Board.

It has been stated that there are exceptions to the norm that refinery assets operate and are sold as a unit. The assumption is that, in the case of such an exception, the use of this rule will create an unfair burden on the Taxpayer. The reality is that when we have evidence that a refinery has ceased to operate, and the land and improvements would not sell in the market with the fixtures, we have applied the normal valuation supposition that the fixtures are a separate appraisal unit and valued them as such. Rule 474 would not force us to value them as one unit when they would not sell that way.

It is true that the implementation of any new rule should proceed with prudence, but this rule was not created capriciously. The substance of this rule has been in discussion and debate for the last several years. The matter has been heard in the judicial system all the way to the Supreme Court of the State of California. They indicated that the rule as already prepared was substantially valid and consistent with applicable constitutional and statutory provisions. The only impediment to the validity of this rule as it was then proposed was the necessity to adequately estimate all cost impacts on affected parties to meet the requirements for an Economic Impact Statement. It is a disservice to that opinion, to the effort so far expended, and to the people of the State of California not to take this rule over this final hurdle. We would beg the board to simply follow the advice so kindly proffered by the State Supreme Court and reintroduce the rule with a sufficient Economic Impact Statement to allow its passage.

In closing, I would also like to offer, on behalf of the County of Los Angeles, our expertise toward crafting a proper Economic Impact Statement to meet the requirements for the passage of Rule 474. We believe Los Angeles' share of over half the refining capacity in the state gives us a well-informed opinion on the impact of this rule. It would be our pleasure to assist the Board with this effort in any way possible.

Thank you.

State of California

Board of Equalization
Legal Department-MIC:83
Office of the Chief Counsel
(916) 445-4380
Fax: (916) 322-0341

Memorandum

To: Honorable Jerome E. Horton, Chairman
Honorable Michelle Steel, Vice Chair
Honorable Betty T. Yee, First District
Senator George Runner, Second District
Honorable John Chiang, State Controller

Date: August 28, 2013

From: Randy M. Ferris
Chief Counsel

Subject: **Board Meeting, September 10, 2013**
Chief Counsel Matters – Item J – Rulemaking
Request for Authorization to Repeal and Initiate Rulemaking to Readopt Property Tax Rule 474, *Petroleum Refining Properties*

We request your approval to repeal and initiate the rulemaking process to readopt Property Tax Rule[1] 474, *Petroleum Refining Properties* (Rule 474).[2] These actions are in response to the August 5, 2013, California Supreme Court decision in *Western States Petroleum Association v. Board of Equalization* (August 5, 2013, S200475) __ Cal.4th ___ (hereafter *WSPA*). In that case, the Supreme Court held that Rule 474 is substantively valid, but procedurally invalid under the Administrative Procedure Act (APA).

The Board adopted Rule 474 on September 27, 2006,[3] to provide that, consistent with California Constitution article XIII, section 1,[4] article XIII A (which contains Proposition 13 as amended by Proposition 8), Revenue and Taxation Code[5] section 51, and Rules 461 and 324, refinery property consisting of land, improvements and fixtures is rebuttably presumed to be a single appraisal unit in determining Proposition 8 declines in value below the Proposition 13 adjusted base year value for property tax valuation purposes.

The Supreme Court held that the adoption of Rule 474 did not exceed the Board's rulemaking authority because the rule is consistent with applicable constitutional and statutory provisions as well as the long-standing valuation principle that the proper appraisal unit is the collection of assets that people in the marketplace normally buy and sell as a single unit. Notably, it opined that Rule 474 comports with economic reality in determining declines in value when

[1] All references to Property Tax Rules or Rules are to sections of title 18 of the California Code of Regulations.
[2] We also note the Los Angeles County Assessor's Office has requested, in a letter dated August 20, 2013, that the Board initiate rulemaking regarding Rule 474. (The letter is attached.)
[3] The Board readopted Rule 474 on August 14, 2007, after amendment to the Initial Statement of Reasons.
[4] This section states that all property is taxable and shall be assessed at the same percentage of fair market value unless otherwise provided by the California Constitution or the laws of the United States.
[5] All further statutory references are to the Revenue and Taxation Code unless otherwise indicated.

land and fixtures are actually bought and sold as a single unit. Specifically, in the last paragraph of part III.B. of the opinion, the Supreme Court stated:

> . . . To account for fixture depreciation separately when land and fixtures are actually bought and sold as a single unit would allow the owner to claim a reduction in real property value that is economically fictitious, resulting in a tax windfall. Neither California Constitution article XIII A nor section 51 nor traditional appraisal practices require the unit of appraisal to be defined in a manner that maximizes the depreciation of fixtures in contravention of economic reality. To the contrary, the law and consistent practice have long required appraisal of real property in the declining value context to reflect its "full cash value" – that is, the value "property would bring if exposed for sale in the open market." (§§ 51(a)(2), 110.) Rule 474 is consistent with this principle.

Nevertheless, the Supreme Court affirmed the Court of Appeal's judgment invalidating Rule 474 on procedural grounds, finding that the Board failed to provide an adequate assessment of the Rule's economic impact during the rulemaking process as required by the APA. In particular, the Supreme Court held that Rule 474 is procedurally deficient because the Board did not make a reasoned estimate of all cost impacts of the rule on affected parties.

Therefore, Board Staff requests the Board's authorization to repeal Rule 474 under California Code of Regulations, title 1, section (Rule) 100 without the normal notice and public hearing process. This change to the California Code of Regulations is specifically authorized by Rule 100, subdivision (a)(3) because the change merely deletes a provision that has been held invalid in a final judgment entered by a California court of competent jurisdiction. Board Staff also requests the Board's authorization to initiate the rulemaking process to readopt Rule 474 following the notice and public hearing process under the APA. As part of that process, staff will reassess the economic impact of Rule 474 on affected businesses in accordance with the APA and *WSPA*. Then, staff will make a determination in the Notice of Proposed Regulatory Action published by the Office of Administrative Law as to whether Rule 474 will or will not have a "significant, statewide adverse economic impact on business," and staff will include the factual basis for that determination in the Initial Statement of Reasons, which will be posted on the Board's website. Finally, because the Supreme Court held that Rule 474 was substantively valid, the text of Rule 474 will remain unchanged, and is attached.

If you need more information or have any questions, please contact Robert Tucker, Assistant Chief Counsel, at (916) 322-0437 or Richard Moon, Tax Counsel IV, at (949) 440-3486.

STATE BOARD OF EQUALIZATION

BOARD APPROVED
At the 9/10/13 Board Meeting

Joann Richmond, Chief
Board Proceedings Division

Approved:

Cynthia Bridges
Executive Director

Attachments: August 20, 2013, Letter from Los Angeles County Assessor's Office
Text of Rule 474

RMF:RSM:yg

cc:	Mr. Robert Tucker	MIC:82
	Mr. David Gau	MIC:63
	Mr. Richard Moon	MIC:82
	Mr. Bradley Heller	MIC:82
	Mr. Dean Kinnee	MIC:64
	Mr. Todd Gilman	MIC:70

OFFICE OF THE ASSESSOR
COUNTY OF LOS ANGELES
500 WEST TEMPLE STREET, ROOM 320
LOS ANGELES, CALIFORNIA 90012-2770
(213) 974-3101
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SHARON MOLLER
CHIEF DEPUTY ASSESSOR

August 20, 2013

Chairman Jerome E. Horton
Fourth District
State Board of Equalization
450 N Street, MIC: 72
Sacramento, CA 95814

Dear Chairman Horton:

Request for Rulemaking, Property Tax Rule 474

The Los Angeles County Assessor's Office respectfully requests that the Board of Equalization initiate rulemaking to address the problem with the economic impact statement for Property Tax Rule 474 identified by the California Supreme Court in its opinion in *Western States Petroleum Assn. v. Board of Equalization* 2013 Cal. LEXIS 6646, (*"WSPA"*).

The Court affirmed in *WSPA*, on a very positive note, that the policy enacted in Rule 474 and adopted by your Board of requiring the performance of "decline-in-value" appraisals of oil refineries on a unit basis was substantively valid. The Court reasoned that the Rule was consistent with applicable constitutional and statutory provisions, and that for valuation purposes the proper appraisal unit is the collection of assets that persons in the marketplace normally buy and sell as a single unit.

Unfortunately, the Court also confirmed that Rule 474 was invalid because it found that the Rule's economic impact statement required by the pertinent procedural law did not adequately estimate all cost impacts on affected parties.

Assessors with oil refinery properties in their jurisdiction now face a difficult dilemma. The Supreme Court affirmed the substantive policy of Rule 474 as satisfying the applicable legal principles such as the requirement of full cash value assessments. Assessors, however, are required to follow specific provisions of law including your Board's rules, or potentially expose their County to potential liability for taxpayer attorneys' fees. (Rev. & Tax. code § 538.)

With Rule 474 confirmed invalid on procedural grounds, an argument could potentially be advanced that the regulatory provision now applicable to refinery properties is Property Tax Rule 461(e), which requires the separate assessment of fixtures for decline-in-value appraisals. This development would have a significant adverse impact on the County of Los Angeles. Our county has six major refineries in its jurisdiction with a combined annual assessment of approximately $9 billion. If the pertinent measure for refinery decline-in-value analysis were the artificial separation of fixtures from land and improvements as required by Rule 461(e), the impact on refinery assessed values would be substantial and negative.

Local assessors should not be put to a Hobson's choice. On the one hand, an assessor risks exposure for attorneys' fees if he or she were to follow the sound policy direction of what has been declared a procedurally invalid rule. On the other, to follow Rule 461(e) in contravention to what has been stated to be consistent with applicable constitutional and statutory provisions risks the potential loss of significant tax revenues to their county and the State.

We respectfully request your Board to initiate a rulemaking proceeding to reenact Rule 474 in a manner that satisfies the procedural concerns of the *WSPA* Court. My Office stands ready to advocate in support of that result, and to provide expert testimony in the rulemaking process.

Thank you for your consideration of this request.

Sincerely,

SHARON MOLLER

BD

c: Members, State Board of Equalization
Cynthia Bridges, Executive Director
Randy Ferris, Chief Counsel
David Gau, Deputy Director, Property and Special Taxes Department
Dean Kinnee, Chief, County-Assessed Properties Division

RULE 474. PETROLEUM REFINING PROPERTIES.

(a) The provisions of this rule apply to the valuation of the real property, personal property, and fixtures used for the refining of petroleum.

(b) GENERAL.

(1) The unique nature of property used for the refining of petroleum requires the application of specialized appraisal techniques designed to satisfy the requirements of article XIII, section 1, and article XIII A, section 2, of the California Constitution. To this end, petroleum refineries and other real and personal property associated therewith shall be valued pursuant to the principles and procedures set forth in this section.

(2) Notwithstanding any other provision in this section, any appropriate valuation method described in section 3 of title 18 of this code may be applied in the event of a change in ownership in a petroleum refining property.

(c) DEFINITIONS. For the purposes of this section:

(1) "Petroleum refining property" means any industrial plant, including real property, personal property, and fixtures, used for the refining of petroleum, as identified in Standard Industrial Classification (SIC) System Codes 2911 and 2992, or North American Industry Classification System (NAICS) Codes 32411 and 324191.

(2) "Appraisal unit" consists of the real and personal property that persons in the marketplace commonly buy and sell as a unit.

(d) DECLINES IN VALUE. For the purposes of this section:

(1) Declines in value of petroleum refining properties will be determined by comparing the current lien date full value of the appraisal unit to the indexed base year full value of the same unit.

(2) The land, improvements, and fixtures and other machinery and equipment classified as improvements for a petroleum refining property are rebuttably presumed to constitute a single appraisal unit, except when measuring declines in value caused by disaster, in which case land shall constitute a separate unit.

(3) In rebutting this presumption, the assessor may consider evidence that:

(A) The land and improvements including fixtures and other machinery and equipment classified as improvements are not under common ownership or control and do not typically transfer in the marketplace as one economic unit; or,

(B) When the fixtures and other machinery and equipment classified as improvements are not functionally and physically integrated with the realty and do not operate together as one economic unit.

Authority Cited: Section 15606(c), Government Code
Reference: Article XIII, Section 1, and Article XIII A, Section 2, California Constitution
Sections 51 and 110.1, Revenue and Taxation Code

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

505 VAN NESS AVENUE, AUDITORIUM

SAN FRANCISCO, CALIFORNIA

REPORTER'S TRANSCRIPT

SEPTEMBER 10, 2013

CHIEF COUNSEL MATTERS

ITEM J RULEMAKING

J1 PROPERTY TAX RULE 474, PETROLEUM REFINING PROPERTIES

REPORTED BY: Kathleen Skidgel

CSR NO. 9039

Electronically signed by Kathleen Skidgel (601-100-826-6264) 56ca3a9a-beb3-4e76-aad5-0b0d58522d31

1 P R E S E N T

2

3 For the Board of Equalization: Jerome E. Horton
Chairman

4

5 Michelle Steel
Vice-Chairwoman

6

7 Betty T. Yee
Member

8

9 George Runner
Member

10

11 Marcy Jo Mandel
Appearing for John
12 Chiang, State Controller
(per Government Code
13 Section 7.9)

14

Joann Richmond
15 Chief, Board Proceedings
Division

16

17 For Board of Equalization Staff: Richard Moon
18 Tax Counsel IV
Legal Department

19

Bradley Heller
20 Tax Counsel IV
Legal Department

21

Randy Ferris
22 Chief Legal Counsel
Legal Department

23

24 ---oOo---

25 Speaker: Gina Rodriquez
Vice President of State
26 Tax Policy
CalTax

27

28 ---oOo---

1 505 VAN NESS AVENUE, AUDITORIUM
2 SAN FRANCISCO, CALIFORNIA
3 SEPTEMBER 10, 2013
4 ---oOo---
5 MS. RICHMOND: Next are Chief Counsel
6 matters. Item J Rulemaking; J1 Property Tax Rule
7 474, Petroleum Refining Properties.
8 And I believe we do have a speaker. One of
9 the speakers that signed in had to leave, but he did
10 leave his written comment.
11 MR. HORTON: Welcome, Mr. Moon. I would
12 ask that you introduce the issue as the speaker
13 comes forward.
14 MR. MOON: Good evening. Richard Moon and
15 Brad Heller for the Legal Department.
16 As a result of a recent Supreme Court
17 decision that invalidated Property Tax Rule 474 for
18 procedural reasons but upheld its substantive
19 validity, staff is requesting your approval to
20 repeal and initiate the rulemaking process to
21 readopt the rule.
22 MR. HORTON: Thank you very much, sir.
23 Ms. Rodriquez, Vice -- Vice President of
24 the State Policy California Taxpayers Association.
25 I was about to call you "President."
26 ---oOo---
27 GINA RODRIQUEZ
28 ---oOo---

1 MS. RODRIQUEZ: Okay, thank you -- am I on?
2 Thank you, Mr. Chair, Members.
3 MR. HORTON: Yes.
4 MS. RODRIQUEZ: Gina Rodriquez with
5 California Taxpayers Association.
6 Board staff should provide an adequate
7 assessment of Rule 474's economic impact during the
8 rulemaking process; a reasoned estimate of all costs
9 resulting from the rule must be included; evidence
10 from assessors showing that refineries, including
11 fixtures, are sold in the marketplace as a unit must
12 be included.
13 CalTax respectfully requests that the Board
14 direct staff to initiate meetings with interested
15 parties before the rulemaking process begins. An
16 interested parties process will ensure an open,
17 transparent process in developing this very
18 important economic impact report.
19 Let's get it right this time. Let's reduce
20 the State's exposure to another lawsuit and let's
21 create an honest, accurate report. And that's why
22 we request that you initiate the rulemaking process
23 for interested parties.
24 Thank you.
25 MR. HORTON: Thank you very much.
26 Discussion?
27 Member Mandel?
28 MS. MANDEL: Uhm, I'm just looking at, uh,

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1 what we were handed. This is the written comments
2 of the gentleman from L.A. County Assessor who had
3 to leave, right?
4 MS. RICHMOND: Yes.
5 MS. RODRIQUEZ: Yes. Mr. Cooney had to
6 catch his plane.
7 MS. MANDEL: Right. Um, and I'm looking at
8 his last paragraph. He'd like to offer, on behalf
9 of County of L.A., expertise toward crafting an
10 economic impact statement to meet the requirements
11 for passage of Rule 474.
12 I mean, he is urging the Board to, you
13 know, redo the rule, but he's offering his expertise
14 as well.
15 MR. HORTON: I think that's part of the
16 interested parties process.
17 MS. RODRIQUEZ: As are we.
18 MR. RUNNER: That would be part of the
19 interested parties process, right?
20 MS. MANDEL: I just wanted to note that --
21 that.
22 MR. RUNNER: He's willing to participate.
23 MS. MANDEL: He is.
24 MS. RODRIQUEZ: As are we.
25 MR. HORTON: Okay. Uhm, that seems to be
26 the --
27 Member Yee.
28 MS. YEE: I don't have any objection. I

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1 guess I'm just trying to, um -- is the interested
2 parties process the best venue? I mean, we've
3 always welcomed them. But I'm just thinking in
4 terms of, you know, for data and economic analysis
5 it's not ever been the most successful venue for
6 those types of things to happen.
7 MS. MANDEL: Well, here -- here's -- oh,
8 I'm sorry.
9 Here -- here's what my -- I mean the
10 interested parties process wasn't -- I mean that's
11 like a term that we use.
12 MS. YEE: Mm-hmm.
13 MS. MANDEL: But --
14 MR. HORTON: It's actually the rulemaking
15 process.
16 MS. MANDEL: It's -- it's -- but --
17 Otherwise I think what staff would do --
18 again, throw something at me if I'm crazy here -- is
19 that you would just redraft your economic impact
20 statement, um -- if the Board voted to reinitiate,
21 you -- you'd draft the thing and it would be in with
22 the notice for the hearing? Is that how -- where we
23 next see it? Or we don't see it; it just goes to
24 OAL? Help me out a little, Mr. Heller.
25 MR. HELLER: Ms. Mandel, the -- the
26 analysis is included in the initial Statement of
27 Reasons which is made available on the Board's
28 website. And the findings of it and the conclusions

Electronically signed by Kathleen Skidgel (601-100-826-6264) 56ca3a9a-beb3-4e76-aad5-0b0d58522d31

1 are included in the notice itself.
2 MS. MANDEL: The notice before our public
3 hearing?
4 MR. HELLER: Mm-hmm.
5 MS. MANDEL: Okay. So here's -- here's
6 what I was thinking in terms of -- then when it
7 comes to public hearing, just like we had that last
8 public hearing, if there are people who thought
9 there were problems with the economic impact
10 statement, they're going to come and testify during
11 that hearing and tell us why they think it's wrong.
12 And I guess having that input in advance,
13 to the extent that that seems to be -- I mean, I
14 don't know that it's a full interested parties
15 process and we don't usually have that with an
16 economic impact statement. But since there was some
17 testimony last time, it just seemed a little
18 diff- -- I mean, we might still wind up with
19 testimony at the hearing that there's something not
20 quite right in the economic impact statement.
21 But I guess it just seemed like it was
22 better to have it -- since there seems to be a fuss
23 about it, better to have it vetted before it goes
24 in --
25 MR. RUNNER: Yeah.
26 MS. MANDEL: But it doesn't necessarily
27 have to be a whole interested parties process, it's
28 just --

1 MR. RUNNER: Yeah, let me -- can I ask
2 about that? I mean, what is -- I mean, I guess what
3 we're talking about -- again, sometimes I get lost
4 in the term of art.
5 MR. HORTON: Mr. Ferris, would you come
6 forward, please?
7 MR. RUNNER: Sometimes I get lost maybe in
8 the term of art when we say "interested parties
9 meeting" in terms of whether that just means, hey,
10 as we're going through this process can't we talk to
11 folks in regards and get their input prior to us
12 coming before the Board with the recommendation,
13 uhm -- and I don't know if that's a formal
14 interested parties process or if that's just smart
15 way to do business -- in order to then -- so that we
16 don't have the testimony in the midst of the first
17 time we hear it here.
18 And it seems to me we both have, uhm -- you
19 know, we have both the -- the taxpayer group
20 interest, or taxpayer interest issue. And it seems
21 to me we have the assessors saying, "Hey, I'd be
22 glad to help be a part of that discussion, too."
23 So I guess that's -- and I don't know how
24 that slows down or -- it certainly doesn't speed it
25 up. But I don't know what impact that is
26 necessarily then on the -- on the rulemaking process
27 that we initiate there.
28 MR. FERRIS: Randy Ferris, Chief Counsel.

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1 Yeah, staff is already in the process of --
2 of getting information, seeking that to update the
3 economic impact statement. And L.A. County is
4 expressing its eagerness to assist with that; I'm
5 sure other assessors will as well.
6 We would also welcome any input from
7 industry that they -- sometimes they don't want to
8 put forward specifics about some of their financial
9 dealings. But to the extent anyone in industry
10 would like to give us information on this, we would
11 welcome that. As well, if the Board would like to
12 formalize that information-gathering process and
13 instruct staff to -- you know, to reach out formally
14 in that way, we would be happy to do so.
15 If you'd like us to -- to link that with an
16 actual meeting where we sit down at a table and talk
17 about the information that we've gathered, that can
18 happen as well. Or that can be part of the public
19 hearing discussion as well.
20 But we're certainly -- however the Board
21 directs, we're certainly planning for and will
22 execute a process whereby everybody is able to
23 provide input to us with respect to revising and
24 making reasonable REIS.
25 MS. YEE: Mm-hmm.
26 MR. HORTON: Um, not to get caught up in
27 the semantics of the term "interested parties," it
28 seems as if, though, we are accomplishing the

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1 objective of having all the interested parties be
2 able to -- to interject in the process.
3 I personally think as much transparency if
4 we can possibly have in this process not only adds
5 to the economic study but also gives the public an
6 opportunity to understand the process what we go
7 through.
8 So, therefore, just continue to do what
9 you're doing in soliciting input and providing a way
10 in which the public can provide input. And at the
11 same time, when it's brought forth, the public will
12 have another opportunity at the hearing to, again,
13 share their thoughts as it relates to the conclusive
14 recommendation of staff.
15 Uhm, does that work?
16 MR. RUNNER: Yeah. I -- I -- I think I
17 would tend to say, you know, a little -- well, I
18 hesitate to use the word "formal" as much as I am --
19 you know, face-to-face discussions as opposed to,
20 "Hey, give us a call and tell us what you think"
21 kind of discussions.
22 So I think -- I think a good meeting
23 together is always a good thing to get -- you know,
24 help get input.
25 MR. FERRIS: Yeah. And I mean we are
26 really desirous of things in writing --
27 MR. RUNNER: Absolutely. Right.
28 MR. FERRIS: -- with very specific

1 information --
2 MR. RUNNER: Absolutely.
3 MR. FERRIS: -- about assessment issues.
4 MR. RUNNER: Yeah.
5 MR. HORTON: Okay. So Member --
6 MR. RUNNER: I think they got the gist.
7 MS. YEE: Okay.
8 MR. FERRIS: You could -- you could leave
9 it to staff's discretion --
10 MS. YEE: Mm-hmm.
11 MR. FERRIS: -- as to whether or not a
12 actual sit-in-a-room meeting is necessary. But we
13 will formalize the process of requesting information
14 from interested parties and --
15 MR. HORTON: Okay.
16 MR. FERRIS: -- and the assessors.
17 MR. RUNNER: Okay.
18 MS. YEE: Okay.
19 MR. HORTON: Member Ru- -- Member Yee moves
20 to adopt staff recommendation to repeal and to
21 readopt Rule seven four -- 474, uhm, with the
22 caveats and understandings put forth by our Chief
23 Legal Counsel as well as the Members of the Board.
24 Without objection, Members, such will be
25 the order.
26 ---oOo---
27
28

1 REPORTER'S CERTIFICATE

2

3 State of California)

4) ss

5 County of Sacramento)

6

7 I, KATHLEEN SKIDGEL, Hearing Reporter for

8 the California State Board of Equalization certify

9 that on September 10, 2013 I recorded verbatim, in

10 shorthand, to the best of my ability, the

11 proceedings in the above-entitled hearing; that I

12 transcribed the shorthand writing into typewriting;

13 and that the preceding pages 1 through 11 constitute

14 a complete and accurate transcription of the

15 shorthand writing.

16

17 Dated: September 20, 2013

18

19 Kathleen Skidgel

20

21 KATHLEEN SKIDGEL, CSR #9039

22 Hearing Reporter

23

24

25

26

27

28

Electronically signed by Kathleen Skidgel (601-100-826-6264) 56ca3a9a-beb3-4e76-aad5-0b0d58522d31

ESTIMATE OF COST OR SAVINGS RESULTING FROM PROPOSED REGULATORY ACTION

Proposed Amendment of Property Tax Rule 474, *Petroleum Refining Properties*

STATEMENT OF COST OR SAVINGS FOR NOTICE OF PUBLIC HEARING

The State Board of Equalization has determined that the proposed action does not impose a mandate on local agencies or school districts. Further, the Board has determined that the action will result in no direct or indirect cost or savings to any State agency, any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary cost or savings imposed on local agencies, or cost or savings in Federal funding to the State of California.

The cost impact on private persons or businesses will be insignificant. This proposal will not have a significant adverse economic impact on businesses.

This proposal will not be detrimental to California businesses in competing with businesses in other states.

This proposal will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand business in the State of California.

Statement Prepared by _____ Date 10-15-14
Richard Bennion, Regulations Coordinator

Approved by _____ Date 10/15/14
Randy Ferris, Chief Counsel

If Costs or Savings are Identified, Signatures of Chief, Fiscal Management Division, and Chief, Board Proceedings Division, are Required

Approved by _____ Date _____
Chief, Financial Management Division

Approved by _____ Date _____
Chief, Board Proceedings Division

NOTE: **SAM Section 6615 requires that estimates resulting in cost or savings be submitted for Department of Finance concurrence before the notice of proposed regulatory action is released.**

Board Proceedings Division
01/22/14

STATE OF CALIFORNIA — DEPARTMENT OF FINANCE

ECONOMIC AND FISCAL IMPACT STATEMENT (REGULATIONS AND ORDERS)

STD. 399 (REV. 12/2013)

Instructions and Code Citations: SAM Section 6601-6616

ECONOMIC IMPACT STATEMENT

ARTMENT NAME	CONTACT PERSON	EMAIL ADDRESS	TELEPHONE NUMBER
..te Board of Equalization	Richard E. Bennion	rbennion@boe.ca.gov	916-445-2130

DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400	NOTICE FILE NUMBER
Title 18, Section 474, Petroleum Refining Properties	Z

A. ESTIMATED PRIVATE SECTOR COST IMPACTS *Include calculations and assumptions in the rulemaking record.*

1. Check the appropriate box(es) below to indicate whether this regulation:

- ☐ a. Impacts business and/or employees
- ☐ b. Impacts small businesses
- ☐ c. Impacts jobs or occupations
- ☐ d. Impacts California competitiveness
- ☐ e. Imposes reporting requirements
- ☐ f. Imposes prescriptive instead of performance
- ☐ g. Impacts individuals
- ☒ h. None of the above (Explain below):

Please see the attached .

If any box in Items 1 a through g is checked, complete this Economic Impact Statement.
If box in Item 1.h. is checked, complete the Fiscal Impact Statement as appropriate.

2. The _____ (Agency/Department) estimates that the economic impact of this regulation (which includes the fiscal impact) is:

- ☐ Below $10 million
- ☐ Between $10 and $25 million
- ☐ Between $25 and $50 million
- ☐ Over $50 million *[If the economic impact is over $50 million, agencies are required to submit a Standardized Regulatory Impact Assessment as specified in Government Code Section 11346.3(c)]*

3. Enter the total number of businesses impacted: _____

Describe the types of businesses (Include nonprofits): _____

Enter the number or percentage of total businesses impacted that are small businesses: _____

4. Enter the number of businesses that will be created: _____ eliminated: _____

Explain: _____

5. Indicate the geographic extent of impacts: ☐ Statewide ☐ Local or regional (List areas): _____

6. Enter the number of jobs created: _____ and eliminated: _____

Describe the types of jobs or occupations impacted: _____

7. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here? ☐ YES ☐ NO

If YES, explain briefly: _____

Instructions and Code Citations:
SAM Section 6601-6616

ECONOMIC IMPACT STATEMENT (CONTINUED)

ESTIMATED COSTS *Include calculations and assumptions in the rulemaking record.*

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? $ _____

   a. Initial costs for a small business: $ _____ Annual ongoing costs: $ _____ Years: _____

   b. Initial costs for a typical business: $ _____ Annual ongoing costs: $ _____ Years: _____

   c. Initial costs for an individual: $ _____ Annual ongoing costs: $ _____ Years: _____

   d. Describe other economic costs that may occur: _____

2. If multiple industries are impacted, enter the share of total costs for each industry: _____

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. *Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.* $ _____

4. Will this regulation directly impact housing costs? ☐ YES ☐ NO

   If YES, enter the annual dollar cost per housing unit: $ _____

   Number of units: _____

5. Are there comparable Federal regulations? ☐ YES ☐ NO

   Explain the need for State regulation given the existence or absence of Federal regulations: _____

   Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: $ _____

C. ESTIMATED BENEFITS *Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. Briefly summarize the benefits of the regulation, which may include among others, the health and welfare of California residents, worker safety and the State's environment: _____

2. Are the benefits the result of: ☐ specific statutory requirements, or ☐ goals developed by the agency based on broad statutory authority?

   Explain: _____

3. What are the total statewide benefits from this regulation over its lifetime? $ _____

4. Briefly describe any expansion of businesses currently doing business within the State of California that would result from this regulation: _____

D. ALTERNATIVES TO THE REGULATION *Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: _____

Instructions and Code Citations:
SAM Section 6601-6616

ECONOMIC IMPACT STATEMENT (CONTINUED)

ımmarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation: Benefit: $ _____ Cost: $ _____

Alternative 1: Benefit: $ _____ Cost: $ _____

Alternative 2: Benefit: $ _____ Cost: $ _____

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: _____

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? ☐ YES ☐ NO

Explain: _____

E. MAJOR REGULATIONS *Include calculations and assumptions in the rulemaking record.*

California Environmental Protection Agency (Cal/EPA) boards, offices and departments are required to submit the following (per Health and Safety Code section 57005). Otherwise, skip to E4.

1. Will the estimated costs of this regulation to California business enterprises **exceed $10 million**? ☐ YES ☐ NO

If YES, complete E2. and E3
If NO, skip to E4

riefly describe each alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____

Alternative 2: _____

(Attach additional pages for other alternatives)

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: Total Cost $ _____ Cost-effectiveness ratio: $ _____

Alternative 1: Total Cost $ _____ Cost-effectiveness ratio: $ _____

Alternative 2: Total Cost $ _____ Cost-effectiveness ratio: $ _____

4. Will the regulation subject to OAL review have an estimated economic impact to business enterprises and individuals located in or doing business in California exceeding $50 million in any 12-month period between the date the major regulation is estimated to be filed with the Secretary of State through12 months after the major regulation is estimated to be fully implemented?

☐ YES ☐ NO

If YES, agencies are required to submit a Standardized Regulatory Impact Assessment (SRIA) as specified in Government Code Section 11346.3(c) and to include the SRIA in the Initial Statement of Reasons.

5. Briefly describe the following:

The increase or decrease of investment in the State: _____

The incentive for innovation in products, materials or processes: _____

The benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency: _____

STATE OF CALIFORNIA — DEPARTMENT OF FINANCE

ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)

STD 399 (REV 12/2013)

SAM Section 6601-6616

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT *Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

☐ 1. Additional expenditures in the current State Fiscal Year which are reimbursable by the State. (Approximate) (Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

$ _____

☐ a. Funding provided in _____

Budget Act of _____ or Chapter _____, Statutes of _____

☐ b. Funding will be requested in the Governor's Budget Act of _____

Fiscal Year: _____

☐ 2. Additional expenditures in the current State Fiscal Year which are NOT reimbursable by the State. (Approximate) (Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

$ _____

Check reason(s) this regulation is not reimbursable and provide the appropriate information:

☐ a. Implements the Federal mandate contained in _____

☐ b. Implements the court mandate set forth by the _____ Court.

Case of: _____ vs. _____

☐ c. Implements a mandate of the people of this State expressed in their approval of Proposition No. _____

Date of Election: _____

☐ d. Issued only in response to a specific request from affected local entity(s).

Local entity(s) affected: _____

☐ e. Will be fully financed from the fees, revenue, etc. from: _____

Authorized by Section: _____ of the _____ Code;

☐ f. Provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each;

☐ g. Creates, eliminates, or changes the penalty for a new crime or infraction contained in _____

☐ 3. Annual Savings. (approximate)

$ _____

☐ 4. No additional costs or savings. This regulation makes only technical, non-substantive or clarifying changes to current law regulations.

☒ 5. No fiscal impact exists. This regulation does not affect any local entity or program.

☐ 6. Other. Explain _____

Instructions and Code Citations:
SAM Section 6601-6616

FISCAL IMPACT STATEMENT (CONTINUED)

FISCAL EFFECT ON STATE GOVERNMENT *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

☐ 1. Additional expenditures in the current State Fiscal Year. (Approximate)

$ _____

It is anticipated that State agencies will:

☐ a. Absorb these additional costs within their existing budgets and resources.

☐ b. Increase the currently authorized budget level for the _____ Fiscal Year

☐ 2. Savings in the current State Fiscal Year. (Approximate)

$ _____

☒ 3. No fiscal impact exists. This regulation does not affect any State agency or program.

☐ 4. Other. Explain _____

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

☐ 1. Additional expenditures in the current State Fiscal Year. (Approximate)

$ _____

☐ 2. Savings in the current State Fiscal Year. (Approximate)

$ _____

☒ 3. No fiscal impact exists. This regulation does not affect any federally funded State agency or program.

☐ 4. Other. Explain _____

FISCAL OFFICER SIGNATURE	DATE
Joe Fitz	October 14, 2014

The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6601-6616, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.

AGENCY SECRETARY	DATE
Joann Richmond	October 14, 2014

ance approval and signature is required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD. 399.

DEPARTMENT OF FINANCE PROGRAM BUDGET MANAGER	DATE
Exempt under SAM section 6615	

Attachment to Economic and Fiscal Impact Statement (STD. 399 (Rev. 12/2013)) for the Proposed Re-Adoption of California Code of Regulations, Title 18, Section 474, *Petroleum Refining Properties*

Economic Impact of the Re-Adoption of Rule 474

Prior to beginning the formal rulemaking process, Board staff determined how the re-adoption of Property Tax Rule (Rule) 474, *Petroleum Refining Properties*, might change (or effect) the current assessment of petroleum refining property, for property tax purposes, and thereby have an economic impact on county assessors and the California petroleum refining industry. Board staff determined that, in the absence of Rule 474, county assessors are currently authorized by Revenue and Taxation Code (RTC) section 51, subdivision (d) (hereafter section 51(d)), as interpreted by the California Supreme Court in *Western States Petroleum Association v. Board of Equalization* (2013) 57 Cal.4th 401 (hereafter *WSPA v. BOE*), to determine that petroleum refinery property (land, improvements, and fixtures) constitutes a single appraisal unit for measuring declines in value when persons in the marketplace commonly buy and sell refinery property as a unit. Board staff also determined that persons in the marketplace still commonly buy and sell operable California petroleum refineries as a unit, just as they did when the Board first adopted Rule 474 (as explained in detail in the initial statement of reasons). Therefore, Board staff determined that, as a result, county assessors are currently required to monitor the market for petroleum refinery property. However, in the absence of substantial changes in the California petroleum refinery market, it is also currently reasonable for a county assessor to generally value petroleum refinery property as a single appraisal unit, for purposes of measuring declines in value, and rely on each petroleum refinery owner to produce evidence, when available, to establish that some or all of its refinery's fixtures should be valued as a separate appraisal unit because those fixtures are not commonly bought and sold as a unit with the refinery's land and improvements.

Board staff determined that the re-adoption of Rule 474 does not materially change the treatment of petroleum refinery property under RTC section 51(d) as interpreted by the California Supreme Court in *WSPA v. BOE*. Instead, the re-adoption of Rule 474 has the effect of clarifying that, based upon the California petroleum refinery market (discussed in detail in the initial statement of reasons):

- "The land, improvements, and fixtures and other machinery and equipment classified as improvements for a petroleum refining property are rebuttably presumed to constitute a single appraisal unit" for purposes of determining declines in value because doing so is generally consistent with RTC section 51(d) as interpreted by the California Supreme Court in *WSPA v. BOE*; and
- The provisions in subdivision (e) of Rule 461, *Real Property Value Changes* (hereafter Rule 461(e)), providing that "fixtures and other machinery and equipment classified as improvements constitute a separate appraisal unit" for purposes of determining declines in value do not apply to petroleum refinery property, unless there is evidence that treating specific fixtures as a separate appraisal unit would be consistent with RTC section 51(d) as interpreted by the California Supreme Court in *WSPA v. BOE*.

In addition, Board staff determined that, after the re-adoption of Rule 474, a county assessor would still need to continue to monitor the market for petroleum refinery property because Rule 474 does not supersede RTC section 51(d) and because the presumption in Rule 474 is rebuttable. Staff determined that, after the re-adoption of Rule 474 and in the absence of substantial changes in the California petroleum refinery market, county assessors could continue to generally value petroleum refinery property (land, improvements, and fixtures) as a single appraisal unit. Board staff also determined that, after the re-adoption of Rule 474 and in the absence of substantial changes in the California petroleum refinery market, county assessors could continue to rely on each petroleum refinery owner to produce evidence to establish that some or all of its refinery's "fixtures" should be valued as a separate appraisal unit because those fixtures are not commonly bought and sold as a unit with the refinery's land and improvements, when available. Therefore, Board staff concluded that the re-adoption of Rule 474 is fully consistent with the existing mandates of RTC section 51(d), and that there is nothing in the proposed re-adoption of Rule 474 that would significantly change how individuals and businesses, including county assessors and petroleum refinery owners, would generally behave due to the current provisions of RTC section 51(d) as interpreted by the California Supreme Court in *WSPA v. BOE.*

As a result, the Board has determined that the re-adoption of Rule 474 does not impose any costs on any persons, including businesses, in addition to whatever costs are imposed by RTC section 51(d) as interpreted by the California Supreme Court in *WSPA v. BOE*, and there is nothing in Rule 474 that would impact revenue. The Board also estimates that the proposed re-adoption of Rule 474 will not have a measurable economic impact on individuals and business, including county assessors and petroleum refinery owners, that is in addition to whatever economic impact the enactment of RTC section 51(d), as interpreted by the California Supreme Court in *WSPA v. BOE*, has and will have on individuals and businesses. And, the Board has determined that the proposed re-adoption of Rule 474 is not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, because the Board has estimated that the proposed amendments will not have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars ($50,000,000) during any 12-month period. Therefore, based on these facts and all of the information in the rulemaking file, the Board has determined that the proposed re-adoption of Rule 474:

- Will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states;
- Will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor affect the expansion of businesses currently doing business in the State of California;
- Will not have a significant effect on housing costs;
- Will result in no direct or indirect cost or savings to any state agency, and will result in no cost or savings in federal funding to the State of California;
- Will result in no direct or indirect cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of

title 2 of the Government Code, and will result in no other non-discretionary cost or savings imposed on local agencies; and

- Will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

Finally, Rule 474 does not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has also determined that the re-adoption of Rule 474 will not affect the benefits of Rule 474 to the health and welfare of California residents, worker safety, or the state's environment.

Tax Effect of Treating Petroleum Refinery Property as One Appraisal Unit

Although the Board has determined that there is no economic impact associated with the re-adoption of Rule 474 due to the mandates of RTC section 51(d), the Board is aware that fixture depreciation can be offset by appreciation in land and improvements when petroleum refinery property (land, improvements, and fixtures) is valued as a single appraisal unit, as the California Supreme Court indicated in *WSPA v. BOE*. Therefore, the Board recognizes that there is sometimes an increase in the total assessed value of petroleum refinery property when fixtures are valued as part of the same appraisal unit with land and improvements under RTC section 51(d) and Rule 474, instead of valued as a separate appraisal unit under Rule 461(e). The Board also recognizes that property taxes increase by one percent of each increase in assessed value.

As a result, Board staff determined that it needed to obtain the available data regarding the market values and adjusted base year values for petroleum refinery land, improvements, and fixtures so that Board staff could accurately compare the total assessed value of a petroleum refinery when its fixtures are valued as a separate appraisal unit under Rule 461(e) and valued as part of the same appraisal unit with land and improvements under Rule 474. Therefore, Board staff contacted the California Assessors' Association and requested that the county assessors provide Board staff with the available data for 2009 through 2013 without identifying specific petroleum refineries. In response, the California Assessors' Association provided all of the data for nine petroleum refineries for 2009-2013, and all the data for one additional petroleum refinery for 2009-2012, including many of California's largest refineries.

Board staff subsequently reviewed the available data for the 10 refineries.[1] Board staff determined that valuing petroleum refinery fixtures as part of the same appraisal unit with land and improvements under RTC section 51(d) and Rule 474, instead of valuing fixtures as a separate appraisal unit under Rule 461(e), only results in a higher total assessed value:

1. When the current market value of the fixtures is less than the adjusted base year value of the fixtures; and

2. Either:

[1] See Attachment F to the initial statement of reasons, which contains Board staff's economic impact assessment of the available data.

A. The combined current market value of land and improvements is more than the combined current adjusted base year value of the land and improvements; or
B. The combined current market value of land, improvements, and fixtures is more than the combined current adjusted base year value of the land, improvements, and fixtures.

Otherwise, valuing petroleum refinery fixtures as part of the same appraisal unit with land and improvements under RTC section 51(d) and Rule 474, instead of valuing fixtures as a separate appraisal unit under Rule 461(e), does not result in an increase in assessed value.[2]

In addition, Board staff determined what the assessed values would be for 2009 through 2013, under RTC section 51(d) and Rule 474, and under Rule 461(e), for each of the 10 California petroleum refineries for which data is available.[3] However, the data did not indicate that valuing petroleum refinery fixtures as part of the same appraisal unit with land and improvements under RTC section 51(d) and Rule 474, instead of valuing fixtures as a separate appraisal unit under Rule 461(e), has a consistent tax effect in any given year or from year-to-year. Instead, staff determined that the owners of one of the 10 refineries would not pay higher property taxes under RTC section 51(d) and Rule 474, than under Rule 461, in any of the five years.[4] Staff also determined that the owners of nine of the 10 refineries would pay higher property taxes under RTC section 51(d) and Rule 474, than under Rule 461, in at least two of the five years. Specifically, staff determined that:

- The owners of two of the 10 refineries would pay higher property taxes under RTC section 51(d) and Rule 474, than under Rule 461, in two of the five years;
- The owners of two of the 10 refineries would pay higher property taxes under RTC section 51(d) and Rule 474, than under Rule 461, in three of the five years;
- The owners of three of the 10 refineries would pay higher property taxes under RTC section 51(d) and Rule 474, than under Rule 461, in four of the five years; and
- The owners of two of the 10 refineries would pay higher property taxes under RTC section 51(d) and Rule 474, than under Rule 461, in all five years.[5]

In addition, Board staff determined that the owners of 9 of the 10 refineries would collectively pay the following additional property taxes for 2009 through 2013 if their refineries were valued under RTC section 51(d) and Rule 474, rather than under Rule 461, and determined that the additional taxes represented the following percentage increases in their collective property taxes for each year:

2009:	$4,633,805	2.78%
2010:	$5,221,876	3.79%
2011:	$5,159,918	3.46%
2012:	$4,045,140	2.52%
2013:	$2,816,552	2.40%[6]

[2] See Attachment F to the initial statement of reasons, pages 1 through 8.
[3] See Attachment F to the initial statement of reasons, pages 7 and 8.
[4] See Attachment F to the initial statement of reasons, pages 7 and 9.
[5] See Attachment F to the initial statement of reasons, pages 7 through 10.

Finally, as noted above, Board staff concluded that the tax effect of valuing petroleum refinery fixtures as part of the same appraisal unit with land and improvements under RTC section 51(d) and Rule 474, instead of valuing fixtures as a separate appraisal unit under Rule 461(e), depends entirely upon:

- Whether and to what extent the current market value of a particular petroleum refinery's fixtures is less than the adjusted base year value of the fixtures; and
- Whether and to what extent the: (A) the combined current market value of the same petroleum refinery's land and improvements is more than the combined current adjusted base year value of the land and improvements; or (B) the combined current market value of the same petroleum refinery's land, improvements, and fixtures is more than the combined current adjusted base year value of the land, improvements, and fixtures.

[6] See Attachment F to the initial statement of reasons, page 11.

STATE OF CALIFORNIA–OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-2014-1010-02		

For use by Office of Administrative Law (OAL) only

RECEIVED FOR FILING PUBLICATION DATE

OCT 10 '14 OCT 24 '14

Office of Administrative Law

NOTICE | REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY: State Board of Equalization

AGENCY FILE NUMBER (If any):

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
Petroleum Refining Properties	18	474	October 24, 2014

3. NOTICE TYPE	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
[X] Notice re Proposed Regulatory Action [ ] Other	Rick Bennion	(916) 445-2130	(916) 324-3984

OAL USE ONLY	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE
	[ ] Approved as Submitted [ ] Approved as Modified [ ] Disapproved/ Withdrawn		

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)

1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) **(Including title 26, if toxics related)**

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)

ADOPT

AMEND

TITLE(S)

REPEAL

3. TYPE OF FILING

- [ ] Regular Rulemaking (Gov. Code §11346)
- [ ] Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)
- [ ] Emergency (Gov. Code, §11346.1(b))
- [ ] Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.
- [ ] Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
- [ ] Emergency Readopt (Gov. Code, §11346.1(h))
- [ ] File & Print
- [ ] Other (Specify) _____
- [ ] Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
- [ ] Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

- [ ] Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))
- [ ] Effective on filing with Secretary of State
- [ ] §100 Changes Without Regulatory Effect
- [ ] Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

- [ ] Department of Finance (Form STD. 399) (SAM §6660)
- [ ] Fair Political Practices Commission
- [ ] State Fire Marshal
- [ ] Other (Specify) _____

7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)

8. **I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.**

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

TYPED NAME AND TITLE OF SIGNATORY

For use by Office of Administrative Law (OAL) only

TITLE 18. BOARD OF EQUALIZATION

The State Board of Equalization Proposes to Adopt California Code of Regulations, Title 18, Section 474, *Petroleum Refining Properties*

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Government Code section 15606, proposes to re-adopt California Code of Regulations, title 18, section (Rule) 474, *Petroleum Refining Properties*. Proposed Rule 474 implements, interprets, and makes specific section 1 of article XIII and section 2 of article XIII A of the California Constitution and Revenue and Taxation Code (RTC) sections 51 and 110.1, as interpreted by the California Supreme Court in *Western States Petroleum Association v. Board of Equalization* (2013) 57 Cal.4th 401 (hereafter *WSPA v BOE*), by defining the terms "petroleum refinery property" and "appraisal unit," and establishing a rebuttable presumption that the land, improvements, and fixtures and other machinery and equipment classified as improvements for a petroleum refining property constitute a single appraisal unit, except when measuring declines in value caused by disaster.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on December 17-18, 2014. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at *www.boe.ca.gov* at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:30 a.m. or as soon thereafter as the matter may be heard on December 17 or 18, 2014. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the re-adoption of proposed Rule 474.

AUTHORITY

Government Code section 15606

REFERENCE

Section 1 of article XIII and section 2 of article XIII A of the California Constitution, RTC sections 51 and 110.1, and *WSPA v. BOE*

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW PURSUANT TO GOVERNMENT CODE SECTION 11346.5, SUBDIVISION (a)(3)

Summary of Existing Laws and Regulations

Initial Adoption of Rule 474

The Board previously adopted Rule 474. In *WSPA v. BOE*, the California Supreme Court provided the following summary of the applicable property tax laws as they existed prior to the Board's initial adoption of Rule 474 and the effect of the initial adoption of Rule 474:

> Article XIII, section 1 of the California Constitution declares that "[a]ll property is taxable and shall be assessed at the same percentage of fair market value." (Cal. Const., art. XIII, § 1, subd. (a).) Proposition 13, an initiative measure enacted in June 1978, added article XIII A to the California Constitution and changed the taxation of real property by replacing "the fair market valuation standard with that of acquisition value." (*Roy E. Hanson, Jr. Mfg. v. County of Los Angeles* (1980) 27 Cal.3d 870, 873 [167 Cal. Rptr. 828, 616 P.2d 810].) Article XIII A, section 2 provides that all real property, except for property acquired prior to 1975, shall be assessed and taxed at its value on the date of acquisition, subject to a 2 percent maximum annual inflationary increase. (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 235 [149 Cal. Rptr. 239, 583 P.2d 1281].) This is sometimes referred to as the indexed or adjusted base year value. (See Bd. of Equalization, Assessors' Handbook, Section 501, Basic Appraisal (2002 rev.) appen. A, Assessment Pre- and Post-Proposition 13, p. 137.)
>
> Proposition 13 did not address how real property should be assessed and taxed when its market value declines instead of appreciates. To address this issue, California voters passed Proposition 8 in November 1978. Proposition 8 amended article XIII A so that it now reads: "The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction, or may be reduced to reflect substantial damage, destruction, or other factors causing a decline in value." (Cal. Const., art. XIII A, § 2, subd. (b).) In other words, when the value of real property declines to a level below its adjusted base year value under Proposition 13, the value of the property is determined according to its actual fair market value.
>
> The Legislature formed a task force to study the implementation of the new real property tax system mandated by Proposition 13 and Proposition 8. In January 1979, the task force submitted a report and recommendations to the Assembly Committee on Revenue and Taxation, officially titled Report of the Task Force on Property Tax Administration (hereafter Task Force Report). (See *Pacific Southwest Realty Co. v.*

County of Los Angeles (1991) 1 Cal.4th 155, 161 [2 Cal. Rptr. 2d 536, 820 P.2d 1046].) The Task Force Report has been recognized as a statement of legislative intent for purposes of interpreting the statutes enacted to implement Proposition 13 and Proposition 8. (See, e.g., *Auerbach v. Assessment Appeals Bd. No. 1* (2006) 39 Cal.4th 153, 161 [45 Cal. Rptr. 3d 774, 137 P.3d 951].)

The report recommended that "the assessed value of real property be the lesser of the Prop. 13 base value compounded annually by 2% or full cash value. These changes will be measured by that appraisal unit which is commonly bought and sold in the market, or which is normally valued separately." (Task Force Rep., *supra*, at p. 29.) Revenue and Taxation Code section 51 was subsequently amended to incorporate the task force recommendations. (All further statutory references are to the Revenue and Taxation Code unless otherwise specified.) Section 51, subdivision (a) (hereafter section 51(a)) provides that "the taxable value of real property shall . . . be the lesser of: [¶] (1) Its base year value, compounded annually since the base year by an inflation factor . . ." not to exceed 2 percent per year, or "(2) Its full cash value, as defined in Section 110, as of the lien date, taking into account reductions in value due to damage, destruction, depreciation, obsolescence, removal of property, or other factors causing a decline in value." Section 110, subdivision (a) defines the term "full cash value," synonymously with the term "fair market value," as "the amount of cash or its equivalent that property would bring if exposed for sale in the open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other, and both the buyer and the seller have knowledge of all of the uses and purposes to which the property is adapted and for which it is capable of being used, and of the enforceable restrictions upon those uses and purposes."

Most significantly for this case, the term "real property" under section 51, subdivision (d) (hereafter section 51(d)) is defined as "that appraisal unit that persons in the marketplace commonly buy and sell as a unit, or that is normally valued separately." This definition echoes almost verbatim the definition recommended by the Task Force Report. The statute does not further define "appraisal unit," but the term is defined by regulation as "a collection of assets that functions together, and that persons in the marketplace commonly buy and sell as a single unit or that is normally valued in the marketplace separately from other property . . . ." (Cal. Code Regs., tit. 18, § 324.)

In the wake of Proposition 13 and Proposition 8, and shortly before the enactment of section 51, the Board promulgated and then amended rule 461, a regulation applicable to most real property used for manufacturing. (Cal. Code Regs., tit. 18, § 461 (Rule 461).) Rule 461, subdivision (e)

(hereafter Rule 461(e)) provides: "Declines in value will be determined by comparing the current lien date full value of the appraisal unit to the indexed base year full value of the same unit for the current lien date. Land and improvements constitute an appraisal unit except when measuring declines in value caused by disaster, in which case land shall constitute a separate unit. For purposes of this subdivision, fixtures and other machinery and equipment classified as improvements constitute a separate appraisal unit."

At the same time that it adopted Rule 461(e)'s classification of fixtures as "a separate appraisal unit," the Board adopted two exceptions to this rule for certain types of industrial property where land and fixtures were valued as a single unit in the marketplace: Rule 468, which applies to oil and gas properties, and Rule 469, which applies to mining properties. (See Cal. Code Regs., tit. 18, §§ 468, subd. (c)(6) (Rule 468), 469, subd. (e)(2)(C) (Rule 469).) Rule 473, adopted in 1995, similarly treats land and fixtures on geothermal properties as a single appraisal unit. (Cal. Code Regs., tit. 18, § 473(e)(4)(C) (Rule 473).) Petroleum refinery property was covered by Rule 461(e) until the Board's adoption of Rule 474.

In September 2006, the Board voted three to two to adopt Rule 474 to address "the valuation of the real property, personal property, and fixtures used for the refining of petroleum." (Rule 474, subd. (a).) Subdivision (b)(1) of Rule 474 states that "[t]he unique nature of property used for the refining of petroleum requires the application of specialized appraisal techniques designed to satisfy the requirements of article XIII, section 1, and article XIII A, section 2, of the California Constitution. To this end, petroleum refineries and other real and personal property associated therewith shall be valued pursuant to the principles and procedures set forth in this section." Rule 474, subdivision (c)(2) states that "'[a]ppraisal unit' consists of the real and personal property that persons in the marketplace commonly buy and sell as a unit." Most pertinent here, subdivision (d) states that "[f]or the purposes of this section: [¶] (1) Declines in value of petroleum refining properties will be determined by comparing the current lien date full value of the appraisal unit [(i.e., its value in an open market transaction)] to the indexed base year full value of the same unit [(i.e., its Proposition 13 value)]. [¶] (2) *The land, improvements, and fixtures and other machinery and equipment classified as improvements for a petroleum refining property are rebuttably presumed to constitute a single appraisal unit* . . . . [¶] (3) In rebutting this presumption, the assessor may consider evidence that: [¶] (A) The land and improvements including fixtures and other machinery and equipment classified as improvements are not under common ownership or control and do not typically transfer in the marketplace as one economic unit; or, [¶] (B) When the fixtures and other machinery and equipment classified as improvements are not functionally and physically integrated

> with the realty and do not operate together as one economic unit." (Rule 474, subd. (d); italics added [in original opinion].)
>
> [¶] . . . [¶]
>
> In November 2007, the Office of Administrative Law approved the regulation, and it became effective in December 2007. (*WSPA v. BOE*, pp. 409-413.)

History Regarding WSPA v. BOE

In *WSPA v. BOE*, the California Supreme Court also explained that in December 2008, the Western States Petroleum Association (WSPA) filed a complaint challenging the validity of Rule 474 and seeking a declaration that the Board violated the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.) in adopting the rule. (WSPA v. BOE, pp. 413-414.) And, "[i]n October 2009, the Board and WSPA filed cross-motions for summary judgment. WSPA argued that Rule 474 violates section 51(d) and California Constitution, article XIII A, and that the Board failed to provide an adequate statement of economic impact as required by the APA. The trial court granted WSPA's summary judgment motion on both grounds, and the Court of Appeal affirmed on both grounds" before the California Supreme Court granted review. (*WSPA v. BOE*, p. 414.)

As explained in more detail in the initial statement of reasons, the California Supreme Court disagreed with all of WSPA's arguments as to why Rule 474 violates RTC section 51, subdivision (d) (hereafter section 51(d)), and California Constitution, article XIII A. The Court specifically concluded that "Rule 474's market-based approach to determining the proper appraisal unit for petroleum refinery property ensures that reductions in property values are measured according to fair market value. Thus, Rule 474 appears consistent with articles XIII and XIII A." (*WSPA v. BOE*, pp. 416-417.) Furthermore, the California Supreme Court specifically concluded that "Rule 474 is also consistent with section 51(d)." (*WSPA v. BOE*, p. 417.) The Court said that "[b]y its terms, the statute provides two alternative methods of determining the appraisal unit that constitutes taxable real property: it is either (1) a unit 'that persons in the marketplace commonly buy and sell as a unit' or (2) a unit 'that is normally valued separately.' Rule 474 applies the first method to petroleum refinery property." (*WSPA v. BOE*, p. 417.)

Although the California Supreme Court held that Rule 474 was substantively valid in *WSPA v. BOE*, the Court still concluded that the Board's adoption of Rule 474 was procedurally invalid under the APA. (*WSPA v. BOE*, pp. 408-409.) The Court held that the Board did not properly assess the economic impact of Rule 474 and that the Board's initial determination that Rule 474 would not have a significant adverse economic impact on businesses did not substantially comply with the APA (Gov. Code, §§ 11346.2, subd. (b)(5)(A), 11346.3, 11346.5, subd. (a)(8)) because:

- "The Board relied on a 2006 document titled 'Revenue Estimate' concerning proposed Rule 474. According to the document, which was prepared by Board

staff, WSPA reported that there are 20 major refineries located in California, with five in Los Angeles County and four in Contra Costa County. (Bd. of Equalization, Revenue Estimate, Issue No. 6-001 (June 7, 2006) p. 2.) County data indicated that the total assessment in these two counties was over $ 14 billion, with about 80 percent of that value enrolled as fixtures. Projecting figures statewide, the Board staff estimated that there was $ 32 billion of refinery property, of which $ 25 billion consisted of fixtures and $ 7 billion in land and nonfixture improvements. To 'conservatively estimate' the incremental amount of taxable assessed value resulting from the proposed rule, the Board staff multiplied the $ 7 billion in land value by a 2 percent appreciation factor to conclude that Rule 474 would yield 'at least $ 140 million' in additional assessed value. (Revenue Estimate, at p. 3.) The Board staff then multiplied $ 140 million by the 1 percent tax on real property permitted under article XIII A to arrive at $ 1.4 million as the annual estimated revenue effect of Rule 474, while acknowledging that '[t]he actual revenue effect could be considerably higher or lower depending on the number of properties [affected] and the actual amount of offsetting values.' (Revenue Estimate, at p. 3.) Based on these calculations, the Board concluded that Rule 474 'will not have a significant adverse economic impact on businesses.'" (*WSPA v. BOE*, pp. 429-430.);

- The Court concluded that "[e]ven assuming the Board could reasonably project $ 32 billion as the total value of 20 refineries statewide based on data showing $ 14 billion as the total value of nine refineries in two counties, the Board's analysis offers no explanation why multiplying $ 7 billion in land value by a 2 percent appreciation factor is, empirically or conceptually, a valid or reasonable way to estimate the amount of fixture depreciation that would be offset by appraising land and fixtures as a single unit." (*WSPA v. BOE*, p. 430.); and
- "[T]he Board's calculation failed to consider prior land appreciation and the full tax impact that would occur if land were valued at actual market value rather than adjusted base year value." (*Ibid.*)

Effect, Objective, and Benefit of the Proposed Re-Adoption of Rule 474

During the Board's September 10, 2013, meeting, the Board considered a Chief Counsel Memorandum dated August 28, 2013. In the Chief Counsel Memorandum, Board staff explained that the Board adopted Rule 474 on September 27, 2006, to clarify that, consistent with California Constitution article XIII, section 1, article XIII A (which contains Proposition 13 as amended by Proposition 8), RTC section 51, and Rules 461, *Real Property Value Changes*, and 324, *Decision*, refinery property consisting of land, improvements, and fixtures is rebuttably presumed to be a single appraisal unit in determining Proposition 8 declines in value below the Proposition 13 adjusted base year value for property tax valuation purposes. In the Chief Counsel Memorandum, Board staff also explained that the California Supreme Court held that Rule 474 was substantively valid in *WSPA v. BOE*. However, nevertheless, the Court also invalidated Rule 474 on procedural grounds, finding that the Board failed to provide an adequate assessment of the rule's economic impact during the rulemaking process as required by the APA. In particular, the Supreme Court held that Rule 474 is procedurally deficient

because the Board did not make a reasoned estimate of all the cost impacts of the rule on affected parties. Therefore, in the memorandum, Board staff requested the Board's authorization to repeal Rule 474 pursuant to California Code of Regulations, title 1, section 100 (Rule 100). Board staff also requested the Board's authorization to initiate the rulemaking process to re-adopt Rule 474 following the APA's regular notice and public hearing process after Board staff reassessed the economic impact of Rule 474 on affected businesses in accordance with the APA and *WSPA v. BOE*.

Therefore, at the conclusion of the Board's discussion of the Chief Counsel Memorandum dated August 28, 2013, during its meeting on September 10, 2013, the Board Members unanimously voted to authorize staff to repeal Rule 474 pursuant to Rule 100, and initiate the rulemaking process to re-adopt Rule 474 after Board staff reassessed the economic impact of Rule 474 in accordance with the APA and *WSPA v. BOE*. The Board determined that it is reasonably necessary to re-adopt Rule 474 to have the effect and accomplish the objective of clarifying that petroleum refinery land, improvements, and fixtures are rebuttably presumed to constitute a single appraisal unit for determining declines in value because petroleum refineries are commonly bought and sold as a unit in the marketplace. The Board anticipates that the re-adoption of Rule 474 will clarify the treatment of petroleum refinery property for purposes of measuring declines in value, and thereby benefit county assessors and the owners of petroleum refineries by promoting fairness and uniformity in the assessment of petroleum refinery property throughout the state.

The Board subsequently repealed Rule 474 pursuant to Rule 100, effective October 30, 2013. However, regardless of the repeal of Rule 474, county assessors are still authorized to determine that refinery property (land, improvements, and fixtures) constitutes a single appraisal unit for measuring declines in value when persons in the marketplace commonly buy and sell refinery property as a unit, in accordance with RTC section 51(d) as interpreted by the California Supreme Court in *WSPA v. BOE* (discussed above).

In addition, Board staff has reassessed the economic impact of Rule 474 in accordance with the APA and *WSPA v. BOE*. Staff's economic impact assessment is included in the initial statement of reasons, and the results of staff's assessment are provided below.

The Board has performed an evaluation of whether Rule 474 is inconsistent or incompatible with existing state regulations and determined that the proposed rule is not inconsistent or incompatible with existing state regulations. This is because proposed Rule 474 is the only state regulation that specifically prescribes the appraisal unit for determining declines in value of petroleum refining properties. The Board has also determined that there are no comparable federal regulations or statutes to proposed Rule 474.

NO MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Board has determined that the re-adoption of Rule 474 will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement pursuant to title 2, division 4, part 7 (commencing with section 17500) of the Government Code.

NO COST OR SAVINGS TO ANY STATE AGENCY, LOCAL AGENCY, OR SCHOOL DISTRICT

The Board has determined that the re-adoption of proposed Rule 474 will result in no direct or indirect cost or savings to any state agency and will result in no cost or savings in federal funding to the State of California. The Board has also determined that the re-adoption of proposed Rule 474 will result in no direct or indirect cost to any local agency or school district that is required to be reimbursed under title 2, division 4, part 7 (commencing with section 17500) of the Government Code, and will result in no other non-discretionary cost or savings imposed on local agencies.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that the re-adoption of proposed Rule 474 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed re-adoption of Rule 474 may affect small businesses.

NO KNOWN COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has determined that the proposed re-adoption of Rule 474 is not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the re-adoption of proposed Rule 474 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the re-adoption of proposed Rule 474 will not affect the benefits of Rule 474 to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The re-adoption of proposed Rule 474 will not have a significant effect on housing costs.

STATEMENT REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of proposed Rule 474 should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984 , by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends at 9:30 a.m. on December 17, 2014, or as soon thereafter as the Board begins the public hearing regarding the re-adoption of proposed Rule 474 during the December 17-18, 2014, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, or contentions contained in those written comments before the Board decides whether to re-adopt proposed Rule 474. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared a copy of the text of proposed Rule 474 illustrating its express terms; however, the proposed regulation is not illustrated in underline or italics format because California Code of Regulations, title 1, section 8, subdivision (b) provides that "[u]nderline or italic is not required for the adoption of a new regulation or set of regulations if the final text otherwise clearly indicates that all of the final text submitted to OAL for filing is added to the California Code of Regulations." The Board has also

prepared an initial statement of reasons for the adoption of the proposed rule, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed regulation is based are available to the public upon request.

The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation and the initial statement of reasons are also available on the Board's Website at *www.boe.ca.gov*.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may re-adopt proposed Rule 474 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board re-adopts proposed Rule 474, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at *www.boe.ca.gov*.

Bennion, Richard

From: BOE-Board Meeting Material
Sent: Friday, October 24, 2014 9:01 AM
To: Alonzo, Mary Ann (Legal); Angeja, Jeff (Legal); Angeles, Joel; Appleby, Jaclyn; Armenta, Christopher; Bartolo, Lynn; Bennion, Richard; Benson, Bill; Bisauta, Christine (Legal); Blake, Sue; BOE-Board Meeting Material; Boyle, Kevin; Bridges, Cynthia; Brown, Michele C; Carrigan, Brenn; Chung, Sophia (Legal); Cruz, Giovan; Davis, Toya P.; Delgado, Maria; Dixon, Camille; Duran, David; Durham, Mark; Eaton, Janet; Elliott, Claudia; Epolite, Anthony (Legal); Ferris, Randy (Legal); Ford, Ladeena L; Garcia, Laura; Gau, David; Gilman, Todd; Hamilton, Tabitha; Hanohano, Rebecca; Harvill, Mai; He, Mengjun; Heller, Bradley (Legal); Hellmuth, Leila; Herrera, Cristina; Holmes, Dana; Hughes, Shellie L; Jacobson, Andrew; Kinkle, Sherrie L; Kinst, Lynne; Kruckenberg, Kendra; Kuhl, James; Lambert, Gary; Lambert, Robert (Legal); Lee, Chris; Levine, David H. (Legal); LoFaso, Alan; Madrigal, Claudia; Mandel, Marcy Jo; Matsumoto, Sid; McGuire, Jeff; Melendez-Collier, Alisa; Miller, Brad; Mandel, Marcy Jo @ SCO; Moon, Richard (Legal); Morquecho, Raymond; Nienow, Trecia (Legal); Oakes, Clifford; Pielsticker, Michele; Ralston, Natasha; Richmond, Joann; Riley, Denise (Legal); Salazar, Ramon; Salgado-Ponce, Sylvia; Schultz, Glenna; Shah, Neil; Silva, Monica (Legal); Singh, Sam; Smith, Kevin (Legal); Smith, Rose; Stowers, Yvette; Torres, Rodrigo; Torres, Rodrigo; Tran, Mai (Legal); Treichelt, Tim; Tucker, Robert (Legal); Vandrick, Tanya; Vasquez, Rosalyn; Wallentine, Sean; Whitaker, Lynn; White, Sharon; Williams, Lee; Zivkovich, Robert
Subject: State Board of Equalization - Announcement of Regulatory Change 474

The State Board of Equalization proposes to re-adopt Property Tax Rule 474, *Petroleum Refining Properties*. A public hearing regarding the proposed regulatory action will be held in Room 121, 450 N Street, Sacramento, at 9:30 a.m., or as soon thereafter as the matter may be heard, on December 17 or 18, 2014.

The proposed re-adoption of Rule 474 establishes a rebuttable presumption that petroleum refining property (land, improvements, and fixtures) constitutes a single appraisal unit for determining declines in value, except when measuring declines in value caused by disaster.

To view the notice of hearing, initial statement of reasons, proposed text, and history click on the following link: http://www.boe.ca.gov/regs/reg_474_2014.htm.

Questions regarding the substance of the proposed amendments should be directed to Mr. Bradley Heller, Tax Counsel IV, at 450 N Street, MIC:82, P.O. Box 942879, Sacramento, CA 94279-0082, e-mail Bradley.Heller@boe.ca.gov, telephone (916) 323-3091, or FAX (916) 323-3387.

Written comments for the Board's consideration, notices of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed regulatory action should be directed to Mr. Rick Bennion, Regulations Coordinator, telephone (916) 445-2130, fax (916) 324-3984, e-mail Richard.Bennion@boe.ca.gov or by mail to: State Board of Equalization, Attn: Rick Bennion, MIC: 80, P.O. Box 942879-0080, Sacramento, CA 94279-0080.

Please do not reply to this message.

Board Proceedings Division, MIC:80
Rick Bennion
Regulations Coordinator
Phone (916) 445-2130
Fax (916) 324-3984

Bennion, Richard

From: State Board of Equalization - Announcement of Regulatory Change <Legal.Regulations@BOE.CA.GOV>
Sent: Friday, October 24, 2014 10:07 AM
To: BOE_REGULATIONS@LISTSERV.STATE.CA.GOV
Subject: State Board of Equalization - Announcement of Regulatory Change 474

The State Board of Equalization proposes to re-adopt Property Tax Rule 474, *Petroleum Refining Properties*. A public hearing regarding the proposed regulatory action will be held in Room 121, 450 N Street, Sacramento, at 9:30 a.m., or as soon thereafter as the matter may be heard, on December 17 or 18, 2014.

The proposed re-adoption of Rule 474 establishes a rebuttable presumption that petroleum refining property (land, improvements, and fixtures) constitutes a single appraisal unit for determining declines in value, except when measuring declines in value caused by disaster.

To view the notice of hearing, initial statement of reasons, proposed text, and history click on the following link: http://www.boe.ca.gov/regs/reg_474_2014.htm.

Questions regarding the substance of the proposed amendments should be directed to Mr. Bradley Heller, Tax Counsel IV, at 450 N Street, MIC:82, P.O. Box 942879, Sacramento, CA 94279-0082, e-mail Bradley.Heller@boe.ca.gov, telephone (916) 323-3091, or FAX (916) 323-3387.

Written comments for the Board's consideration, notices of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed regulatory action should be directed to Mr. Rick Bennion, Regulations Coordinator, telephone (916) 445-2130, fax (916) 324-3984, e-mail Richard.Bennion@boe.ca.gov or by mail to: State Board of Equalization, Attn: Rick Bennion, MIC: 80, P.O. Box 942879-0080, Sacramento, CA 94279-0080.

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Bennion, Richard

From: LIST, LTA <LTA.LIST@BOE.CA.GOV>
Sent: Friday, October 24, 2014 9:54 AM
To: BOE_LETTERS_TO_ASSESSORS@LISTSERV.STATE.CA.GOV
Subject: Letter to Assessors No. 2014/051, Notice of Proposed Regulatory Action by the State Board of Equalization – Proposed to Adopt Amendments to California Code of Regulations, Title 18, Section 474, Petroleum Refining Properties

State Board of Equalization

Notice of Letters to Assessors

You have subscribed to the State Board of Equalization Notice of Letters to Assessors (LTAs).

LTA No. 2014/051 - Notice of Proposed Regulatory Action by the State Board of Equalization – Proposed to Adopt Amendments to California Code of Regulations, Title 18, Section 474, Petroleum Refining Properties, dated October 24, 2014, has been posted to our website.

It can be viewed at:
http://www.boe.ca.gov/proptaxes/pdf/lta14051.pdf

All other LTA's issued for the current year can be accessed through http://www.boe.ca.gov/proptaxes/2014.htm

Please DO NOT REPLY to this message, as it was sent from an "announcement list", see below.

Information

If you would like specific information regarding these Letters to Assessors, please contact the County-Assessed Properties Division of the Property and Special Taxes Department via email by visiting
http://www.boe.ca.gov/info/email.html

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makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulations as revised. Please send requests for copies of any modified regulation text to the attention of the Contact Person identified in this Notice or by visiting the Board's website at http://www.cdcr.ca.gov/BOPH/reg_revisions.html. If the Board makes modifications, the Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained from the Board's Contact Person identified in this Notice or by visiting the Board's website at:

http://www.cdcr.ca.gov/BOPH/reg_revisions.html.

TITLE 18. BOARD OF EQUALIZATION

The State Board of Equalization Proposes to Adopt California Code of Regulations, Title 18, Section 474, *Petroleum Refining Properties*

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Government Code section 15606, proposes to re–adopt California Code of Regulations, title 18, section (Rule) 474, *Petroleum Refining Properties.* Proposed Rule 474 implements, interprets, and makes specific section 1 of article XIII and section 2 of article XIII A of the California Constitution and Revenue and Taxation Code (RTC) sections 51 and 110.1, as interpreted by the California Supreme Court in *Western States Petroleum Association v. Board of Equalization* (2013) 57 Cal.4th 401 (hereafter *WSPA v. BOE),* by defining the terms "petroleum refinery property" and "appraisal unit," and establishing a rebuttable presumption that the land, improvements, and fixtures and other machinery and equipment classified as improvements for a petroleum refining property constitute a single appraisal unit, except when measuring declines in value caused by disaster.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on December 17–18, 2014. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:30 a.m. or as soon thereafter as the matter may be heard on December 17 or 18, 2014. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the re–adoption of proposed Rule 474.

AUTHORITY

Government Code section 1560.6

REFERENCE

Section 1 of article XIII and section 2 of article XIII A of the California Constitution, RTC sections 51 and 110.1, and *WSPA v. BOE.*

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW PURSUANT TO GOVERNMENT CODE SECTION 11346.5, SUBDIVISION (a)(3)

Summary of Existing Laws and Regulations

Initial Adoption of Rule 474

The Board previously adopted Rule 474. In *WSPA v. BOE,* the California Supreme Court provided the following summary of the applicable property tax laws as they existed prior to the Board's initial adoption of Rule 474 and the effect of the initial adoption of Rule 474:

> Article XIII, section 1 of the California Constitution declares that [a]ll property is taxable and shall be assessed at the same percentage of fair market value." (Cal. Const., art. XIII, § 1, subd. (a).) Proposition 13, an initiative measure enacted in June 1978, added article XIII A to the California Constitution and changed the taxation of real property by replacing "the fair market valuation standard with that of acquisition value." (*Roy E. Hanson, Jr. Mfg. v. County of Los Angeles* (1980) 27 Cal.3d 870, 873 [167 Cal. Rptr. 828, 616 P.2d 810].) Article XIII A, section 2 provides that all real property, except for property acquired prior to 1975, shall be assessed and taxed at its value on the date of acquisition, subject to a 2 percent maximum annual inflationary increase. *(Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 235 [149 Cal. Rptr. 239, 583 P.2d 1281].) This is sometimes referred to as the indexed or adjusted base year

value. (See Bd. of Equalization, Assessors' Handbook, Section 501, Basic Appraisal (2002 rev.) appen. A, Assessment Pre– and Post–Proposition 13, p. 137.)

Proposition 13 did not address how real property should be assessed and taxed when its market value declines instead of appreciates. To address this issue, California voters passed Proposition 8 in November 1978. Proposition 8 amended article XIII A so that it now reads: "The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction, or may be reduced to reflect substantial damage, destruction, or other factors causing a decline in value." (Cal. Const., art. XIII A, § 2, subd. (b).) In other words, when the value of real property declines to a level below its adjusted base year value under Proposition 13, the value of the property is determined according to its actual fair market value.

The Legislature formed a task force to study the implementation of the new real property tax system mandated by Proposition 13 and Proposition 8. In January 1979, the task force submitted a report and recommendations to the Assembly Committee on Revenue and Taxation, officially titled Report of the Task Force on Property Tax Administration (hereafter Task Force Report). (See *Pacific Southwest Realty Co. v. County of Los Angeles* (1991) 1 Cal.4th 155, 161 [2 Cal. Rptr. 2d 536, 820 P.2d 1046].) The Task Force Report has been recognized as a statement of legislative intent for purposes of interpreting the statutes enacted to implement Proposition 13 and Proposition 8. (See, e.g., *Auerbach v. Assessment Appeals Bd. No. 1* (2006) 39 Cal.4th 153, 161 [45 Cal. Rptr. 3d 774, 137 P.3d 951].)

The report recommended that "the assessed value of real property be the lesser of the Prop. 13 base value compounded annually by 2% or full cash value. These changes will be measured by that appraisal unit which is commonly bought and sold in the market, or which is normally valued separately." (Task Force Rep., *supra,* at p. 29.) Revenue and Taxation Code section 51 was subsequently amended to incorporate the task force recommendations. (All further statutory references are to the Revenue and Taxation Code unless otherwise specified.) Section 51, subdivision (a) (hereafter section 51(a)) provides that "the taxable value of real property shall . . . be the lesser of: [¶] (1) Its base year value, compounded annually since the base year by an inflation factor . . ." not to exceed 2 percent per year, or "(2) Its full cash value, as defined in Section 110, as of the lien date, taking into account reductions in value due to damage, destruction, depreciation, obsolescence, removal of property, or other factors causing a decline in value." Section 110, subdivision (a) defines the term "full cash value," synonymously with the term "fair market value," as "the amount of cash or its equivalent that property would bring if exposed for sale in the open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other, and both the buyer and the seller have knowledge of all of the uses and purposes to which the property is adapted and for which it is capable of being used, and of the enforceable restrictions upon those uses and purposes."

Most significantly for this case, the term "real property" under section 51, subdivision (d) (hereafter section 51(d)) is defined as "that appraisal unit that persons in the marketplace commonly buy and sell as a unit, or that is normally valued separately." This definition echoes almost verbatim the definition recommended by the Task Force Report. The statute does not further define "appraisal unit," but the term is defined by regulation as "a collection of assets that functions together, and that persons in the marketplace commonly buy and sell as a single unit or that is normally valued in the marketplace separately from other property . . ." (Cal. Code Regs., tit. 18, § 324.)

In the wake of Proposition 13 and Proposition 8, and shortly before the enactment of section 51, the Board promulgated and then amended rule 461, a regulation applicable to most real property used for manufacturing. (Cal. Code Regs., tit. 18, § 461 (Rule 461).) Rule 461, subdivision (e) (hereafter Rule 461(e)) provides: "Declines in value will be determined by comparing the current lien date full value of the appraisal unit to the indexed base year full value of the same unit for the current lien date. Land and improvements constitute an appraisal unit except when measuring declines in value caused by disaster, in which case land shall constitute a separate unit. For purposes of this subdivision, fixtures and other machinery and equipment classified as improvements constitute a separate appraisal unit."

At the same time that it adopted Rule 461(e)'s classification of fixtures as "a separate appraisal unit," the Board adopted two exceptions to this

rule for certain types of industrial property where land and fixtures were valued as a single unit in the marketplace: Rule 468, which applies to oil and gas properties, and Rule 469, which applies to mining properties. (See Cal. Code Regs., tit. 18, §§ 468, subd. (c)(6) (Rule 468), 469, subd. (e)(2)(C) (Rule 469).) Rule 473, adopted in 1995, similarly treats land and fixtures on geothermal properties as a single appraisal unit. (Cal. Code Regs., tit. 18, § 473(e)(4)(C) (Rule 473).) Petroleum refinery property was covered by Rule 461(e) until the Board's adoption of Rule 474.

In September 2006, the Board voted three to two to adopt Rule 474 to address "the valuation of the real property, personal property, and fixtures used for the refining of petroleum." (Rule 474, subd. (a).) Subdivision (b)(1) of Rule 474 states that "[t]he unique nature of property used for the refining of petroleum requires the application of specialized appraisal techniques designed to satisfy the requirements of article XIII, section 1, and article XIII A, section 2, of the California Constitution. To this end, petroleum refineries and other real and personal property associated therewith shall be valued pursuant to the principles and procedures set forth in this section." Rule 474, subdivision (c)(2) states that "'[a]ppraisal unit' consists of the real and personal property that persons in the marketplace commonly buy and sell as a unit." Most pertinent here, subdivision (d) states that "[f]or the purposes of this section: [¶] (1) Declines in value of petroleum refining properties will be determined by comparing the current lien date full value of the appraisal unit [(i.e., its value in an open market transaction)] to the indexed base year full value of the same unit [(i.e., its Proposition 13 value)]. [¶] (2) *The land, improvements, and fixtures and other machinery and equipment classified as improvements for a petroleum refining property are rebuttably presumed to constitute a single appraisal unit*. . . . [¶] (3) In rebutting this presumption, the assessor may consider evidence that: [¶] (A) The land and improvements including fixtures and other machinery and equipment classified as improvements are not under common ownership or control and do not typically transfer in the marketplace as one economic unit; or, [¶] (B) When the fixtures and other machinery and equipment classified as improvements are not functionally and physically integrated with the realty and do not operate together as one economic unit." (Rule 474, subd. (d); italics added [in original opinion].)

[¶]...[¶]

In November 2007, the Office of Administrative Law approved the regulation, and it became effective in December 2007. (*WSPA v. BOE*, pp. 409–413.)

History Regarding WSPA v. BOE

In *WSPA v. BOE*, the California Supreme Court also explained that in December 2008, the Western States Petroleum Association (WSPA) filed a complaint challenging the validity of Rule 474 and seeking a declaration that the Board violated the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.) in adopting the rule. (*WSPA v. BOE*, pp. 413–414.) And, "[i]n October 2009, the Board and WSPA filed cross–motions for summary judgment. WSPA argued that Rule 474 violates section 51(d) and California Constitution, article XIII A, and that the Board failed to provide an adequate statement of economic impact as required by the APA. The trial court granted WSPA's summary judgment motion on both grounds, and the Court of Appeal affirmed on both grounds" before the California Supreme Court granted review. (*WSPA v. BOE*, p. 414.)

As explained in more detail in the initial statement of reasons, the California Supreme Court disagreed with all of WSPA's arguments as to why Rule 474 violates RTC section 51, subdivision (d) (hereafter section 51(d)), and California Constitution, article XIII A. The Court specifically concluded that "Rule 474's market–based approach to determining the proper appraisal unit for petroleum refinery property ensures that reductions in property values are measured according to fair market value. Thus, Rule 474 appears consistent with articles XIII and XIII A." (*WSPA v. BOE*, pp. 416–417.) Furthermore, the California Supreme Court specifically concluded that "Rule 474 is also consistent with section 51(d)." (*WSPA v. BOE*, p. 417.) The Court said that "[b]y its terms, the statute provides two alternative methods of determining the appraisal unit that constitutes taxable real property: it is either (1) a unit 'that persons in the marketplace commonly buy and sell as a unit' or (2) a unit 'that is normally valued separately.' Rule 474 applies the first method to petroleum refinery property." (*WSPA v. BOE*, p. 417.)

Although the California Supreme Court held that Rule 474 was substantively valid in *WSPA v. BOE*, the Court still concluded that the Board's adoption of Rule 474 was procedurally invalid under the APA. (*WSPA v. BOE*, pp. 408–409.) The Court held that the Board did not properly assess the economic impact of Rule 474 and that the Board's initial determination that Rule 474 would not have a significant adverse economic impact on businesses did not substantially comply with the

APA (Gov. Code, §§ 11346.2, subd. (b)(5)(A), 11346.3, 11346.5, subd. (a)(8)) because:

- "The Board relied on a 2006 document titled 'Revenue Estimate' concerning proposed Rule 474. According to the document, which was prepared by Board staff, WSPA reported that there are 20 major refineries located in California, with five in Los Angeles County and four in Contra Costa County. (Bd. of Equalization, Revenue Estimate, Issue No. 6–001 (June 7, 2006) p. 2.) County data indicated that the total assessment in these two counties was over $14 billion, with about 80 percent of that value enrolled as fixtures. Projecting figures statewide, the Board staff estimated that there was $32 billion of refinery property, of which $25 billion consisted of fixtures and $7 billion in land and nonfixture improvements. To 'conservatively estimate' the incremental amount of taxable assessed value resulting from the proposed rule, the Board staff multiplied the $7 billion in land value by a 2 percent appreciation factor to conclude that Rule 474 would yield 'at least $140 million' in additional assessed value. (Revenue Estimate, at p. 3.) The Board staff then multiplied $140 million by the 1 percent tax on real property permitted under article XIII A to arrive at $1.4 million as the annual estimated revenue effect of Rule 474, while acknowledging that '[t]he actual revenue effect could be considerably higher or lower depending on the number of properties [affected] and the actual amount of offsetting values.' (Revenue Estimate, at p. 3.) Based on these calculations, the Board concluded that Rule 474 'will not have a significant adverse economic impact on businesses.'" (*WSPA v. BOE*, pp. 429–430.);
- The Court concluded that "[e]ven assuming the Board could reasonably project $32 billion as the total value of 20 refineries statewide based on data showing $14 billion as the total value of nine refineries in two counties, the Board's analysis offers no explanation why multiplying $7 billion in land value by a 2 percent appreciation factor is, empirically or conceptually, a valid or reasonable way to estimate the amount of fixture depreciation that would be offset by appraising land and fixtures as a single unit." (*WSPA v. BOE*, p. 430.); and
- "[T]he Board's calculation failed to consider prior land appreciation and the full tax impact that would occur if land were valued at actual market value rather than adjusted base year value." (*Ibid.*)

Effect, Objective, and Benefit of the Proposed Re–Adoption of Rule 474

During the Board's September 10, 2013, meeting, the Board considered a Chief Counsel Memorandum dated August 28, 2013. In the Chief Counsel Memorandum, Board staff explained that the Board adopted Rule 474 on September 27, 2006, to clarify that, consistent with California Constitution article XIII, section 1, article XIII A (which contains Proposition 13 as amended by Proposition 8), RTC section 51, and Rules 461, *Real Property Value Changes*, and 324, *Decision*, refinery property consisting of land, improvements, and fixtures is rebuttably presumed to be a single appraisal unit in determining Proposition 8 declines in value below the Proposition 13 adjusted base year value for property tax valuation purposes. In the Chief Counsel Memorandum, Board staff also explained that the California Supreme Court held that Rule 474 was substantively valid in *WSPA v. BOE*. However, nevertheless, the Court also invalidated Rule 474 on procedural grounds, finding that the Board failed to provide an adequate assessment of the rule's economic impact during the rulemaking process as required by the APA. In particular, the Supreme Court held that Rule 474 is procedurally deficient because the Board did not make a reasoned estimate of all the cost impacts of the rule on affected parties. Therefore, in the memorandum, Board staff requested the Board's authorization to repeal Rule 474 pursuant to California Code of Regulations, title 1, section 100 (Rule 100). Board staff also requested the Board's authorization to initiate the rulemaking process to re–adopt Rule 474 following the APA's regular notice and public hearing process after Board staff reassessed the economic impact of Rule 474 on affected businesses in accordance with the APA and *WSPA v. BOE*.

Therefore, at the conclusion of the Board's discussion of the Chief Counsel Memorandum dated August 28, 2013, during its meeting on September 10, 2013, the Board Members unanimously voted to authorize staff to repeal Rule 474 pursuant to Rule 100, and initiate the rulemaking process to re–adopt Rule 474 after Board staff reassessed the economic impact of Rule 474 in accordance with the APA and *WSPA v. BOE*. The Board determined that it is reasonably necessary to re–adopt Rule 474 to have the effect and accomplish the objective of clarifying that petroleum refinery land, improvements, and fixtures are rebuttably presumed to constitute a single appraisal unit for determining declines in value because petroleum refineries are commonly bought and sold as a unit in the marketplace. The Board anticipates that the re–adoption of Rule 474 will clarify the treatment of petroleum refinery property for pur-

poses of measuring declines in value, and thereby benefit county assessors and the owners of petroleum refineries by promoting fairness and uniformity in the assessment of petroleum refinery property throughout the state.

The Board subsequently repealed Rule 474 pursuant to Rule 100, effective October 30, 2013. However, regardless of the repeal of Rule 474, county assessors are still authorized to determine that refinery property (land, improvements, and fixtures) constitutes a single appraisal unit for measuring declines in value when persons in the marketplace commonly buy and sell refinery property as a unit, in accordance with RTC section 51(d) as interpreted by the California Supreme Court in *WSPA v. BOE* (discussed above).

In addition, Board staff has reassessed the economic impact of Rule 474 in accordance with the APA and *WSPA v. BOE*. Staff's economic impact assessment is included in the initial statement of reasons, and the results of staff's assessment are provided below.

The Board has performed an evaluation of whether Rule 474 is inconsistent or incompatible with existing state regulations and determined that the proposed rule is not inconsistent or incompatible with existing state regulations. This is because proposed Rule 474 is the only state regulation that specifically prescribes the appraisal unit for determining declines in value of petroleum refining properties. The Board has also determined that there are no comparable federal regulations or statutes to proposed Rule 474.

NO MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Board has determined that the re–adoption of Rule 474 will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement pursuant to title 2, division 4, part 7 (commencing with section 17500) of the Government Code.

NO COST OR SAVINGS TO ANY STATE AGENCY, LOCAL AGENCY, OR SCHOOL DISTRICT

The Board has determined that the re–adoption of proposed Rule 474 will result in no direct or indirect cost or savings to any state agency and will result in no cost or savings in federal funding to the State of California. The Board has also determined that the re–adoption of proposed Rule 474 will result in no direct or indirect cost to any local agency or school district that is required to be reimbursed under title 2, division 4, part 7 (commencing with section 17500) of the Government Code, and will result in no other non–discretionary cost or savings imposed on local agencies.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that the re–adoption of proposed Rule 474 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed re–adoption of Rule 474 may affect small businesses.

NO KNOWN COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has determined that the proposed re–adoption of Rule 474 is not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the re–adoption of proposed Rule 474 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the re–adoption of proposed Rule 474 will not affect the benefits of Rule 474 to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The re–adoption of proposed Rule 474 will not have a significant effect on housing costs.

STATEMENT REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective

in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of proposed Rule 474 should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323–3091, by e–mail at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279–0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445–2130, by fax at (916) 324–3984 , by e–mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279–0080.

WRITTEN COMMENT PERIOD

The written comment period ends at 9:30 a.m. on December 17, 2014, or as soon thereafter as the Board begins the public hearing regarding the re–adoption of proposed Rule 474 during the December 17–18, 2014, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, or contentions contained in those written comments before the Board decides whether to re–adopt proposed Rule 474. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared a copy of the text of proposed Rule 474 illustrating its express terms; however, the proposed regulation is not illustrated in underline or italics format because California Code of Regulations, title 1, section 8, subdivision (b) provides that "[u]nderline or italic is not required for the adoption of a new regulation or set of regulations if the final text otherwise clearly indicates that all of the final text submitted to OAL for filing is added to the California Code of Regulations." The Board has also prepared an initial statement of reasons for the adoption of the proposed rule, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed regulation is based are available to the public upon request.

The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation and the initial statement of reasons are also available on the Board's Website at *www.boe.ca.gov.*

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may re–adopt proposed Rule 474 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board re–adopts proposed Rule 474, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at *www.boe.ca.gov.*

STATE OF CALIFORNIA

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Fourth District, Los Angeles

JOHN CHIANG
State Controller

CYNTHIA BRIDGES
Executive Director

October 24, 2014

No. 2014/051

TO COUNTY ASSESSORS, COUNTY COUNSELS,
AND OTHER INTERESTED PARTIES:

Notice of Proposed Regulatory Action
by the
State Board of Equalization

Proposed to Adopt
Amendments to California Code of Regulations, Title 18,

Section 474,

Petroleum Refining Properties

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Government Code section 15606, proposes to re-adopt California Code of Regulations, title 18, section (Rule) 474, *Petroleum Refining Properties*. Proposed Rule 474 implements, interprets, and makes specific section 1 of article XIII and section 2 of article XIII A of the California Constitution and Revenue and Taxation Code (RTC) sections 51 and 110.1, as interpreted by the California Supreme Court in *Western States Petroleum Association v. Board of Equalization* (2013) 57 Cal.4th 401 (hereafter *WSPA v BOE*), by defining the terms "petroleum refinery property" and "appraisal unit," and establishing a rebuttable presumption that the land, improvements, and fixtures and other machinery and equipment classified as improvements for a petroleum refining property constitute a single appraisal unit, except when measuring declines in value caused by disaster.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on December 17-18, 2014. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at *www.boe.ca.gov* at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:30 a.m. or as soon thereafter as the matter may be heard on December 17 or 18, 2014. At the hearing, any

interested person may present or submit oral or written statements, arguments, or contentions regarding the re-adoption of proposed Rule 474.

AUTHORITY

Government Code section 15606

REFERENCE

Section 1 of article XIII and section 2 of article XIII A of the California Constitution, RTC sections 51 and 110.1, and *WSPA v. BOE*

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW PURSUANT TO GOVERNMENT CODE SECTION 11346.5, SUBDIVISION (a)(3)

Summary of Existing Laws and Regulations

Initial Adoption of Rule 474

The Board previously adopted Rule 474. In *WSPA v. BOE*, the California Supreme Court provided the following summary of the applicable property tax laws as they existed prior to the Board's initial adoption of Rule 474 and the effect of the initial adoption of Rule 474:

> Article XIII, section 1 of the California Constitution declares that "[a]ll property is taxable and shall be assessed at the same percentage of fair market value." (Cal. Const., art. XIII, § 1, subd. (a).) Proposition 13, an initiative measure enacted in June 1978, added article XIII A to the California Constitution and changed the taxation of real property by replacing "the fair market valuation standard with that of acquisition value." (*Roy E. Hanson, Jr. Mfg. v. County of Los Angeles* (1980) 27 Cal.3d 870, 873 [167 Cal. Rptr. 828, 616 P.2d 810].) Article XIII A, section 2 provides that all real property, except for property acquired prior to 1975, shall be assessed and taxed at its value on the date of acquisition, subject to a 2 percent maximum annual inflationary increase. (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 235 [149 Cal. Rptr. 239, 583 P.2d 1281].) This is sometimes referred to as the indexed or adjusted base year value. (See Bd. of Equalization, Assessors' Handbook, Section 501, Basic Appraisal (2002 rev.) appen. A, Assessment Pre- and Post-Proposition 13, p. 137.)
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> Proposition 13 did not address how real property should be assessed and taxed when its market value declines instead of appreciates. To address this issue, California voters passed Proposition 8 in November 1978. Proposition 8 amended article XIII A so that it now reads: "The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction, or may be reduced to reflect substantial damage,

destruction, or other factors causing a decline in value." (Cal. Const., art. XIII A, § 2, subd. (b).) In other words, when the value of real property declines to a level below its adjusted base year value under Proposition 13, the value of the property is determined according to its actual fair market value.

The Legislature formed a task force to study the implementation of the new real property tax system mandated by Proposition 13 and Proposition 8. In January 1979, the task force submitted a report and recommendations to the Assembly Committee on Revenue and Taxation, officially titled Report of the Task Force on Property Tax Administration (hereafter Task Force Report). (See *Pacific Southwest Realty Co. v. County of Los Angeles* (1991) 1 Cal.4th 155, 161 [2 Cal. Rptr. 2d 536, 820 P.2d 1046].) The Task Force Report has been recognized as a statement of legislative intent for purposes of interpreting the statutes enacted to implement Proposition 13 and Proposition 8. (See, e.g., *Auerbach v. Assessment Appeals Bd. No. 1* (2006) 39 Cal.4th 153, 161 [45 Cal. Rptr. 3d 774, 137 P.3d 951].)

The report recommended that "the assessed value of real property be the lesser of the Prop. 13 base value compounded annually by 2% or full cash value. These changes will be measured by that appraisal unit which is commonly bought and sold in the market, or which is normally valued separately." (Task Force Rep., *supra*, at p. 29.) Revenue and Taxation Code section 51 was subsequently amended to incorporate the task force recommendations. (All further statutory references are to the Revenue and Taxation Code unless otherwise specified.) Section 51, subdivision (a) (hereafter section 51(a)) provides that "the taxable value of real property shall . . . be the lesser of: [¶] (1) Its base year value, compounded annually since the base year by an inflation factor . . ." not to exceed 2 percent per year, or "(2) Its full cash value, as defined in Section 110, as of the lien date, taking into account reductions in value due to damage, destruction, depreciation, obsolescence, removal of property, or other factors causing a decline in value." Section 110, subdivision (a) defines the term "full cash value," synonymously with the term "fair market value," as "the amount of cash or its equivalent that property would bring if exposed for sale in the open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other, and both the buyer and the seller have knowledge of all of the uses and purposes to which the property is adapted and for which it is capable of being used, and of the enforceable restrictions upon those uses and purposes."

Most significantly for this case, the term "real property" under section 51, subdivision (d) (hereafter section 51(d)) is defined as "that appraisal unit that persons in the marketplace commonly buy and sell as a unit, or that is normally valued separately." This definition echoes almost verbatim the definition recommended by the Task Force Report. The statute does not further define "appraisal unit," but the term is defined by regulation as "a collection of assets that functions together, and that persons in the marketplace commonly buy and

sell as a single unit or that is normally valued in the marketplace separately from other property . . . ." (Cal. Code Regs., tit. 18, § 324.)

In the wake of Proposition 13 and Proposition 8, and shortly before the enactment of section 51, the Board promulgated and then amended rule 461, a regulation applicable to most real property used for manufacturing. (Cal. Code Regs., tit. 18, § 461 (Rule 461).) Rule 461, subdivision (e) (hereafter Rule 461(e)) provides: "Declines in value will be determined by comparing the current lien date full value of the appraisal unit to the indexed base year full value of the same unit for the current lien date. Land and improvements constitute an appraisal unit except when measuring declines in value caused by disaster, in which case land shall constitute a separate unit. For purposes of this subdivision, fixtures and other machinery and equipment classified as improvements constitute a separate appraisal unit."

At the same time that it adopted Rule 461(e)'s classification of fixtures as "a separate appraisal unit," the Board adopted two exceptions to this rule for certain types of industrial property where land and fixtures were valued as a single unit in the marketplace: Rule 468, which applies to oil and gas properties, and Rule 469, which applies to mining properties. (See Cal. Code Regs., tit. 18, §§ 468, subd. (c)(6) (Rule 468), 469, subd. (e)(2)(C) (Rule 469).) Rule 473, adopted in 1995, similarly treats land and fixtures on geothermal properties as a single appraisal unit. (Cal. Code Regs., tit. 18, § 473(e)(4)(C) (Rule 473).) Petroleum refinery property was covered by Rule 461(e) until the Board's adoption of Rule 474.

In September 2006, the Board voted three to two to adopt Rule 474 to address "the valuation of the real property, personal property, and fixtures used for the refining of petroleum." (Rule 474, subd. (a).) Subdivision (b)(1) of Rule 474 states that "[t]he unique nature of property used for the refining of petroleum requires the application of specialized appraisal techniques designed to satisfy the requirements of article XIII, section 1, and article XIII A, section 2, of the California Constitution. To this end, petroleum refineries and other real and personal property associated therewith shall be valued pursuant to the principles and procedures set forth in this section." Rule 474, subdivision (c)(2) states that "'[a]ppraisal unit' consists of the real and personal property that persons in the marketplace commonly buy and sell as a unit." Most pertinent here, subdivision (d) states that "[f]or the purposes of this section: [¶] (1) Declines in value of petroleum refining properties will be determined by comparing the current lien date full value of the appraisal unit [(i.e., its value in an open market transaction)] to the indexed base year full value of the same unit [(i.e., its Proposition 13 value)]. [¶] (2) *The land, improvements, and fixtures and other machinery and equipment classified as improvements for a petroleum refining property are rebuttably presumed to constitute a single appraisal unit* . . . . [¶] (3) In rebutting this presumption, the assessor may consider evidence that: [¶] (A) The land and improvements including fixtures and other machinery and equipment classified as improvements are not under common ownership or control and do not typically

> transfer in the marketplace as one economic unit; or, [¶] (B) When the fixtures and other machinery and equipment classified as improvements are not functionally and physically integrated with the realty and do not operate together as one economic unit." (Rule 474, subd. (d); italics added [in original opinion].)
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> [¶] . . . [¶]
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> In November 2007, the Office of Administrative Law approved the regulation, and it became effective in December 2007. (*WSPA v. BOE*, pp. 409-413.)

History Regarding WSPA v. BOE

In *WSPA v. BOE*, the California Supreme Court also explained that in December 2008, the Western States Petroleum Association (WSPA) filed a complaint challenging the validity of Rule 474 and seeking a declaration that the Board violated the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.) in adopting the rule. (WSPA v. BOE, pp. 413-414.) And, "[i]n October 2009, the Board and WSPA filed cross-motions for summary judgment. WSPA argued that Rule 474 violates section 51(d) and California Constitution, article XIII A, and that the Board failed to provide an adequate statement of economic impact as required by the APA. The trial court granted WSPA's summary judgment motion on both grounds, and the Court of Appeal affirmed on both grounds" before the California Supreme Court granted review. (*WSPA v. BOE*, p. 414.)

As explained in more detail in the initial statement of reasons, the California Supreme Court disagreed with all of WSPA's arguments as to why Rule 474 violates RTC section 51, subdivision (d) (hereafter section 51(d)), and California Constitution, article XIII A. The Court specifically concluded that "Rule 474's market-based approach to determining the proper appraisal unit for petroleum refinery property ensures that reductions in property values are measured according to fair market value. Thus, Rule 474 appears consistent with articles XIII and XIII A." (*WSPA v. BOE*, pp. 416-417.) Furthermore, the California Supreme Court specifically concluded that "Rule 474 is also consistent with section 51(d)." (*WSPA v. BOE*, p. 417.) The Court said that "[b]y its terms, the statute provides two alternative methods of determining the appraisal unit that constitutes taxable real property: it is either (1) a unit 'that persons in the marketplace commonly buy and sell as a unit' or (2) a unit 'that is normally valued separately.' Rule 474 applies the first method to petroleum refinery property." (*WSPA v. BOE*, p. 417.)

Although the California Supreme Court held that Rule 474 was substantively valid in *WSPA v. BOE*, the Court still concluded that the Board's adoption of Rule 474 was procedurally invalid under the APA. (*WSPA v. BOE*, pp. 408-409.) The Court held that the Board did not properly assess the economic impact of Rule 474 and that the Board's initial determination that Rule 474 would not have a significant adverse economic impact on businesses did not substantially comply with the APA (Gov. Code, §§ 11346.2, subd. (b)(5)(A), 11346.3, 11346.5, subd. (a)(8)) because:

- "The Board relied on a 2006 document titled 'Revenue Estimate' concerning proposed Rule 474. According to the document, which was prepared by Board staff, WSPA reported that there are 20 major refineries located in California, with five in Los Angeles County and four in Contra Costa County. (Bd. of Equalization, Revenue Estimate, Issue No. 6-001 (June 7, 2006) p. 2.) County data indicated that the total assessment in these two counties was over $ 14 billion, with about 80 percent of that value enrolled as fixtures. Projecting figures statewide, the Board staff estimated that there was $ 32 billion of refinery property, of which $ 25 billion consisted of fixtures and $ 7 billion in land and nonfixture improvements. To 'conservatively estimate' the incremental amount of taxable assessed value resulting from the proposed rule, the Board staff multiplied the $ 7 billion in land value by a 2 percent appreciation factor to conclude that Rule 474 would yield 'at least $ 140 million' in additional assessed value. (Revenue Estimate, at p. 3.) The Board staff then multiplied $ 140 million by the 1 percent tax on real property permitted under article XIII A to arrive at $ 1.4 million as the annual estimated revenue effect of Rule 474, while acknowledging that '[t]he actual revenue effect could be considerably higher or lower depending on the number of properties [affected] and the actual amount of offsetting values.' (Revenue Estimate, at p. 3.) Based on these calculations, the Board concluded that Rule 474 'will not have a significant adverse economic impact on businesses.'" (*WSPA v. BOE*, pp. 429-430.);
- The Court concluded that "[e]ven assuming the Board could reasonably project $ 32 billion as the total value of 20 refineries statewide based on data showing $ 14 billion as the total value of nine refineries in two counties, the Board's analysis offers no explanation why multiplying $ 7 billion in land value by a 2 percent appreciation factor is, empirically or conceptually, a valid or reasonable way to estimate the amount of fixture depreciation that would be offset by appraising land and fixtures as a single unit." (*WSPA v. BOE*, p. 430.); and
- "[T]he Board's calculation failed to consider prior land appreciation and the full tax impact that would occur if land were valued at actual market value rather than adjusted base year value." (*Ibid.*)

<u>Effect, Objective, and Benefit of the Proposed Re-Adoption of Rule 474</u>

During the Board's September 10, 2013, meeting, the Board considered a Chief Counsel Memorandum dated August 28, 2013. In the Chief Counsel Memorandum, Board staff explained that the Board adopted Rule 474 on September 27, 2006, to clarify that, consistent with California Constitution article XIII, section 1, article XIII A (which contains Proposition 13 as amended by Proposition 8), RTC section 51, and Rules 461, *Real Property Value Changes*, and 324, *Decision*, refinery property consisting of land, improvements, and fixtures is rebuttably presumed to be a single appraisal unit in determining Proposition 8 declines in value below the Proposition 13 adjusted base year value for property tax valuation purposes. In the Chief Counsel Memorandum, Board staff also explained that the California Supreme Court held that Rule 474 was substantively valid in *WSPA v. BOE*. However, nevertheless, the Court also invalidated Rule 474 on procedural grounds, finding that the Board failed to provide an adequate assessment of the rule's economic impact during the rulemaking process as required by the APA. In particular, the Supreme Court held that Rule 474 is procedurally deficient because the Board did not make a reasoned estimate of all the cost impacts of the rule on affected parties.

Therefore, in the memorandum, Board staff requested the Board's authorization to repeal Rule 474 pursuant to California Code of Regulations, title 1, section 100 (Rule 100). Board staff also requested the Board's authorization to initiate the rulemaking process to re-adopt Rule 474 following the APA's regular notice and public hearing process after Board staff reassessed the economic impact of Rule 474 on affected businesses in accordance with the APA and *WSPA v. BOE.*

Therefore, at the conclusion of the Board's discussion of the Chief Counsel Memorandum dated August 28, 2013, during its meeting on September 10, 2013, the Board Members unanimously voted to authorize staff to repeal Rule 474 pursuant to Rule 100, and initiate the rulemaking process to re-adopt Rule 474 after Board staff reassessed the economic impact of Rule 474 in accordance with the APA and *WSPA v. BOE.* The Board determined that it is reasonably necessary to re-adopt Rule 474 to have the effect and accomplish the objective of clarifying that petroleum refinery land, improvements, and fixtures are rebuttably presumed to constitute a single appraisal unit for determining declines in value because petroleum refineries are commonly bought and sold as a unit in the marketplace. The Board anticipates that the re-adoption of Rule 474 will clarify the treatment of petroleum refinery property for purposes of measuring declines in value, and thereby benefit county assessors and the owners of petroleum refineries by promoting fairness and uniformity in the assessment of petroleum refinery property throughout the state.

The Board subsequently repealed Rule 474 pursuant to Rule 100, effective October 30, 2013. However, regardless of the repeal of Rule 474, county assessors are still authorized to determine that refinery property (land, improvements, and fixtures) constitutes a single appraisal unit for measuring declines in value when persons in the marketplace commonly buy and sell refinery property as a unit, in accordance with RTC section 51(d) as interpreted by the California Supreme Court in *WSPA v. BOE* (discussed above).

In addition, Board staff has reassessed the economic impact of Rule 474 in accordance with the APA and *WSPA v. BOE.* Staff's economic impact assessment is included in the initial statement of reasons, and the results of staff's assessment are provided below.

The Board has performed an evaluation of whether Rule 474 is inconsistent or incompatible with existing state regulations and determined that the proposed rule is not inconsistent or incompatible with existing state regulations. This is because proposed Rule 474 is the only state regulation that specifically prescribes the appraisal unit for determining declines in value of petroleum refining properties. The Board has also determined that there are no comparable federal regulations or statutes to proposed Rule 474.

NO MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Board has determined that the re-adoption of Rule 474 will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement pursuant to title 2, division 4, part 7 (commencing with section 17500) of the Government Code.

NO COST OR SAVINGS TO ANY STATE AGENCY, LOCAL AGENCY, OR SCHOOL DISTRICT

The Board has determined that the re-adoption of proposed Rule 474 will result in no direct or indirect cost or savings to any state agency and will result in no cost or savings in federal funding to the State of California. The Board has also determined that the re-adoption of proposed Rule 474 will result in no direct or indirect cost to any local agency or school district that is required to be reimbursed under title 2, division 4, part 7 (commencing with section 17500) of the Government Code, and will result in no other non-discretionary cost or savings imposed on local agencies.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that the re-adoption of proposed Rule 474 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed re-adoption of Rule 474 may affect small businesses.

NO KNOWN COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has determined that the proposed re-adoption of Rule 474 is not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the re-adoption of proposed Rule 474 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the re-adoption of proposed Rule 474 will not affect the benefits of Rule 474 to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The re-adoption of proposed Rule 474 will not have a significant effect on housing costs.

STATEMENT REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the

purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of proposed Rule 474 should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984 , by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends at 9:30 a.m. on December 17, 2014, or as soon thereafter as the Board begins the public hearing regarding the re-adoption of proposed Rule 474 during the December 17-18, 2014, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, or contentions contained in those written comments before the Board decides whether to re-adopt proposed Rule 474. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared a copy of the text of proposed Rule 474 illustrating its express terms; however, the proposed regulation is not illustrated in underline or italics format because California Code of Regulations, title 1, section 8, subdivision (b) provides that "[u]nderline or italic is not required for the adoption of a new regulation or set of regulations if the final text otherwise clearly indicates that all of the final text submitted to OAL for filing is added to the California Code of Regulations." The Board has also prepared an initial statement of reasons for the adoption of the proposed rule, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed regulation is based are available to the public upon request.

The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation and the initial statement of reasons are also available on the Board's Website at *www.boe.ca.gov*.

October 24, 2014

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may re-adopt proposed Rule 474 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board re-adopts proposed Rule 474, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at *www.boe.ca.gov*.

Sincerely,

Joann Richmond

Joann Richmond, Chief
Board Proceedings Division

JR:reb

STATE BOARD OF EQUALIZATION

BOARD APPROVED

At the December 18, 2014 Board Meeting

Joann Richmond

Joann Richmond, Chief
Board Proceedings Division

Initial Statement of Reasons for the

Proposed Re-Adoption of California Code of Regulations,

Title 18, Section 474, *Petroleum Refining Properties*

SPECIFIC PURPOSE, PROBLEM INTENDED TO BE ADDRESSED, NECESSITY, AND ANTICIPATED BENEFIT

Existing Law

Initial Adoption of Rule 474

The State Board of Equalization (Board) previously adopted California Code of Regulations, title 18, section (Rule) 474, *Petroleum Refining Properties*. In *Western States Petroleum Association v. Board of Equalization* (2013) 57 Cal.4th 401 (hereafter *WSPA v. BOE*), the California Supreme Court provided the following summary of the applicable property tax laws as they existed prior to the Board's initial adoption of Rule 474 and the effect of the initial adoption of Rule 474:

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In the wake of Proposition 13 and Proposition 8, and shortly before the enactment of section 51, the Board promulgated and then amended rule 461, a regulation applicable to most real property used for manufacturing. (Cal. Code Regs., tit. 18, § 461 (Rule 461).) Rule 461, subdivision (e) (hereafter Rule 461(e)) provides: "Declines in value will be determined by comparing the current lien date full value of the appraisal unit to the indexed base year full value of the same unit for the current lien date. Land and improvements constitute an appraisal unit except when measuring declines in value caused by disaster, in which case land shall constitute a separate unit. For purposes of this subdivision, fixtures and other machinery and equipment classified as improvements constitute a separate appraisal unit."

At the same time that it adopted Rule 461(e)'s classification of fixtures as "a separate appraisal unit," the Board adopted two exceptions to this rule for certain types of industrial property where land and fixtures were valued as a single unit in the marketplace: Rule 468, which applies to oil and gas properties, and Rule 469, which applies to mining properties. (See Cal. Code Regs., tit. 18, §§ 468, subd. (c)(6) (Rule 468), 469, subd. (e)(2)(C) (Rule 469).) Rule 473, adopted in 1995, similarly treats land and fixtures on geothermal properties as a single appraisal unit. (Cal. Code Regs., tit. 18, § 473(e)(4)(C) (Rule 473).) Petroleum refinery property was covered by Rule 461(e) until the Board's adoption of Rule 474.

In September 2006, the Board voted three to two to adopt Rule 474 to address "the valuation of the real property, personal property, and fixtures used for the refining of petroleum." (Rule 474, subd. (a).) Subdivision (b)(1) of Rule 474 states that "[t]he unique nature of property used for the refining of petroleum requires the application of specialized appraisal techniques designed to satisfy the requirements of article XIII, section 1, and article XIII A, section 2, of the California Constitution. To this end, petroleum refineries and other real and personal property associated therewith shall be valued pursuant to the principles and procedures set forth in this section." Rule 474, subdivision (c)(2) states that "'[a]ppraisal unit' consists of the real and personal property that persons in the marketplace commonly buy and sell as a unit." Most pertinent here, subdivision (d) states that "[f]or the purposes of this section: [¶] (1) Declines in value of petroleum refining properties will be determined by comparing the current lien date full value of the appraisal unit [(i.e., its value in an open market transaction)] to the indexed base year full value of the same unit [(i.e., its Proposition 13 value)]. [¶] (2) *The land, improvements, and fixtures and other machinery and equipment classified as improvements for a petroleum refining property are rebuttably presumed to constitute a single appraisal unit* . . . . [¶] (3) In rebutting this presumption, the assessor may consider evidence that: [¶] (A) The land and improvements including fixtures and other machinery and equipment classified as improvements are not under common ownership or control and do not typically transfer in the marketplace as one economic unit; or, [¶] (B) When the fixtures and other machinery and equipment classified as improvements are not

functionally and physically integrated with the realty and do not operate together as one economic unit." (Rule 474, subd. (d); italics added [in original opinion].)

The difference between treating fixtures as a separate appraisal unit (Rule 461(e)) and treating fixtures and land together as a single appraisal unit (Rule 474) may be illustrated by a hypothetical drawn from a Board staff report. (For brevity, we will use the term "land" to refer to land and "non-fixture" improvements considered together unless otherwise indicated.) Suppose that following the purchase of a petroleum refinery property, the assessed value in "Year 1" of the land is $ 2 million and the assessed value of the fixtures is $1 million. Now suppose the land appreciates at $ 100,000 per year while the fixtures, when appraised separately, depreciate at $ 100,000 per year. Under Rule 461(e), the treatment of fixtures as a separate appraisal unit means that the assessed value of the fixtures will decline by $ 100,000 each year, while the land, though appreciating at $ 100,000 per year, will yield an assessed value that increases by only 2 percent each year, the maximum increase allowed by Proposition 13. The results are shown in the following table:

Year	Land	Assessed Value Fixtures	Total
1	$ 2,000,000	$ 1,000,000	$ 3,000,000
2	$ 2,040,000	$ 900,000	$ 2,940,000
3	$ 2,080,800	$ 800,000	$ 2,880,800
4	$ 2,122,416	$ 700,000	$ 2,822,416
5	$ 2,164,864	$ 600,000	$ 2,764,864
6	$ 2,208,162	$ 500,000	$ 2,708,162

By contrast, if land and fixtures were treated as a single appraisal unit under Rule 474, the total assessed value of petroleum refinery property beyond Year 1 would be greater than the values shown above. When such property is treated as a single unit, fixture depreciation ($ 100,000 per year) may be offset by the full amount of land appreciation ($ 100,000 per year), resulting in a total assessed value of $ 3 million each year. The total assessed value may be even greater than $ 3 million beyond Year 1 (though no greater than a 2 percent annual increase) to the extent that fixture values decline by less than $ 100,000 per year when petroleum refinery fixtures are bought and sold in the open market as a single unit with the underlying land. Thus, owners of petroleum refinery property pay higher property taxes under Rule 474 than under Rule 461(e).

Before adopting Rule 474, the Board held a hearing at which several public officials testified in favor of the rule. Typical was the testimony of Rick Auerbach, the Los Angeles County Assessor, who stated that in his experience "refineries in California . . . are bought and sold as a unit. . . . I am not aware of one that has not been sold as a unit. If we have a case where there is the potential for a refinery to be dismantled and sold–where the fixtures are sold separately, the

proposed rule is a rebuttable presumption and we would take that into account. And we would value the fixtures separately."

The Board concluded in its final statement of reasons before adopting the rule that "sufficient evidence in the rulemaking record exists to determine that proposed Rule 474 is necessary to obtain assessments more accurately reflecting how petroleum refinery properties would actually trade in the marketplace. . . . At the June 27, 2006 Property Tax Committee meeting, Thomas Parker, Deputy County Counsel, Sacramento County; Rick Auerbach, Los Angeles County Assessor and President of the California Assessor's Association; Lance Howser, Chief Assessor, Solano County; and Robert Quon, Director of Major Appraisals for the Los Angeles County Assessor's office, all testified that refineries are in fact bought, sold, and valued as a single unit. In the same meeting, Mr. Auerbach testified that refineries are different from other heavily-fixtured manufacturing industries such as breweries, canneries, and amusement parks and toy manufacturing. Refineries are unique in that up to 80 percent of their values are contained in the fixtures and because the land and fixtures are so integrated, it is difficult to physically separate the fixtures from the land. Further, the land and fixtures are also so economically integrated that a buyer normally would not, in a fair market transaction, purchase the land separately from the fixtures or the fixtures separately from the land. [¶] Since petroleum refineries are bought and sold as a unit consisting of land and fixtures, to value the fixtures separate and apart from the land may result in assessed values either below or above fair market value in violation of Propositions 8 and 13."

Petroleum industry counsel submitted evidence to the Board, mostly in the form of for-sale advertisements and newspaper articles, showing that refinery fixtures are sometimes dismantled and sold separately.

In November 2007, the Office of Administrative Law approved the regulation, and it became effective in December 2007. (*WSPA v. BOE*, pp. 409-413.)

Procedural History Regarding WSPA v. BOE

In *WSPA v. BOE*, the California Supreme Court also explained that in December 2008, the Western States Petroleum Association (WSPA) filed a complaint challenging the validity of Rule 474 and seeking a declaration that the Board violated the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.) in adopting the rule because: (1) "Rule 474 is inconsistent with California Constitution, article XIII A and section 51(d), and is not necessary to implement such law; (2) Rule 474 violates article XIII A's cap on year-to-year increases in assessed value of real property; (3) Rule 474 violates article XIII A's requirement of a two-thirds vote of the Legislature for raising real property taxes; and (4) Rule 474 violates petroleum refiners' constitutional right to equal protection and uniformity of laws." (WSPA v. BOE, pp. 413-414.) And, "[i]n October 2009, the Board and WSPA filed cross-motions for summary judgment. WSPA argued that Rule 474 violates section 51(d) and California Constitution, article XIII A, and that the Board failed to provide an adequate statement of economic impact as required by the

APA. The trial court granted WSPA's summary judgment motion on both grounds, and the Court of Appeal affirmed on both grounds" before the California Supreme Court granted review. (*WSPA v. BOE*, p. 414.)

California Supreme Court Held that Rule 474 is Consistent with Existing Property Tax Law

In *WSPA v. BOE*, the California Supreme Court disagreed with all of WSPA's arguments as to why Rule 474 violates Revenue and Taxation Code (RTC) section 51, subdivision (d) (hereafter section 51(d)) and California Constitution, article XIII A. The Court specifically concluded that "Rule 474's market-based approach to determining the proper appraisal unit for petroleum refinery property ensures that reductions in property values are measured according to fair market value. Thus, Rule 474 appears consistent with articles XIII and XIII A." (*WSPA v. BOE*, pp. 416-417.)

The California Supreme Court specifically concluded that "Rule 474 is also consistent with section 51(d)." (*WSPA v. BOE*, p. 417.) The Court said that "[b]y its terms, the statute provides two alternative methods of determining the appraisal unit that constitutes taxable real property: it is either (1) a unit 'that persons in the marketplace commonly buy and sell as a unit' or (2) a unit 'that is normally valued separately.' Rule 474 applies the first method to petroleum refinery property." (*WSPA v. BOE*, p. 417.)

In addition, the California Supreme Court found that "the Legislature enacted section 51(d) on the understanding that real property values may 'rise and fall ... [to] any point below [the Proposition 13] cap, should actual market values so dictate," "Rule 474 furthers the long-standing mandate to appraise real property according to 'actual market values,'" and "Rule 474's market-based approach to determining the proper appraisal unit was in fact the traditional method for making such determinations before Proposition 13." (*WSPA v. BOE*, p. 419.) The Court also specifically found that "Rule 474 thus represents no change in the method of determining the appropriate appraisal unit. In adopting this exception to Rule 461(e) for petroleum refinery property, the Board sought to align the concept of 'appraisal unit' with the settled rule that when real property declines in value, it should be appraised according to its actual market value. There is no evidence that section 51(d) was intended to freeze or codify the treatment of industrial fixtures as a separate appraisal unit." (*WSPA v. BOE*, p. 421.)

Further, the California Supreme Court expressly held that "no constitutional or statutory provision precludes the Board from treating land and fixtures as a single appraisal unit when substantial evidence indicates that a particular type of property is bought and sold as a single unit in the marketplace." (*WSPA v. BOE*, p. 422.) The Court also held that Rule 474 does properly take into account reductions in value due to "depreciation" as required by RTC section 51, subdivision (a)(2). (*Ibid.*) The Court stated that:

> To account for fixture depreciation separately when land and fixtures are actually bought and sold as a single unit would allow the owner to claim a reduction in real property value that is economically fictitious, resulting in a tax windfall. Neither California Constitution, article XIII A nor section 51 nor traditional appraisal practices require the unit of appraisal to be defined in a manner that

> maximizes the depreciation of fixtures in contravention of economic reality. To the contrary, the law and consistent practice have long required appraisal of real property in the declining value context to reflect its "full cash value"—that is, the value "property would bring if exposed for sale in the open market." (§§ 51(a)(2), 110.) Rule 474 is consistent with this principle. (*WSPA v. BOE*, p. 423.)

Furthermore, the California Supreme Court held that the Board's adoption of Rule 474 did not violate section 3, subdivision (a), of article XIII A of the California Constitution, which prohibits tax increases without a two-thirds vote of both houses in the Legislature. The Court said that "By its terms, article XIII A, section 3(a) applies only to a 'change in *state statute* which results in any taxpayer paying a higher tax.' (Italics added [in original opinion].) It does not apply to an agency's decision to modify an administrative rule in response to substantial evidence that such modification is reasonably necessary to faithfully implement an existing statute." (*WSPA v. BOE*, pp. 423-424.)

California Supreme Court Held that Rule 474 is Procedurally Invalid

Although the California Supreme Court held that Rule 474 was substantively valid in *WSPA v. BOE*, the Court still concluded that the Board's adoption of Rule 474 was procedurally invalid under the APA. (*WSPA v. BOE*, pp. 408-409.) The Court held that the Board did not properly assess the economic impact of Rule 474 and that the Board's initial determination that Rule 474 would not have a significant adverse economic impact on businesses did not substantially comply with the APA (Gov. Code, §§ 11346.2, subd. (b)(5)(A), 11346.3, 11346.5, subd. (a)(8)) because:

- "The Board relied on a 2006 document titled 'Revenue Estimate' concerning proposed Rule 474. According to the document, which was prepared by Board staff, WSPA reported that there are 20 major refineries located in California, with five in Los Angeles County and four in Contra Costa County. (Bd. of Equalization, Revenue Estimate, Issue No. 6-001 (June 7, 2006) p. 2.) County data indicated that the total assessment in these two counties was over $ 14 billion, with about 80 percent of that value enrolled as fixtures. Projecting figures statewide, the Board staff estimated that there was $ 32 billion of refinery property, of which $ 25 billion consisted of fixtures and $ 7 billion in land and nonfixture improvements. To 'conservatively estimate' the incremental amount of taxable assessed value resulting from the proposed rule, the Board staff multiplied the $ 7 billion in land value by a 2 percent appreciation factor to conclude that Rule 474 would yield 'at least $ 140 million' in additional assessed value. (Revenue Estimate, at p. 3.) The Board staff then multiplied $ 140 million by the 1 percent tax on real property permitted under article XIII A to arrive at $ 1.4 million as the annual estimated revenue effect of Rule 474, while acknowledging that '[t]he actual revenue effect could be considerably higher or lower depending on the number of properties [affected] and the actual amount of offsetting values.' (Revenue Estimate, at p. 3.) Based on these calculations, the Board concluded that Rule 474 'will not have a significant adverse economic impact on businesses.'" (*WSPA v. BOE*, pp. 429-430.);
- The Court concluded that "[e]ven assuming the Board could reasonably project $ 32 billion as the total value of 20 refineries statewide based on data showing $ 14 billion as

the total value of nine refineries in two counties, the Board's analysis offers no explanation why multiplying $ 7 billion in land value by a 2 percent appreciation factor is, empirically or conceptually, a valid or reasonable way to estimate the amount of fixture depreciation that would be offset by appraising land and fixtures as a single unit." (*WSPA v. BOE*, p. 430.); and

- "[T]he Board's calculation failed to consider prior land appreciation and the full tax impact that would occur if land were valued at actual market value rather than adjusted base year value." (*Ibid.*)

Repeal and Proposed Re-Adoption of Rule 474

During the Board's September 10, 2013, meeting, the Board considered a Chief Counsel Memorandum dated August 28, 2013. In the Chief Counsel Memorandum, Board staff explained that the Board adopted Rule 474 on September 27, 2006, to clarify that, consistent with California Constitution article XIII, section 1, article XIII A (which contains Proposition 13 as amended by Proposition 8), RTC section 51, and Rules 461, *Real Property Value Changes*, and 324, *Decision*, refinery property consisting of land, improvements, and fixtures is rebuttably presumed to be a single appraisal unit in determining Proposition 8 declines in value below the Proposition 13 adjusted base year value for property tax valuation purposes. In the Chief Counsel Memorandum, Board staff also explained that the California Supreme Court held that Rule 474 was substantively valid in *WSPA v. BOE*. However, nevertheless, the Court also invalidated Rule 474 on procedural grounds, finding that the Board failed to provide an adequate assessment of the rule's economic impact during the rulemaking process as required by the APA. In particular, the Supreme Court held that Rule 474 is procedurally deficient because the Board did not make a reasoned estimate of all the cost impacts of the rule on affected parties. Therefore, in the memorandum, Board staff requested the Board's authorization to repeal Rule 474 pursuant to California Code of Regulations, title 1, section 100 (Rule 100). Board staff also requested the Board's authorization to initiate the rulemaking process to re-adopt Rule 474 following the APA's regular notice and public hearing process after Board staff reassessed the economic impact of Rule 474 on affected businesses in accordance with the APA and *WSPA v. BOE*.

The Board also received a letter dated August 20, 2013, from Sharon Moller, the Chief Deputy Assessor for the Los Angeles County Assessor's Office, which was attached to the August 28, 2013, Chief Counsel Memorandum. In the letter, Ms. Moller explained that the California Supreme Court's opinion in *WSPA v. BOE*, which upheld the substantive validity of Rule 474, but still invalidated the rule on procedural grounds, created an issue (or problem within the meaning of Gov. Code, § 11346.2, subd. (b)(1)) for county assessors in counties with petroleum refinery property as to:

- Whether petroleum refinery land, improvements, and fixtures constitute a single appraisal unit for determining declines in value, under RTC section 51 and the substantive policy expressed in Rule 474, because petroleum refineries are commonly bought and sold as a unit in the marketplace; or
- Whether petroleum refinery fixtures constitute a separate appraisal unit, as provided in Rule 461, subdivision (e) (hereafter Rule 461(e)).

In the letter, Ms. Moller also requested that the Board initiate the rulemaking process to re-adopt Rule 474 to clarify that petroleum refinery land, improvements, and fixtures are rebuttably presumed to constitute a single appraisal unit for determining declines in value.

In addition, the Board received the following written statement from Robert Cooney, Appraiser Specialist with the Los Angeles County Assessor's Office:

> I have been involved with refinery valuations for the last eight years. In that time, I have become something of a specialist in the application of the Sales Comparison Approach to refinery valuations. I have spoken or am scheduled to speak to groups such as the SAA, IAAO, and the most recent WSPA Conference on refinery and oil valuation. I have interacted with staff from the other two counties with large refinery properties, as well as every owner of a large refinery in California and their representatives.
>
> We at the County of Los Angeles are strongly in favor of the repeal and re-initiation of the Rule 474 rulemaking process.
>
> The purpose of Rule 474 is, from our point of view, to codify a practice already employed at the County of Los Angeles. In my time at the County, we have always viewed these properties as the market does, with land, improvement, and fixture operating as a unit. This is not a novel practice, though it is a contraversion of the typical rebuttable presumption that land and improvement are bought and sold and therefore valuable separately from fixtures. Passage of this rule allows us to continue to operate in harmony with market realities for refinery properties without having to overcome the rebuttable presumption each time these matters appear before an Assessment Appeals Board.
>
> It has been stated that there are exceptions to the norm that refinery assets operate and are sold as a unit. The assumption is that, in the case of such an exception, the use of this rule will create an unfair burden on the Taxpayer. The reality is that when we have evidence that a refinery has ceased to operate, and the land and improvements would not sell in the market with the fixtures, we have applied the normal valuation supposition that the fixtures are a separate appraisal unit and valued them as such. Rule 474 would not force us to value them as one unit when they would not sell that way.
>
> It is true that the implementation of any new rule should proceed with prudence, but this rule was not created capriciously. The substance of this rule has been in discussion and debate for the last several years. The matter has been heard in the judicial system all the way to the Supreme Court of the State of California. They indicated that the rule as already prepared was substantially valid and consistent with applicable constitutional and statutory provisions. The only impediment to the validity of this rule as it was then proposed was the necessity to adequately

> estimate all cost impacts on affected parties to meet the requirements for an Economic Impact Statement. It is a disservice to that opinion, to the effort so far expended, and to the people of the State of California not to take this rule over this final hurdle. We would beg the board to simply follow the advice so kindly proffered by the State Supreme Court and reintroduce the rule with a sufficient Economic Impact Statement to allow its passage.

Therefore, at the conclusion of the Board's discussion of the Chief Counsel Memorandum dated August 28, 2013, during its meeting on September 10, 2013, the Board Members unanimously voted to authorize staff to repeal Rule 474 pursuant to Rule 100, and initiate the rulemaking process to re-adopt Rule 474 after Board staff reassessed the economic impact of Rule 474 in accordance with the APA and *WSPA v. BOE*. The Board determined that it is reasonably necessary to re-adopt Rule 474 for the specific purpose of addressing the issue (or problem) identified in Ms. Moller's August 20, 2013, letter by clarifying that petroleum refinery land, improvements, and fixtures are rebuttably presumed to constitute a single appraisal unit for determining declines in value because petroleum refineries are commonly bought and sold as a unit in the marketplace. The Board anticipates that the re-adoption of Rule 474 will clarify the treatment of petroleum refinery property for purposes of measuring declines in value, and thereby benefit county assessors and the owners of petroleum refineries by promoting fairness and uniformity in the assessment of petroleum refinery property throughout the state.

The Board subsequently repealed Rule 474 pursuant to Rule 100, effective October 30, 2013. However, regardless of the repeal of Rule 474, county assessors are still authorized to determine that refinery property (land, improvements, and fixtures) constitutes a single appraisal unit for measuring declines in value when persons in the marketplace commonly buy and sell refinery property as a unit, in accordance with RTC section 51(d) as interpreted by the California Supreme Court in *WSPA v. BOE* (discussed in detail above).

The proposed re-adoption of Rule 474 is not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Rule 474.

DOCUMENTS RELIED UPON

The Board relied on the California Supreme Court's opinion in *WSPA v. BOE*, that Rule 474's market-based approach to determining the proper appraisal unit for petroleum refinery property is consistent with RTC section 51(d) and articles XIII and XIII A of the California Constitution because it ensures that reductions in property values are measured according to fair market value, in deciding to propose to re-adopt Rule 474. The Board relied on the Chief Counsel Memorandum dated August 28, 2013 (referred to above), Ms. Moller's August 20, 2013, letter, which was attached to the Chief Counsel Memorandum, the written statement from Robert Cooney (referred to above), and the comments made during the Board's discussion of the Chief Counsel Memorandum during its September 10, 2013, Board meeting in deciding to propose to re-adopt Rule 474. The Board also relied upon the documents (referred to above) and the information in attachments A through F to this initial statement of reasons (identified below) in assessing the economic impact of the re-adoption of Rule 474 and determining that the re-adoption of Rule 474 will not have a significant adverse economic impact on business.

ALTERNATIVES CONSIDERED

The Board considered whether to begin the formal rulemaking process to re-adopt Rule 474 at this time or, alternatively, whether to take no action at this time. The Board decided to begin the formal rulemaking process to re-adopt Rule 474 at this time because the Board determined that the re-adoption of Rule 474 is reasonably necessary for the reasons set forth above.

The Board did not reject any reasonable alternative to Rule 474 that would lessen any adverse impact the proposed action may have on small business or that would be less burdensome and equally effective in achieving the purposes of the proposed regulation in a manner that ensures full compliance with the laws being implemented and made specific by the proposed regulation. No reasonable alternative has been identified and brought to the Board's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

INFORMATION REQUIRED BY GOVERNMENT CODE SECTION 11346.2, SUBDIVISION (b)(5) AND ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

Background Information Regarding the Petroleum Refining Industry

Prior to beginning the formal rulemaking process, Board staff reviewed relevant background information regarding the California petroleum refining industry. First, staff reviewed information available in the "Energy Almanac" published by the California Energy Commission, which provides both a quick overview and in-depth statistics regarding California's energy industries.[1] The Energy Almanac explains that "California's [petroleum] refineries are located in the San Francisco Bay area, Los Angeles area and the Central Valley." The Energy Almanac provides the following current table showing that there were 20 total refineries in California as of October 2012:

California Oil Refinery Locations and Capacities
Classification of refiners based on crude oil capacity (barrels per day)
Information as of October 2012

Refinery Name	Barrels Per Day	CARB Diesel	CARB Gasoline
BP West Coast Products LLC, Carson Refinery	240,000	Yes	Yes
Chevron U.S.A. Inc., El Segundo Refinery	276,000	Yes	Yes

[1] Attachment A contains the Energy Almanac information regarding California's petroleum refineries quoted directly below.

Chevron U.S.A. Inc., Richmond Refinery	245,271	Yes	Yes
Tesoro Refining & Marketing Company, Golden Eagle Martinez/Avon Refinery	166,000	Yes	Yes
Shell Oil Products US, Martinez Refinery	156,400	Yes	Yes
ExxonMobil Refining & Supply Company, Torrance Refinery	149,500	Yes	Yes
Valero Benicia Refinery	132,000	Yes	Yes
ConocoPhillips, Wilmington Refinery	139,000	Yes	Yes
Tesoro Refining & Marketing Company, Wilmington Refinery	103,800	Yes	Yes
Valero Wilmington Refinery	78,000	Yes	Yes
ConocoPhillips, Rodeo San Francisco Refinery	78,400	Yes	Yes
ALON USA, Bakersfield Refinery	66,000	Yes	Yes
Paramount Petroleum Corporation, Paramount Refinery	50,000	No	Yes
ConocoPhillips, Santa Maria Refinery	41,800	No	No
Edgington Oil Company, Long Beach Refinery	26,000	No	No
Kern Oil & Refining Company, Bakersfield Refinery	26,000	Yes	Yes
San Joaquin Refining Company Inc., Bakersfield Refinery	15,000	Yes	No
Greka Energy, Santa Maria Refinery	9,500	No	No
Lunday Thagard, South Gate Refinery	8,500	No	No
Valero Wilmington Asphalt Refinery	6,300	No	No

Note: Data on this table represents total crude oil capacity not gasoline, distillate production, diesel fuel production or production of other products. Production potential varies depending on time of year and status of the refinery. A rule of thumb is that roughly 50 percent of total capacity is gasoline production (about 1.0 million barrels of gasoline - 42 million gallons - is produced per day).

Source: California Energy Commission Fuels Office Staff.

The Energy Almanac also provides the history of California's petroleum refineries.[2] As relevant here, the history, which is current through October 2012, indicates that existing refineries are periodically bought and sold as a unit (land, improvements, and fixtures) and that none of the 20 refineries listed above has changed ownership since June 2010, when Alon USA Energy, Inc., acquired its Bakersfield refinery. For example, the history shows that Chevron's El Segundo refinery, which has the greatest capacity of any of the 20 refineries, was owned by Standard Oil

[2] Attachment B contains the history of California's petroleum refineries from the Energy Almanac.

Company from 1912-1926, Standard Oil Company of California from 1926-1977, Chevron USA Inc. from 1977-2001, Chevron Texaco Corporation from 2001-2005, and Chevron Corporation from 2005 to the present.

Second, Board staff reviewed information regarding the United States' petroleum refineries available from the United States Energy Commission (U.S.E.C.). The U.S.E.C.'s information for the entire United States indicates that the country had 142 operable petroleum refineries as of January 1, 2014, and that the newest United States refinery began operating in Douglas, Wyoming, in 2008.[3] The California specific information from the United States Energy Commission indicates that:

- California's newest refinery was built in 1979 and began operating in Wilmington, California in 1980;
- California has had between 18 and 20 operable petroleum refineries from 2008 to 2014; and
- At least one of California's operable petroleum refineries has been idle, but not shutdown, at some point during each year from 2008 to 2014.[4]

Third, Board staff reviewed the current state of the United States' market for operating petroleum refineries. Staff found that while there are individual pieces of refinery equipment available for sale, there are still significant sales of entire petroleum refineries occurring. The most recent sale in California is the June 2013 sale of BP's Carson, California refinery and related logistics and marketing assets in the region to Tesoro Corporation for approximately $2.4 billion.[5] Therefore, Board staff concluded that persons in the marketplace still commonly buy and sell operable California petroleum refineries as a unit, just as they did when the Board first adopted Rule 474.

Economic Impact of the Re-Adoption of Rule 474

Prior to beginning the formal rulemaking process, Board staff also determined how the re-adoption of Rule 474 might change (or effect) the current assessment of petroleum refining property and thereby have an economic impact on county assessors and the California petroleum refining industry. Board staff determined that, in the absence of Rule 474, county assessors are currently authorized by RTC section 51(d), as interpreted by the California Supreme Court in *WSPA v. BOE*, to determine that petroleum refinery property (land, improvements, and fixtures) constitutes a single appraisal unit for measuring declines in value when persons in the marketplace commonly buy and sell refinery property as a unit. Therefore, Board staff determined that, as a result, county assessors are currently required to monitor the market for petroleum refinery property. However, in the absence of substantial changes in the California petroleum refinery market (discussed above), it is also currently reasonable for a county assessor to generally value petroleum refinery property as a single appraisal unit, for purposes of measuring declines in value, and rely on each petroleum refinery owner to produce evidence,

[3] Attachment C contains the information regarding United States' petroleum refineries from the U.S.E.C.
[4] Attachment D contains the information regarding California's petroleum refineries from the U.S.E.C.
[5] Attachment E contains BP's June 3, 2013, press release regarding the sale of the Carson, California, refinery to Tesoro Corporation.

when available, to establish that some or all of its refinery's fixtures should be valued as a separate appraisal unit because those fixtures are not commonly bought and sold as a unit with the refinery's land and improvements.

Board staff determined that the re-adoption of Rule 474 does not materially change the treatment of petroleum refinery property under RTC section 51(d) as interpreted by the California Supreme Court in *WSPA v. BOE*. Instead, the re-adoption of Rule 474 has the effect of clarifying that, based upon the California petroleum refinery market (discussed above):

- "The land, improvements, and fixtures and other machinery and equipment classified as improvements for a petroleum refining property are rebuttably presumed to constitute a single appraisal unit" for purposes of determining declines in value because doing so is generally consistent with RTC section 51(d) as interpreted by the California Supreme Court in *WSPA v. BOE*; and
- Rule 461(e)'s provisions providing that "fixtures and other machinery and equipment classified as improvements constitute a separate appraisal unit" for purposes of determining declines in value do not apply to petroleum refinery property, unless there is evidence that treating specific fixtures as a separate appraisal unit would be consistent with RTC section 51(d) as interpreted by the California Supreme Court in *WSPA v. BOE*.

In addition, Board staff determined that, after the re-adoption of Rule 474, a county assessor would still need to continue to monitor the market for petroleum refinery property because Rule 474 does not supersede RTC section 51(d) and because the presumption in Rule 474 is rebuttable. Staff determined that, after the re-adoption of Rule 474 and in the absence of substantial changes in the California petroleum refinery market, county assessors could continue to generally value petroleum refinery property (land, improvements, and fixtures) as a single appraisal unit. Board staff also determined that, after the re-adoption of Rule 474 and in the absence of substantial changes in the California petroleum refinery market, county assessors could continue to rely on each petroleum refinery owner to produce evidence to establish that some or all of its refinery's "fixtures" should be valued as a separate appraisal unit because those fixtures are not commonly bought and sold as a unit with the refinery's land and improvements, when available. Therefore, Board staff concluded that the re-adoption of Rule 474 is fully consistent with the existing mandates of RTC section 51(d), and that there is nothing in the proposed re-adoption of Rule 474 that would significantly change how individuals and businesses, including county assessors and petroleum refinery owners, would generally behave due to the current provisions of RTC section 51(d) as interpreted by the California Supreme Court in *WSPA v. BOE*.

As a result, the Board has determined that the re-adoption of Rule 474 does not impose any costs on any persons, including businesses, in addition to whatever costs are imposed by RTC section 51(d) as interpreted by the California Supreme Court in *WSPA v. BOE*, and there is nothing in Rule 474 that would impact revenue. The Board also estimates that the proposed re-adoption of Rule 474 will not have a measurable economic impact on individuals and business, including county assessors and petroleum refinery owners, that is in addition to whatever economic impact the enactment of RTC section 51(d), as interpreted by the California Supreme Court in *WSPA v. BOE*, has and will have on individuals and businesses. And, the Board has determined that the

proposed re-adoption of Rule 474 is not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, because the Board has estimated that the proposed amendments will not have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars ($50,000,000) during any 12-month period. Therefore, based on these facts and all of the information in the rulemaking file, the Board has determined that the proposed re-adoption of Rule 474 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

Finally, Rule 474 does not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has also determined that the re-adoption of Rule 474 will not affect the benefits of Rule 474 to the health and welfare of California residents, worker safety, or the state's environment.

The forgoing information also provides the factual basis for the Board's initial determination that the re-adoption of Rule 474 will not have a significant adverse economic impact on business.

The proposed re-adoption of Rule 474 may affect small businesses.

Tax Effect of Treating Petroleum Refinery Property as One Appraisal Unit

Although the Board has determined that there is no economic impact associated with the re-adoption of Rule 474 due to the mandates of RTC section 51(d), the Board is aware that fixture depreciation can be offset by appreciation in land and improvements when petroleum refinery property (land, improvements, and fixtures) is valued as a single appraisal unit, as the California Supreme Court indicated in *WSPA v. BOE*. Therefore, the Board recognizes that there is sometimes an increase in the total assessed value of petroleum refinery property when fixtures are valued as part of the same appraisal unit with land and improvements under RTC section 51(d) and Rule 474, instead of valued as a separate appraisal unit under Rule 461(e). The Board also recognizes that property taxes increase by one percent of each increase in assessed value.

As a result, Board staff determined that it needed to obtain the available data regarding the market values and adjusted base year values for petroleum refinery land, improvements, and fixtures so that Board staff could accurately compare the total assessed value of a petroleum refinery when its fixtures are valued as a separate appraisal unit under Rule 461(e) and valued as part of the same appraisal unit with land and improvements under Rule 474. Therefore, Board staff contacted the California Assessors' Association and requested that the county assessors provide Board staff with the available data for 2009 through 2013 without identifying specific petroleum refineries. In response, the California Assessors' Association provided all of the data for nine petroleum refineries for 2009-2013, and all the data for one additional petroleum refinery for 2009-2012, including many of California's largest refineries.

Board staff subsequently reviewed the available data for the 10 refineries.[6] Board staff determined that valuing petroleum refinery fixtures as part of the same appraisal unit with land

[6] Attachment F contains Board staff's economic impact assessment of the available data.

and improvements under RTC section 51(d) and Rule 474, instead of valuing fixtures as a separate appraisal unit under Rule 461(e), only results in a higher total assessed value:

1. When the current market value of the fixtures is less than the adjusted base year value of the fixtures; and

2. Either:

    A. The combined current market value of land and improvements is more than the combined current adjusted base year value of the land and improvements; or
    B. The combined current market value of land, improvements, and fixtures is more than the combined current adjusted base year value of the land, improvements, and fixtures.

Otherwise, valuing petroleum refinery fixtures as part of the same appraisal unit with land and improvements under RTC section 51(d) and Rule 474, instead of valuing fixtures as a separate appraisal unit under Rule 461(e), does not result in an increase in assessed value.[7]

In addition, Board staff determined what the assessed values would be for 2009 through 2013, under RTC section 51(d) and Rule 474, and under Rule 461(e), for each of the 10 California petroleum refineries for which data is available.[8] However, the data did not indicate that valuing petroleum refinery fixtures as part of the same appraisal unit with land and improvements under RTC section 51(d) and Rule 474, instead of valuing fixtures as a separate appraisal unit under Rule 461(e), has a consistent tax effect in any given year or from year-to-year. Instead, staff determined that the owners of one of the 10 refineries would not pay higher property taxes under RTC section 51(d) and Rule 474, than under Rule 461, in any of the five years.[9] Staff also determined that the owners of nine of the 10 refineries would pay higher property taxes under RTC section 51(d) and Rule 474, than under Rule 461, in at least two of the five years. Specifically, staff determined that:

- The owners of two of the 10 refineries would pay higher property taxes under RTC section 51(d) and Rule 474, than under Rule 461, in two of the five years;
- The owners of two of the 10 refineries would pay higher property taxes under RTC section 51(d) and Rule 474, than under Rule 461, in three of the five years;
- The owners of three of the 10 refineries would pay higher property taxes under RTC section 51(d) and Rule 474, than under Rule 461, in four of the five years; and
- The owners of two of the 10 refineries would pay higher property taxes under RTC section 51(d) and Rule 474, than under Rule 461, in all five years.[10]

In addition, Board staff determined that the owners of 9 of the 10 refineries would collectively pay the following additional property taxes for 2009 through 2013 if their refineries were valued under RTC section 51(d) and Rule 474, rather than under Rule 461, and determined that the

[7] See Attachment F, pages 1 through 8.
[8] See Attachment F, pages 7 and 8.
[9] See Attachment F, pages 7 and 9.
[10] See Attachment F, pages 7 through 10.

additional taxes represented the following percentage increases in their collective property taxes for each year:

2009:	$4,633,805	2.78%
2010:	$5,221,876	3.79%
2011:	$5,159,918	3.46%
2012:	$4,045,140	2.52%
2013:	$2,816,552	2.40%[11]

Finally, as noted above, Board staff concluded that the tax effect of valuing petroleum refinery fixtures as part of the same appraisal unit with land and improvements under RTC section 51(d) and Rule 474, instead of valuing fixtures as a separate appraisal unit under Rule 461(e), depends entirely upon:

- Whether and to what extent the current market value of a particular petroleum refinery's fixtures is less than the adjusted base year value of the fixtures; and
- Whether and to what extent the: (A) the combined current market value of the same petroleum refinery's land and improvements is more than the combined current adjusted base year value of the land and improvements; or (B) the combined current market value of the same petroleum refinery's land, improvements, and fixtures is more than the combined current adjusted base year value of the land, improvements, and fixtures.

[11] See Attachment F, page 11.

California's Oil Refineries

California's refineries are located in the San Francisco Bay area, Los Angeles area and the Central Valley. Each day approximately two million barrels (a barrel is equal to 42 U.S. gallons) of petroleum are processed into a variety of products, with gasoline representing about half of the total product volume. (A list of refineries, their location and capacity is shown in the table below.)

Refineries can be classified as topping, hydroskimming or complex. Topping refineries are the least sophisticated and contain only the atmospheric distillation tower and possibly a vacuum distillation tower. The topping refiner's ability to produce finished products depends on the quality of the petroleum being processed. A hydroskimming refinery has reforming and desulfurization process units in addition to basic topping units. This allows the refiner to increase the octane levels of motor gasoline and reduce the sulfur content of diesel fuel. Complex refineries are the most sophisticated refinery type and have additional process units to "crack" the heavy gas oils and distillate oils into lighter, more valuable products.

Using a variety of processes including distillation, reforming, hydrocracking, catalytic cracking, coking, alkylation and blending, the refinery produces many different products. The four basic groups are motor gasolines, aviation fuel, distillate fuel and residual fuel. On a statewide average, about 12 percent of the product from California's refineries is aviation fuel, 13 percent is distillate fuel and 9 percent is residual fuel.

Complex refineries have the highest utilization rate at approximately 95 percent. Utilization rate is the ratio of barrels input to the refinery to the operating capacity of the refinery. Complex refineries are able to produce a greater proportion of light products, such as gasoline, and operate near capacity because of California's large demand for gasoline. Permitting Issues. It is unlikely that new refineries will be built in California. In fact, from 1985 to 1995, 10 California refineries closed, resulting in a 20 percent reduction in refining capacity. Further refinery closures are expected for small refineries with capacities of less than 50,000 barrels per day. The cost of complying with environmental regulations and low product prices will continue to make it difficult to continue operating older, less efficient refineries.

To comply with federal and state regulations, California refiners invested approximately $5.8 billion to upgrade their facilities to produce cleaner fuels, including reformulated gasoline and low-sulfur diesel fuel. These upgrades received permits since low-sulfur diesel fuel regulations went into effect in 1993. Requirements to produce federal reformulated gasoline took effect at the beginning of 1995, and more stringent state requirements for CARB reformulated gasoline went into effect statewide on April 1, 1996. That requirement was removed by Governor Gray Davis when it was found that the oxygenate, methyl tertiary butyl-ether or MTBE, was leaking from some underground storage tanks and polluting water supplies. MTBE was phased out and removed as of December 31, 2003, and replaced by ethanol.

For information about oil production and imports to refineries, please see our main oil page.

Refineries Outside of California That Can Produce California Gasoline

Domestic sources include refineries located in Washington State and the US Gulf Coast. Foreign sources include Eastern Canada, Finland, Germany, US Virgin Islands, Middle East, and Asia.

California Oil Refinery Locations and Capacities

Classification of refiners based on crude oil capacity (barrels per day)
Information as of October 2012

Refinery Name	Barrels Per Day	CARB Diesel	CARB Gasoline
BP West Coast Products LLC, Carson Refinery	240,000	Yes	Yes
Chevron U.S.A. Inc., El Segundo Refinery	276,000	Yes	Yes
Chevron U.S.A. Inc., Richmond Refinery	245,271	Yes	Yes
Tesoro Refining & Marketing Company, Golden Eagle Martinez/Avon Refinery	166,000	Yes	Yes
Shell Oil Products US, Martinez Refinery	156,400	Yes	Yes
ExxonMobil Refining & Supply Company, Torrance Refinery	149,500	Yes	Yes
Valero Benicia Refinery	132,000	Yes	Yes
ConocoPhillips, Wilmington Refinery	139,000	Yes	Yes
Tesoro Refining & Marketing Company, Wilmington Refinery	103,800	Yes	Yes
Valero Wilmington Refinery	78,000	Yes	Yes
ConocoPhillips, Rodeo San Francisco Refinery	78,400	Yes	Yes
ALON USA, Bakersfield Refinery	66,000	Yes	Yes
Paramount Petroleum Corporation, Paramount Refinery	50,000	No	Yes
ConocoPhillips, Santa Maria Refinery	41,800	No	No
Edgington Oil Company, Long Beach Refinery	26,000	No	No
Kern Oil & Refining Company, Bakersfield Refinery	26,000	Yes	Yes
San Joaquin Refining Company Inc., Bakersfield Refinery	15,000	Yes	No
Greka Energy, Santa Maria Refinery	9,500	No	No
Lunday Thagard, South Gate Refinery	8,500	No	No
Valero Wilmington Asphalt Refinery	6,300	No	No

Note: Data on this table represents total crude oil capacity not gasoline, distillate production, diesel fuel production or production of other products. Production potential varies depending on time of year and status of the refinery. A rule of thumb is that roughly 50 percent of total capacity is gasoline production (about 1.0 million barrels of gasoline - 42 million gallons - is produced per day).

Source: California Energy Commission Fuels Office Staff.

Terminal Facilities

California's nearly 100 terminals receive petroleum and petroleum products by tanker, barge, pipeline, rail or truck. Most of California's terminals are marine terminals. At these facilities petroleum or product is transferred from or to tankers or barges. Tankers loaded with Alaska North Slope petroleum, for example, enter marine terminals in northern and southern California, where the crude oil is then sent to refineries by pipeline for processing. An example of pipeline receipts of petroleum at a terminal is heavy California petroleum produced in the Bakersfield area that is sent by pipeline to a refinery at Martinez.

Terminals also serve as refiner's wholesale distribution points for products. Product, such as gasoline, is sold to distributors (jobbers) who then sell to consumers through the distributors' own retail stations. The distributor may also resell the gasoline to other station dealers. Gasoline can also be sold directly to station dealers from the terminal. The marketing structure differs depending on the type of product being sold.

A terminal can be linked with several refineries and storage facilities and be supplied by privately-owned pipelines or a common carrier line. Total capacity at a terminal can range from a few thousand barrels to a few million barrels. The most apparent equipment at a terminal are the tanks used for storage and separation of different product grades. The number of tanks can range from a few to more than 70. Other equipment found includes piping, pumps, valves, and meters needed for bulk receipts and for loading racks used for small deliveries to trucks. Marine terminals have vessel length and water depth limits that dictate the size of tankers that can off-load at the facility.

Permitting Issues. Some of the environmental and safety issues associated with permitting petroleum and petroleum product terminals include:

- Changes in visual quality
- Disturbances to vegetation and wildlife
- Emissions from floating roof tanks
- Potential water and soil contamination from earthquake-damaged tanks
- Increased tanker traffic and potential for spills at marine facilities

References

1. **U.S. Petroleum Refining, Meeting Requirements for Cleaner Fuels and Refineries**, Volume I, National Petroleum Council, August, 1993. This document is a comprehensive assessment of how environmental regulations impact the petroleum refining industry and U.S. consumers.
2. **Fuels Report**, California Energy Commission, December, 1995, Publication No. P300-95-017. The Fuels Report describes emerging trends and long range forecasts of the demand, supply and price of petroleum, petroleum products, natural gas, coal and synthetic and other fuels. It is the state's principal fuels policy document.
3. Petroleum Industry Information Reporting Act submittals from the petroleum industry to the California Energy Commission.
4. **Quarterly Oil Report**, Fourth Quarter 1993, April 1994, California Energy Commission, Publication No. P300-94-003. This report describes petroleum fuels market trends, price trends, refinery activity, oil production trends and petroleum company financial performance. It contains aggregated petroleum statistics for California based on industry submittals to the Commission including refinery utilization rates.
5. **1994 Annual Report**, Western States Petroleum Association.

Sources:

Refinery list - California Energy Commission staff, updated regularly.

Background information and discussion - *Energy Aware Planning Guide II: Energy Facilities*, California Energy Commission, Publication No. 700-96-006, December 1996, Appendices B-24 and B-25.in

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ENERGYALMANAC.CA GOV / PETROLEUM / REFINERY HISTORY

California Oil Refinery History
Information current as of August 2012.

Note: Information for some refineries about start-up date and ownership prior to 1981 is not available.

Refineries highlighted in yellow are currently operational. Light blue indicates re-refiner.

This chart is also available to download as an Excel spreadsheet. Current as of December 2012. (36 kb).

California Refinery Facilities	Began Operations	Ownership Information	Current Crude Capacity (Barrels/Day)[1]
Anchor Refining, McKittrick Refinery**(Closed)**	Prior to 1981	Anchor Refining: 1981-1984	
Alon USA Energy, Inc., Bakersfield Refinery	1932	Mohawk Petroleum Corp: 1932-1975 Reserve Oil & Gas Co: 1975-1980 Getty Oil Co: 1980-1984 Texaco, Inc: 1984-2000 Equilon: 2000-2001 Shell Oil Co: 2001-2005 Big West of Calif. (Flying J): 2005-June 2010 Alon USA Energy Inc: June 2010-Present	66,000
BP West Coast Products, Carson Refinery	1938	Richfield Oil Corp: 1938-1966 Atlantic Richfield Company (ARCO): 1966-2000 BP West Coast Products: 2000-Present	240,000
Chemoil Refining Corporation, Signal Hill Refinery **(Closed)**	Prior to 1981	MacMillan Ring-Free Oil Co: 1981-1988 Chemoil Refining Co: 1988-1994	
Chevron, Bakersfield Refinery **(Closed)**	1913	Standard Oil Co: 1913-1926 Standard Oil Company of California (Socal): 1926-1977 Chevron USA Inc: 1977-1986	
Chevron, El Segundo Refinery	1912	Standard Oil Co: 1912-1926 Standard Oil Company of California (Socal): 1926-1977 Chevron USA Inc: 1977-2001 ChevronTexaco Corp: 2001-2005 Chevron Corp: 2005-Present	276,000
Chevron, Richmond Refinery	1902	Pacific Coast Oil: 1902-1906 Standard Oil Co: 1906-1926 Standard Oil Company of California (Socal): 1926-1977 Chevron USA Inc: 1977-2001 ChevronTexaco Corp: 2001-2005 Chevron Corp: 2005-Present	245,271
Conoco (formerly Fletcher), Paramount Refinery **(Closed)**	Prior to 1981	Conoco: 1981-1983	46,500

ConocoPhillips, Rodeo Refinery	1896	Union Oil Co of Calif: 1896-1983 Unocal: 1983-1997 Tosco Corp: 1997-2001 Phillips: 2001-2002 ConocoPhillips: 2002-Present	78,400
ConocoPhillips, Santa Maria Refinery	1955	Union Oil Co of Calif: 1955-1983 Unocal: 1983-1997 Tosco Corp: 1997-2001 Phillips: 2001-2002 ConocoPhillips: 2002-Present	41,800
ConocoPhillips, Wilmington Refinery	1917	Union Oil Co of Calif: 1917-1983 Unocal: 1983-1997 Tosco Corp: 1997-2001 Phillips: 2001-2002 ConocoPhillips: 2002-Present	139,000
DeMenno/Kerdoon, Compton Refinery **(Reprocesses Waste Oil as Oil Re-Refiner)**	Prior to 1981	DeMenno/Kerdoon: 1981-1984	
ECO Petroleum, Signal Hill Refinery **(Closed)**	Prior to 1981	ECO Petroleum: 1981-1984	11,000
Edgington Oil Company/Alon USA Energy Inc, Long Beach Refinery	1932	Apex Oil Co: 1932-1941 Edgington Oil Co: 1941-2006 Alon USA Energy Inc: 2006-Present	26,000
ExxonMobil, Torrance Refinery	1907	Vacuum Oil Co: 1907-1929 General Petroleum Corporation of Calif: 1929-1931 Socony-Vacuum Corp: 1931-1934 Socony-Vacuum Oil Company, Inc: 1934-1955 Socony Mobil Oil Co: 1955-1966 Mobil Oil Corp: 1966-2000 ExxonMobil: 2000-Present	149,500
Fletcher Oil & Refining, Wilmington Refinery **(Closed)**	Prior to 1981	Fletcher Oil & Refining: 1981-1991	
Gibson Oil & Refining, Bakersfield Refinery **(Closed)**	Prior to 1981	Gibson Oil & Refining: 1981-1986	
Golden Bear, Oildale Refinery **(Closed)**	Prior to 1981	Witco Chemical Corp: 1981-1997 Golden Bear: 1997-2001	
Golden Eagle Refining, Carson Refinery **(Closed)**	1947	Sunset Oil: 1947 - 1958 Golden Eagle Refining: 1958-1984	
Golden Eagle Refining, Hanford Refinery **(Closed)**	Prior to 1981	Golden Eagle Refining: 1981-1985	
Golden West Refining Company, Santa Fe Springs Refinery **(Refinery Closed in 1992, Continued Operating as a Terminal Until 1997)**	1936	Wilshire Oil Co: 1936-1960 Gulf Oil Corp USA: 1960-1983 Golden West Refining Co: 1983-1997	
Greka Energy, Santa Maria Asphalt Refinery	1935	Conoco: 1981-1992 Saba Petroleum Co: 1995-1999 Greka Energy: 1999-Present	9,500
Independent Valley Energy Company (IVEC), Bakersfield Refinery (Became Part of Big West Refinery))	? 1982	Independent Valley Energy Co: 1982-1987	
Kern Oil & Refining Company, Bakersfield Refinery	1934	El Tejon Oil & Refinign Co: 1934-1943 Kreiger Oil Co: 1943-1945 Douglas Oil Co: 1945-1962 Continental Oil: 1962-1966 Edgington Oil/Signal Oil & Gas: 1966-1971 Kern County Refinery Inc. (Charter Oil Co.): 1971-1976 Kern County Refinery Inc. (Privately Held): 1976-1982	26,000

		Kern Oil & Refining Co: 1982-Presentt	
Lunday Thagard Oil Company, South Gate Refinery	Prior to 1981	Lunday Thagard Oil Co: 1981-Present	8,500
Marlex Oil & Refining Company, Long Beach Refinery **(Closed)**	Prior to 1981	Marlex Oil & Refining Co: 1981-1984	19,000
Newhall Refining Company / Pauley Petroleum Inc, Santa Clarita Refinery **(Closed)**	Prior to 1981	Newhall Refining Co: 1981-1989	
Pacific Refining, Hercules Refinery **(Closed)** Ceased refinery operations August 1995. Continued limited storage and terminal operations until 1997.	1967	Sequoia Refining Corp: 1967-1968 Gulf Oil Corp USA: 1968-1976 Pacific Refining: 1976-1997	50,000
Paramount Petroleum Corporation, Paramount Refinery	1930s	Ajax Oil Company: 1930s-1937 Kreiger Oil Co: 1937-1940s Douglas Oil Co: 1940s-1961 Continental Oil Company (Conoco): 1961-1982 Pacific Oasis, Inc: 1982-1984 Paramount Petroleum Corp: 1983-2006 Alon USA Energy Inc: 2006-Present	50,000
Powerine Oil Company, Santa Fe Springs Refinery **(Closed)** Ceased refinery operations early July, 1995. CENCO is offering the refinery equipment for sale, as of April 2007.	1934	Rothchild Oil Co/Powerine Oil Co: 1934-1984 Closed bankruptcy: 1984-1986 Powerine Oil Co: 1986-1993 Castle Energy Corp: 1993-1995 Kenyen Resources: 1995-1996 Energy Merchant Corp: 1996-1998 Creative Energy Company (CENCO): 1998-Present	
San Joaquin Refining Company, Bakersfield Refinery	1969	San Joaquin Refining Co: 1969-Present	15,000
Shell Oil Products US, Carson Refinery **(Closed)**	1923	Shell Company of Calif: 1923-1939 Shell Oil Company Inc: 1939-1949 Shell Oil Co: 1949-1992	
Shell Oil Products US, Martinez Refinery	1915	Shell Company of Calif: 1915-1939 Shell Oil Company, Inc: 1939-1949 Shell Oil Co: 1949-1998 Equilon Enterprises (joint venture of Shell Oil Co. & Texaco Inc.): 1998-2002 Shell Oil Co: 2002-Present	156,400
Sunland Refining Corporation, Bakersfield Refinery **(Closed)**	Prior to 1929	Sunland Refining Corp: ?1929-1995	12,000
Tenby Incorporated, Oxnard Refinery **(Closed)**	Prior to 1981	Tenby Inc: 1981-December 2011	
Tesoro Refining & Marketing Co., Golden Eagle Refinery, Martinez/Avon	1913	Associated Oil Co: 1913-1937 Tidewater Associated Oil Co: 1937-1966 Phillips Petroleum: 1966-1976 Tosco Corp: 1976-2000 Ultramar Diamond Shamrock: 2000-2002 Valero Refining Co: 2002 Tesoro Refining: 2002-Present	166,000
Tesoro Refining & Marketing Co., Wilmington Refinery	1923	California Petroleum Corp. 1923-1928 Texas Company 1928-1959	103,800

		Texaco, Inc. 1959-1998 Equilon Enterprises 1998-2002 Shell Oil Company 2002-2007 Tesoro Corp. 2007-Present	
Tosco, Bakersfield Refinery (Became Part of Big West Refinery)	Prior to 1981	Tosco Corp: 1981-1984	
Ultramar Oil, Hanford Refinery **(Closed)**	1931	HH Bell Refinery Co. 1931-1932 Caminol Oil Co: 1932-1967 Beacon Oil Co: 1967-1982 Ultramar Oil Co: 1982-1987	
USA Petrochem Corporation, Ventura Refinery **(Closed)**	Prior to 1981	USA Petrochem Corp: 1981-1984	27,900
Valero, Benicia Asphalt Refinery **(Part of Valero Benicia Refinery)**	1982	Huntway Refining: 1982-2001 Valero Refining Co: 2001-Present	
Valero, Benicia Refinery	1968	Exxon Co USA: 1968-2000 Valero Refining Co: 2000-Present	132,000
Valero, Wilmington Asphalt Refinery	Prior to 1981	Huntway Refining: 1981-2001 Valero Refining Co: 2001-Present	6,300
Valero, Wilmington Refinery	1969	Champlin Petroleum Co: 1969-1987 Union Pacific Resources Co: 1987-1988 Ultramar Refining: 1988-1997 Ultramar Diamond Shamrock: 1997-2002 Valero Refining Co: 2002-Present	78,000
West Coast Oil Company, Oildale Refinery **(Closed)**	Prior to 1981	West Coast Oil Co: 1981-1988	

Source: Compiled by California Energy Commission Transportation Energy Office

Notes: 1. Atmospheric crude oil distillation processing capacity as measured in barrels per calendar day - source: Energy Information Agency - Refinery Capacity Report

Attachment C

U.S. Energy Information Administration

Frequently Asked Questions

When was the last refinery built in the United States?

There were 142 operable petroleum refineries in the United States as of January 1, 2014.

The "newest" refinery in the United States began operating in 2008 in Douglas, Wyoming with an initial capacity of 3,000 barrels per calendar day (bbl/cd). As of January 1, 2014, the facility has 3,800 bbl/cd of capacity. However, the newest complex refinery with significant downstream unit capacity began operating in 1977 in Garyville, Louisiana. That facility came online in 1977 with an initial atmospheric distillation unit capacity of 200,000 bbl/cd and as of January 1, 2014 had capacity of 522,000 bbl/cd.

Ground was broken in March 2013 for construction of a new refinery in Dickinson, North Dakota. The 20,000 barrel per stream day (bbl/sd) Dakota Prairie facility is scheduled to open in December 2014. Kinder Morgan plans to start up a 50,000 bbl/sd condensate processing facility on the Houston ship channel by the end of 2014.

Capacity has also been added to existing refineries through upgrades or new construction. The most recent examples include

- In 2012, Motiva upgraded its refinery in Port Arthur, Texas, making it the largest refinery in the United States with a capacity of 600,250 bbl/cd.
- In 2009, Marathon upgraded its Garyville, Louisiana refinery. As of January 1, 2014, the capacity (bbl/cd) is more than double its original 1977 capacity.

The newest refineries currently operating in the United States are as follow

Year Built	First Operated	Location	Original Owner	Original Capacity Bbl/cd	Current Owner	2014 Capacity Bbl/cd	Type
2008	2008	Douglas, WY	Interline Resources	3,000	Antelope Refining	3,800	Simple
1998	1998	Atmore, AL	Goodway	4,100	Goodway	4,100	Simple
1993	1993	Valdez, AK	Petro Star	26,300	Petro Star	55,000	Simple
1991	1992	Ely, NV	Petro Source	7,000	Foreland	2,000	Simple
1986	1987	North Pole, AK	Petro Star	6,700	Petro Star	19,700	Simple
1985	1986	Prudhoe Bay, AK	ARCO	12,000	ConocoPhillips	15,000	Simple
1981	1982	Thomas, OK	OK Refining	10,700	Ventura	12,000	Simple
1979	1980	Wilmington, CA	Huntway	5,400	Valero	6,300	Simple
1978	1979	Vicksburg, MS	Ergon	10,000	Ergon	23,000	Simple
1978	1979	North Slope, AK	ARCO	13,000	BP Exp AK	10,500	Simple
1978	1978	North Pole, AK	Earth Resources	22,600	Flint Hills	126,535	Simple
1977	1978	Lake Charles, LA	Calcasieu	6,500	Calcasieu	78,000	Simple

1976	1977	Garyville, LA	Marathon	200,000	Marathon	522,000	Complex
1976	1977	Krotz Springs, LA	Gold King	5,000	Alon	80,000	Complex
1975	1975	Corpus Christi, TX	Saber	15,000	Valero	200,000	Complex

Learn more:

Refinery Capacity Report, Table 1

Last updated: June 25, 2014

Other FAQs about Diesel

Does EIA have projections for energy production, consumption, and prices for individual states?
Does EIA publish off-road diesel fuel prices?
How do I calculate diesel fuel surcharges?
How many gallons of diesel fuel does one barrel of oil make?
How much biodiesel is produced, imported, exported, and consumed in the United States?
How much carbon dioxide is produced by burning gasoline and diesel fuel?
When was the last refinery built in the United States?
Why are the retail pump prices for gasoline and diesel fuel in increments of 0.9 cents?
Why don't fuel prices change as quickly as crude oil prices?
Why has diesel fuel been more expensive than gasoline?
What are the projected diesel fuel prices for 2014 and for 2015?

U.S. Energy Information Administration

PETROLEUM & OTHER LIQUIDS

OVERVIEW | DATA | ANALYSIS & PROJECTIONS

Number and Capacity of Petroleum Refineries

Area: California Period: Annual (as of January 1)

Show Data By: Data Series / Area	Graph Clear	2009	2010	2011	2012	2013	2014	View History
Number of Operable Refineries								
Total Number of Operable Refineries		20	20	20	18	18	18	1982-2014
Operating		19	18	18	16	16	17	1982-2014
Idle		1	2	2	2	2	1	1982-2014
Atmospheric Crude Oil Distillation Capacity								
Operable (Barrels per Calendar Day)		2,060,718	2,047,218	1,959,271	1,955,971	1,954,971	1,960,671	1982-2014
Operating		1,994,218	1,859,718	1,874,771	1,865,171	1,625,200	1,876,171	1982-2014
Idle		66,500	187,500	84,500	90,800	329,771	84,500	1982-2014
Operable (Barrels per Stream Day)		2,148,500	2,134,000	2,059,900	2,078,000	2,073,000	2,073,000	1982-2014
Operating		2,078,500	1,939,000	1,969,900	1,981,500	1,725,800	1,983,000	1982-2014
Idle		70,000	195,000	90,000	96,500	347,200	90,000	1982-2014
Downstream Charge Capacity (Barrels per Stream Day)								
Vacuum Distillation		1,273,556	1,273,556	1,250,656	1,227,556	1,231,756	1,230,756	1982-2014
Thermal Cracking		534,000	524,500	506,900	507,700	501,200	501,200	1982-2014
Total Coking		529,000	519,500	501,900	502,700	496,200	496,200	1987-2014
Delayed Coking		477,000	467,500	449,900	450,700	444,200	444,200	1987-2014
Fluid Coking		52,000	52,000	52,000	52,000	52,000	52,000	1987-2014
Visbreaking		5,000	5,000	5,000	5,000	5,000	5,000	1987-2014
Other (Including Gas Oil)		0	0	0	0	0	0	1987-2014
Catalytic Cracking - Fresh Feed		735,600	716,000	716,000	716,300	716,500	716,300	1982-2014
Catalytic Cracking - Recycle Feed		1,000	13,400	13,400	13,400	13,400	13,400	1982-2014
Catalytic Hydro-Cracking		536,500	484,300	474,900	484,500	487,000	487,100	1982-2014
Distillate		209,600	209,600	185,700	191,500	191,400	191,500	2004-2014
Gas Oil		261,900	274,700	289,200	293,000	295,600	295,600	2004-2014
Residual		65,000	0	0	0	0	0	2004-2014
Catalytic Reforming		456,100	434,100	430,500	430,500	431,500	431,500	1982-2014
Low Pressure		220,100	220,100	213,800	213,800	214,800	214,800	1987-2014
High Pressure		236,000	214,000	216,700	216,700	216,700	216,700	1987-2014
Catalytic Hydrotreating/Desulfurization		1,993,100	2,050,100	2,063,700	2,090,600	2,091,200	2,096,900	1982-2014
Naphtha/Reformer Feed		447,900	447,900	443,600	443,600	443,100	443,100	1987-2014
Gasoline		142,100	202,400	228,300	228,300	228,300	228,000	2004-2014
Heavy Gas Oil		642,500	699,200	687,200	711,200	711,200	714,200	1987-2014
Distillate Fuel Oil		634,600	639,400	648,900	651,800	652,900	655,900	1987-2014
Kerosene/Jet Fuel		185,800	194,100	196,100	196,100	196,100	196,100	2004-2014
Diesel Fuel		330,300	326,800	332,800	335,200	336,300	339,300	2004-2014
Other Distillate		118,500	118,500	120,000	120,500	120,500	120,500	2004-2014
Residual Fuel Oil/Other		126,000	61,200	55,700	55,700	55,700	55,700	1987-2014
Residual Fuel Oil		0	0	0	0	0	0	2006-2014
Other		126,000	61,200	55,700	55,700	55,700	55,700	2004-2014
Fuels Solvent Deasphalting		66,000	66,000	66,000	66,000	56,000	56,000	1987-2014

Downstream Charge Capacity (Barrels per Calendar Day)							
Catalytic Reforming		396,146	371,306	373,756	379,406	378,160	2010-2014
Total Coking	496,408	484,055	460,500	459,500	451,600	451,100	1987-2014
Catalytic Cracking - Fresh Feed	692,315	666,158	669,600	670,700	662,800	661,400	1987-2014
Catalytic Hydro-Cracking	490,272	432,080	429,760	438,656	439,410	442,000	1987-2014

- = No Data Reported, -- = Not Applicable, NA = Not Available, W = Withheld to avoid disclosure of individual company data

Notes: Idle refineries represent refineries where distillation units were completely idle but not permanently shutdown as of January 1 of the year. See Definitions, Sources, and Notes link above for more information on this table

Release Date: 6/25/2014
Next Release Date: 6/30/2015

BP Completes Sale of Carson Refinery and Southwest U.S. Retail Assets to Tesoro

Release date: **03 June 2013**

BP has completed the previously announced sale of its Carson, California refinery and related logistics and marketing assets in the region to Tesoro Corporation for approximately $2.4 billion as part of a plan to reshape BP's U.S. fuels business. Cash proceeds from the sale include approximately $1.075 billion for assets and an estimated $1.35 billion primarily for inventory at market value and other working capital.

"With the completion of this divestment the strategic refocusing of our U.S. fuels portfolio is essentially complete" said Iain Conn, chief executive of BP's global refining and marketing business. "BP's U.S. fuels business is now anchored around three, highly sophisticated northern refineries, which are crude feedstock-advantaged, and tied to strong marketing businesses."

BP will continue to maintain a number of business interests in California, including a large ARCO retail and logistics presence that includes approximately 270 retail sites in the northern part of the state. BP will also continue the distribution and marketing of lubricants through its Castrol brand and remain active in the California natural gas and power sector.

"California remains an important state for us and we remain committed to supplying our customers in Northern California and the rest of the Pacific Northwest with the quality fuels they depend on," said Jeff Pitzer, BP's Northwest Fuels Value Chain president. "We've recently upgraded our Cherry Point, Washington refinery to produce cleaner-burning diesel fuel and are building a new rail terminal at the plant to take advantage of growing supplies of domestically produced crude oil."

In addition to marketing conventional fuels and lubricants in the state, BP will also continue to support the development of renewable energy sources in California through its Global Biofuels Technology Center in San Diego, and the Energy Biosciences Institute at UC Berkeley.

With the transaction's closing on June 1st, Tesoro took ownership of the 266,000 barrel per day (bpd) refinery near Los Angeles as well as the associated logistics network of pipelines and storage terminals and the ARCO-branded retail marketing network in Southern California, Arizona and Nevada.

While the sale included BP's ARCO retail brand rights, BP has exclusively licensed those rights from Tesoro for Northern California, Oregon and Washington.

BP retains ownership of the ampm convenience store brand and has franchised it to Tesoro for use in the Southwest.

About BP in the US

Over the past five years, BP has invested more than $55 billion in the U.S. – more than any other energy company. BP is the nation's second-largest producer of oil and gas and provides enough energy annually to light nearly the entire country for a year. Directly employing more than 20,000 people in all 50 states, BP supports nearly a quarter of a million jobs through all of its business activities. For more information, visit:

www.bp.com/us

Notes to editors

- The Carson Refinery is one of the largest on the U.S. West Coast, with a crude distillation capacity of 266,000 bpd. It became part of BP through the 2000 acquisition of ARCO. It employs over 1,100 staff and in total the divested business employs approximately 1,750 staff.
- The transaction includes the refinery and integrated terminals and pipelines, as well as marketing agreements with about 800 retail sites in Southern California, Arizona and Nevada.
- The refinery is located on 650 acres in Los Angeles County, near the Long Beach and Los Angeles Harbors. The

refinery began operations in 1938. It processes crude oil from Alaska's North Slope, the Middle East and West Africa. Processing equipment includes the largest fluid catalytic cracker in California, two cokers and distillate hydrocracking.

- BP's 51 percent interest in a nominal 400 megawatt cogeneration facility located at the refinery is included in the sale.
- BP's Wilmington Coke Calciner located about five miles from the refinery is also part of the sale. The plant occupies about 17 acres. The plant employs approximately 40 people and produces 350,000 metric tons of calcinated coke per year.
- Logistics assets included in the sale include ownership of Berth 121 facility improvements and equipment, Marine Terminals 2 and 3 and the LA basin pipelines system that moves crude, products and intermediates to and from the refinery.
- Terminals included in the sale are Carson Crude, East Hynes, West Hynes, Hathaway, Carson Products, Colton, Vinvale and San Diego.
- BP announced plans to divest its Carson, California and Texas City, Texas refineries in February 2011 as part of a strategic refocusing of the company's global refining portfolio. BP completed the sale of Texas City to Marathon Petroleum Corporation on February 1st.
- BP is completing a number of major investments in its other US refineries, including a large investment program to transform its 413,000 bpd capacity Whiting, Ind., refinery to process heavy, sour crudes, expected to come on stream in the second half of this year; a recently-completed clean diesel upgrading project at its 234,000 bpd Cherry Point, Wash., refinery; and the recent start-up of a continuous catalytic reformer to the 160,000 bpd capacity Toledo, Ohio, refinery (a 50:50 joint venture with partner Husky Energy Inc.).

Cautionary Statement

This press release contains certain forward-looking statements, including upgrades and anticipated timing of its Whiting and Cherry Point refineries and other statements which are generally, but not always, identified by the use of words such as 'want', 'intended to', 'expected to', and similar expressions. Forward-looking statements involve risks and uncertainties because they depend on circumstances that will or may occur in the future. Actual results may differ materially from those expressed in such statements, depending on a variety of factors, including general economic conditions; the actions of regulators and other factors discussed in BP's First Quarter Results 2013 (SEC File No. 13794367) and, 2012 Annual Report and Form 20F as filed with the United States Securities and Exchange Commission.

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Economic Impact Assessment for Rule 474
10 Refineries with Current Fair Market Values and Adjusted Base Year Values

Fixtures
Market Value and Adjusted Base Year Value

Refinery A

Fixtures

	2009	2010	2011	2012	2013
Current Market Value	1,880,122,646	1,887,388,187	1,679,071,617	1,595,492,029	1,359,876,090
Current Adjusted Base Year Value	1,895,202,435	2,019,590,926	2,047,580,436	1,968,969,582	2,030,485,296
Adjusted Base Year Value > Market Value	15,079,789	132,202,739	368,508,819	373,477,553	670,609,206

Refinery B

Fixtures

	2009	2010	2011	2012	2013
Current Market Value	2,061,450,203	1,732,213,864	1,501,047,975	1,467,055,023	1,437,067,764
Current Adjusted Base Year Value	2,268,184,680	2,338,828,060	2,353,095,330	2,160,958,795	2,133,967,819
Adjusted Base Year Value > Market Value	206,734,477	606,614,196	852,047,355	693,903,772	696,900,055

Refinery C

Fixtures

	2009	2010	2011	2012	2013
Current Market Value	1,332,461,979	1,139,931,321	1,082,912,858	1,019,025,632	1,011,250,213
Current Adjusted Base Year Value	1,396,924,823	1,319,486,606	1,334,919,321	1,372,911,135	1,376,130,580
Adjusted Base Year Value > Market Value	64,462,844	179,555,285	252,006,463	353,885,503	364,880,367

Refinery D

Fixtures

	2009	2010	2011	2012	2013
Current Market Value	1,163,881,804	1,109,118,357	1,114,109,115	1,071,086,534	1,087,148,510
Current Adjusted Base Year Value	1,271,901,010	1,325,751,649	1,376,123,449	1,361,932,926	1,400,580,867
Adjusted Base Year Value > Market Value	108,019,206	216,633,292	262,014,334	290,846,392	313,432,357

Refinery E

Fixtures

	2009	2010	2011	2012	2013
Current Market Value	2,567,404,620	1,073,496,817	1,545,427,619	2,076,833,981	1,491,566,803
Current Adjusted Base Year Value	1,668,258,605	1,744,426,448	1,785,889,066	1,844,834,284	1,873,902,761
Adjusted Base Year Value > Market Value		670,929,631	240,461,447		382,335,958

Economic Impact Assessment for Rule 474
10 Refineries with Current Fair Market Values and Adjusted Base Year Values

Fixtures
Market Value and Adjusted Base Year Value

Refinery F

Fixtures

	2009	2010	2011	2012	2013
Current Market Value	3,332,322,123	770,703,336	972,468,868	1,831,238,968	1,116,489,844
Current Adjusted Base Year Value	1,024,434,550	1,095,349,620	1,111,470,031	1,150,061,621	1,168,955,989
Adjusted Base Year Value > Market Value		324,646,284	139,001,163		52,466,145

Refinery G

Fixtures

	2009	2010	2011	2012	2013
Current Market Value	731,794,729	890,531,323	1,248,700,977	1,373,985,234	1,052,965,123
Current Adjusted Base Year Value	612,797,999	1,472,028,746	1,491,599,252	1,539,161,819	1,564,026,688
Adjusted Base Year Value > Market Value		581,497,423	242,898,275	165,176,585	511,061,565

Refinery H

Fixtures

	2009	2010	2011	2012	2013
Current Market Value	695,911,963	678,646,696	617,298,912	606,173,986	530,401,266
Current Adjusted Base Year Value	717,588,283	738,919,289	743,612,902	757,452,420	748,369,214
Adjusted Base Year Value > Market Value	21,676,320	60,272,593	126,313,990	151,278,434	217,967,948

Refinery I

Fixtures

	2009	2010	2011	2012	2013
Current Market Value	1,057,579,171	969,147,777	893,097,601	829,822,975	848,593,083
Current Adjusted Base Year Value	941,423,513	958,968,776	953,198,497	972,895,994	993,835,283
Adjusted Base Year Value > Market Value			60,100,896	143,073,019	145,242,200

Refinery J

Fixtures

	2009	2010	2011	2012	2013
Current Market Value	3,098,233,939	1,288,224,045	2,005,502,652	3,298,620,241	0
Current Adjusted Base Year Value	4,332,613,560	3,902,234,307	3,636,891,724	2,890,193,265	0
Adjusted Base Year Value > Market Value	1,234,379,621	2,614,010,262	1,631,389,072		

Economic Impact Assessment for Rule 474
10 Refineries with Current Fair Market Values and Adjusted Base Year Values

Land and Improvements
Market Value and Adjusted Base Year Value

Refinery A

Land and Improvements

	2009	2010	2011	2012	2013
Current Market Value	242,152,633	269,717,215	260,130,901	256,328,417	173,478,961
Current Adjusted Base Year Value	227,072,844	237,433,630	239,220,840	244,005,239	248,885,338
Adjusted Base Year Value > Market Value					75,406,377

Refinery B

Land and Improvements

	2009	2010	2011	2012	2013
Current Market Value	338,981,585	358,525,175	353,147,520	347,270,684	329,279,661
Current Adjusted Base Year Value	229,737,725	229,193,212	230,919,000	235,537,350	240,248,089
Adjusted Base Year Value > Market Value					

Refinery C

Land and Improvements

	2009	2010	2011	2012	2013
Current Market Value	327,519,642	343,671,289	338,565,364	334,496,454	351,523,464
Current Adjusted Base Year Value	263,056,798	262,433,348	264,409,466	269,697,649	275,091,597
Adjusted Base Year Value > Market Value					

Refinery D

Land and Improvements

	2009	2010	2011	2012	2013
Current Market Value	260,558,100	275,013,163	269,490,803	265,963,169	204,858,509
Current Adjusted Base Year Value	280,049,795	279,386,057	281,489,824	285,538,938	292,861,986
Adjusted Base Year Value > Market Value	19,491,695	4,372,894	11,999,021	19,575,769	88,003,477

Refinery E

Land and Improvements

	2009	2010	2011	2012	2013
Current Market Value	315,932,936	315,184,155	317,551,471	323,905,599	330,386,751
Current Adjusted Base Year Value	254,857,798	279,130,902	281,231,913	285,919,612	293,965,372
Adjusted Base Year Value > Market Value					

Economic Impact Assessment for Rule 474
10 Refineries with Current Fair Market Values and Adjusted Base Year Values

Land and Improvements
Market Value and Adjusted Base Year Value

Refinery F

Land and Improvements

	2009	2010	2011	2012	2013
Current Market Value	240,773,600	243,202,949	242,011,656	246,851,871	251,772,730
Current Adjusted Base Year Value	352,166,173	372,352,043	376,147,637	383,670,590	391,343,976
Adjusted Base Year Value > Market Value	111,392,573	129,149,094	134,135,981	136,818,719	139,571,246

Refinery G

Land and Improvements

	2009	2010	2011	2012	2013
Current Market Value	254,005,577	253,403,576	255,311,692	260,417,915	265,626,264
Current Adjusted Base Year Value	177,502,453	177,081,731	178,415,207	181,983,460	185,855,911
Adjusted Base Year Value > Market Value					

Refinery H

Land and Improvements

	2009	2010	2011	2012	2013
Current Market Value	123,029,467	129,779,944	129,598,407	126,531,495	94,122,043
Current Adjusted Base Year Value	122,951,625	122,660,221	123,583,847	126,125,957	127,376,123
Adjusted Base Year Value > Market Value					33,254,080

Refinery I

Land and Improvements

	2009	2010	2011	2012	2013
Current Market Value	71,344,936	88,403,885	89,743,429	88,636,104	75,605,291
Current Adjusted Base Year Value	92,326,531	92,107,699	92,801,266	110,278,599	112,484,172
Adjusted Base Year Value > Market Value	20,981,595	3,703,814	3,057,837	21,642,495	36,878,881

Refinery J

Land and Improvements

	2009	2010	2011	2012	2013
Current Market Value	478,880,444	487,568,230	510,687,115	423,611,808	0
Current Adjusted Base Year Value	336,738,443	331,432,743	331,220,409	240,897,624	0
Adjusted Base Year Value > Market Value					

Economic Impact Assessment for Rule 474
10 Refineries with Current Fair Market Values and Adjusted Base Year Values

Total
Market Value and Adjusted Base Year Value

Refinery A

	2009	2010	Total 2011	2012	2013
Current Market Value	2,122,275,279	2,157,105,402	1,939,202,518	1,851,820,446	1,533,355,051
Current Adjusted Base Year Value	2,122,275,279	2,257,024,556	2,286,801,276	2,212,974,821	2,279,370,634
Adjusted Base Year Value > Market Value		99,919,154	347,598,758	361,154,375	746,015,583

Refinery B

	2009	2010	Total 2011	2012	2013
Current Market Value	2,400,431,788	2,090,739,039	1,854,195,495	1,814,325,707	1,766,347,425
Current Adjusted Base Year Value	2,497,922,405	2,568,021,272	2,584,014,330	2,396,496,145	2,374,215,908
Adjusted Base Year Value > Market Value	97,490,617	477,282,233	729,818,835	582,170,438	607,868,483

Refinery C

	2009	2010	Total 2011	2012	2013
Current Market Value	1,659,981,621	1,483,602,610	1,421,478,222	1,353,522,086	1,362,773,677
Current Adjusted Base Year Value	1,659,981,621	1,581,919,954	1,599,328,787	1,642,608,784	1,651,222,177
Adjusted Base Year Value > Market Value		98,317,344	177,850,565	289,086,698	288,448,500

Refinery D

	2009	2010	Total 2011	2012	2013
Current Market Value	1,424,439,904	1,384,131,520	1,383,599,918	1,337,049,703	1,292,007,019
Current Adjusted Base Year Value	1,551,950,805	1,605,137,706	1,657,613,273	1,647,471,864	1,693,442,853
Adjusted Base Year Value > Market Value	127,510,901	221,006,186	274,013,355	310,422,161	401,435,834

Refinery E

	2009	2010	Total 2011	2012	2013
Current Market Value	2,883,337,556	1,388,680,972	1,862,979,090	2,400,739,580	1,821,953,554
Current Adjusted Base Year Value	1,923,116,403	2,023,557,350	2,067,120,979	2,130,753,896	2,167,868,133
Adjusted Base Year Value > Market Value		634,876,378	204,141,889		345,914,579

Economic Impact Assessment for Rule 474
10 Refineries with Current Fair Market Values and Adjusted Base Year Values

Total
Market Value and Adjusted Base Year Value

Refinery F

	2009	2010	Total 2011	2012	2013
Current Market Value	3,573,095,723	1,013,906,285	1,214,480,524	2,078,090,839	1,368,262,574
Current Adjusted Base Year Value	1,376,600,723	1,467,701,663	1,487,617,668	1,533,732,211	1,560,299,965
Adjusted Base Year Value > Market Value		453,795,378	273,137,144		192,037,391

Refinery G

	2009	2010	Total 2011	2012	2013
Current Market Value	985,800,306	1,143,934,899	1,504,012,669	1,634,403,149	1,318,591,387
Current Adjusted Base Year Value	790,300,452	1,649,110,477	1,670,014,459	1,721,145,279	1,749,882,599
Adjusted Base Year Value > Market Value		505,175,578	166,001,790	86,742,130	431,291,212

Refinery H

	2009	2010	Total 2011	2012	2013
Current Market Value	818,941,430	808,426,640	746,897,319	732,705,481	624,523,309
Current Adjusted Base Year Value	840,539,908	861,579,510	867,196,749	883,578,377	875,745,337
Adjusted Base Year Value > Market Value	21,598,478	53,152,870	120,299,430	150,872,896	251,222,028

Refinery I

	2009	2010	Total 2011	2012	2013
Current Market Value	1,128,924,107	1,057,551,662	982,841,030	918,459,079	924,198,374
Current Adjusted Base Year Value	1,033,750,044	1,051,076,475	1,045,999,763	1,083,174,593	1,106,319,455
Adjusted Base Year Value > Market Value			63,158,733	164,715,514	182,121,081

Refinery J

	2009	2010	Total 2011	2012	2013
Current Market Value	3,577,114,383	1,775,792,275	2,516,189,767	3,722,232,049	0
Current Adjusted Base Year Value	4,669,352,003	4,233,667,050	3,968,112,133	3,131,090,889	0
Adjusted Base Year Value > Market Value	1,092,237,620	2,457,874,775	1,451,922,366		

Economic Impact Assessment for Rule 474
10 Refineries with Current Fair Market Values and Adjusted Base Year Values

Rule 474 and Rule 461 Values

Refinery A

Rule 474 and Rule 461 Values

	2009	2010	2011	2012	2013
Rule 474 Value	2,122,275,279	2,157,105,402	1,939,202,518	1,851,820,446	1,533,355,051
Rule 461 Value	2,107,195,490	2,124,821,817	1,918,292,457	1,839,497,268	1,533,355,051
Difference	15,079,789	32,283,585	20,910,061	12,323,178	
Percentage Increase in Value	0.72%	1.52%	1.09%	0.67%	

Refinery B

Rule 474 and Rule 461 Values

	2009	2010	2011	2012	2013
Rule 474 Value	2,400,431,788	2,090,739,039	1,854,195,495	1,814,325,707	1,766,347,425
Rule 461 Value	2,291,187,928	1,961,407,076	1,731,966,975	1,702,592,373	1,677,315,853
Difference	109,243,860	129,331,963	122,228,520	111,733,334	89,031,572
Percentage Increase in Value	4.77%	6.59%	7.06%	6.56%	5.31%

Refinery C

Rule 474 and Rule 461 Values

Rule 474 Value	1,659,981,621	1,483,602,610	1,421,478,222	1,353,522,086	1,362,773,677
Rule 461 Value	1,595,518,777	1,402,364,669	1,347,322,324	1,288,723,281	1,286,341,810
Difference	64,462,844	81,237,941	74,155,898	64,798,805	76,431,867
Percentage Increase in Value	4.04%	5.79%	5.50%	5.03%	5.94%

Refinery D

Rule 474 and Rule 461 Values

	2009	2010	2011	2012	2013
Rule 474 Value	1,424,439,904	1,384,131,520	1,383,599,918	1,337,049,703	1,292,007,019
Rule 461 Value	1,424,439,904	1,384,131,520	1,383,599,918	1,337,049,703	1,292,007,019
Difference					
Percentage Increase in Value					

Refinery E

Rule 474 and Rule 461 Values

	2009	2010	2011	2012	2013
Rule 474 Value	1,923,116,403	1,388,680,972	1,862,979,090	2,130,753,896	1,821,953,554
Rule 461 Value	1,923,116,403	1,352,627,719	1,826,659,532	2,130,753,896	1,785,532,175
Difference		36,053,253	36,319,558		36,421,379
Percentage Increase in Value		2.67%	1.99%		2.04%

Economic Impact Assessment for Rule 474
10 Refineries with Current Fair Market Values and Adjusted Base Year Values

Rule 474 and Rule 461 Values

Refinery F

Rule 474 and Rule 461 Values

	2009	2010	2011	2012	2013
Rule 474 Value	1,376,600,723	1,013,906,285	1,214,480,524	1,533,732,211	1,368,262,574
Rule 461 Value	1,265,208,150	1,013,906,285	1,214,480,524	1,396,913,492	1,368,262,574
Difference	111,392,573			136,818,719	
Percentage Increase in Value	8.80%			9.79%	

Refinery G

Rule 474 and Rule 461 Values

	2009	2010	2011	2012	2013
Rule 474 Value	790,300,452	1,143,934,899	1,504,012,669	1,634,403,149	1,318,591,387
Rule 461 Value	790,300,452	1,067,613,054	1,427,116,184	1,555,968,694	1,238,821,034
Difference		76,321,845	76,896,485	78,434,455	79,770,353
Percentage Increase in Value		7.15%	5.39%	5.04%	6.44%

Refinery H

Rule 474 and Rule 461 Values

	2009	2010	2011	2012	2013
Rule 474 Value	818,941,430	808,426,640	746,897,319	732,705,481	624,523,309
Rule 461 Value	818,863,588	801,306,917	740,882,759	732,299,943	624,523,309
Difference	77,842	7,119,723	6,014,560	405,538	
Percentage Increase in Value	0.01%	0.89%	0.81%	0.06%	

Refinery I

Rule 474 and Rule 461 Values

	2009	2010	2011	2012	2013
Rule 474 Value	1,033,750,044	1,051,076,475	982,841,030	918,459,079	924,198,374
Rule 461 Value	1,012,768,449	1,047,372,661	982,841,030	918,459,079	924,198,374
Difference	20,981,595	3,703,814			
Percentage Increase in Value	2.07%	0.35%			

Refinery J

Rule 474 and Rule 461 Values

	2009	2010	2011	2012	2013
Rule 474 Value	3,577,114,383	1,775,792,275	2,516,189,767	3,131,090,889	0
Rule 461 Value	3,434,972,382	1,619,656,788	2,336,723,061	3,131,090,889	0
Difference	142,142,001	156,135,487	179,466,706		
Percentage Increase in Value	4.14%	9.64%	7.68%		

Economic Impact Assessment for Rule 474
10 Refineries with Current Fair Market Values and Adjusted Base Year Values

Tax Effect by Refinery

Refinery A

	Estimated Tax				
	2009	2010	2011	2012	2013
Tax on Rule 474 Value	21,222,753	21,571,054	19,392,025	18,518,204	15,333,551
Tax on Rule 461 Value	21,071,955	21,248,218	19,182,925	18,394,973	15,333,551
Tax Effect	150,798	322,836	209,101	123,232	
Percentage Increase in Tax	0.72%	1.52%	1.09%	0.67%	

Refinery B

	Estimated Tax				
	2009	2010	2011	2012	2013
Tax on Rule 474 Value	24,004,318	20,907,390	18,541,955	18,143,257	17,663,474
Tax on Rule 461 Value	22,911,879	19,614,071	17,319,670	17,025,924	16,773,159
Tax Effect	1,092,439	1,293,320	1,222,285	1,117,333	890,316
Percentage Increase in Tax	4.77%	6.59%	7.06%	6.56%	5.31%

Refinery C

	Estimated Tax				
Tax on Rule 474 Value	16,599,816	14,836,026	14,214,782	13,535,221	13,627,737
Tax on Rule 461 Value	15,955,188	14,023,647	13,473,223	12,887,233	12,863,418
Tax Effect	644,628	812,379	741,559	647,988	764,319
Percentage Increase in Tax	4.04%	5.79%	5.50%	5.03%	5.94%

Refinery D

	Estimated Tax				
	2009	2010	2011	2012	2013
Tax on Rule 474 Value	14,244,399	13,841,315	13,835,999	13,370,497	12,920,070
Tax on Rule 461 Value	14,244,399	13,841,315	13,835,999	13,370,497	12,920,070
Tax Effect					
Percentage Increase in Tax					

Refinery E

	Estimated Tax				
	2009	2010	2011	2012	2013
Tax on Rule 474 Value	19,231,164	13,886,810	18,629,791	21,307,539	18,219,536
Tax on Rule 461 Value	19,231,164	13,526,277	18,266,595	21,307,539	17,855,322
Tax Effect		360,533	363,196		364,214
Percentage Increase in Tax		2.67%	1.99%		2.04%

Economic Impact Assessment for Rule 474
10 Refineries with Current Fair Market Values and Adjusted Base Year Values

Tax Effect by Refinery

Refinery F

	Estimated Tax				
	2009	2010	2011	2012	2013
Tax on Rule 474 Value	13,766,007	10,139,063	12,144,805	15,337,322	13,682,626
Tax on Rule 461 Value	12,652,082	10,139,063	12,144,805	13,969,135	13,682,626
Tax Effect	1,113,926			1,368,187	
Percentage Increase in Tax	8.80%			9.79%	

Refinery G

	Estimated Tax				
	2009	2010	2011	2012	2013
Tax on Rule 474 Value	7,903,005	11,439,349	15,040,127	16,344,031	13,185,914
Tax on Rule 461 Value	7,903,005	10,676,131	14,271,162	15,559,687	12,388,210
Tax Effect		763,218	768,965	784,345	797,704
Percentage Increase in Tax		7.15%	5.39%	5.04%	6.44%

Refinery H

	Estimated Tax				
	2009	2010	2011	2012	2013
Tax on Rule 474 Value	8,189,414	8,084,266	7,468,973	7,327,055	6,245,233
Tax on Rule 461 Value	8,188,636	8,013,069	7,408,828	7,322,999	6,245,233
Tax Effect	778	71,197	60,146	4,055	
Percentage Increase in Tax	0.01%	0.89%	0.81%	0.06%	

Refinery I

	Estimated Tax				
	2009	2010	2011	2012	2013
Tax on Rule 474 Value	10,337,500	10,510,765	9,828,410	9,184,591	9,241,984
Tax on Rule 461 Value	10,127,684	10,473,727	9,828,410	9,184,591	9,241,984
Tax Effect	209,816	37,038			
Percentage Increase in Tax	2.07%	0.35%			

Refinery J

	Estimated Tax				
	2009	2010	2011	2012	2013
Tax on Rule 474 Value	35,771,144	17,757,923	25,161,898	31,310,909	0
Tax on Rule 461 Value	34,349,724	16,196,568	23,367,231	31,310,909	0
Tax Effect	1,421,420	1,561,355	1,794,667		
Percentage Increase in Tax	4.14%	9.64%	7.68%		

Economic Impact Assessment for Rule 474
10 Refineries with Current Fair Market Values and Adjusted Base Year Values

Combined Tax Effect

	Estimated Tax				
	2009	2010	2011	2012	2013
Total Combined Rule 474 Tax	171,269,520	142,973,961	154,258,766	164,378,626	120,120,124
Total Combined Rule 461 Tax	166,635,715	137,752,085	149,098,848	160,333,486	117,303,572
Total Tax Effect	4,633,805	5,221,876	5,159,918	4,045,140	2,816,552
Percentage Increase in Tax	2.78%	3.79%	3.46%	2.52%	2.40%

Proposed Text of

California Code of Regulations, Title 18, Section

474, *Petroleum Refining Properties*

(All of the text below is proposed to be added to the California Code of Regulations)

474. Petroleum Refining Properties.

(a) The provisions of this rule apply to the valuation of the real property, personal property, and fixtures used for the refining of petroleum.

(b) General.

(1) The unique nature of property used for the refining of petroleum requires the application of specialized appraisal techniques designed to satisfy the requirements of article XIII, section 1, and article XIII A, section 2, of the California Constitution. To this end, petroleum refineries and other real and personal property associated therewith shall be valued pursuant to the principles and procedures set forth in this section.

(2) Notwithstanding any other provision in this section, any appropriate valuation method described in section 3 of title 18 of this code may be applied in the event of a change in ownership in a petroleum refining property.

(c) Definitions. For the purposes of this section:

(1) "Petroleum refining property" means any industrial plant, including real property, personal property, and fixtures, used for the refining of petroleum, as identified in Standard Industrial Classification (SIC) System Codes 2911 and 2992, or North American Industry Classification System (NAICS) Codes 32411 and 324191.

(2) "Appraisal unit" consists of the real and personal property that persons in the marketplace commonly buy and sell as a unit.

(d) Declines in Value. For the purposes of this section:

(1) Declines in value of petroleum refining properties will be determined by comparing the current lien date full value of the appraisal unit to the indexed base year full value of the same unit.

(2) The land, improvements, and fixtures and other machinery and equipment classified as improvements for a petroleum refining property are rebuttably presumed to constitute a single appraisal unit, except when measuring declines in value caused by disaster, in which case land shall constitute a separate unit.

(3) In rebutting this presumption, the assessor may consider evidence that:

(A) The land and improvements including fixtures and other machinery and equipment classified as improvements are not under common ownership or control and do not typically transfer in the marketplace as one economic unit; or,

(B) When the fixtures and other machinery and equipment classified as improvements are not functionally and physically integrated with the realty and do not operate together as one economic unit.

Note: Authority cited: Section 15606(c), Government Code. Reference: Article XIII Section 1, and Article XIII A, Section 2, California Constitution; Sections 51 and 110.1, Revenue and Taxation Code; and *Western States Petroleum Association v. Board of Equalization* (2013) 57 Cal.4th 401.

Regulation History

Type of Regulation: PropertyTax
Regulation: 474
Title: *Petroleum Refining Properties*
Preparation: *Bradley Heller*
Legal Contact: *Bradley Heller*

The Board proposes to re-adopt Rule 474, *Petroleum Refining Properties*, to establish a rebuttable presumption that petroleum refining property (land, improvements, and fixtures) constitutes a single appraisal unit for determining declines in value, except when measuring declines in value caused by disaster.

Regulation History

December 17-18, 2014	Public Hearing
October 24, 2014:	OAL publication date; 45-day public comment period begins; Interested Parties mailing
September 10, 2013:	Board Meeting, Chief Counsel Matters, Board Authorized Publication. (Vote 5-0)

Support: None
Oppose: None

Statement of Compliance

The State Board of Equalization, in process of adopting Property Tax Rule 474, *Petroleum Refining Properties*, did comply with the provision of Government Code section 11346.4(a)(1) through (4). A notice to interested parties was mailed on October 24, 2014, 55 days prior to the public hearing.

December 17, 2014

Richard Bennion
Regulations Coordinator
State Board of Equalization

Bennion, Richard

Subject: Concern

From: Michelle Schumacher [mailto:michelle@grklaw.com]
Sent: Friday, October 24, 2014 10:16 AM
To: Heller, Bradley (Legal)
Subject: Concern

I am very concerned with the preferential treatment that refineries are being given – this is NOT acceptable – make the taxation fair – tired of this and tired of having special interests and special rules that allows for the oil industry to not have to own up as the rest of us do regarding taxes.

In addition due to the toxic nature of their business they should actually be paying more.

(2) The land, improvements, and fixtures and other machinery and equipment classified as improvements for a petroleum refining property are rebuttably presumed to constitute a single appraisal unit, except when measuring declines in value caused by disaster, in which case land shall constitute a separate unit.

Thank you

Michelle Schumacher

OFFICE OF THE ASSESSOR
COUNTY OF LOS ANGELES
500 WEST TEMPLE STREET, ROOM 320
LOS ANGELES, CALIFORNIA 90012-2770
(213) 974-3101
assessor.lacounty.gov
JEFFREY PRANG
ASSESSOR

December 9, 2014

Chairman Jerome E. Horton
Fourth District
State Board of Equalization
450 N Street, MIC: 72
Sacramento, CA 95814

Dear Chairman Horton:

SUPPORT FOR RE-ADOPTION OF RULE 474,
PETROLEUM REFINING PROPERTIES

The Los Angeles County Assessor's Office wishes to reiterate its support for the State Board of Equalization's pursuit to re-adopt California Code of Regulations, title 18, section (Rule) 474, *Petroleum Refining Properties*. As the home of six of the eleven large petroleum refineries in the State of California, we advocate the Board's efforts to promote fairness and uniformity in the assessment of petroleum refineries in the State for the purpose of measuring declines in value.

Rule 474's original adoption was ruled procedurally invalid by the California Supreme Court in *WSPA v. BOE* solely because the Board failed to provide an adequate statement of economic impact as required by the Administrative Procedure Act. More importantly, the Court affirmed the policy enacted in Rule 474 that the performance of "decline-in-value" appraisals of petroleum refinery properties should be based on the unit that persons in the marketplace commonly buy and sell. This market based approach ensures that reductions in property values are measured according to fair market value.

Land, improvements and fixtures and other machinery and equipment classified as improvements for a petroleum refining property are rebuttably presumed to constitute a single appraisal unit for determining declines in value because petroleum refineries are commonly bought and sold as a unit in the marketplace. Rule 474 still allows assessors the flexibility to consider evidence that shows that land, improvements and fixtures did not transfer as an economic unit when such circumstances present themselves.

Rule 474 is consistent with current assessment practice being employed in the County of Los Angeles. The re-adoption of Rule 474 would clarify for county assessors that petroleum refinery land, improvements and fixtures constitute a single appraisal unit which is consistent with RTC section 51 (d) as opposed to petroleum refinery fixtures constituting a separate appraisal unit as provided in Rule 461.

Los Angeles County Assessor's Office has provided economic data to the Board to assist it in completing the economic impact assessment. We believe the Board's assessment as reflected in the Initial Statement of Reasons is in accordance with the APA and *WSPA v. BOE*. The study makes a reasoned estimate of all the cost impacts of the proposed rule on the affected parties.

In conclusion, we support the re-adoption of Rule 474 which will assist assessors by clarifying the appraisal unit to be used when valuing petroleum refining properties for declines in value. This practice is consistent with what is observed in the marketplace and has been affirmed by the California Supreme Court. The economic impact assessment has been completed as required by the APA and *WSPA v. BOE.*

We appreciate the Board taking steps to proceed with the readopting of Rule 474. My Office stands ready to advocate in support of this action and to provide expert testimony in this process.

Thank you for your consideration of this request.

Sincerely,

JEFFREY PRANG
Assessor

County Administrator

County Administration Building
651 Pine Street, 10th Floor
' 'tinez, California 94553-1229
) 335-1080
5) 335-1098 FAX

David J. Twa
County Administrator

Contra
Costa
County

Board of Supervisors

John M. Gioia
1st District

Candace Andersen
2nd District

Mary N. Piepho
3rd District

Karen Mitchoff
4th District

Federal D. Glover
5th District

December 15, 2014

Chairman Jerome Horton
Fourth District
State Board of Equalization
450 N Street, MIC:72
Sacramento, CA 95814

Re: Support for Adoption Property Tax Rule 474

Dear Chairman Horton:

Contra Costa County respectfully requests that the Board of Equalization readopt Property Tax Rule 474, relating to the assessment of petroleum refineries. Four refineries are located in Contra Costa County. The County is charged with the valuation and taxation of the refineries, as well as the apportionment of the resulting property tax revenues to the County's public agencies. Rule 474 follows core principles of real property taxation in California and provides a necessary foundation for the proper taxation of refineries.

Rule 474 rebuttably presumes that a refinery constitutes a single appraisal unit based on evidence provided to the SBE that refineries are sold as a single unit in the marketplace. However, a refinery's fixtures may be valued separately if evidence is presented that (1) the fixtures "do not typically transfer in the marketplace" with the remainder of a refinery, or (2) that the fixtures are not functionally and physically integrated with the remainder of a refinery.

As the California Supreme Court recently confirmed, Rule 474 is in accord with constitutional and statutory authority. (*Western States Petroleum Association v. State Board of Equalization* (2013) 57 Cal. 4th 401, 423 ["*Rule 474* is consistent with th[e] principle" that "appraisal of real property in the declining value context [should] reflect its 'full cash value' – that is, the value 'property would bring if exposed for sale in the

open market.'"]). For valuation purposes, the proper appraisal unit is the collection of assets that persons in the marketplace normally buy and sell as a single unit. Revenue and Taxation Code section 51, which defines a taxable unit of real property, follows this tenet:

> For purposes of this section, ***"real property" means that appraisal unit that persons in the marketplace commonly buy and sell as a unit***, or that is normally valued separately.

Rule 474 is consistent with property tax valuation principles set in the California Constitution, which require such valuations to be made on a fair market value basis. (Cal. Const., art. XIII, § 1 & art. XIII A, § 2; see also Rev. & Tax. Code, § 110 (a) ["'full cash value' or 'fair market value' means the amount of cash or its equivalent that property would bring if exposed for sale in the open market . . . ."]).

If Rule 474 is not adopted, it might be claimed that land and improvements should be artificially separated in performing a refinery decline-in-value analysis under Rule 461(e). Such an approach would potentially result in a "tax windfall" for refinery owners because "account[ing] for fixture depreciation separately when land and fixtures are actually bought and sold as a single unit would allow the owner to claim a reduction in real property value that is economically fictitious." *Western States Petroleum Association v. State Board of Equalization* (2013) 57 Cal. 4th 401, 423.

Rule 474 is also necessary to permit local assessors to carry out their duties without the risk of litigation or potential liability for taxpayer's attorney's fees under Revenue & Taxation Code section 538. Rule 461(e) provides for the separate assessment of fixtures from land and improvements for decline-in-value appraisals. As explained above, interpreting Rule 461(e) to require fixtures to be a separate appraisal unit in every instance fails to conform to the constitutional and statutory requirement that an appraiser value a property as it would be valued by buyers and sellers in the marketplace. Yet, without Rule 474 in place, it might be claimed that assessors err in separately valuing fixtures from land and improvements. Rule 474 resolves any such confusion by clarifying that petroleum refineries should be valued first and foremost in accordance with the constitutional principle of full market value.

For these reasons, we respectfully request that the Board reenact Rule 474.

Thank you for your consideration of this request.

Respectfully submitted,

David Twa
County Administrator
County of Contra Costa

December 16, 2014

Chairman Jerome Horton
Fourth District
State Board of Equalization
450 N Street, MIC:72
Sacramento, CA 95814

Re: Property Tax Rule 474

Dear Chairman Horton:

I write in support of Property Tax Rule 474. My background includes more than 30 years of experience as a chemical engineer, as a commercial manager, and as a consultant in the petroleum refining industry. As reflected in my resume and accompanying experience list, which are attached to this letter, I spent over a decade working in refineries and learning various aspects of the refining business during my career in industry. Since that time, I have worked as a consulting expert in the petroleum refining, gas processing, and petrochemical industries. In this role, I have been involved in a variety of assignments involving the acquisition, privatization, and financing of petroleum refineries in the United States and abroad, and have served as an expert witness in numerous litigation matters involving the refining and chemical process industries.

I am familiar with California property taxation and Rule 474 through my work for Contra Costa County. As a consultant for Contra Costa County, I have assisted the County in appraising the four refineries located there. I have also provided expert testimony to assist the County to defend against assessment appeals challenging the assessed value of taxable refinery property, among other services. I also have advised the County concerning the facts supporting the valuation of petroleum refineries, as provided by Rule 474.

The first fact that supports adoption of Rule 474 is that refineries are bought and sold as a single unit. During my career, I have reviewed the details of more than one hundred refinery sales and I only recall a handful of instances when a refinery's equipment has been sold separately from its land and improvements. Most, if not all of these sales, I would categorize as exigency sales that were not open market transactions or involved refineries that were no

longer in operation. Due to this reality, there is little data to establish separate fair market values for refinery land, improvements and equipment.

The second significant fact supporting the necessity for Rule 474 is that buyers, sellers, and refinery operators are primarily interested in the income that is generated by the refinery. The income potential of a petroleum refinery is dictated by the installed processing equipment, which generally exceeds 80% of the total value of taxable property. However, because the fixtures at a refinery cannot contribute to income without the land on which they rest and, conversely, land at a refinery cannot produce income without the attached fixtures, income resulting from the refinery cannot be rationally allocated between these elements. In other words, the land, improvements and fixtures at refineries are physically and functionally integrated. For this reason, refinery operations planning, economic analysis, and management accounting do not allocate income to classes of assets, such as land, improvements, and equipment. Rather, income is measured and attributed to a refinery as a single economic unit.

As the income stream must be attributed to the refinery as a single unit, Rule 474 is necessary to value refineries under the income approach. In my experience, the income approach is used by buyers and sellers of refineries to establish the selling price in transactions. For purposes of determining assessed values, the income approach is often the preferred method for valuing refineries because sales comparisons are not always available and because many refineries in the United States have suffered significant depreciation or obsolescence that makes the cost approach unreliable. Not only is it appropriate to value refineries as a single appraisal unit under the income approach, but the justification for requiring a separate appraisal unit for fixtures in order to account for fixture depreciation does not exist under the income approach. This is because the refinery income stream and the resulting value account for a lower level of performance that would result from physical depreciation of a refinery's fixtures by wear and tear or obsolescence. In addition, the income approach accounts for costs of maintenance and replacement that refineries incur to mitigate the effects of physical depreciation and obsolescence.

In conclusion, Rule 474 reflects the realities of the marketplace. Moreover, the rebuttable presumption provided by Rule 474 does not foreclose a refinery owner from presenting evidence that a refinery's fixtures are not part of the same economic unit as the refinery's land and improvements, while recognizing that such exceptions are few and far between. In recognizing how refineries are bought and sold, Rule 474 can help ensure that the market value of refineries is evaluated in accordance with the practice in the marketplace for purposes of decline-in-value valuations.

Yours truly,

Donald L. Flessner
Executive Vice-President
Baker & O'Brien, Inc.

RESUME

DONALD L. FLESSNER

EDUCATION: B.S. Magna cum Laude Chemistry and Biology - 1977
Mount Union College, Alliance, Ohio

Post-graduate work in Chemical Engineering - 1979 to 1981
M.B.A. Finance - 1989
Cleveland State University

EXPERIENCE:

Baker & O'Brien, Inc. Executive Vice President	Current
Purvin & Gertz, Inc. Associate Consultant	1992 - 1994
BP Oil Co./Standard Oil Co. (Ohio) Technical Specialist, Refining Department Senior Distribution Coordinator, Products Supply and Trading Department Senior Process Engineer, Refining Department	1979 - 1992
Scott & Fetzer Corporation Plant Chemist, Chagrin Falls, Ohio	1977 - 1979

SUMMARY OF EXPERIENCE:

Following graduation in 1977, Don joined Scott & Fetzer Corporation as the Plant Chemist at its Chagrin Falls, Ohio, specialty chemicals plant. In this position, he implemented purchasing and cost controls, managed quality control and environmental programs, and supervised production schedules and work crews.

In 1979, Don joined Standard Oil Co. of Ohio (SOHIO), later BP Oil Co. (BP Oil), in SOHIO's Cleveland corporate engineering department as a specialist in chemical treating and corrosion. After completing assignments in three SOHIO refineries, Don was assigned to the Toledo refinery in 1981 and promoted to Senior Process Engineer. While at the Toledo refinery, he organized and supervised teams that identified, evaluated, and implemented a number of projects that improved refinery profitability, which amounted to $10 million of capital investment. In 1986, Don was promoted to Senior Distribution Coordinator in the Products Supply and Trading Department at BP Oil's Cleveland headquarters. In this position, he evaluated market economics and managed distribution of petroleum products in Midwest, East Coast, and Gulf Coast

markets served by BP's wholesale marketing system. In 1991, Don was promoted to Technical Specialist in BP Oil's Refining Department where he prepared capital investment strategies for its U.S. refining system. He developed several of these proposals as detailed investment initiatives for approval by BP Oil's board of directors.

In 1992, Don left BP Oil to become an independent consultant with Purvin & Gertz, Inc., in its Dallas office. While at Purvin & Gertz, he completed various assignments in the petroleum refining, gas processing, and petrochemical industries. He was a regular contributor to the monthly *Global LPG Market Outlook* and evaluated markets for gas liquids as petrochemical feedstocks and alternative fuels.

Since joining Baker & O'Brien, Inc. in 1994, Don has completed a wide range of assignments in the refining, chemical, and fertilizer industries. These projects have included due diligence on behalf of investors and financial institutions for companies and construction projects around the world. He has prepared valuations of refining, transportation, and chemical manufacturing assets for companies, financial institutions, and government agencies. He has served as a consulting expert and a testifying expert in litigation involving major construction projects, processing agreements, product quality and testing, business interruption, and property damage on behalf of operating companies, contractors, and insurers involved in the refining and chemical process industries. Don has testified as an expert witness in depositions, public hearings, jury trials, and international arbitration.

REPRESENTATIVE MAJOR AREAS OF EXPERIENCE:

1. **Refinery Valuation –** Prepared annual property values for several major California refineries. Work included review of refinery records, inspection of the plants, analysis of refinery yields and operating costs, review of refinery capital investments, market reviews and assessments, and preparation of financial models to support the valuations. Assisted in negotiation of settlements. Presented and defended valuation issues in public hearings before Assessment Appeals Boards.

2. **Ammonia Plant Project Finance –** Performed due diligence and project monitoring for construction of world-scale ammonia plants on behalf of financial institutions. These projects included engineering and construction of new plants in the Caribbean and the Middle East and the relocation of a plant from the U.S. to the Caribbean. Work included technology assessment, review of EPC contracts, analysis of feedstock supply and product offtake, evaluation of capital investment, review of comparative manufacturing economics, and evaluation of infrastructure facilities and agreements. Served as the independent engineer to monitor construction progress and mechanical completion, and to witness, evaluate, and certify performance tests and project completion.

3. **Refinery Project Finance** – Performed due diligence for construction of a world-scale refinery located in the Middle East on behalf of financial institutions. Work included technology assessment, analysis of feedstock supply and products offtake, review of comparative manufacturing economics, development of a market study, review of capital expenditures, and evaluation of infrastructure facilities and agreements.

4. **Russian Oil Company Privatization** – Performed due diligence for the purchase of an integrated oil company on behalf of an investor. Work included inspection of company assets located at several sites in Western Siberia, technology assessment, analysis of feedstock supply and market opportunities for products, evaluation of capital expenditures, and an evaluation of manufacturing economics.

5. **Russian Fertilizers Privatization** – Prepared due diligence for the purchase of fertilizer plants on behalf of an investor. These plants manufactured nitrogen fertilizers, phosphate fertilizers, methanol, and related industrial chemicals. Work included inspection of company assets located at several sites near Moscow, technology assessment, analysis of feedstock supply and market opportunities for products, evaluation of capital investment programs, and analysis of manufacturing economics.

6. **Gas Plant and Pipelines Valuation** – Prepared a valuation of an onshore gas processing plant and offshore pipelines for the gathering and processing of deepwater Gulf of Mexico oil and gas production. The valuation was prepared for a financial institution in support of structured finance. Served as independent engineer to certify completion of the project for financial purposes.

7. **Refinery Manufacturing Options Study** – Prepared a capital investment strategy to manufacture transportation fuels at a Middle Eastern refinery. Evaluated yields and operating economics for manufacturing options related to production of gasoline and diesel fuel, upgrade of residual fuels, management of light ends, and optimization of conversion capacity. Presented conclusions for consideration to the company board of directors.

8. **Caribbean Refinery Privatization** – Prepared a business plan and presentation brochure for privatization of a world-class refinery on behalf of an investor. Work included inspection of refinery assets located in the Caribbean, technology assessment, analysis of feedstock supply and products offtake, review of capital expenditures, and identification of joint venture partners. Presented the project to major European investment banks.

9. **Refinery Manufacturing Options Study** – Prepared a capital investment strategy for manufacturing and marketing operations at a major U.S. West Coast refinery. Evaluated yields and operating economics for production of reformulated fuels, upgrade of residual fuels, management of light ends, optimization of conversion capacity, and competitive analysis. Presented conclusions to the company board of directors.

10. **Refinery Processing Agreement Litigation** – Assisted a major international petroleum trader in asserting claims of fraud and theft against parties involved in a toll processing agreement. Work included assistance in discovery, review of refinery trading records, evaluation of refinery operations, interpretation of the processing agreement, and preparation of exhibits used at trial.

11. **Ammonia Manufacturing Litigation** – Assisted a major equipment supplier in defending allegations that its equipment was the cause of a business interruption claim. Work included assistance in discovery, evaluation of operating records, determination of business interruption damages, and expert testimony.

12. **Fluid Catalytic Cracker Unit (FCCU) Construction Litigation** – Assisted a major engineering and construction firm in defending allegations that construction errors in the installation of an FCCU catalyst cooler resulted in a business interruption claim. Work included assistance in discovery, evaluation of FCCU operating data, evaluation of refinery operations, determination of business interruption damages, and expert testimony.

13. **Refinery Business Interruption Litigation** – Assisted a control systems firm in defending allegations that its compressor surge controllers caused a business interruption claim. Work included assistance in discovery, evaluation of refinery operating data, review of procedures and control systems, determination of business interruption damages, and expert testimony.

14. **Refinery Crude Supply Contract Litigation** – Assisted a state-owned oil company in defending allegations that its declaration of force majeure was improperly issued. Work included assistance in discovery, evaluation of crude oil import data, review of contracts, determination of economic damages, and expert testimony.

15. **Nitroparaffins Litigation** – Assisted a major engineering and construction firm in defending allegations that its process design contributed to an explosion at a nitroparaffins manufacturing plant. Work included assistance in discovery, evaluation of design issues, and expert testimony.

16. **Acrylonitrile Plant Construction Litigation** – Assisted a major engineering and construction firm in asserting claims that the owner's interference in a lump-sum engineering, procurement, and construction contract resulted in a large cost overrun. Work included assistance with discovery, evaluation of construction documents, analysis of project disruption, evaluation of change orders, and preparation of trial exhibits.

17. **Ethylene Plant Construction Litigation** – Assisted a major engineering and construction firm in defending allegations that poor engineering work resulted in a large cost overrun. Work included assistance with discovery, inspection of the plant, evaluation of construction documents, analysis of critical path, and determination of economic damages due to delays in the project schedule.

18. **Formaldehyde Plant Construction Litigation** – Assisted an engineering and construction firm in defending allegations that delays in completing construction of a formaldehyde plant and poor plant performance resulted in a damage claim. Work included assistance in discovery, inspection of the plant in Belgium, evaluation of operating records, review of construction contracts, valuation of the plant, and determination of economic damages. Presented and defended conclusions in an International Chamber of Commerce Arbitration.

19. **Polycarbonate Manufacturing Litigation** – Assisted an engineering and construction contractor involved in a power outage at a polycarbonate plant that resulted in a business interruption claim. Work included assistance in discovery, inspection of the plant, review of maintenance records, and determination of property and business interruption damages. Presented and defended conclusions at trial.

20. **Polybutylene Litigation** – Assisted municipal water districts in asserting claims for damages resulting from defective polybutylene pipe. Work included assistance in discovery, evaluation of research and development records, review of "state of the art" issues, and expert testimony.

21. **Polyurethane Foam Litigation** – Assisted manufacturers of polyurethane foam systems in defending claims that the products were defective or unfit for their intended use. Issues included whether manufacturers of architectural cladding panels properly used these products and implemented adequate quality control procedures. Work included assistance in discovery, observation and review of work methods, evaluation of manufacturing records, review of warranty claims, and preparation of trial exhibits.

22. **Product Contamination Litigation** – Assisted supplier and transporters in defending claims that cargoes of refined products were contaminated or unfit for their intended use. Issues included applicable test procedures, pathways for contamination, compatibility of blending components, marine operations, and commercial specifications. Work included assistance in discovery, evaluation of manufacturing records, review of shipping documents, and expert testimony.

23. **Ammonia Plant Insurance Dispute** – Assisted a major ammonia manufacturer in resolving insurance claims with adjusters. Evaluated adjusters' assertions that claims involved construction defects and warranty work. Work included assistance in documenting the claim, evaluation of project records, and review of maintenance records.

24. **Gas Liquids Recovery Plant** – Directed project development, engineering design, process selection, detailed design, and cost estimate for a $4.5 million plant that recovered propane, butane, and pentanes from refinery gas streams. Sponsored project for approval.

25. **Sulfur Recovery Plant** – Home office representative, process engineer, and start-up engineer for a 120 long tons per day sulfur recovery unit. Prepared operating manual and process safety reviews, supervised commissioning and start-up of the plant, and certified performance in accordance with license guarantees.

26. **Vacuum Distillation Unit (VDU) Modernization** – Modernized a VDU to reduce bottoms production and increase crude throughput. Prepared the detailed design and supervised the $2 million retrofit and start-up. The project demonstrated technology that was subsequently installed at three other company facilities. Sponsored project for approval and directed its implementation.

27. **Reformulated Fuels Investment Plan** – Prepared five-year and ten-year programs for investments to manufacture reformulated fuels at three refineries. Developed a gasoline blending model that incorporated the unique effects of oxygenates on gasoline vapor pressure, octane, and distillation curve into the planning process.

28. **Octane Value Arbitrage** – Implemented a three-way arbitrage strategy, which combined premium gasoline trading and exchanges with physical movements between Midwest, East Coast, and Gulf Coast markets in order to direct surplus octane capacity to markets where octane had the highest sales value. The program added $11 million per year to refined products value.

29. **Residual Fuel Oil Supply and Trading** – Managed all operational aspects of residual fuel oil supply in the Midwest and on the U.S. East Coast, including refinery supply, purchases, imports, and sales to trading companies and utilities. Provided economic analysis to support traders' activities.

30. **Gas Liquids Supply and Trading** – Managed all operational aspects for supply and distribution of propane, butane, isobutene, and butylenes in the Midwest and on the U.S. East Coast, including refinery supply, purchases, imports, and sales to trading companies and utilities. Provided economic analysis to support traders' activities.

31. **Global Liquefied Petroleum Gas (LPG) Market Outlook** – Edited and contributed to a monthly publication providing short-term forecasts of supply and demand for gas liquids in the U.S., short-term forecasts of LPG prices in European, Middle East, and Far East markets, and analysis of global LPG trading patterns.

Representative Experience

Petroleum Refining and Marketing

Project: Refinery Valuation
Location: California
Synopsis: On behalf of Contra Costa County, prepared annual income values for four major California refineries. Work included site visits, review of refinery records, inspection of the plants, analysis of refinery yields and operating costs, review of refinery capital investments, market assessments, and preparation of economic models to support the valuations. Presented and defended valuation issues in public hearings before Assessment Appeals Boards.

Project: Refinery Valuation
Location: Wyoming
Synopsis: On behalf of the owner, prepared purchase a price allocation for various interests that had purchased a refinery. Work included evaluation of the condition of equipment at the plant, review of maintenance records, analysis of refinery yields, and evaluation of markets for crude oil and refined products. Annual reviews of operations, economic performance; and the refinery valuation were subsequently prepared for the client.

Project: Refinery Valuation
Location: New Jersey
Synopsis: On behalf of the local tax assessor, prepared a valuation for a large asphalt refinery. Work included a site visit, evaluation of the condition of equipment at the plant, review of maintenance records, analysis of refinery yields and product quality, evaluation of markets for crude oil and refined products, documentation of conclusions and expert testimony.

Project: Refinery Valuation
Location: Indiana
Synopsis: Served as an expert to value a refinery that had been closed and was in the process of demolition. Work included review of the condition of equipment at the plant, review of maintenance records, analysis of operating records, and evaluation of markets for crude oil and refined products. Prepared a report of findings and assisted in negotiation of a financial settlement.

Project: Refinery Valuation
Location: Russia
Synopsis: Served as an expert to determine economic damages related to a dispute involving the construction of three refineries in Western Siberia. Work included assessment of construction budgets and schedules for the three refineries, evaluation of markets for crude oil and refined products, refinery technology, refinery yields, and refinery income. Conclusions and analysis of income losses were documented and presented in expert testimony prior to settlement.

Project: Refinery Acquisition
Location: West Texas
Synopsis: On behalf of the seller, evaluated a refinery for acquisition by another refining company. Work included review of processing capabilities, short-term and long-term capital requirements, and future product markets. Potential economic returns for various acquisition scenarios were documented for consideration by the seller.

Project: Refinery Acquisition
Location: Wyoming
Synopsis: On behalf of a buyer, assisted in support of financing the acquisition of a condensate processing refinery. Project included evaluation of the buyer's plans to process lower-priced sour condensate in place of traditional sweet condensate, as well as a study of the potential market for products.

Project: Refinery Acquisition
Location: Belgium
Synopsis: On behalf of a trading house, evaluated a refinery for acquisition. Work included evaluation of the physical condition of the refinery, assessment of processing capabilities, and development of potential options for expansion and upgrade. An economic model was prepared and used by the client to support its offering price and subsequent negotiations.

Project: Refinery Acquisition
Location: Germany
Synopsis: On behalf of a national oil company, assisted an investment bank in evaluating the acquisition of an interest in a refinery. Work included assessment of the refinery's physical condition, evaluation of the competitiveness of its technology, assessment of markets for feedstock, and the outlook for its product markets.

Project: Refinery Privatization
Location: Caribbean
Synopsis: On behalf of an investor, assisted in the preparation of a strategic business plan for privatization of a refinery. Work included a site visit, evaluation of the condition of the existing assets, assessment of crude oil supply, analysis of future U.S. East Coast markets for the refinery's products, evaluation of potential upgrading facilities, review of capital investment, analysis of operating costs and changes in operation. A prospectus was prepared that summarized the business plan and findings were presented to potential financial partners.

Project: Oil Company Privatization
Location: Russia
Synopsis: On behalf of an investor, performed due diligence for the purchase of an integrated oil company, including refineries, terminals, retail facilities, and a trading house. Work included site visits, inspection of company assets, assessment of existing and proposed technology, evaluation of feedstock and product markets, review of capital investment programs, and analysis of manufacturing economics.

Project: Refinery Due Diligence
Location: Middle East
Synopsis: On behalf of financial institutions, performed due diligence for construction of a world-scale refinery. Work included site visits, technology assessment, analysis of feedstock supply and products offtake, review of comparative manufacturing economics, development of a market study, review of capital expenditures, evaluation of infrastructure facilities and agreements, and evaluation of the sponsor's financial model.

Project: Refinery Due Diligence
Location: Serbia
Synopsis: On behalf of the sponsor, performed a market assessment in support of financing the construction of a refinery. Work included technology assessment, analysis of feedstock supply and products offtake, review of comparative manufacturing economics, development of a market study, review of capital expenditures, and evaluation of infrastructure facilities and agreements.

Project: Refinery Due Diligence
Location: Ohio
Synopsis: On behalf of a buyer, performed due diligence for purchase of a major refinery. Work included a site visit, inspection of the facilities, technology assessment, analysis of feedstock supply and products offtake, review of manufacturing economics, review of capital expenditures, and evaluation of infrastructure facilities.

Project: Refinery Due Diligence
Location: Oklahoma
Synopsis: On behalf of the owner, assisted in support of financing to reactivate a refinery. Work included a site visit, evaluation of the condition of equipment at the plant, review of maintenance records, analysis of refinery yields, and evaluation of markets for crude oil and refined products. Subsequent to financial close, annual reviews of operations and economic performance were prepared for the client.

Project: Manufacturing Options Study
Location: Middle East
Synopsis: On behalf of the owner, prepared a capital investment strategy to manufacture high quality transportation fuels. Work included evaluation of refinery yields and operating economics for manufacturing options related to production of gasoline and diesel fuel, upgrade of residual fuels, management of light ends, and optimization of conversion capacity. Conclusions and income analysis of the various options were presented to the company board of directors.

Project: Manufacturing Options Study
Location: Pacific Northwest
Synopsis: On behalf of the owner, prepared a capital investment strategy for manufacturing and marketing operations at a major U.S. refinery. Work included site visits, evaluation of yields and operating economics for production of reformulated fuels, upgrade of residual fuels, management of light ends, optimization of conversion capacity, and competitive analysis. The economics of various manufacturing strategies were compared to the sale or closure of the refinery. Conclusions and income analysis of the various options were presented to the company board of directors.

Project: Manufacturing Options Study
Location: East Coast
Synopsis: On behalf of the owner, prepared a capital investment strategy for manufacturing and marketing operations for a major U.S. refinery. Work included site visits, evaluation of yields and operating economics for production of reformulated fuels, upgrade of residual fuels, management of light ends, optimization of conversion capacity, and competitive analysis. The economics of various manufacturing strategies were compared to the sale or closure of the refinery. Conclusions and income analysis of the various options were presented to the company board of directors.

Project: Manufacturing Options Study
Location: Texas
Synopsis: On behalf of the owner, prepared a capital investment strategy for manufacturing operations for a major U.S. refinery. Work included evaluation of yields and operating economics for production of reformulated fuels, upgrade of residual fuels, production of asphalt products, optimization of conversion capacity, and competitive analysis. An economic model was prepared and used for evaluation of refinery margins under various investment scenarios. The economics of various manufacturing strategies were compared to U.S. Gulf Coast benchmarks. Conclusions and income analysis of the various options were presented to the company board of directors.

Project: Toll Processing Agreement
Location: Canada
Synopsis: Served as an expert to assist a major international petroleum trader in asserting claims of fraud and theft against parties involved in a toll processing agreement. Work included review of refinery trading and operating records, evaluation of refinery operations, interpretation of the toll processing agreement, and preparation of exhibits used at trial.

Project: Force Majeure Claims
Location: International Arbitration
Synopsis: Served as an expert to assist a national oil company in defending allegations that it improperly issued declarations of force majeure for supply of crude oil to a major U.S. refinery. Work included evaluation of crude oil import data, review of contracts, analysis of refinery operations, determination of economic damages, and expert testimony.

Contra
Costa
County

Office of Assessor

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Gus S. Kramer
Assessor

Lori Koch
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Administration

Louis Rivara
Assistant Assessor
Valuation

December 16, 2014

Chairman Jerome Horton
Fourth District
State Board of Equalization
450 N Street, MIC:72
Sacramento, CA 95814

Re: Property Tax Rule 474

Dear Chairman Horton:

I am the Assessor of Contra Costa County and have held this position for the past 20 years. During that time, I have become quite familiar with the valuation of refineries. I annually oversee the appraisal of four major petroleum refineries located in Contra Costa County and I have testified at hearings concerning their valuation.

I write in support of the readoption of Property Tax Rule 474. Rule 474 ensures fair and uniform taxation of petroleum refineries based on the concept of fair market value. As explained in the letter of Donald Flessner, a refinery, including land, buildings, tanks, machinery and equipment, is a collection of assets that functions together as a single unit to produce petroleum products. As also explained, such a property is valued and sold as a single integrated operating unit in any sale that is an open market non-exigency sale. Thus, an entire refinery generally is a single appraisal unit within the meaning of Revenue and Taxation Code section 51(d) and Rule 324(b). However, in those infrequent instances when land, improvements and fixtures does not transfer as an economic unit, Rule 474 permits assessors to separately value fixtures from land and improvements upon a proper showing.

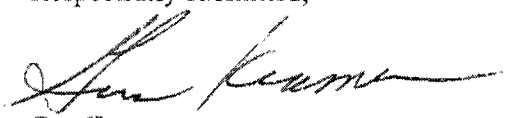
Currently, several of the refineries in Contra Costa are valued under Proposition 8, as shown in the economic data that my office has provided to the Board to assist it in completing the economic impact assessment. Reenactment of Rule 474 is important to

advance accurate assessment of the refineries. When petroleum refinery property is valued as a single appraisal unit, land, improvements and fixtures are jointly assessed under the lower of the collective fair market value or factored base year value for these assets. If these assets were not valued as a single unit, fixtures could be valued at their fair market value, while land and improvements are valued at their factored base year value, to create artificially low valuations that are inconsistent with the marketplace. Valuation of petroleum refinery property as a single appraisal unit also results in more accurate assessments because fixture depreciation can be offset by appreciation in land and improvements, reflecting the reality that refineries are generally bought and sold as a single unit.

For these reasons, and because the readoption of Rule 474 will assist assessors in clarifying the appraisal unit to be used when valuing petroleum refining properties for declines in value, I respectfully request that the Board reenact Rule 474.

Thank you for your consideration of this request.

Respectfully submitted,



Gus Kramer
Contra Costa County Assessor

CalTax℠
Established 1926

December 17, 2014

Attn: Rick Bennion
Regulations Coordinator
State Board of Equalization
450 N Street, MIC: 80
Sacramento, CA 94279-0080
Transmitted via e-mail: Richard.Bennion@boe.ca.gov

Re: Request to Reject Re-Adoption of Property Tax Rule 474, *Petroleum Refining Properties*

Dear Mr. Bennion:

The California Taxpayers Association respectfully requests that the State Board of Equalization (Board) reject proposed Property Tax Rule 474, and submits the following comments and objections to the rule, which is scheduled for a public hearing on December 18, 2014. Please include this letter in the Board's official rulemaking file for Rule 474.

CalTax is a nonprofit, nonpartisan research and advocacy association founded in 1926 with a dual mission: to guard against unnecessary taxation, and to ensure that government spending of taxpayer dollars is efficient and appropriate as possible. CalTax's membership includes many businesses across all industries, ranging from small firms to Fortune 500 companies, and is dedicated to the uniform and equitable administration of taxes and minimizing the cost of tax administration and compliance.

In considering the re-adoption of Rule 474, CalTax is interested in preserving the integrity of the Administrative Procedures Act (APA), Government Code §§11346.2(b)(5)(A), 11346.3 and 11346.5(a)(8), as well as the California Supreme Court's directive in *Western States Petroleum Assn. v. Board of Equalization* (2013) 57 Cal.4th 401 (2013), which determined that the original Rule 474 was invalid due to its lack of an economic impact analysis.

CalTax has significant concerns about re-adoption of Rule 474, including the Board's failure to follow the APA rules and to comply with Government Code §§11346.2(b)(5)(A), 11346.3 and 11346.5(a)(8). Until the Board has substantially complied with these statutory and regulatory requirements, the Board must reject Rule 474's re-adoption, and the rule must continue to be found invalid.

Pursuant to Government Code §11346.3(a), the Board must address as part of its economic impact analysis the potential for adverse economic impact. This requires the agency to base the regulation

on adequate information regarding the need for, and consequences of, the proposed rule; and to "consider the proposal's impact on business, with consideration of industries affected including the ability of California businesses to compete with businesses in other states."

The Board's proposed economic impact analysis fails to assess: whether and to what extent the proposed rule will affect the creation or elimination of jobs within the state; the creation of new businesses or the elimination of existing businesses within the state; the expansion of businesses currently doing business within the state; and the benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.

The Supreme Court set a clear mandate on the Board for its regulations to satisfy the APA. However, the Board's proposed economic impact analysis fails to make a reasoned estimate of all the cost impacts of the rule on affected parties. The Board's economic impact analysis does not consider the full economic impact of the rule, and, therefore, does not comply with the Supreme Court's mandate. For these reasons, the Board should reject proposed Rule 474.

Thank you for your consideration.

Sincerely,

Gina Rodriquez, Vice President of State Tax Policy
California Taxpayers Association

Western States Petroleum Association
Credible Solutions • Responsive Service • Since 1907

Catherine H. Reheis-Boyd
President

December 17, 2014

VIA EMAIL Richard.Bennion@boe.ca.gov

Rick Bennion
Regulations Coordinator
State Board of Equalization
450 N Street, MIC: 80
Sacramento, CA 94279-0080

Re: **Proposal to Re-Adopt Property Tax Rule 474, *Petroleum Refining Properties***
Western States Petroleum Association's Objections to Proposed Rule 474

Dear Mr. Bennion:

The Western States Petroleum Association ("WSPA") respectfully submits the following opposing comments and objections to proposed Property Tax Rule 474 ("Rule 474"). The State Board of Equalization ("Board") issued a Notice of Proposed Action to Re-Adopt Rule 474 on October 24, 2014. The Board is scheduled to consider re-adoption of the rule on December 18, 2014. This letter should be included in the Board's official rulemaking file for Rule 474.

WSPA is a long-standing trade association comprised of energy companies that own and operate properties and facilities in the petroleum industry, including petroleum refineries.

WSPA opposes Rule 474 because the Board has failed to comply with the requirement under the Administrative Procedures Act ("APA"), Gov. Code §§ 11346.2(b)(5)(A), 11346.3 and 11346.5(a)(8). For this reason, WSPA urges the Board to reject Rule 474 at this time, and until the Board has substantially complied with the requirements under the APA.

Last year, the California Supreme Court (herein, the "Supreme Court") in *Western States Petroleum Assn. v. Board of Equalization*, 57 Cal. 4th 401 (2013), held that Rule 474, which was adopted by the Board and became effective December 2007, was procedurally invalid. The Supreme Court held that the Board failed to assess the economic impact of Rule 474 and thus the Board's initial determination that the rule would not have a significant adverse impact on businesses did not substantially comply with the APA. Specifically, the Court held that the Board's assessment was inadequate because it failed to make a reasoned estimate of all the cost impacts of the rule on affected parties. As described below, the Board has failed to rectify these deficiencies in its newest version of the proposed rule. Accordingly, the Board's continuing and ongoing failure to provide an adequate statutorily-required analysis of the economic impact of

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Rule 474 means that if the Board were to adopt it at this time, it should again be found invalid by the California courts.

Relevant California Statutes

Proposition 13 limits the assessment of real property to its full cash value (fair market value). (Cal. Const. art. XIII A, § 1.) The full cash value is the assessor's valuation as shown on the 1975-76 tax bill, or the appraised value when purchased, newly constructed, or a change in ownership occurs after the 1975 assessment. (*Id.*, § 2(a).) This full cash value base year value assessment ("base year value") may be increased annually by an amount equal to the greater of the California consumer price index or two percent (the "adjusted base year value"). (*Id.*, § 2(b); Rev. & Tax. Code ("RTC") § 51(a)(1)) The assessed value may be reduced temporarily to reflect a decline in value of the property. (Cal. Const. art. XIII A, § 2(b); RTC § 51(a)(2).) When the current full cash value of a property is less than the property's adjusted base year value, the current full cash value must be enrolled as the taxable value. (Property Tax Rule 461(f).)

When calculating whether a property has suffered a decline in value, it is necessary to determine what constitutes the real property interest to be valued. RTC § 51(d) provides that for purposes of calculating a property's full cash value, the property interest to be measured is "that appraisal unit that persons in the marketplace commonly buy and sell as a unit, or that is normally valued separately."

Under Property Tax Rule 461(e), when calculating the value of property to determine whether there has been a decline in value, land and improvements constitute a separate appraisal unit from fixtures and other machinery and equipment that are classified as improvements (herein, "fixtures"). Accordingly, when determining the assessed value of an industrial property, land and improvements are valued as a separate appraisal unit from fixtures, with the assessed value of each these two appraisal units separately determined as the lower of its separate standalone adjusted base year value or its fair market value. For industrial properties that have long been held by one owner, it is typical that the fair market value of land and buildings exceeds their base year value, while the fair market value of fixtures is typically less than the fixture adjusted base year value. Accordingly, under Proposition 13, RTC § 51(d) and Rule 461(e), increases in the full cash value of land and improvements would not be subject to assessment above the adjusted base year value of land and improvements, while declines in value in fixtures due to depreciation would be reflected in a lower enrolled taxable value for the fixtures.

As an exception to the basic rule in Rule 461(e) that fixtures must be treated as a separate appraisal unit from land and improvements, the Board adopted Rule 474 in 2007. Rule 474 established a separate, specific rule for the assessment of petroleum refining properties. Rule 474(d)(2) provided that for petroleum refining properties, land, improvements and fixtures are rebuttably presumed to be one appraisal unit. Accordingly, declines in value in fixtures due to depreciation would not be allowed to the extent that they were offset by increases in the fair market value of land and improvements.

Administrative Procedures Act

Under the APA, state agencies proposing to adopt a regulation must "assess the potential for adverse economic impact on California business enterprises and individuals, avoiding the imposition of unnecessary or unreasonable regulations or reporting, recordkeeping, or compliance requirements." (Gov. Code § 11346.3(a).) The agency's assessment of the potential for adverse economic impact requires the agency: (1) to base the regulation on adequate information regarding the need for, and consequences of, the proposed rule; and (2) to "consider the proposal's impact on business, with consideration of industries affected including the ability of California businesses to compete with businesses in other states." (Gov. Code § 11346.3(a)(1) and (2).)

Specifically, these statutory provisions require that an agency's economic impact assessment must assess whether and to what extent the proposed rule will affect:

(A) The creation or elimination of jobs within the state.
(B) The creation of new businesses or the elimination of existing businesses within the state.
(C) The expansion of businesses currently doing business within the state.
(D) The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment. (Gov. Code § 11346.3(b)(1).)

As the Supreme Court did, we will review the other relevant statutory requirements in the APA:

1. Every agency that proposes to adopt a regulation is required to submit a notice of the proposed action to the Office of Administrative Law and to make the notice available to the public. (Gov. Code §§ 11346.2, 11346.5(a).)

2. The notice of the proposed action must contain a copy of the express terms of the regulation and an initial statement of reasons for proposing it ("*Initial Statement*"). (Gov. Code § 11346.2(a), (b).)

3. The *Initial Statement* must include a "statement of the specific purpose" for the adoption of the regulation and a "description of reasonable alternatives to the regulation and the agency's reasons for rejecting those alternatives." (Gov. Code § 11346.2(b)(1), (b)(5)(A).)

4. If the agency makes an initial determination that its proposed regulation will not have a significant adverse economic impact on business, the *Initial Statement* must include "[f]acts, evidence, documents, testimony, or other evidence on which the agency relies to support" this determination. (Gov. Code § 11346.2(b)(5)(A).)

5. If the agency makes an initial determination that its proposed regulation will not have a significant adverse economic impact on business, "it shall make a declaration to that effect in the notice of proposed action. In making this declaration, the agency shall provide in the record facts, evidence, documents, testimony, or other evidence upon

which the agency relies to support its initial determination." (Gov. Code § 11346.5(a)(8).)

6. If the agency's declaration pursuant to Gov. Code § 11346.5(a)(8) is in conflict with substantial evidence in the record, the regulation may be declared invalid. (Gov. Code § 11350(b)(2).)

7. The agency's notice of proposed action must include a "description of all cost impacts, known to the agency at the time the notice of proposed action is submitted to the office, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action." (Gov. Code § 11346.5(a)(9).)

8. If there has been substantial compliance with the requirement to provide the description of cost impacts, the regulation may not be invalided because of the alleged inadequacy of the summary or cost estimates. (Gov. Code § 11346.5(c).)

***Western States Petroleum* Supreme Court Decision**

Despite the leeway and deference given to agencies, the Supreme Court found the Board's initial determination that Rule 474 would not have a significant adverse impact on business failed to substantially comply with the APA requirement that the Board *actually assess* the potential adverse economic impact on businesses based on the facts. An agency must *actually assess* the potential adverse economic impact on California businesses and individual businesses, which calls "for an evaluation based on facts." (*Western States Petroleum*, 57 Cal. 4th at 428, citing *California Assn. of Medical Products Suppliers v. Maxwell-Jolly*, 199 Cal. App. 4th 286 (*Maxwell-Jolly*).)

The Supreme Court upheld the trial court's finding that the Board had not adequately estimated the increased taxes that would result from treating refineries as a single appraisal unit for decline in value purposes. (*Western States Petroleum*, 57 Cal. 4th at 430.) As noted above, the principal effect of Rule 474 and its combining of land and improvements with fixtures as a single appraisal unit is to allow the erosion of fixture fair market value beneath fixture adjusted base year value to be assessed to the extent land and building values had appreciated above their adjusted base year values. The potential land appreciation that would now be subject to property tax is limited to the extent fixture value has fallen below its adjusted base year value. The trial court held that the economic impact statement required an accurate measure of these potential assessment increases and that "as a theoretical matter, surely there should be some quantification of the effect of depreciation of fixtures on assessed value." (*Ibid.*) Since the Board had not provided an accurate estimate of refinery fixture depreciation (indeed it provided no estimate at all), the Supreme Court summarily affirmed the trial court, rejecting the Board's analysis because it:

> [F]ailed to provide "an economic impact based on data concerning fixture depreciation on assessed values" and thus "leaves a reader without an understanding of what the taxes on a representative refinery would have been under the formerly applicable Rule 461(e), and what the taxes would be under the new rule 474(d)(2)." (*Ibid.*, quoting the Court of Appeal.)

The Supreme Court agreed with the trial court and Court of Appeal because the Board did not explain how its analysis was a "valid or reasonable way to estimate the amount of fixture depreciation that would be offset by appraising land and fixtures as a single unit." (*Ibid.*) The Supreme Court stated further, "[E]ven if the Board's prediction of future land appreciation were correct, the Board's calculation failed to consider prior land appreciation and the full tax impact that would occur if land were valued at actual market value rather than adjusted base year value."

The Supreme Court clearly enunciated the standard the Board must satisfy: The Board's estimate must consider prior land appreciation and quantify the amount of fixture depreciation that would be offset by the land appreciation if land were assessed at its actual market value (under Rule 474) instead of its adjusted base year value (under Rule 461(e)). Then, the estimate must calculate the full property tax impact that would occur under each scenario. By failing to meet these standards, the Supreme Court concluded that the Board failed to make a reasoned estimate of all cost impacts of the rule on affected parties.

In light of the Supreme Court's *Western States Petroleum* decision, Rule 474 was invalidated. However, shortly thereafter the Board initiated the rulemaking process to re-adopt Rule 474.

New Initial Statement

On October 24, 2014, the Board issued "Initial Statement of Reasons for the Proposed Re-Adoption of California Code of Regulations, Title 18, Section 474, *Petroleum Refining Properties*".

Beginning on page 11, the Board set forth a discussion intended to comply with the APA requirements, entitled "INFORMATION REQUIRED BY GOVERNMENT CODE SECTION 11346.2, SUBDIVISION (b)(5) AND ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)." This section had several subsections.

Economic Impact

Initially, the Board just ignored all prior law, including fully ignoring Rule 461(e), which had for over 30 years required land and buildings to be treated as a separate appraisal unit from fixtures. In the subsection of the *Initial Statement* entitled *Economic Impact of the Re-Adoption of Rule 474*, the Board takes a position that Rule 474 imposes no additional costs on businesses because assessors are already authorized by Revenue and Taxation Code ("RTC") § 51(d) to assess petroleum refining properties as a single appraisal unit for decline in value purposes. The Board explains as follows:

> Board staff determined that, in the absence of Rule 474, county assessors are currently authorized by RTC section 51(d), as interpreted by the California Supreme Court in *WSPA v. BOE*, to determine that petroleum refinery property (land, improvements, and fixtures) constitutes a single appraisal unit for measuring declines in value when persons in the marketplace commonly buy and sell refinery property as a unit.

[...]

> Therefore, Board staff concluded that the re-adoption of Rule 474 is fully consistent with the existing mandates of RTC section 51(d), and that there is nothing in the proposed re-adoption of Rule 474 that would significantly change how individuals and businesses, including county assessors and petroleum refinery owners, would generally behave due to the current provisions of RTC section 51(d) as interpreted by the California Supreme Court in *WSPA v. BOE.*
>
> As a result, the Board has determined that the re-adoption of Rule 474 does not impose any costs on any persons, including businesses, in addition to whatever costs are imposed by RTC section 51(d) as interpreted by the California Supreme Court in *WSPA v. BOE*, and there is nothing in Rule 474 that would impact revenue.

This fails to comply with the APA and the clear mandate from the Supreme Court that the Board make an initial *actual assessment* of the economic impact of Rule 474. In this *Economic Impact* subsection, the Board has essentially ignored the Supreme Court directive, and instead concluded that Rule 474 does not effectuate a change in law because assessors are already authorized to assess the land, improvements and fixtures of petroleum refining properties as a single appraisal unit for decline in value purposes under RTC § 51(d). In effect, the Board is arguing that Rule 474 is unnecessary because the rule it establishes is already provided for by statute in RTC § 51(d).

Certainly, the Board does not believe this. Under this argument, no property tax regulation would ever impose a cost because it could always be deemed consistent with its underlying authorizing statute. Even in the Board's reply brief to the Supreme Court in *Western States Petroleum*, it conceded that "Rule 474 is not merely an interpretation of section 51(d) under specific circumstances, but a new rule with general application to petroleum refineries for Proposition 8 valuation purposes ...." (Appellant's Reply Brief, p. 5.) Just because the Supreme Court held that the prior Rule 474 was *substantively* valid as an appropriate interpretation of RTC § 51(d) and consistent with Proposition 13 does not mean that Rule 474 was not a change in the prior regulatory interpretation of Rule 461(e). Accordingly the Supreme Court was correct in demanding that the Board quantify the additional tax revenue that would be collected as result of Rule 474 well as the additional costs imposed as compared to a world without Rule 474.

To that point, it is clear from the Supreme Court that the requisite comparison for economic impact is to compare the costs to businesses without the regulation to the costs to businesses with the regulation. Without Rule 474, Rule 461(e) states, without equivocation, that for purposes of calculating declines in value, "fixtures and other machinery and equipment classified as improvements constitute a separate appraisal unit." There is no other specific rule applicable to petroleum refining property. The Supreme Court clearly endorsed the trial court's view that the Board is required to calculate the increased taxes, taking into consideration the effect of fixture depreciation on assessed values. (*Western States Petroleum*, 57 Cal. 4th at 430.) In addition, the Supreme Court agreed with the Court of Appeal's holding that the Board must calculate the difference in taxes on refineries using Rule 461(e) and the new proposed Rule 474, stating that the Board's analysis in the first adoption of Rule 474 "'leaves a reader without an

understanding of what the taxes on a representative refinery would have been under the formerly applicable Rule 461(e), and what the taxes would be under the new rule Rule 474(d)(2).'" (*Ibid.*) Thus, the Board's comparison of the effect of its proposed Rule 474 to the costs on business under RTC § 51(d) is not the correct comparison, and thus the statement that the rule imposes no costs fails to satisfy the APA requirement that the agency *actually assess* the potential adverse economic impacts of a proposed regulation.

Tax Effect

Despite the Board's stated view that Rule 474 is not a substantive change, the Board concedes that it must provide some calculations because the Supreme Court rejected its methodology in the first adoption of the rule. Putting aside the obvious inconsistencies in the positions that, first, "there is no cost", and second, "but we will calculate the cost," the calculations in the *Initial Statement* are deficient as a matter of law because they failed to comport with the Supreme Court's mandate, as explained below. Accordingly, the *Initial Statement* fails to substantially comply with the APA requirements and if adopted would again be struck down by the courts.

To "accurately compare the total assessed value of a petroleum refinery when its fixtures are valued as a separate appraisal unit under Rule 461(e) and valued as part of the same appraisal unit with land and improvements under Rule 474," the Board sought data regarding market values and adjusted base year values of refineries from county assessors through the California Assessors' Association, for the tax years 2009 through 2013. The Board obtained the information 10 refineries, and includes the data and its analysis of the data as *Attachment F.*

The Board's analysis looks at the base year values for the fixtures at each of these 10 refineries and compares them to the Board's estimates of the fair market values of the fixtures. It then makes the same comparison between the base year values of the land and improvements at the 10 refineries and the Board's estimates of the fair market values of the land and improvements. Based on this Board-determined data, the Board then makes its determination of each refinery's assessed value under Rule 474 and each refinery's assessed value under Rule 461(e), and when they are different, the percentage difference between the two. The Board concluded that:

- The owners of two of the 10 refineries would pay *higher* property taxes under RTC § 51(d) and Rule 474, than under Rule 461, in two of the five past years;
- The owners of two of the 10 refineries would pay *higher* property taxes under RTC § 51(d) and Rule 474, than under Rule 461, in three of the five past years;
- The owners of three of the 10 refineries would pay *higher* property taxes under RTC § 51(d) and Rule 474, than under Rule 461, in four of the five past years; and
- The owners of two of the 10 refineries would pay *higher* property taxes under RTC § 51(d) and Rule 474, than under Rule 461, in all five of the five past years.

Board's Inaccurate Estimates

Because WSPA believes that Board's estimated fixture fair market values in its analysis are substantially overstated, and well in excess of fair market value, WSPA believes that the estimated additional property tax burdens are wrong and therefore unreasonable. In short, because the Board's estimates greatly overstated the fair market value of refinery fixtures, they greatly understate the depreciation in fixture value underneath their respective base year values. Ironically, the Board has made exactly the same mistake it made previously and for which it was chastised by the Supreme Court: *The Board has failed to adequately and accurately estimate fixture depreciation beneath fixture base year value*, and determine how much this depreciation would be offset by land appreciation, considering past appreciation. Since determining fixture depreciation is the most critical factor in estimating the economic impact and incremental property tax effect of Rule 474, the new *Initial Statement* is inherently deficient. Accordingly, if the Board adopts Rule 474 at this time and this latest economic impact statement were subjected to review by the courts once again, there is no reason to expect a result any different from the Supreme Court declaring Rule 474 procedurally invalid as it ruled in *Western States Petroleum.*

For the Board to provide an economic impact based on data concerning fixture depreciation on assessed value, as the Supreme Court mandate requires, the Board's estimates must use data that is accurate. The accuracy of the estimated additional property tax burden imposed on the petroleum refining industry by Rule 474 depends entirely upon the accuracy of the Board's estimation of fair market values. If the input estimated property values are inaccurate, then the estimate of the additional property tax burden that would occur if the rule is adopted would necessarily be wrong. If the estimate of additional property tax burden is wrong, then the Board's economic impact statement would leave "a reader without an understanding of what the taxes on a representative refinery would have been under" Rule 461(e) compared to what they would be under the proposed Rule 474. (*Western States Petroleum*, 57 Cal. 4th at 430.)

Simply looking at the figures, it is clear that the Board's method of estimating fixture fair market values is fatally flawed. The first clear evidence that the Board's estimates of fixture fair market values are flawed is that they are not consistent with one another and vary wildly over the course of the five years used in the Board's analysis. The best, standard measure for refinery value is fair market value per "complexity barrel." The value of a refinery is proportional to its complexity times its crude capacity, or complexity-barrels. While this is an advanced concept, the valuation of the California refineries per complexity barrel ought to be consistent, since this methodology accounts for the differences between the refineries in the "complexity" of the oil refined. This is a standard appraisal method accepted by industry appraisers and assessors alike, and certainly is known to Board staff.

Exhibit 1 to this letter, *Board of Equalization Stated Fair Market Value for Fixtures – Complexity Barrels*, illustrates the problem with the Board's figures. We were able to match the Board's 10 Refineries A through J to their owners and then obtain complexity barrels of refinery capacity for each. The complexity barrels of refining capacity figure for each refinery is public information. Exhibit 1 shows the range of Board values per complexity barrel of the 10 refineries analyzed. They range from $281 for Refinery J in one year, up to $1,489 for Refinery F in another year. As repeated here below, these values are all over the place, and ought to be within a consistent, tight range, especially because the 10 refineries that the Board used for its analysis and set forth in *Attachment F* are all within Los Angeles and Contra Costa County.

Board Determined Fair Market Values Per Complexity Barrel of Refinery Capacity
(See Exhibit 1)

Refinery A	$446 to $619 (the Carson refinery)
Refinery B	$463 to $665
Refinery C	$697 to $919
Refinery D	$541 to $588
Refinery E	$475 to $1,136
Refinery F	$344 to $1,489
Refinery G	$431 to $810
Refinery H	$315 to $413
Refinery I	$384 to $490
Refinery J	$281 to $719

Because there are such wild variances in the values per complexity barrel in the Board's data and analysis, it is clear that the Board's estimates of fair market value of the fixtures at the refineries in *Attachment F* to the *Initial Statement* are badly flawed. There is no reasonable reason why these figures would be so wildly different.

More significantly, the Board's values are not in line with the market value of a refinery that sold in 2013. Data available from the June 2013 sale of the BP Carson refinery (the "Carson refinery") and related assets to Tesoro Corporation (the "Tesoro Acquisition") highlights how overstated the Board's estimated fixture fair market value figures are from true market value as established in an arm's-length, open market transaction. (See BP's Press Release attached to the *Initial Statement* as *Attachment E.*) The Carson refinery is well-located and data from the sale is perfectly suited to analyzing what fair market value of a California refinery ought to be.

The Tesoro Acquisition included the Carson refinery and many non-refinery assets such as integrated terminals and pipelines and a network of service stations throughout Southern California, Arizona and Nevada.[1] Tesoro paid $1.075 billion for the entire bundle of these assets. (See *Initial Statement, Attachment E.*) The Carson refinery is "Refinery A" on the *Attachment F.* Subsequent to the sale, Tesoro Corporation sold the non-refinery assets to a related entity, and Tesoro Corporation kept the Carson refinery itself.[2] The amount Tesoro Corporation paid for all of the assets, including the non-refinery assets, was $1.075 billion *total for the entire bundle.* Clearly the non-refinery assets have value, which means that the value of the refinery assets along is less than the $1.075 billion Tesoro paid for *all of the assets.* Even using, for the sake of argument only, the full $1.075 billion purchase price that was for the refinery and the non-refinery assets as the refinery value (again, which it clearly is not since the

[1] The assets included in the sale included the 266 Mbpd Carson refinery, related marine terminals, land terminals and pipelines; the ARCO brand and associated registered trademarks; the supply rights to stations in central and southern California, Nevada and Arizona; an anode coke calcining operation and a 51 percent ownership in the Watson cogeneration facility, both located at the Carson refinery. (Tesoro Corporation, Annual Statement on Form 10-K filed with the U.S. Securities and Exchange Commission for the fiscal year ending December 31, 2013, p. 7.)

[2] See Tesoro Corporation's 2013 Annual Statement on Form 10-K at p. 39.

non-refinery assets have demonstrable value), and allocating 89 percent to the fixtures and 11 percent to the land (using the Board's allocation percentages for Refinery A), that means that the value of Refinery A on a complexity barrel basis was $313[3] in 2013. Again, this $313 value includes all of the non-refinery assets as well.

The Board estimated a fair market value of the Refinery A *fixtures alone* in 2013 at $1.360 billion (and the entire refinery including land, plus all of the non-refinery assets, sold for $1.075 billion). Even including all of the other non-refinery assets, the $313 value per complexity barrel is significantly below the Board's Refinery A low-to-high range of $446-$619 per complexity barrel as shown on Exhibit 1. Certainly if the value of the non-refinery assets were removed from the total $1.075 billion purchase price to derive the real fair market value for the refinery fixtures only, the $313 would be reduced significantly.

Moreover, compare that $313 value to all of the other values on Exhibit 1. It is clear that the $313 is only higher than two values, the value for Refinery J from 2010, and Refinery H from 2013. Of course, once the non-refinery values are removed from the Tesoro Acquisition $1.075 billion total purchase price, clearly the Carson refinery market value per complexity barrel would be lower than all of the Board's estimates, *for all 10 refineries, in all five years*. Some of the Board estimates are two to four times the $313 figure before removing the non-refinery assets. This demonstrates how unrealistic and unreasonable the Board's estimates are. The best evidence of the fair market value of a California refinery is the Carson refinery, as established through the June 2013 sale, and *all* of the Board's estimates exceed that value by significant margins.

Further evidence that the Board-derived values are flawed can be shown by looking at the values of the refineries on the basis of crude barrels of refining capacity. Exhibit 2 to this letter, *Board of Equalization Stated Fair Market Value for Fixtures – Crude Barrel Capacity*, demonstrates this point. Exhibit 2 is a summary of the highest and lowest values for each refinery across the 2009-2013 years, derived from the Board's analysis on *Attachment F* to the *Initial Statement*, and shows the Board's estimated fair market values of fixtures at each of the 10 refineries analyzed divided by the number of crude barrels of refining capacity per day.

Board Determined Fair Market Values of Fixtures Per Crude Barrel of Refinery Capacity
(See Exhibit 2)

Refinery A	$5,112 to $7,095 (the Carson refinery)
Refinery B	$5,342 to $7,663
Refinery C	$7,491 to $9,870
Refinery D	$7,722 to $8,391
Refinery E	$7,181 to $17,173
Refinery F	$4,787 to $20,698
Refinery G	$6,098 to $11,450
Refinery H	$5,304 to $6,959

[3] ($1.075 billion x .89) divided by 3,048,413 complexity barrels.

Refinery I	$5,723 to $7,294
Refinery J	$5,913 to 12,835

Using the Carson refinery as a good example again to demonstrate how overstated the Board's estimates are, even if the entire $1.075 purchase price figure were used to determine fair market value per barrel of refining capacity, the figure would be $3,800.[4] Compare this (which again includes all of the non-refinery assets) to the Board's estimates of per barrel of capacity fair market values of fixtures for the 10 refineries on Exhibit 2.

Not only is the Board's estimated value of the Carson refinery inconsistent with the data from Tesoro Acquisition, but the Board's estimates of all of the other nine refineries are all inconsistent with this arm's length, market-based value of California refineries on a per barrel of capacity basis. Even if we simply look at the overall fair market values the Board ascribed to all of the refineries for lien date 2013 (land, improvements and fixtures combined), and compare them to the Carson refinery, it is clear that the Board's figures are wildly overstated.

Board's Overall Fair Market Value Estimates for Lien Date 2013 from Attachment F

Refinery A	$1,533,355,051 (the Carson refinery)
Refinery B	$1,766,347,425
Refinery C	$1,362,773,677
Refinery D	$1,292,007,019
Refinery E	$1,821,953,554
Refinery F	$1,368,262,574,
Refinery G	$1,318,591,387
Refinery H	$624,523,309
Refinery I	$924,198,374
Refinery J	$ 3,722,232,049 (2012)

The Carson refinery sold in June 2013 along with a bundle of non-refinery assets for a total purchase price of $1.075 billion. That total purchase price for *all of the assets* is lower than eight of the 10 Board-derived total refinery fair market values for 2013 (and 2012 for Refinery J, since 2013 data was not provided). Given that the Carson refinery is one of the largest refineries in California in terms of refinery capacity in complexity barrels and in overall crude barrel refining capacity, it makes absolutely no sense that all of the other Board-determined fair market values would exceed the arm's-length sales price value of the Carson refinery. And certainly when the non-refinery assets are removed from the $1.075 billion purchase price, it is clear that *all* of the Board's fair market value estimates exceed the actual Carson refinery fair market value as of the sale date.

The point is that the Tesoro Acquisition provides a supportable fair market value measure of a quality, well-equipped refinery that is well-located in a metropolitan area with significant demand for its product. Given these enormous variances in value, it is difficult for the Board to

[4] ($1.075 billion x .89) divided by 252,000 barrels.

argue that its estimates are reasonable. In fact, the Board's failure to adequately estimate the true magnitude of fixture depreciation is exactly the error the Supreme Court concluded was the fatal flaw in the Board economic analysis in the first version of Rule 474. (See *Western States Petroleum*, 57 Cal. 4th at 430.) As explained below (and in the attached chart), the Board's egregious overstatement of fixture value causes it to grossly understate the true tax effect of Rule 474. As discussed below, we would expect the courts to rule just as they did previously and conclude that the Board's failure to provide an economic impact statement that adequately estimated the property tax increment of Rule 474 made the rule procedurally invalid.

The Impact of Wrong Data

On *Initial Statement – Attachment F*, the Board used *past data* to estimate the future impact of Rule 474 on the petroleum refining industry. Putting aside the misjudgment of using historical data to project the future impact of a tax regulation, it is clear that the Board's estimated additional property tax costs that will be caused by proposed Rule 474 are not reasonable given that so many of its input figures are clearly flawed.

The attached example, *Proposed Rule 474 Property Tax Impact of Overstating Fixture Values*, illustrates this point:

> In this hypothetical refinery, the fixtures have an adjusted base year value of $200 million. The Board has incorrectly overstated its estimate of the fixture fair market value at $150 million. The actual fair market value of the fixtures is only $50 million. On the land, the fair market value is $175 million, and the base year value is $25 million.
>
> In this example, the $150 million in land appreciation above the land base year value is subject to possible assessment under Rule 474, but only to the extent that the actual fixtures had depreciated in value below the fixtures base year values.
>
> Using the Board's overstated estimate of $150 million as the fair market value of the fixtures, the Board has only allowed for $50 million of fixture depreciation ($200 million fixture base year value less the estimated $150 million fair market value). Accordingly, the Board's calculation of the incremental economic effect under Rule 474 would result in only $50 million of additional land appreciation as being subject to assessment, and the additional property tax cost on that additional assessed value would be approximately $500,000 (one percent of $50 million).
>
> On the other hand, if the Board's estimates were corrected to show actual fair market value for the fixtures at $50 million, Rule 474 produces a much more severe economic impact. In this case, the $50 million fixture value means that there has been $150 million in fixture depreciation ($200 million fixture base year value less the actual $50 million fair market value). Thus, the incremental effect of applying Rule 474 is that the full $150 million of incremental land value is subject to being included in the refinery's assessed value, producing an additional

property tax cost that would be approximately $1,500,000 (one percent of $150 million).

Thus, the incremental assessed value produced by Rule 474 using an accurate measure of the fixture value is $150 million instead of $50 million in this example. The incremental property tax collected from the refinery would be $1.5 million, three times the incremental tax effect produced by the Board's overstated fixture value estimate.

As further evidence that the Board's estimates of fixture fair market value are greatly overstated are the multiple cases where the Board's purported fixture fair market values on a particular refinery exceed that refinery's fixture Proposition 13 adjusted base year value (the fixture cost when newly added adjusted annually by the Proposition 13 inflation factor). (See *Initial Statement. Attachment F*: Page 1—Refinery E for 2009 and 2012; Page 2—Refinery F for 2009 and 2012, Refinery G for 2009, Refinery I for 2009 and 2010, and Refinery J for 2012.) This is obviously incorrect. As any appraiser would confirm, industrial fixtures lose significant value as soon as they start production. Thus, it is nearly impossible for industrial fixtures to ever have a fair market value in excess of their adjusted base year value. Yet, the Board's flawed analysis contains multiple examples of the implausible conclusion that refinery fixtures actually *appreciate in value*.

The Supreme Court held that the APA requires the Board "to estimate the amount of fixture depreciation that would be offset by appraising land and fixtures as a single unit." (*Western States Petroleum*, 57 Cal. 4th at 430.) Because it has used incorrect estimates for fixture values, fixture depreciation on the California refineries is not property captured in the Board's model. Accordingly, the Board's analysis could not possibly provide clear, objective, or reasoned estimates of the additional full property tax caused by the newly adopted Rule 474. As a consequence, the Board has not made a reasoned estimate the amount of fixture depreciation that would be offset by land values.

Failure to Analyze Impact on All Refineries

In *Western States Petroleum*, the Supreme Court criticized the Board's economic impact assessment analysis for only considering data from nine of the 20 major refineries in the state, the five in Los Angeles County and the four in Contra Costa County. The Board extrapolated from the data on the nine, estimating based on the averages from the nine what the total values of all refinery property was in the state, and the breakdown of the estimated totals between fixtures and land and improvements: (*Western States Petroleum*, 57 Cal. 4th at 429-430.). Thus, it is clear the Supreme Court did not believe that the Board's initial economic impact assessment from the first adoption of the rule in 2007 could reasonably project the economic impact of the rule on the 20 refineries from data it had from only nine. Here, in the present proposal, the Board's initial economic impact assessment uses data from *only 10 of the 20 major refineries*, and thus it continues to draw its conclusion from only half of the available data. WSPA believes that the Supreme Court would continue to question the validity of the Board's conclusions as to the statewide impact of Rule 474 since the Board's analysis continues to be based on data from only half of the California refineries.

Failure to Assess Other Impacts on Jobs and Business

Last, WSPA believes that the Board failed to property comply with the APA provision set out in Gov. Code § 11346.3(b)(1), which requires the Board's economic impact assessment to assess whether and to what extent Rule 474 would affect (i) the creation or elimination of jobs in California; (ii) the creation of new businesses or the elimination of existing businesses within California; (iii) the expansion of businesses currently doing business in California; and (iv) the benefits of the rule to the health and welfare of California residents, worker safety, and the California environment. WSPA believes that to comply with this requirement, it is not enough for the Board to say, perfunctorily, that Rule 474 would not have an impact on any of these matters. However, this is precisely what the Board has done. In the *Initial Statement*, the Board states:

> Therefore, based on these facts and all of the information in the rulemaking file, the Board has determined that the proposed re-adoption of Rule 474 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. [¶] Finally, Rule 474 does not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has also determined that the re-adoption of Rule 474 will not affect the benefits of Rule 474 to the health and welfare of California residents, worker safety, or the state's environment.

The statute clearly requires agencies to prepare an economic impact assessment "that assesses" these matters. WSPA believes that the Supreme Court would conclude that the Board has to actually carefully assess and evaluate these matters, and not simply say conclusively that it has determined that the proposed rule would not eliminate jobs nor result in the elimination of existing business in California.

Conclusion

The Supreme Court set a clear mandate on the Board for its regulations to satisfy the APA. The APA requires the Board to include a description of all costs impacts that business would necessarily incur as a result of the proposed rule known to the Board in its notice of proposed action. The Board's estimate of economic impact must consider the *full tax impact* of the rule. Under the APA, alleged inadequacies in cost estimates may only save a proposed rule from invalidation if there is substantial compliance with the economic impact estimate. WSPA believes the Board's estimates are flawed and erroneous, which is obvious upon any reasoned analysis of them. With flawed and erroneous figures, the Board has not substantially complied with the requirement to provide a description of the full tax cost impacts of proposed Rule 474. Accordingly, WSPA believes that the Board's economic analysis fails to satisfy the Supreme Court's mandate that the Board make a reasoned estimate of all the cost impacts of the rule on affected parties.

Sincerely,

Catherine H. Reheis-Boyd
President
Western States Petroleum Association
(916) 498-7752

EXHIBIT 1

BOARD OF EQUALIZATION STATED FAIR MARKET VALUE FOR FIXTURES - COMPLEXITY BARRELS

	Complexity Barrels of Refinery Capacity	Board Determined Fair Market Values of Fixtures 2009 to 2013		Board Determined Fair Market Values Per Complexity Barrel Of Refinery Capacity 2009 to 2013	
		Low	High	Low	High
Refinery A	3,048,413	$ 1,359,876,090	$ 1,887,388,187	$ 446	$ 619
Refinery B	3,101,350	$ 1,437,067,764	$ 2,061,450,203	$ 463	$ 665
Refinery C	1,450,650	$ 1,011,250,213	$ 1,332,461,979	$ 697	$ 919
Refinery D	1,979,325	$ 1,071,086,534	$ 1,163,881,804	$ 541	$ 588
Refinery E	2,260,600	$ 1,073,496,817	$ 2,567,404,620	$ 475	$ 1,136
Refinery F	2,238,050	$ 770,703,336	$ 3,332,322,123	$ 344	$ 1,489
Refinery G	1,697,300	$ 731,794,729	$ 1,373,985,234	$ 431	$ 810
Refinery H	1,685,825	$ 530,401,266	$ 695,911,963	$ 315	$ 413
Refinery I	2,160,075	$ 829,822,975	$ 1,057,579,171	$ 384	$ 490
Refinery J	4,587,150	$ 1,288,224,045	$ 3,298,620,241	$ 281	$ 719

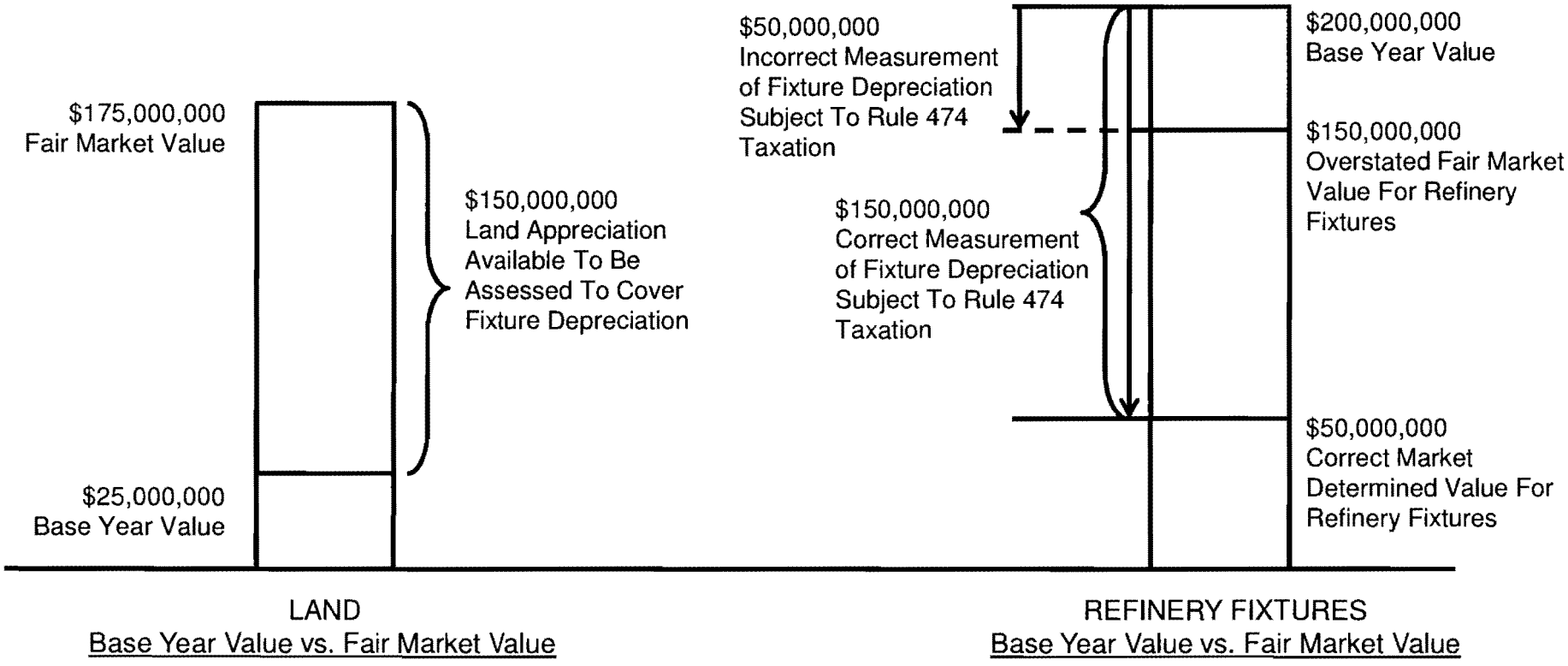
EXHIBIT 2

BOARD OF EQUALIZATION STATED FAIR MARKET VALUE FOR FIXTURES - CRUDE BARREL CAPACITY

	Crude Barrels of Refinery Capacity	Board Determined Fair Market Values of Fixtures 2009 to 2013		Board Determined Fair Market Values of Fixtures Per Crude Barrel of Refinery Capacity 2009 to 2013	
		Low	High	Low	High
Refinery A	252,000	$ 1,359,876,090	$ 1,887,388,187	$ 5,396	$ 7,490
Refinery B	269,000	$ 1,437,067,764	$ 2,061,450,203	$ 5,342	$ 7,663
Refinery C	135,000	$ 1,011,250,213	$ 1,332,461,979	$ 7,491	$ 9,870
Refinery D	138,700	$ 1,071,086,534	$ 1,163,881,804	$ 7,722	$ 8,391
Refinery E	149,500	$ 1,073,496,817	$ 2,567,404,620	$ 7,181	$ 17,173
Refinery F	161,000	$ 770,703,336	$ 3,332,322,123	$ 4,787	$ 20,698
Refinery G	120,000	$ 731,794,729	$ 1,373,985,234	$ 6,098	$ 11,450
Refinery H	100,000	$ 530,401,266	$ 695,911,963	$ 5,304	$ 6,959
Refinery I	145,000	$ 829,822,975	$ 1,057,579,171	$ 5,723	$ 7,294
Refinery J	257,000	$ 1,288,224,045	$ 3,298,620,241	$ 5,013	$ 12,835

PROPOSED RULE 474

PROPERTY TAX IMPACT OF OVERSTATING FIXTURE VALUES



SBE Systemic Overstatement Of Refinery Fixture Fair Market Value
Understates Property Tax Effect of Rule 474

Correction of Error Produces Incremental 3x Property Tax Effect

- With Overstated Fixture FMV → Property Tax Effect is 1% x $50,000,000 = $500,000
- With Correct Fixture FMV → Property Tax Effect is 1% x $150,000,000 = $1,500,000

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BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

DECEMBER 18, 2014

F PUBLIC HEARINGS

F3 PROPOSED RE-ADOPTION OF PROPERTY TAX RULE 474,

PETROLEUM REFINING PROPERTIES

REPORTED BY: Kathleen Skidgel

CSR NO. 9039

Electronically signed by Kathleen Skidgel (601-100-826-6264) c4c3c244-15d7-4de0-bb20-88f3c238f203

1 P R E S E N T

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3 For the Board of Equalization: Jerome E. Horton
Chairman

4

5 Michelle Steel
Vice-Chairwoman

6

7 Betty T. Yee
Member

8

9 George Runner
Member

10

11 Marcy Jo Mandel
Appearing for John
12 Chiang, State Controller
(per Government Code
13 Section 7.9)

14

Joann Richmond
15 Chief
Board Proceedings
16 Division

17

For Staff: Bradley Heller
18 Tax Counsel IV
Legal Department

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Electronically signed by Kathleen Skidgel (601-100-826-6264) c4c3c244-15d7-4de0-bb20-88f3c238f2C

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5 Craig A. Becker Attorney 6 Pillsbury Winthrop Shaw Pittman, LLP Representing Western States Petroleum 7 Association	11
8 Walt Turville Senior Property Tax Representative 9 Chevron	16
10 Donald L. Flessner Executive Vice-President 11 Baker & O'Brien, Inc. Representing Contra Costa County 12	18
Rebecca Hooley 13 Deputy County Counsel Contra Costa County 14	21
Peter Yu 15 Appraiser Business Division 16 Contra Costa County Assessor's Office	23

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1 450 N STREET
2 SACRAMENTO, CALIFORNIA
3 DECEMBER 18, 2014
4 ---oOo---
5 MR. HORTON: Ms. Richmond.
6 MS. RICHMOND: Our next matter is F3,
7 Proposed Re-Adoption of Property Tax Rule 474,
8 Petroleum Refining Properties.
9 And we do have several speakers for this
10 matter.
11 MR. HORTON: Thank you, Ms. Richmond.
12 As staff comes in, in the essence of time,
13 I would ask that Mr. Albert Rams -- Ramseyer please
14 come forward, Deputy County Counsel for the Los
15 Angeles County Assessor's Office.
16 Craig A. Becker with the WSPA.
17 Matt Turvilla (verbatim), Senior Property
18 Tax Rep with Chevron.
19 Donald Flessinger (verbatim), Vice
20 President, Bakers Tobin (verbatim), Incorporated,
21 for Contra Costa County. Writes like a doctor.
22 Rebecca Hooley, Deputy Counsel for Contra
23 Costa County.
24 Peter -- we would ask that you take a seat
25 in -- in the front, but please come forward, sir --
26 Principal Appraiser for Contra Costa County
27 Assessor's Office.
28 Welcome, everyone, to the Board of

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1 Equalization.
2 Mr. Heller, please make your
3 presentation.
4 MR. HELLER: Good afternoon, Chairman
5 Horton, Members of the Board.
6 I'm Bradley Heller from the Board's Legal
7 Department, and I'm here to request that the
8 Board -- the Board vote to re-adopt Property Tax
9 Rule 474, Petroleum Refining Properties, which
10 provides a rebuttable presumption that petroleum
11 refinery property constitutes a single appraisal
12 unit for purposes of measuring declines in value.
13 In Western States Petroleum Association
14 versus the Board of Equalization, the California
15 Supreme Court concluded that the rule was
16 substantively valid because petroleum refineries are
17 commonly bought and sold as a unit and the
18 presumption in the rule is consistent with Revenue
19 and Taxation Code section 51(d) which defines real
20 property as the appraisal unit that persons in the
21 marketplace commonly buy and sell as a unit.
22 However, the court invalidated the rule on
23 procedural grounds because the court concluded that
24 the Board did not properly assess the economic
25 impact under the administrative -- excuse me, the
26 economic impact of the rule under the Administrative
27 Procedure Act. This was because the Board based its
28 entire assessment on a revenue estimate and the

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1 court found that the Board could not explain why the
2 methodology -- excuse me, methodology used in the
3 revenue estimate was a valid or reasonable way to
4 estimate the amount of fixture depreciation that
5 would be offset by appraising land and fixtures as a
6 single appraisal unit.
7 Therefore, staff has performed a new
8 evaluation of the economic impact of re-adopting
9 Rule 474. Staff has determined that currently
10 assessors may treat petroleum refining property as
11 one appraisal unit under section 51(d) as
12 interpreted by the California Supreme Court; Rule
13 474 does not materially change the treatment of
14 petroleum refinery property under section 51(d); and
15 that there is no economic impact from the
16 re-adoption of Rule 474 that is in addition to the
17 economic impact of section 51(d).
18 In addition, staff has clearly explained
19 the methodology used to assess the economic impact
20 of the re-adoption of Rule 474 in the initial
21 statement of reasons and staff believes that the
22 method -- methodology is reasonable.
23 In addition, the Board has received written
24 comments from Jeffrey Prang, Los Angeles County
25 Assessor; Gus Kramer, Contra County -- Contra Costa
26 County Assessor; David Twa, County Administrator for
27 Contra Costa County; and Donald Flessner, Executive
28 Vice President of Baker & O'Brien, Incorporated in

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1 support of the Board's re-adoption of Rule 474 and
2 staff's economic impact assessment of the
3 re-adoption.
4 Further, the Board received a written
5 comment from Gina Rodriquez, Vice President of Tax
6 Policy for the California Taxpayers Association,
7 which requested that the Board reject the rule
8 because the Board failed to follow the APA and
9 comply with Government Code sections 11346.2
10 subdivision (b)(5)(A), 11346.3 and 11346.5
11 subdivision (a)(8).
12 Therefore, staff reviewed all of the
13 rulemaking documents and confirmed that the economic
14 impact assessment complies with Government Code
15 section eleven -- or, excuse me, 11346.2 subdivision
16 (b)(5)(A) because it clearly identifies the facts,
17 evidence, documents, testimony and other evidence
18 supporting the initial determination that the
19 re-adoption of Rule 474 will not have a significant
20 adverse economic impact on business.
21 The economic impact assessment complies
22 with the applicable provisions of Government Code
23 section 11346.3 subdivision (b) because pages 14 and
24 15 of the initial statement of reasons expressly
25 provide that due to the current application of
26 section 51(d), the re-adoption of Rule 474 will
27 neither create nor eliminate jobs in the State of
28 California nor result in the elimination of existing

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1 businesses nor create or expand businesses in the
2 State of California; and that the re-adoption of
3 rule seventy -- Rule 474 will not affect the
4 benefits of the rule to the health and welfare of
5 California residents, worker safety, or the state's
6 environment because Rule 474 does not regulate the
7 health and welfare of California residents, worker
8 safety, or the state's environment.
9 And the economic impact assessment complies
10 with Government Code section 11346.5 subdivision
11 (a)(8) because page 8 of the Board's notice contains
12 the declaration that the Board has made an initial
13 determination that the re-adoption of proposed Rule
14 474 will not have a significant statewide adverse
15 economic impact directly affecting business,
16 including the ability of California businesses to
17 compete with businesses in other states.
18 And the initial statement of reasons
19 provides the facts, evidence, documents, testimony,
20 or other evidence upon which the Board relies to
21 support its initial determination.
22 Finally, the Board received a written
23 comment from Catherine -- and I apologize if I don't
24 get this right -- Reheis-Boyd, President of Western
25 States Petroleum Association, stating that the
26 association opposes Rule 474 and that the Board's
27 economic impact assessment does not comply with the
28 requirements of the Administrative Procedure Act.

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1 Therefore, staff reviewed the letter and
2 concluded that it primarily contests staff's
3 understanding of Revenue and Taxation Code section
4 51(d) as interpreted by the California Supreme Court
5 because it alleges that the rule will have impacts
6 beyond the statute. And the letter contests the
7 data provided by the California Assessors'
8 Association that staff obtained to determine the tax
9 effect of appraising petroleum refinery property as
10 a single appraisal unit versus appraising fixtures
11 separately from other petroleum refinery property.
12 As a result, staff is not aware of anything
13 in Ms. Rodriquez' or Ms. Reheis-Boyd's comments that
14 changes staff's opinion that the new economic impact
15 assessment complies with the Administrative
16 Procedure Act. And if the Board adopts the rule
17 today, staff will respond to their comments in the
18 final statement of reasons.
19 I can answer any questions the Board may
20 have regarding re-adoption of Rule 474.
21 MR. HORTON: Thank you very much.
22 Members, let us hear from the -- from our
23 guests today as they sit from, I guess, my left,
24 moving all the way around.
25 Welcome.
26 Please introduce yourself for the record.
27 You have three minutes of testimony.
28 ---oOo---

1 ALBERT RAMSEYER

2 ---oOo---

3 MR. RAMSEYER: Good afternoon. My name is
4 Albert Ramseyer. I'm a Deputy County Counsel in the
5 County of Los Angeles. I'm appearing here this
6 afternoon on behalf of newly elected Assessor
7 Jeffrey Prang.
8 We support the proposed rule change. We
9 believe it's consistent with good appraisal
10 practice. The issue -- the issue is how should an
11 assessor do a decline in value assessment of an oil
12 refinery? And the rule provides, as we understand
13 it, that decline in value assessment of an oil
14 refinery should be done on a fair market value
15 basis, consistent with how a refinery typically is
16 bought and sold in the marketplace.
17 Now, if a taxpayer comes before the
18 assessor or the Assessment Appeals Board and can
19 prove that -- that his refinery is actually being
20 bought and sold in pieces, on a scrap basis, we
21 would take that into consider in doing our decline
22 in value assessment, or our -- or our review.
23 But typically, you know, our experience is
24 that oil refineries are bought and sold as operating
25 enterprises, as economic units. This rule is
26 consistent with the actual -- actual transactions in
27 the marketplace and -- and these properties should
28 be appraised consistent with the market, consistent

1 with how other taxpayers are typically assessed
2 in -- in -- in these circumstances. And so we
3 strongly support the rule.
4 Our office has worked with your staff to
5 provide the economic data that's an input into
6 the -- into the economic impact assessment. And
7 frankly, that's a bit beyond our expertise. But on
8 the substance, we strongly support the rule and we
9 urge its adoption.
10 Thank you.
11 MR. HORTON: Thank you very much.
12 Please introduce yourself for the record.
13 ---oOo---
14 CRAIG BECKER
15 ---oOo---
16 MR. BECKER: Craig Becker, for WSPA.
17 Well, first of all, let's be straight about
18 what's going on here. This is a real change. Prior
19 to 474 -- or I should say prior to the proposed Rule
20 474, industrial manufacturing operations had land
21 and fixtures assessed separately under 461(e); that
22 was the law.
23 The Supreme Court recognizes that in their
24 decision when they say "any attempt to change the
25 law under Rule 474 is quasi legislative and a
26 change."
27 They go on to say that the Board has the
28 power to make that change. We regrettably disagree

1 with that conclusion by the Supreme Court, but
2 nevertheless, the Supreme Court said it.
3 The fact is the Supreme Court starts this
4 analysis by saying that the current law is 461(e).
5 Absent 474, we value fixtures separately from land
6 and buildings. And we do that not just for
7 refineries, we do that for all industrial
8 operations, all manufacturing operations.
9 474 singles out refineries for a special
10 rule. It singles them out for a special rule. Now
11 regrettably, the Supreme Court said we can do
12 that.
13 So basically what we're here for today is
14 we're going to argue that the economic impact
15 statement is inaccurate. It's inaccurate and
16 unacceptable and will destine Rule 474 to being
17 failing -- to fail again before the Supreme Court.
18 Now why is that the case? I guess to help
19 the Board understand my argument, I'd ask you to
20 turn to the last page of the WSPA submission where
21 we talk about what's really going on here. And
22 what's really going on here is Rule 474 allows
23 fixture depreciation to be subject to property tax.
24 So when fixtures depreciate beneath the
25 base year value -- as in refineries they almost
26 certainly will because it's an industrial operation
27 where fixtures are used up in the process of making
28 oil and gas products -- that decline in value

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1 currently, under 461(e), cannot be taxed. You have
2 to go to the fair market value.
3 474 says I can grab that decline in value
4 and tax it to the extent of land depreciation.
5 Okay. We got to measure that. We got to measure
6 that accurately to tell the economic impact of
7 what's going on here.
8 Now, I -- Mr. Heller and his people made an
9 attempt at that, but it's not a very accurate one.
10 When you look at what they've done and how they've
11 come up with those numbers, those numbers are far in
12 excess -- the fair market value numbers they came up
13 with are far in excess of market values. And
14 because they're in excess of market values, in
15 measuring the spread, the extra spread between base
16 year value and market value that can be captured,
17 they've minimized the tax impact. Because the fair
18 market value of refinery fixtures is actually much,
19 much lower, the tax impact is much broader of
20 allowing that depreciation to be taxed.
21 The principal evidence we present for
22 this -- you didn't even have to look far for it --
23 it was in the Board's economic impact statement that
24 they presented. It's the recent sale, in June of
25 2013, of the BP -- the BP Carson refinery Tesoro --
26 to Tesoro. That refinery sold for a billion
27 dollars. It's not $2.4 billion as is noted in some
28 of the Board's materials, but for a billion dollars,

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1 a billion 75 million. The remaining amount was for
2 inventories which are not taxed.
3 But beyond that, that billion 75 included
4 much, much more than the refinery. It included
5 marine terminals. It included service stations. It
6 included trade names.
7 Actually, when you think about this
8 transaction, those items, those other items are the
9 vast majority of this transaction. So really, the
10 refinery value is a minor fraction of that billion
11 dollars.
12 Nevertheless, let's look at that billion
13 dollars because we have that as an objective number
14 to look at. When you look at that billion dollars
15 in relation to crude capacity of this refinery, it
16 produces a value of $3800 per barrel of crude
17 capacity.
18 Now, I ask you to go to Exhibit 2 of what
19 WSPA presented. These are the numbers that the
20 Board presents as their estimates of fair market
21 value. They go from a low of, I think, $5400 per
22 barrel of crude capacity for the Carson refinery to
23 $20,000 per barrel of crude capacity. This is what
24 they're saying the fair market values are of these
25 fixtures in the face of a recent transaction, for a
26 number at $3800 which is vastly below this. And
27 that $3800 is vastly overstated because it includes
28 tons of other assets.

1 That $3800 we expect could go well beneath
2 a thousand dollars. So we're talking about a spread
3 here in fair market value that the Board presented
4 from numbers as high as $20,000 per crude capacity
5 down to a thousand dollars.
6 And because of that spread, because of that
7 spread and that high number that's on this analysis,
8 we believe they have greatly understated the amount
9 of extra assessment that these refineries will be
10 subject to.
11 The spread again that these refineries will
12 be subject to is the base -- the base year value
13 against the fair market value. And if you overstate
14 that fair market value, that tax effect of that
15 spread is going to be minimized. And their analysis
16 is based on that minimal spread.
17 That's what we're unhappy about. We're, of
18 course, unhappy about Rule 474 because the
19 refineries don't like being singled out differently
20 from other industrial operations; that's not fair.
21 But despite that, we're even -- we're equally
22 unhappy about the fact that the economic impact
23 statement has understated, greatly understated the
24 true cost of this measure. And therefore, the
25 analysis that says there's no jobs effect, there's
26 no economic effect, there's no effect on California
27 industry, all of that extra money is going to be
28 taken away from refinery production activities and

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1 not -- not -- not able to go into the free
2 enterprise system.
3 So there is an economic effect that's much
4 greater than what the Board's analysis is saying.
5 And, therefore, we respectfully submit that the
6 economic impact statement is flawed and cannot be
7 accepted.
8 MR. HORTON: Thank you very much.
9 Mr. Turville, would you submit to that
10 argument, or yours is different?
11 ---oOo---
12 WALT TURVILLE
13 ---oOo---
14 MR. TURVILLE: It's similar. And I'm
15 trying to make something much more simpler of an
16 argument. I'm trying to appeal to the Board's
17 sensibilities as -- you know, in the name of the
18 State Board of Equalization is the word
19 "equalization" which you're -- you're charged with
20 protecting taxpayers' rights throughout the land of
21 California, to make sure they're treated equally and
22 fairly under the law.
23 Well, 474 on its face simply is stripping
24 away one taxpayer's group's right for protection
25 under Prop 13. And I -- I can't understand why that
26 would even be something you'd want to do in the
27 sense of equalization throughout all taxpayers.
28 So the assessors already have the

1 opportunity to value property -- or refineries as a
2 whole, as if bought and sold. They already do the
3 cost approach, the income approach and the
4 sales/market approach. And in doing so, they --
5 they value as one unit anyway.
6 It all comes down to how that value gives
7 to the roll. And 461 was promulgated years ago and
8 gives them a road map of how to do that and make
9 sure that each taxpayer, each refinery, gets that
10 Prop 13 protection.
11 And specifically, especially on land and
12 improvements which deserve to have that protection.
13 474 strips that away. And, to me, that just seems
14 grossly unfair, and I appeal to your sensibilities
15 as a Board to not allow that to happen and not
16 promulgate a rule that really isn't necessary to
17 allow the assessors to value a refinery as a whole.
18 They always do. They always have. It's how it gets
19 to the roll, how it gets -- value gets allocated
20 back to the roll. And 461 tells them how to do that
21 and how to do that fairly. And I appeal to you to
22 ask them to -- to actually take that approach with
23 refinery valuations.
24 Thank you.
25 MR. HORTON: Thank you very much.
26 Mr. Flessner, please introduce yourself for
27 the record.
28 ---oOo---

1 DONALD FLESSNER

2 ---oOo---

3 MR. FLESSNER: My name is Donald Flessner.
4 I'm with Baker and O'Brien, Incorporated. And I'm
5 here to speak on behalf of Contra Costa County
6 today.
7 My background includes more than 30 years
8 of experience in the petroleum refining industry.
9 I've worked as an engineer, as a commercial manager,
10 and as consultant in the industry.
11 I started my career with Standard Oil
12 Company Ohio in 1979. While I was industry -- in
13 industry, I was involved in engineering, economic
14 analysis, commercial issues including logistics,
15 product trading, wholesale marketing, and finally
16 strategy development.
17 I became a consultant in 1991. And since
18 that time, I've been involved in a variety of
19 assignments that have included the acquisition,
20 privatization and refinancing of petroleum
21 refineries around the world.
22 As part of my work, I've advised Contra
23 Costa County in the valuation of petroleum
24 refineries located there. And I've -- I have
25 testified in four separate public hearings related
26 to the assessed values of refineries in Contra Costa
27 County as an industry expert.
28 In my work for the county, I have advised

1 them that there are two facts that support the
2 valuation of petroleum refineries as would be
3 provided by Rule 474. The first fact is that
4 refineries are bought and sold in the marketplace as
5 single entire operations, as business enterprises,
6 which include all of the land, fixtures,
7 improvements, personal property that are required to
8 operate the business. It's just the way things are
9 done.
10 The second fact I've advised the county of
11 is that buyers and sellers of refineries value these
12 properties for their capacity to generate income.
13 Beyond that, there is little concern for other
14 things such as cost or other things like that.
15 The first fact is important because the
16 true market value for operating refineries is
17 established in the marketplace for the entire
18 property. I've looked at more than a hundred
19 refinery transactions that have occurred since the
20 early 80s, and there are very few examples where the
21 refinery has not been sold as a single economic
22 unit.
23 And when I look at those exceptions, what I
24 find is that they're often exigency sales which were
25 not either open market transactions or involved
26 refineries that were no longer in operation and were
27 being sold for salvage. For this reason, there is
28 little market data to independently establish the

1 fair market value for land, improvements and
2 equipment that is used in petroleum refineries.
3 The second fact that I mentioned is
4 important because income generated by a refinery is
5 measured and attributed to the single economic unit.
6 The income potential of a refinery is dictated by
7 the installed processing equipment which generally
8 exceeds more than 80 percent of the taxable
9 property.
10 In operating a refinery, the most basic
11 processing and investment decisions, such as what
12 kind of crude oil to buy and how much gasoline or
13 diesel fuel to produce, are evaluated based upon all
14 of the equipment at the refinery, operating and
15 working together in a planned matter, in order to
16 maximize income from the property.
17 For these reasons when I look at refinery
18 economic planning, economic analysis and management
19 accounting practices in the United States and around
20 the world, there's just no activities that they
21 undertake that measure or attribute income
22 separately to land, improvements, fixtures or
23 personal property.
24 MS. RICHMOND: Time's expired.
25 MR. FLESSNER: May I continue just briefly?
26 MR. HORTON: Yes, please.
27 MR. FLESSNER: I also wanted to mention
28 that I've reviewed the conclusions with respect to

1 the economic impact analysis that was presented in
2 the Board's statement. And from the basis of an
3 industry background, I agree with the Board's
4 conclusions.
5 Based on my experience in Contra Costa
6 County, I agree that Rule 474 does not materially
7 change the treatment of petroleum refineries under
8 the RTC section 51(d). And based on my experience
9 in the industry, I agree that Rule 474 will have no
10 material impact on the petroleum refinery industry
11 with respect to jobs, its competitive position with
12 respect to other locations, or the ability of these
13 businesses in the state of California to survive.
14 Thank you.
15 MR. HORTON: Thank you very much.
16 Ms. Hooley.
17 ---oOo---
18 REBECCA HOOLEY
19 ---oOo---
20 MS. HOOLEY: Yeah. Good morning, Mr. Chair
21 and Members of the Board.
22 My name is Rebecca Hooley. I'm a Deputy
23 County Counsel for Contra Costa County where I
24 represent the assessor.
25 In Contra Costa County we have four
26 refineries. And in valuing these refineries, we
27 primarily rely on the income approach for performing
28 decline and value valuations.

1 As mentioned by Mr. Flessner, income is
2 generated by an integrated refinery unit comprised
3 of land, improvements and fixtures. For this reason
4 our valuation of refineries are, and have been,
5 including the data submitted to the Board for the
6 Board's economic impact analysis, consistent with
7 Revenue and Taxation Code section 51(d) and the
8 California Constitution as set forth in the Supreme
9 Court's decision.
10 Although we are in compliance with Revenue
11 and Taxation Code section 51(d), Rule 474 remains
12 necessary. As shown by the letter submitted by
13 WSPA, and which I first saw this morning, refinery
14 owners continue to contend that refineries should be
15 entitled to the lowest possible value by using a
16 separate appraisal unit for land, fixtures and
17 improvements. This creates an artificial value not
18 seen in the marketplace, where in reality refineries
19 are bought and sold as a single unit.
20 Contra Costa County has recently been
21 through nine years of appeals and litigation
22 relating to the value of a refinery. The refinery
23 requested a refund of hundreds of millions of
24 dollars from our county, and one of their main
25 contentions was that their refineries should be
26 valued as separate appraisal units.
27 With Rule 474 in place, much of this
28 litigation could have been avoided and its

1 re-enactment can help avoid such costly and
2 unnecessary litigation in the future. For these
3 reasons and the other reasons submitted by Contra
4 Costa County, I ask the Board to re-enact Rule
5 474.
6 MR. HORTON: Thank you very much.
7 I'm going to ask that Mr. Yu come forward
8 and take the -- one of the seats here.
9 Ma'am, you can -- you can remain.
10 Sir, we're open to your testimony. Please
11 introduce yourself for the record.
12 ---oOo---
13 PETER YU
14 ---oOo---
15 MR. YU: Good afternoon, Chairman and
16 Members of the Board.
17 My name is Peter Yu and I'm the principal
18 appraiser of the business division for the
19 assessor's office of Contra Costa County.
20 I would like to address the economic effect
21 of treating petroleum refinery as one appraisal unit
22 under Rule 474.
23 In my opinion, most of the taxable value of
24 a refinery rests on its fixtures. And so the
25 economic impact of treating a petroleum refinery as
26 one appraisal unit versus separate appraisal units
27 for fixtures and land and improvements is
28 essentially the difference between the Proposition

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1 13 and Proposition 8 values of the land and
2 improvements appraisal unit because the fixtures
3 valued under both scenarios would have been the main
4 value component and assessed at the lower of Prop 13
5 versus Prop 8, in accordance to Revenue and Taxation
6 Code section 51.
7 Since the total value of land improvements
8 appraisal unit is, on average, less than 20 percent
9 of the total refinery value under Prop 13 or Prop 8,
10 the overall economic impact as researched by the
11 Board staff will not be large and, therefore,
12 conclusively indicates that there will be minimal
13 economic impact caused by the re-adoption of Rule
14 474.
15 Finally, I believe any future fair market
16 values of a refinery valued as a single appraisal
17 unit under -- determined under accepted appraisal
18 methods will be fully utilized and considered under
19 Rule 474.
20 Thank you.
21 MR. HORTON: Thank you very much.
22 Members, let's open it up for discussion
23 from the Members.
24 Member Runner.
25 MR. RUNNER: Yeah, just -- I mean let me,
26 um -- the -- going to Mr. Heller first.
27 The -- the material that was presented
28 today from WSPA, uhm, let me just -- let's see, I'm

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1 trying to -- is -- is there anything within that
2 material, uhm, that was not fully addressed in
3 discussions prior with them?
4 MR. HELLER: Senator Runner, I would say
5 all of the material was new material that was never
6 provided to staff before. So it wasn't -- couldn't
7 have been addressed previously.
8 MR. RUNNER: Okay. Okay. Okay.
9 MR. HELLER: At least --
10 MR. RUNNER: Okay. I mean that's -- I'm
11 trying -- what I'm trying to figure out right now is
12 if -- 'cause, again, let me -- well, let me just --
13 this is not -- the action for this today is not
14 needed to take today, correct? We don't need to
15 take an action on this today? We don't have any
16 time table or issue that we're dealing with that
17 puts us vulnerable to make some -- a ruling or
18 decision on this in the next 90 days?
19 MR. HELLER: Senator Runner, there's --
20 there's not a -- well, I should say there's a
21 statutory deadline that the Board complete
22 rulemaking within one year of the publication of the
23 notice for the proposed regulation.
24 MR. RUNNER: And when would that be?
25 MR. HELLER: And so I think -- I believe we
26 published in October, so we still have until the end
27 of next September.
28 MR. RUNNER: Okay.

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1 MR. HELLER: So that's the only statutory
2 deadline.
3 MR. RUNNER: Okay.
4 MR. HELLER: And staff just believes that
5 we've completed the process at this point --
6 MR. RUNNER: Okay.
7 MR. HELLER: -- by requesting --
8 MR. RUNNER: And, again, you know, my -- my
9 concern as we're going through this isn't -- is --
10 is mostly to protect whatever we move forward in to
11 make sure we have fully, um -- uh, had a
12 transparency in the process.
13 I know when we first talked about this, I
14 was concerned about what -- what the, uh -- the
15 dialogue was going to take place between the BOE and
16 also then between, uhm, industry and also then in
17 regards to the -- to the assessors' offices, in
18 regards to the nature, how that would take place.
19 I think in the beginning -- at that meeting
20 we had a discussion whether or not, you know, is
21 there -- is there a formal interested parties
22 discussion here? Is it informal process? What is
23 the process that we should be using?
24 Because I'm -- I -- the concern that I have
25 is that somehow -- 'cause I'm -- I'm hearing -- what
26 I'm hearing, and I think it was maybe in the -- in
27 the correspondence today that -- that there is
28 potential litigation as a result of adopting this as

1 it is worded.
2 Now, that doesn't necessarily scare me.
3 Lots of things we do with potential litigation out
4 there. I just want to make sure that we have done
5 everything that we could do in order to achieve the
6 best position we could be in if indeed that does --
7 that does happen.
8 So that's, I guess, my concern and my --
9 and I guess that's -- I don't know if I'm asking a
10 question here, Mr. Heller, or a comment or -- or a
11 statement.
12 Could we achieve -- well, let me ask you
13 this, could we achieve a better position -- if
14 indeed there is follow-up litigation, could we
15 achieve a better position in that litigation if we,
16 for instance, fully addressed the materials that
17 were presented today and extended the process by,
18 you know, 30, 60 days?
19 MR. HELLER: Personally, I don't -- not --
20 it's my opinion that we've addressed all of the
21 economic impacts and that there's nothing in any of
22 the -- the comments that we've received from the
23 California Taxpayers Association or -- or the
24 Western States Petroleum Association that would
25 actually change the Board's -- or staff's economic
26 impact assessment.
27 And I'd actually say we actually -- we
28 really analyzed their comments already.

1 MR. RUNNER: Mm-hmm.
2 MR. HELLER: We're prepared to respond to
3 them all in the final statement of reasons. So
4 they'll be fully responded to and there won't be a
5 lack of response or a -- or an -- you know -- or
6 some -- I guess some -- some lack of information in
7 the file so that those comments are just sitting out
8 there as if we just chose to not respond to them.
9 And I would just add, though, that there --
10 there are essentially just quite a few different red
11 herrings were thrown out, and many of them really
12 don't relate to what we're talking about today.
13 And I think the first and foremost is --
14 and I think this is what is the primary issue and
15 why I don't think we would actually make a whole lot
16 of progress postponing the -- the rulemaking, was
17 that the Supreme Court basically -- and this is what
18 I think staff has -- has geared our economic impact
19 assessment from, is that the Supreme Court -- and
20 I'm quoting -- said:
21 "To account for fixture depreciation
22 separately when land and fixtures are
23 actually bought and sold as a single unit
24 would allow the owner to claim a reduction
25 in real property value that is economically
26 fictitious, resulting in a tax windfall."
27 And this is the Supreme Court.
28 "Neither California Constitution,

1 article XIII A nor section 51 nor
2 traditional appraisal practices require the
3 unit of appraisal to be defined in a manner
4 that maximizes the depreciation of fixtures
5 in contravention of the economic reality."
6 And this is also quoted in our initial
7 statement of reasons as well.
8 So, "To the contrary," the Supreme
9 Court says "the law and consistent practice
10 have long required appraisal of real
11 property in declining value context to
12 reflect its 'full cash value' -- that is,
13 the value 'property would bring if exposed
14 for sale in the open market.'"
15 Then they say Rule 474 is consistent with
16 that principle.
17 So staff finds it very hard to see how
18 there's an impact from Rule 474 that goes beyond
19 what section 51(d) says as interpreted by the
20 Supreme Court, which essentially requires fair
21 market value to be determined based on the entire
22 appraisal -- the unit that's bought and sold in the
23 marketplace. And I think that's been fairly
24 established.
25 MR. RUNNER: Okay. So, again, let me just
26 see if I'm understanding the -- not so much the
27 specific there, but in the broader context in
28 regards to process and procedure.

1 MR. HELLER: Mm-hmm.
2 MR. RUNNER: Because, again, I think that
3 what's kind of the critical issue in the court's
4 case itself, was we were dealing with procedural
5 issues in part -- in terms of how we had --
6 MR. HELLER: The court was not concerned,
7 though, with like the interested parties meetings
8 process or anything like that.
9 MR. RUNNER: Okay.
10 MR. HELLER: They had just said that the
11 Board really could not provide any rational
12 explanation about how it had --
13 MR. RUNNER: Okay.
14 MR. HELLER: -- done its economic impact
15 assessment previously.
16 MR. RUNNER: Okay. So -- so that being
17 said, I'm just -- I just want to ensure that we are
18 doing everything we think we can do at that point
19 since there is no deadline attached to this, at
20 least not -- there is a deadline, but we're well
21 within that deadline.
22 I'm just wanting to hear that in your
23 opinion then we are not extend -- we -- we would not
24 strengthen our position if we went ahead and had
25 further dialogue in order to communicate and
26 re-examine or take another look at the positions
27 that we've stated.
28 MR. HELLER: I don't believe so.

1 And if I could just add a couple of more
2 points to respond to some of the comments we've
3 made, I can kind of further explain why we don't
4 think -- it's up to you, Senator Runner. But I can
5 help explain why we don't think so.
6 MR. RUNNER: That's okay. Hang on. I may
7 come back to it. But let me just -- let me -- let
8 me go back to WSPA in regards to, um --
9 What I'm -- what I'm -- what I'm not quite
10 understanding is whether or not actually we could
11 actually -- if dialogue and discussion would
12 actually be helpful in order to come to conclusion,
13 or there's no conclusion that you all could find a
14 satis -- that you all could be satisfied with. Is
15 that --
16 MR. BECKER: Well, I -- I guess a couple of
17 things that I think we got to get a perspective on
18 here. Since Prop 13 was adopted in 1978, industrial
19 manufacturing facilities of all kinds have had
20 fixtures treated separately from land and buildings.
21 Okay. 461(e) is the law now. Absent adoption of
22 474, it remains the law.
23 Okay. We can talk about what kind of
24 regulation you can or cannot adopt. I don't
25 disagree that the Supreme Court regrettably said you
26 could adopt this regulation. Okay. But, one, it's
27 not the law now. You can't do this now. Okay.
28 So this is a change. It is a major change

1 for which refineries are being singled out. We find
2 that problematic.
3 Okay. Number two, we think the economic
4 impact statement that is sitting with you right now
5 is badly flawed.
6 I suppose at the end, the state of
7 California is going to do what it wants --
8 MR. RUNNER: You believe it's badly flawed.
9 Do you believe that you could give input that would
10 help correct that? Do you believe -- have you had
11 adequate -- have you had adequate opportunity to
12 provide input that would then correct what you see
13 as a badly flawed document?
14 MR. BECKER: Well, we -- we -- first of
15 all, I'd answer you this way, Board Member Runner,
16 we gave that input today, for one thing, why it's
17 flawed. But I -- but I would relate to you a
18 conversation I had with one of our members in
19 advance of this hearing where we talked about this
20 topic. And he said, it seems to me that Rule 474 is
21 taking tax money from me. And are you -- if the
22 Board is asking me if I'm going to open the door and
23 help them take tax money from me, I don't know that
24 I'm very excited about that.
25 We will be happy -- I mean, I don't know
26 how to answer that. I'd have to pay -- we'd have to
27 solicit our members to talk about that. But we --
28 we see this as wrong. We see the economic impact

1 statement that there's wrong. We gave information
2 today why it's wrong. We will continue to believe
3 it's wrong. It's a -- it's a massive change,
4 isolating refineries. We think it's wrong, and we
5 think the economic impact statement's wrong.
6 MR. RUNNER: Okay.
7 Mr. Heller, tell me, what's the next
8 process after this, if we were to adopt this?
9 MR. HELLER: If the Board votes to adopt
10 today, staff will prepare the final statement of
11 reasons and address all of the comments that were
12 made -- all the public comments that were made, and
13 then file -- complete the rulemaking file and file
14 it with the Office of Administrative Law for their
15 review. And that would hopefully end the rulemaking
16 process for the Board.
17 MR. RUNNER: Okay, thank you.
18 MR. HORTON: Member Steel.
19 MS. STEEL: It seems -- I want to vote for
20 the -- I mean vote not for this, but I want to vote.
21 But it seems like we are going different directions.
22 So that's why I want to make statement before I
23 leave from this Board that Rule 474 is wrong, begin
24 with. And I remember that one of the Board Members
25 at that time that, you know, who created this Rule
26 474 and this is going to open the door for other,
27 like amusement park and other areas. And, you know,
28 we're going to end up making -- actually charging

1 more taxes and creating more taxes than ever.
2 So I was thinking about that I voting
3 actually against staff recommendations in protest
4 today, but it seems like you are moving forward.
5 And hopefully that WSPA and other oil refineries,
6 they come out and they really raise their voices and
7 make sure that, you know, it's going to go right
8 direction.
9 But, you know, whichever that we vote today
10 or not, but I'm totally against for this.
11 MR. HORTON: Further discussion, Members?
12 MR. RUNNER: Yeah, I -- I -- let me just
13 real quick.
14 MR. HORTON: Member Runner.
15 MR. RUNNER: I -- I -- I, for one, am
16 struggling with why it isn't that we would go ahead
17 and extend this discussion just, you know, to
18 another -- to, you know, another 30, 60 days.
19 I -- I guess I'm a bit disappointed that
20 there isn't some specifics that I'm hearing from
21 WSPA. And, quite frankly, I'm always concerned when
22 documents come in on the day of the hearing. Uhm,
23 and -- and it's really not a reflection at all in
24 regards to the work of the staff. Uhm, I'm just --
25 I'm -- I'm just wanting to be, I guess,
26 extraordinarily cautious, uhm, in -- in light of
27 what appears to me to be the setup for additional
28 litigation.

1 And for that reason, I guess, I -- I -- I
2 would feel much more comfortable in us taking a look
3 at this and having the parties -- and -- and, quite
4 frankly, maybe a more formal process of -- of -- of,
5 um -- of engagement that would include not only
6 the -- the industry, not only assessors, but also
7 then as we do with -- with other meetings that take
8 place in regards to interested parties, Members'
9 offices at least hearing the dialogue. Because,
10 unfortunately, the process that did take place, not
11 that it was in error, it just didn't -- it didn't
12 include that.
13 Uhm, so I guess for that reason I'm not
14 prepared to go ahead and -- and approve this today.
15 Not, again, because of the content, but because I
16 think time could at least make me feel better and
17 make me -- help me understand that we have done all
18 that we can do.
19 MR. HORTON: Member Yee.
20 MS. YEE: Thank you, Mr. Chairman.
21 I guess I'm unclear about what the
22 additional time would -- I guess what would staff be
23 addressing with the additional time? I'm trying to
24 understand.
25 MR. RUNNER: For me? Is that for me?
26 MS. YEE: Uh-huh.
27 MR. RUNNER: It seems to me -- again, I --
28 I -- I -- there seems to be material that was

1 presented today. Uhm, industry has a different
2 opinion in regards to what that material says than
3 what -- than what -- than what staff has, I think.
4 I mean I think -- I think -- I mean I think -- I
5 think at that point what I'm hearing is industry
6 says, hey, this is the explanation as to why the
7 economic impact is flawed. Staff is saying we don't
8 think so.
9 And I'm just concerned about the fact that
10 there hasn't been enough dialogue then on that
11 point. In fact, I don't think there's been any
12 dialogue on that point in order to try to see if
13 there's -- if there's some light there. I -- I just
14 don't know.
15 I guess that's what I'm -- and, again,
16 since there's no harm in time, I'm just feeling like
17 that's a step that could -- that could at least be
18 presented.
19 And, again, I'm not at all determined that
20 the staff's position is not correct. I'm just
21 feeling like maybe I'd just like to make sure --
22 again, in an abundance of caution, make sure that
23 we're not setting ourselves up for the additional
24 litigation. And quite frankly, I'm a bit concerned
25 on the industry side that I'm not too sure that
26 there -- that there is a path that they will be
27 satisfied with.
28 MS. YEE: Mm-hmm.

1 MR. RUNNER: But if that's the case, I
2 really want to understand that and know that as we
3 move forward.
4 MS. YEE: Okay. I guess I was under the
5 impression that what was before us was, I guess, a
6 narrower discussion today. And I thought that the
7 staff had addressed the economic impact.
8 And, I mean, my fear is that we're going to
9 take this all the way back to the very beginning of
10 when the petition was first before us. And I
11 thought that now, subsequent to the court ruling, I
12 feel like the staff's addressed the outstanding
13 issue.
14 But, Mr. Heller, maybe can enlighten us.
15 MR. HELLER: Thank you, Ms. Yee.
16 Really, I think staff has reviewed all of
17 the public comments, and we can address any concerns
18 any of the Board Members have about any of the
19 comments that are in the written comments or that
20 were made today. And we don't think that they
21 affect the economic impact assessment. We think the
22 Board can adopt the regulation today.
23 MS. YEE: I mean, is what's being presented
24 today, is that new?
25 MR. HELLER: Well, it's sort of new. I
26 mean it's new to us essentially. But it's -- well,
27 I should say it was new to us yesterday when we got
28 it, but we've since reviewed it. And essentially

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1 what we found was -- and I -- and I think this just
2 goes right back to Mr. Becker's -- just -- the
3 statements he just made which is that they
4 absolutely still want to litigate the substance of
5 what section 51(d) says.
6 So there's really no -- so from their point
7 of view, if they think 51(d) says you have to have
8 fixtures appraised separately, they're always going
9 to have a different --
10 MS. YEE: That's going to be -- yeah.
11 MR. HELLER: -- conclusion than us. So
12 that's why they have different conclusions than
13 us --
14 MS. YEE: Mm-hmm.
15 MR. HELLER: -- because they start from a
16 totally different point. We're not going to talk
17 about it longer and then they're suddenly going to
18 agree with us that -- that assessors can appraise
19 fixtures as part of the same unit under 51(d). So I
20 don't think we'll make progress there.
21 And then I think when they try to attack
22 the economic impact assessment, the specific
23 numbers, both in their written statements and today,
24 they're -- they're kind of misdirecting the Board.
25 And I would say, first of all and foremost,
26 like today they tried to kind of point to the Tesoro
27 transaction that's mentioned in our materials and
28 assert that we used values from that transaction.

1 Staff didn't use any values from that transaction.
2 And in any effort to say that we extrapolated from
3 that is just incorrect, and that we used values that
4 were all provided by the county assessors for five
5 years for all the refineries that we could get
6 information on.
7 We believe it constitutes roughly 97
8 percent of the assessed value of all the refineries
9 in California. And we actually went through and did
10 actual tax calculations using the data provided by
11 the assessors and have the raw information -- or I
12 should say the specific information that the Supreme
13 Court actually asked for in its decision about the
14 specific tax effect of offsetting depreciation.
15 And in addition, I think -- they didn't
16 provide any new numbers that we could use. So they
17 didn't provide new amounts for adjusted base year
18 value and fair market value that we could do
19 calculations on. We've actually provided a formula
20 they could use to do it if they wanted to do it with
21 their own proprietary information.
22 I think -- I think -- oh, in addition to
23 that, a lot of the comments that we've heard and
24 that are -- especially in the written comments, they
25 actually attacked the county assessors' values
26 essentially.
27 So in order for us to actually go further
28 and respond to their critiques of the data that we

1 used, we'd actually have to go out and appraise all
2 those refineries again as of all the different lien
3 dates to determine whether those appraisers' values
4 were accurate, and that's definitely not required by
5 the Administrative Procedure Act.
6 So that's why staff doesn't feel like
7 there's a value in discussing this further. But
8 absolutely we can, you know, meet and -- and bring
9 it back. And Senator Runner's a hundred percent
10 correct that there's not a -- there's not a
11 statutory deadline.
12 MS. YEE: Okay.
13 MR. BECKER: Could -- could -- could I
14 address something that Mr. Heller said?
15 MS. YEE: Please.
16 MR. BECKER: First of all, the Supreme
17 Court's very clear that Rule 474 is a change. Okay.
18 Let's -- let's -- let's let that stand. So this is
19 a change.
20 Secondly, we're using a market transaction,
21 the last one that's available actually, to show why
22 all of their fair market value numbers are
23 overstated and, therefore, that they understate the
24 tax effect.
25 That -- that market transaction was
26 something that was included in Mr. Heller's
27 materials. He didn't do any analysis of it. The
28 analysis of it that we did and submitted today shows

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1 that their numbers have problems.
2 MS. YEE: Mr. Heller?
3 MR. HELLER: Again, I think what -- when we
4 read their materials, what they were really asking
5 us to do was -- and let me just mention, we mention
6 the Tesoro transaction because it's an example of
7 another sale in which a refinery was sold as an
8 entire unit, and it establishes the factual basis
9 for -- for this rulemaking.
10 But -- but absolutely, we did not take --
11 staff did not take its time to go and try to -- to
12 unravel a bundled transaction of an entire
13 corporation that had multiple assets, including a
14 petroleum refinery, then work back using maybe,
15 what, SEC filings or something to try to arrive at
16 our own fair market value to somehow contest the
17 assessors' values?
18 And honestly, we didn't ask the assessors
19 to identify specific refineries because we're doing
20 our best to not disclose any confidential
21 information of any -- any taxpayers. So it would
22 have been -- it would have been difficult for us to
23 decide which refinery in the data we have is even
24 Tesoro's refinery in the -- in the articles.
25 So -- so I just find it hard to see how
26 they think we got this data that we could have used
27 to just immediately find that refinery and just
28 obviously see that after we did the complete

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1 unraveling and then allocated the purchase price of
2 a unit refinery to fixtures, that there -- the
3 fixture value provided by an assessor was wrong?
4 I mean that just seems, like, pretty
5 attenuated to us. And I don't think we can do it in
6 two or three months either. I mean we could sit
7 down and try to have the State-Assessed Properties
8 Division go back through those transactions and
9 whatever -- you know, whatever publicly available
10 information there is. But it would just be a
11 guestimate in their own allocations, and we wouldn't
12 know how the assessor actually valued those
13 properties.
14 MS. YEE: Mr. Chairman, it just seems that,
15 uh, got some different starting points here between
16 the parties. I mean, I really thought that we had a
17 very, very narrow issue that was before us today.
18 I think the courts established that there
19 was consistency between 474 and 51(d). And if the
20 starting point is 51(d) and trying to use this rule
21 to somehow question the validity of 51(d), that's a
22 completely separate, I think, you know, petition
23 that probably ought to come before us, or a
24 statutory change.
25 But I'm -- I'm prepared to move for
26 re-adoption.
27 MR. HORTON: Thank you, Member Yee.
28 It seems to me the question before us is

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1 have we complied with the administrative procedures
2 in making the analysis before us?
3 Many of the arguments that have been
4 presented, while I applaud those arguments, they
5 were litigated and resolved by the Supreme Court,
6 who concluded that Rule 471 is consistent with the
7 applicable constitution as well as statutory
8 provisions, and -- and particularly in regards to
9 the separation of the items in question.
10 So I only share that to -- to say that the
11 solution that WSPA may be looking for may be more of
12 a legislative solution. The Supreme Court has
13 somewhat taken their position and, uh -- and asked
14 us to do this economic study and go through this
15 process which is an administrative process. We
16 can't overturn the Supreme Court. You can delay it
17 and delay it, but as far as our role in this
18 process, the courts have said that it's appropriate
19 for the Board of Equalization. In fact, basically
20 requested that this take place. So --
21 MR. BECKER: Mr. Horton, if I may, I --
22 I -- I do agree that I can't overturn the Supreme
23 Court. I'm not going to challenge you there.
24 But I -- I -- I think we have a second
25 issue, and that's the sufficiency of the economic
26 impact statement.
27 MR. HORTON: Okay.
28 MR. BECKER: And we think it's

1 insufficient.

2 MR. HORTON: So let's -- it always throws

3 me off a little bit when we have these other -- they

4 call them red herrings, but I don't know what they

5 are, but -- not being a lawyer. But we present all

6 these other items that sort of, you know, clouds the

7 issues.

8 So, to the economic study, are there any

9 examples where there's been a negative economic

10 impact? That would have been?

11 MR. BECKER: Well, let -- let me answer

12 your question this way: The Supreme Court was very

13 clear that what the Board of Equalization did not do

14 the first time around was accurately measure the

15 depreciation and fixtures, accurately measure the

16 spread between base year value and fair market

17 value.

18 And that number actually -- you know,

19 obviously requires a solid number of fair market

20 value for the fixtures. And our presentation was

21 directed exactly what the Supreme Court said it need

22 to be done; which is, you need an accurate number

23 for the fair market value of the fixtures.

24 We think the -- the Tesoro --

25 MR. HORTON: I'm going to go to --

26 MR. BECKER: Okay.

27 MR. HORTON: -- to Mr. Heller.

28 MR. BECKER: Okay.

1 MR. HORTON: My apologies for --
2 MR. BECKER: Okay.
3 MR. HORTON: I'm going to go to Mr.
4 Heller to respond to that. But that doesn't
5 necessarily speak to the economic impact and answer
6 my question about an example.
7 But, Mr. Heller?
8 MR. HELLER: Well, we don't -- I mean we
9 don't think there's any economic impact here 'cause
10 the statute is -- well, basically because --
11 MR. HORTON: No, the issue in regards to
12 depreciation.
13 MR. HELLER: Well, we think -- well, like I
14 said earlier, we use -- we use the values provided
15 by the county assessors. And so we think they're
16 reliable values. We have no reason to think they're
17 not reliable. And we haven't been provided like a
18 complete appraisal of those specific refineries that
19 our appraisers could -- could review to try to
20 determine whether or not there was actually an
21 error.
22 MR. HORTON: Okay. You -- you're being
23 defensive.
24 Mr. Becker --
25 MR. HELLER: No --
26 MR. HORTON: You've answered the question.
27 Then the extra was.
28 MR. HELLER: I'm sorry.

1 MR. HORTON: Mr. Becker, what other values
2 should they have used?
3 MR. BECKER: Well, the -- the quoted number
4 for the Tesoro transaction in Mr. Heller's materials
5 is 2.4 billion. That -- that -- that's wrong. It's
6 one billion.
7 MR. HORTON: He said he didn't use that.
8 He said it was an example.
9 MR. BECKER: It's on page 13 of his
10 materials.
11 MR. HORTON: As an example.
12 MR. BECKER: Oh. Oh, okay.
13 My point is, the market has given us an
14 excellent arm's length data point here that has a
15 refinery and much, much more. And when you look at
16 the whole group of things, which includes more than
17 a refinery, his numbers still underestimate the
18 economic impact. And, to me, that says that what we
19 have here is wrong. And if we --
20 MR. HORTON: You said "the market has given
21 us..." What specifically did the market give us?
22 MR. BECKER: The market price that those --
23 those BP assets at a billion 75 million.
24 MR. HORTON: The selling price.
25 MR. BECKER: Yeah. Yes.
26 MR. HORTON: As a unit, not as a -- two
27 separate -- not separating the items.
28 MR. BECKER: Correct. But -- but my

1 point --

2 MR. HORTON: It seems to me that argument

3 sort of rules -- comes -- you know, is kind of

4 counterproductive to your argument that they

5 shouldn't separate.

6 MR. BECKER: It -- my argument in using

7 this data point, Chairman Horton, is toward the

8 economic impact statement. That the economic impact

9 statement, per the Supreme Court's directive, needs

10 to accurately measure the spread between base year

11 value and fair market value. Because that's

12 ultimately the potential that can be taxed. And

13 that's extra tax an industry will bear.

14 That has to be accurately done. And that's

15 not been accurately done because this data point --

16 the only market data point in all this analysis is

17 monumentally below even the lowest data point. The

18 spread is far wider than they're saying.

19 MR. HORTON: Okay. All right.

20 Further discussion, Members?

21 Hearing none, is there --

22 MS. MANDEL: Did --

23 MR. HORTON: Member Mandel.

24 MS. MANDEL: And -- and -- but all of the

25 comments get addressed in the final statement of

26 reasons. And you've -- you've reviewed the comments

27 and you've heard what they have to say and you're

28 satisfied they'll be adequately addressed in the

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1 final statement of reasons?
2 MR. HELLER: Ms. Mandel, all of the
3 comments will be addressed, and the -- the final
4 statement of reasons will be reviewed by the whole
5 Legal Department to make sure that it adequately
6 responds to all of the different comments.
7 MR. RUNNER: And just to --
8 MR. HORTON: Mr. Runner.
9 MR. RUNNER: Just to clarify procedure.
10 But then it goes directly to AOL.
11 MR. HELLER: Right, the whole rulemaking
12 file.
13 MR. RUNNER: So the Board will not see your
14 responses.
15 MR. HELLER: The Board would not normally
16 see it, but we could --
17 MR. RUNNER: Okay. I'm just trying to
18 think, you know, in terms of that.
19 So the issues that have been brought up,
20 you will respond to. But we will not have been able
21 to see or concur or understand the responses.
22 MR. HELLER: Senator Runner, the only thing
23 I would add is -- well, normally our review process
24 for a final statement of reasons doesn't include the
25 Board Members. That could be changed for this one.
26 But, generally speaking, our response will be
27 exactly what you've heard from me today. So it
28 would not be something new that you've never heard

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1 before.
2 MR. RUNNER: Okay.
3 MR. HORTON: Is there a desire to change
4 that process, Mr. Runner?
5 MR. RUNNER: Well, I don't know if I --
6 MR. HORTON: In -- in the -- in the
7 abundance of caution, I would recommend a three-day
8 review by the Members. Not necessarily bringing it
9 back to the Board, but giving the Members that
10 option.
11 MR. RUNNER: Well, here's my concern --
12 MR. HORTON: That's what --
13 MR. RUNNER: -- with the three-day review.
14 And that is a three-day review --
15 MR. HORTON: No, no, no, Mr. Runner.
16 I'll accept any recommendation you have.
17 MR. RUNNER: My concern with three-day
18 review specific is the fact that then you've got one
19 Member who could have a concern and then it gets
20 held up. Then you don't get it resolved. So that --
21 that -- that process --
22 I'm just wanting to know is there a process
23 to where this comes back to us with a response that
24 you're making to AOL, if that's -- if that is one
25 way to do it. Or, again, the other way is just for
26 us to address that issue now between the two of you
27 and bring this up in 60 days or 30 days. I -- I --
28 I think either way it addresses the issue.

1 MS. MANDEL: Well, I -- I -- I heard Mr.
2 Heller's responses this morning. I just was trying
3 to make clear that -- that there is something that
4 he incorporates all those responses --
5 MR. RUNNER: Right.
6 MS. MANDEL: -- as part of the process.
7 MR. HORTON: Yeah.
8 MS. MANDEL: But he -- he did respond today
9 to the comments, and I know that he had the material
10 yesterday because I had it and forwarded to him,
11 so --
12 MR. RUNNER: Okay.
13 MR. HORTON: Yeah. And for me, if there
14 was just any other additional evidence as it relates
15 to the economic study -- I mean I don't necessarily
16 want to rehash what the Supreme Court has decided
17 and would be very interested in any legislation that
18 sought to deal with this prospectively.
19 MR. HELLER: But Mr. --
20 MR. HORTON: With that said, any further
21 discussion, Members?
22 Hearing none, is there a motion?
23 MS. YEE: Move to re-adopt the proposed
24 Rule 474.
25 MR. HORTON: Member Yee moves to re-adopt
26 Rule 474. Second by Member Mandel.
27 Objection --
28 MS. STEEL: Objection.

1 MR. HORTON: -- noted.
2 Ms. Richmond, call the roll.
3 MS. RICHMOND: Mr. Horton.
4 MR. HORTON: Aye.
5 MS. RICHMOND: Ms. Steel.
6 MS. STEEL: No, and protest.
7 MS. RICHMOND: Mr. Runner.
8 MR. RUNNER: No.
9 MS. RICHMOND: Ms. Yee.
10 MS. YEE: Aye.
11 MS. RICHMOND: Ms. Mandel.
12 MS. MANDEL: Aye.
13 MS. RICHMOND: Motion carries.
14 MR. HORTON: To all the guests before us,
15 thank you for your testimony today. It was
16 extremely helpful to this process. We truly
17 appreciate it.
18 ---oOo---
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1 REPORTER'S CERTIFICATE

2

3 State of California)

4) ss

5 County of Sacramento)

6

7 I, KATHLEEN SKIDGEL, Hearing Reporter for

8 the California State Board of Equalization certify

9 that on December 18, 2014 I recorded verbatim, in

10 shorthand, to the best of my ability, the

11 proceedings in the above-entitled hearing; that I

12 transcribed the shorthand writing into typewriting;

13 and that the preceding pages 1 through 51 constitute

14 a complete and accurate transcription of the

15 shorthand writing.

16

17 Dated: January 2, 2015

18

19

20 Kathleen Skidgel

21 KATHLEEN SKIDGEL

22 Hearing Reporter

23

24

25

26

27

28

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2014 MINUTES OF THE STATE BOARD OF EQUALIZATION

Thursday, December 18, 2014

F3 Proposed re-Adoption of Property Tax Rule 474, *Petroleum Refining Properties*

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the re-adoption of Rule 474 to establish a rebuttable presumption that petroleum refining property (land, improvements, and fixtures) constitutes a single appraisal unit for determining declines in value (Exhibit 12.4).

Speakers: Albert Ramseyer, Deputy County Counsel, Los Angeles County Assessor's Office
Craig A. Becker, Attorney, Pillsbury Winthrop Shaw Pittman, LLP, representing Western States Petroleum Association (WSPA)
Walt Turville, Senior Property Tax Representative, Chevron
Donald L. Flessner, Executive Vice-President, Baker & O'brien, Inc., representing Contra Costa County
Rebecca Hooley, Deputy County Counsel, Contra Costa County
Peter Yu, Principal Appraiser, Business Division, Contra Costa County Assessor's Office

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel and Mr. Runner voting no, the Board re-adopted Property Tax Rule 474 as recommended by staff.

F4 Proposed Amendments to Sales and Use Tax Regulation 1588, *Seeds, Plants and Fertilizer*

Monica Silva, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the adoption of proposed amendments to specifically include carbon dioxide in the definition of fertilizer (Exhibit 12.5).

Speaker: John Gamper, California Farm Bureau Federation

Action: Upon motion of Mr. Runner, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted the amendments to Regulation 1588 as published.

ADMINISTRATIVE SESSION

[N] ADMINISTRATIVE MATTERS, CONSENT

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board made the following orders:

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
450 N STREET, SACRAMENTO, CALIFORNIA
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916-445-2130 • FAX 916-324-3984
www.boe.ca.gov

BETTY T. YEE
First District, San Francisco

SEN. GEORGE RUNNER (RET.)
Second District, Lancaster

MICHELLE STEEL
Third District, Orange County

JEROME E. HORTON
Fourth District, Los Angeles

JOHN CHIANG
State Controller

CYNTHIA BRIDGES
Executive Director

October 24, 2014

No. 2014/051

TO COUNTY ASSESSORS, COUNTY COUNSELS,
AND OTHER INTERESTED PARTIES:

Notice of Proposed Regulatory Action
by the
State Board of Equalization

Proposed to Adopt
Amendments to California Code of Regulations, Title 18,

Section 474,

Petroleum Refining Properties

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Government Code section 15606, proposes to re-adopt California Code of Regulations, title 18, section (Rule) 474, *Petroleum Refining Properties*. Proposed Rule 474 implements, interprets, and makes specific section 1 of article XIII and section 2 of article XIII A of the California Constitution and Revenue and Taxation Code (RTC) sections 51 and 110.1, as interpreted by the California Supreme Court in *Western States Petroleum Association v. Board of Equalization* (2013) 57 Cal.4th 401 (hereafter *WSPA v BOE*), by defining the terms "petroleum refinery property" and "appraisal unit," and establishing a rebuttable presumption that the land, improvements, and fixtures and other machinery and equipment classified as improvements for a petroleum refining property constitute a single appraisal unit, except when measuring declines in value caused by disaster.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on December 17-18, 2014. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at *www.boe.ca.gov* at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:30 a.m. or as soon thereafter as the matter may be heard on December 17 or 18, 2014. At the hearing, any

interested person may present or submit oral or written statements, arguments, or contentions regarding the re-adoption of proposed Rule 474.

AUTHORITY

Government Code section 15606

REFERENCE

Section 1 of article XIII and section 2 of article XIII A of the California Constitution, RTC sections 51 and 110.1, and *WSPA v. BOE*

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW PURSUANT TO GOVERNMENT CODE SECTION 11346.5, SUBDIVISION (a)(3)

Summary of Existing Laws and Regulations

Initial Adoption of Rule 474

The Board previously adopted Rule 474. In *WSPA v. BOE*, the California Supreme Court provided the following summary of the applicable property tax laws as they existed prior to the Board's initial adoption of Rule 474 and the effect of the initial adoption of Rule 474:

> Article XIII, section 1 of the California Constitution declares that "[a]ll property is taxable and shall be assessed at the same percentage of fair market value." (Cal. Const., art. XIII, § 1, subd. (a).) Proposition 13, an initiative measure enacted in June 1978, added article XIII A to the California Constitution and changed the taxation of real property by replacing "the fair market valuation standard with that of acquisition value." (*Roy E. Hanson, Jr. Mfg. v. County of Los Angeles* (1980) 27 Cal.3d 870, 873 [167 Cal. Rptr. 828, 616 P.2d 810].) Article XIII A, section 2 provides that all real property, except for property acquired prior to 1975, shall be assessed and taxed at its value on the date of acquisition, subject to a 2 percent maximum annual inflationary increase. (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 235 [149 Cal. Rptr. 239, 583 P.2d 1281].) This is sometimes referred to as the indexed or adjusted base year value. (See Bd. of Equalization, Assessors' Handbook, Section 501, Basic Appraisal (2002 rev.) appen. A, Assessment Pre- and Post-Proposition 13, p. 137.)
>
> Proposition 13 did not address how real property should be assessed and taxed when its market value declines instead of appreciates. To address this issue, California voters passed Proposition 8 in November 1978. Proposition 8 amended article XIII A so that it now reads: "The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction, or may be reduced to reflect substantial damage,

destruction, or other factors causing a decline in value." (Cal. Const., art. XIII A, § 2, subd. (b).) In other words, when the value of real property declines to a level below its adjusted base year value under Proposition 13, the value of the property is determined according to its actual fair market value.

The Legislature formed a task force to study the implementation of the new real property tax system mandated by Proposition 13 and Proposition 8. In January 1979, the task force submitted a report and recommendations to the Assembly Committee on Revenue and Taxation, officially titled Report of the Task Force on Property Tax Administration (hereafter Task Force Report). (See *Pacific Southwest Realty Co. v. County of Los Angeles* (1991) 1 Cal.4th 155, 161 [2 Cal. Rptr. 2d 536, 820 P.2d 1046].) The Task Force Report has been recognized as a statement of legislative intent for purposes of interpreting the statutes enacted to implement Proposition 13 and Proposition 8. (See, e.g., *Auerbach v. Assessment Appeals Bd. No. 1* (2006) 39 Cal.4th 153, 161 [45 Cal. Rptr. 3d 774, 137 P.3d 951].)

The report recommended that "the assessed value of real property be the lesser of the Prop. 13 base value compounded annually by 2% or full cash value. These changes will be measured by that appraisal unit which is commonly bought and sold in the market, or which is normally valued separately." (Task Force Rep., *supra*, at p. 29.) Revenue and Taxation Code section 51 was subsequently amended to incorporate the task force recommendations. (All further statutory references are to the Revenue and Taxation Code unless otherwise specified.) Section 51, subdivision (a) (hereafter section 51(a)) provides that "the taxable value of real property shall . . . be the lesser of: [¶] (1) Its base year value, compounded annually since the base year by an inflation factor . . ." not to exceed 2 percent per year, or "(2) Its full cash value, as defined in Section 110, as of the lien date, taking into account reductions in value due to damage, destruction, depreciation, obsolescence, removal of property, or other factors causing a decline in value." Section 110, subdivision (a) defines the term "full cash value," synonymously with the term "fair market value," as "the amount of cash or its equivalent that property would bring if exposed for sale in the open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other, and both the buyer and the seller have knowledge of all of the uses and purposes to which the property is adapted and for which it is capable of being used, and of the enforceable restrictions upon those uses and purposes."

Most significantly for this case, the term "real property" under section 51, subdivision (d) (hereafter section 51(d)) is defined as "that appraisal unit that persons in the marketplace commonly buy and sell as a unit, or that is normally valued separately." This definition echoes almost verbatim the definition recommended by the Task Force Report. The statute does not further define "appraisal unit," but the term is defined by regulation as "a collection of assets that functions together, and that persons in the marketplace commonly buy and

sell as a single unit or that is normally valued in the marketplace separately from other property . . . ." (Cal. Code Regs., tit. 18, § 324.)

In the wake of Proposition 13 and Proposition 8, and shortly before the enactment of section 51, the Board promulgated and then amended rule 461, a regulation applicable to most real property used for manufacturing. (Cal. Code Regs., tit. 18, § 461 (Rule 461).) Rule 461, subdivision (e) (hereafter Rule 461(e)) provides: "Declines in value will be determined by comparing the current lien date full value of the appraisal unit to the indexed base year full value of the same unit for the current lien date. Land and improvements constitute an appraisal unit except when measuring declines in value caused by disaster, in which case land shall constitute a separate unit. For purposes of this subdivision, fixtures and other machinery and equipment classified as improvements constitute a separate appraisal unit."

At the same time that it adopted Rule 461(e)'s classification of fixtures as "a separate appraisal unit," the Board adopted two exceptions to this rule for certain types of industrial property where land and fixtures were valued as a single unit in the marketplace: Rule 468, which applies to oil and gas properties, and Rule 469, which applies to mining properties. (See Cal. Code Regs., tit. 18, §§ 468, subd. (c)(6) (Rule 468), 469, subd. (e)(2)(C) (Rule 469).) Rule 473, adopted in 1995, similarly treats land and fixtures on geothermal properties as a single appraisal unit. (Cal. Code Regs., tit. 18, § 473(e)(4)(C) (Rule 473).) Petroleum refinery property was covered by Rule 461(e) until the Board's adoption of Rule 474.

In September 2006, the Board voted three to two to adopt Rule 474 to address "the valuation of the real property, personal property, and fixtures used for the refining of petroleum." (Rule 474, subd. (a).) Subdivision (b)(1) of Rule 474 states that "[t]he unique nature of property used for the refining of petroleum requires the application of specialized appraisal techniques designed to satisfy the requirements of article XIII, section 1, and article XIII A, section 2, of the California Constitution. To this end, petroleum refineries and other real and personal property associated therewith shall be valued pursuant to the principles and procedures set forth in this section." Rule 474, subdivision (c)(2) states that "'[a]ppraisal unit' consists of the real and personal property that persons in the marketplace commonly buy and sell as a unit." Most pertinent here, subdivision (d) states that "[f]or the purposes of this section: [¶] (1) Declines in value of petroleum refining properties will be determined by comparing the current lien date full value of the appraisal unit [(i.e., its value in an open market transaction)] to the indexed base year full value of the same unit [(i.e., its Proposition 13 value)]. [¶] (2) *The land, improvements, and fixtures and other machinery and equipment classified as improvements for a petroleum refining property are rebuttably presumed to constitute a single appraisal unit* . . . . [¶] (3) In rebutting this presumption, the assessor may consider evidence that: [¶] (A) The land and improvements including fixtures and other machinery and equipment classified as improvements are not under common ownership or control and do not typically

> transfer in the marketplace as one economic unit; or, [¶] (B) When the fixtures and other machinery and equipment classified as improvements are not functionally and physically integrated with the realty and do not operate together as one economic unit." (Rule 474, subd. (d); italics added [in original opinion].)
>
> [¶] . . . [¶]
>
> In November 2007, the Office of Administrative Law approved the regulation, and it became effective in December 2007. (*WSPA v. BOE*, pp. 409-413.)

History Regarding WSPA v. BOE

In *WSPA v. BOE*, the California Supreme Court also explained that in December 2008, the Western States Petroleum Association (WSPA) filed a complaint challenging the validity of Rule 474 and seeking a declaration that the Board violated the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.) in adopting the rule. (WSPA v. BOE, pp. 413-414.) And, "[i]n October 2009, the Board and WSPA filed cross-motions for summary judgment. WSPA argued that Rule 474 violates section 51(d) and California Constitution, article XIII A, and that the Board failed to provide an adequate statement of economic impact as required by the APA. The trial court granted WSPA's summary judgment motion on both grounds, and the Court of Appeal affirmed on both grounds" before the California Supreme Court granted review. (*WSPA v. BOE*, p. 414.)

As explained in more detail in the initial statement of reasons, the California Supreme Court disagreed with all of WSPA's arguments as to why Rule 474 violates RTC section 51, subdivision (d) (hereafter section 51(d)), and California Constitution, article XIII A. The Court specifically concluded that "Rule 474's market-based approach to determining the proper appraisal unit for petroleum refinery property ensures that reductions in property values are measured according to fair market value. Thus, Rule 474 appears consistent with articles XIII and XIII A." (*WSPA v. BOE*, pp. 416-417.) Furthermore, the California Supreme Court specifically concluded that "Rule 474 is also consistent with section 51(d)." (*WSPA v. BOE*, p. 417.) The Court said that "[b]y its terms, the statute provides two alternative methods of determining the appraisal unit that constitutes taxable real property: it is either (1) a unit 'that persons in the marketplace commonly buy and sell as a unit' or (2) a unit 'that is normally valued separately.' Rule 474 applies the first method to petroleum refinery property." (*WSPA v. BOE*, p. 417.)

Although the California Supreme Court held that Rule 474 was substantively valid in *WSPA v. BOE*, the Court still concluded that the Board's adoption of Rule 474 was procedurally invalid under the APA. (*WSPA v. BOE*, pp. 408-409.) The Court held that the Board did not properly assess the economic impact of Rule 474 and that the Board's initial determination that Rule 474 would not have a significant adverse economic impact on businesses did not substantially comply with the APA (Gov. Code, §§ 11346.2, subd. (b)(5)(A), 11346.3, 11346.5, subd. (a)(8)) because:

- "The Board relied on a 2006 document titled 'Revenue Estimate' concerning proposed Rule 474. According to the document, which was prepared by Board staff, WSPA reported that there are 20 major refineries located in California, with five in Los Angeles County and four in Contra Costa County. (Bd. of Equalization, Revenue Estimate, Issue No. 6-001 (June 7, 2006) p. 2.) County data indicated that the total assessment in these two counties was over $ 14 billion, with about 80 percent of that value enrolled as fixtures. Projecting figures statewide, the Board staff estimated that there was $ 32 billion of refinery property, of which $ 25 billion consisted of fixtures and $ 7 billion in land and nonfixture improvements. To 'conservatively estimate' the incremental amount of taxable assessed value resulting from the proposed rule, the Board staff multiplied the $ 7 billion in land value by a 2 percent appreciation factor to conclude that Rule 474 would yield 'at least $ 140 million' in additional assessed value. (Revenue Estimate, at p. 3.) The Board staff then multiplied $ 140 million by the 1 percent tax on real property permitted under article XIII A to arrive at $ 1.4 million as the annual estimated revenue effect of Rule 474, while acknowledging that '[t]he actual revenue effect could be considerably higher or lower depending on the number of properties [affected] and the actual amount of offsetting values.' (Revenue Estimate, at p. 3.) Based on these calculations, the Board concluded that Rule 474 'will not have a significant adverse economic impact on businesses.'" (*WSPA v. BOE*, pp. 429-430.);
- The Court concluded that "[e]ven assuming the Board could reasonably project $ 32 billion as the total value of 20 refineries statewide based on data showing $ 14 billion as the total value of nine refineries in two counties, the Board's analysis offers no explanation why multiplying $ 7 billion in land value by a 2 percent appreciation factor is, empirically or conceptually, a valid or reasonable way to estimate the amount of fixture depreciation that would be offset by appraising land and fixtures as a single unit." (*WSPA v. BOE*, p. 430.); and
- "[T]he Board's calculation failed to consider prior land appreciation and the full tax impact that would occur if land were valued at actual market value rather than adjusted base year value." (*Ibid.*)

Effect, Objective, and Benefit of the Proposed Re-Adoption of Rule 474

During the Board's September 10, 2013, meeting, the Board considered a Chief Counsel Memorandum dated August 28, 2013. In the Chief Counsel Memorandum, Board staff explained that the Board adopted Rule 474 on September 27, 2006, to clarify that, consistent with California Constitution article XIII, section 1, article XIII A (which contains Proposition 13 as amended by Proposition 8), RTC section 51, and Rules 461, *Real Property Value Changes*, and 324, *Decision*, refinery property consisting of land, improvements, and fixtures is rebuttably presumed to be a single appraisal unit in determining Proposition 8 declines in value below the Proposition 13 adjusted base year value for property tax valuation purposes. In the Chief Counsel Memorandum, Board staff also explained that the California Supreme Court held that Rule 474 was substantively valid in *WSPA v. BOE*. However, nevertheless, the Court also invalidated Rule 474 on procedural grounds, finding that the Board failed to provide an adequate assessment of the rule's economic impact during the rulemaking process as required by the APA. In particular, the Supreme Court held that Rule 474 is procedurally deficient because the Board did not make a reasoned estimate of all the cost impacts of the rule on affected parties.

Therefore, in the memorandum, Board staff requested the Board's authorization to repeal Rule 474 pursuant to California Code of Regulations, title 1, section 100 (Rule 100). Board staff also requested the Board's authorization to initiate the rulemaking process to re-adopt Rule 474 following the APA's regular notice and public hearing process after Board staff reassessed the economic impact of Rule 474 on affected businesses in accordance with the APA and *WSPA v. BOE*.

Therefore, at the conclusion of the Board's discussion of the Chief Counsel Memorandum dated August 28, 2013, during its meeting on September 10, 2013, the Board Members unanimously voted to authorize staff to repeal Rule 474 pursuant to Rule 100, and initiate the rulemaking process to re-adopt Rule 474 after Board staff reassessed the economic impact of Rule 474 in accordance with the APA and *WSPA v. BOE*. The Board determined that it is reasonably necessary to re-adopt Rule 474 to have the effect and accomplish the objective of clarifying that petroleum refinery land, improvements, and fixtures are rebuttably presumed to constitute a single appraisal unit for determining declines in value because petroleum refineries are commonly bought and sold as a unit in the marketplace. The Board anticipates that the re-adoption of Rule 474 will clarify the treatment of petroleum refinery property for purposes of measuring declines in value, and thereby benefit county assessors and the owners of petroleum refineries by promoting fairness and uniformity in the assessment of petroleum refinery property throughout the state.

The Board subsequently repealed Rule 474 pursuant to Rule 100, effective October 30, 2013. However, regardless of the repeal of Rule 474, county assessors are still authorized to determine that refinery property (land, improvements, and fixtures) constitutes a single appraisal unit for measuring declines in value when persons in the marketplace commonly buy and sell refinery property as a unit, in accordance with RTC section 51(d) as interpreted by the California Supreme Court in *WSPA v. BOE* (discussed above).

In addition, Board staff has reassessed the economic impact of Rule 474 in accordance with the APA and *WSPA v. BOE*. Staff's economic impact assessment is included in the initial statement of reasons, and the results of staff's assessment are provided below.

The Board has performed an evaluation of whether Rule 474 is inconsistent or incompatible with existing state regulations and determined that the proposed rule is not inconsistent or incompatible with existing state regulations. This is because proposed Rule 474 is the only state regulation that specifically prescribes the appraisal unit for determining declines in value of petroleum refining properties. The Board has also determined that there are no comparable federal regulations or statutes to proposed Rule 474.

NO MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Board has determined that the re-adoption of Rule 474 will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement pursuant to title 2, division 4, part 7 (commencing with section 17500) of the Government Code.

NO COST OR SAVINGS TO ANY STATE AGENCY, LOCAL AGENCY, OR SCHOOL DISTRICT

The Board has determined that the re-adoption of proposed Rule 474 will result in no direct or indirect cost or savings to any state agency and will result in no cost or savings in federal funding to the State of California. The Board has also determined that the re-adoption of proposed Rule 474 will result in no direct or indirect cost to any local agency or school district that is required to be reimbursed under title 2, division 4, part 7 (commencing with section 17500) of the Government Code, and will result in no other non-discretionary cost or savings imposed on local agencies.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that the re-adoption of proposed Rule 474 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed re-adoption of Rule 474 may affect small businesses.

NO KNOWN COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has determined that the proposed re-adoption of Rule 474 is not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the re-adoption of proposed Rule 474 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the re-adoption of proposed Rule 474 will not affect the benefits of Rule 474 to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The re-adoption of proposed Rule 474 will not have a significant effect on housing costs.

STATEMENT REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the

purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of proposed Rule 474 should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984 , by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends at 9:30 a.m. on December 17, 2014, or as soon thereafter as the Board begins the public hearing regarding the re-adoption of proposed Rule 474 during the December 17-18, 2014, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, or contentions contained in those written comments before the Board decides whether to re-adopt proposed Rule 474. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared a copy of the text of proposed Rule 474 illustrating its express terms; however, the proposed regulation is not illustrated in underline or italics format because California Code of Regulations, title 1, section 8, subdivision (b) provides that "[u]nderline or italic is not required for the adoption of a new regulation or set of regulations if the final text otherwise clearly indicates that all of the final text submitted to OAL for filing is added to the California Code of Regulations." The Board has also prepared an initial statement of reasons for the adoption of the proposed rule, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed regulation is based are available to the public upon request.

The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation and the initial statement of reasons are also available on the Board's Website at *www.boe.ca.gov*.

October 24, 2014

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may re-adopt proposed Rule 474 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board re-adopts proposed Rule 474, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at *www.boe.ca.gov*.

Sincerely,

Joann Richmond

Joann Richmond, Chief
Board Proceedings Division

JR:reb

Initial Statement of Reasons for the

Proposed Re-Adoption of California Code of Regulations,

Title 18, Section 474, *Petroleum Refining Properties*

SPECIFIC PURPOSE, PROBLEM INTENDED TO BE ADDRESSED, NECESSITY, AND ANTICIPATED BENEFIT

Existing Law

Initial Adoption of Rule 474

The State Board of Equalization (Board) previously adopted California Code of Regulations, title 18, section (Rule) 474, *Petroleum Refining Properties*. In *Western States Petroleum Association v. Board of Equalization* (2013) 57 Cal.4th 401 (hereafter *WSPA v. BOE*), the California Supreme Court provided the following summary of the applicable property tax laws as they existed prior to the Board's initial adoption of Rule 474 and the effect of the initial adoption of Rule 474:

> Article XIII, section 1 of the California Constitution declares that "[a]ll property is taxable and shall be assessed at the same percentage of fair market value." (Cal. Const., art. XIII, § 1, subd. (a).) Proposition 13, an initiative measure enacted in June 1978, added article XIII A to the California Constitution and changed the taxation of real property by replacing "the fair market valuation standard with that of acquisition value." (*Roy E. Hanson, Jr. Mfg. v. County of Los Angeles* (1980) 27 Cal.3d 870, 873 [167 Cal. Rptr. 828, 616 P.2d 810].) Article XIII A, section 2 provides that all real property, except for property acquired prior to 1975, shall be assessed and taxed at its value on the date of acquisition, subject to a 2 percent maximum annual inflationary increase. (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 235 [149 Cal. Rptr. 239, 583 P.2d 1281].) This is sometimes referred to as the indexed or adjusted base year value. (See Bd. of Equalization, Assessors' Handbook, Section 501, Basic Appraisal (2002 rev.) appen. A, Assessment Pre- and Post-Proposition 13, p. 137.)
>
> Proposition 13 did not address how real property should be assessed and taxed when its market value declines instead of appreciates. To address this issue, California voters passed Proposition 8 in November 1978. Proposition 8 amended article XIII A so that it now reads: "The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction, or may be reduced to reflect substantial damage, destruction, or other factors causing a decline in value." (Cal. Const., art. XIII A, § 2, subd. (b).) In other words, when the value of real property declines to a level

below its adjusted base year value under Proposition 13, the value of the property is determined according to its actual fair market value.

The Legislature formed a task force to study the implementation of the new real property tax system mandated by Proposition 13 and Proposition 8. In January 1979, the task force submitted a report and recommendations to the Assembly Committee on Revenue and Taxation, officially titled Report of the Task Force on Property Tax Administration (hereafter Task Force Report). (See *Pacific Southwest Realty Co. v. County of Los Angeles* (1991) 1 Cal.4th 155, 161 [2 Cal. Rptr. 2d 536, 820 P.2d 1046].) The Task Force Report has been recognized as a statement of legislative intent for purposes of interpreting the statutes enacted to implement Proposition 13 and Proposition 8. (See, e.g., *Auerbach v. Assessment Appeals Bd. No. 1* (2006) 39 Cal.4th 153, 161 [45 Cal. Rptr. 3d 774, 137 P.3d 951].)

The report recommended that "the assessed value of real property be the lesser of the Prop. 13 base value compounded annually by 2% or full cash value. These changes will be measured by that appraisal unit which is commonly bought and sold in the market, or which is normally valued separately." (Task Force Rep., *supra*, at p. 29.) Revenue and Taxation Code section 51 was subsequently amended to incorporate the task force recommendations. (All further statutory references are to the Revenue and Taxation Code unless otherwise specified.) Section 51, subdivision (a) (hereafter section 51(a)) provides that "the taxable value of real property shall . . . be the lesser of: [¶] (1) Its base year value, compounded annually since the base year by an inflation factor . . ." not to exceed 2 percent per year, or "(2) Its full cash value, as defined in Section 110, as of the lien date, taking into account reductions in value due to damage, destruction, depreciation, obsolescence, removal of property, or other factors causing a decline in value." Section 110, subdivision (a) defines the term "full cash value," synonymously with the term "fair market value," as "the amount of cash or its equivalent that property would bring if exposed for sale in the open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other, and both the buyer and the seller have knowledge of all of the uses and purposes to which the property is adapted and for which it is capable of being used, and of the enforceable restrictions upon those uses and purposes."

Most significantly for this case, the term "real property" under section 51, subdivision (d) (hereafter section 51(d)) is defined as "that appraisal unit that persons in the marketplace commonly buy and sell as a unit, or that is normally valued separately." This definition echoes almost verbatim the definition recommended by the Task Force Report. The statute does not further define "appraisal unit," but the term is defined by regulation as "a collection of assets that functions together, and that persons in the marketplace commonly buy and sell as a single unit or that is normally valued in the marketplace separately from other property . . . ." (Cal. Code Regs., tit. 18, § 324.)

In the wake of Proposition 13 and Proposition 8, and shortly before the enactment of section 51, the Board promulgated and then amended rule 461, a regulation applicable to most real property used for manufacturing. (Cal. Code Regs., tit. 18, § 461 (Rule 461).) Rule 461, subdivision (e) (hereafter Rule 461(e)) provides: "Declines in value will be determined by comparing the current lien date full value of the appraisal unit to the indexed base year full value of the same unit for the current lien date. Land and improvements constitute an appraisal unit except when measuring declines in value caused by disaster, in which case land shall constitute a separate unit. For purposes of this subdivision, fixtures and other machinery and equipment classified as improvements constitute a separate appraisal unit."

At the same time that it adopted Rule 461(e)'s classification of fixtures as "a separate appraisal unit," the Board adopted two exceptions to this rule for certain types of industrial property where land and fixtures were valued as a single unit in the marketplace: Rule 468, which applies to oil and gas properties, and Rule 469, which applies to mining properties. (See Cal. Code Regs., tit. 18, §§ 468, subd. (c)(6) (Rule 468), 469, subd. (e)(2)(C) (Rule 469).) Rule 473, adopted in 1995, similarly treats land and fixtures on geothermal properties as a single appraisal unit. (Cal. Code Regs., tit. 18, § 473(e)(4)(C) (Rule 473).) Petroleum refinery property was covered by Rule 461(e) until the Board's adoption of Rule 474.

In September 2006, the Board voted three to two to adopt Rule 474 to address "the valuation of the real property, personal property, and fixtures used for the refining of petroleum." (Rule 474, subd. (a).) Subdivision (b)(1) of Rule 474 states that "[t]he unique nature of property used for the refining of petroleum requires the application of specialized appraisal techniques designed to satisfy the requirements of article XIII, section 1, and article XIII A, section 2, of the California Constitution. To this end, petroleum refineries and other real and personal property associated therewith shall be valued pursuant to the principles and procedures set forth in this section." Rule 474, subdivision (c)(2) states that "'[a]ppraisal unit' consists of the real and personal property that persons in the marketplace commonly buy and sell as a unit." Most pertinent here, subdivision (d) states that "[f]or the purposes of this section: [¶] (1) Declines in value of petroleum refining properties will be determined by comparing the current lien date full value of the appraisal unit [(i.e., its value in an open market transaction)] to the indexed base year full value of the same unit [(i.e., its Proposition 13 value)]. [¶] (2) *The land, improvements, and fixtures and other machinery and equipment classified as improvements for a petroleum refining property are rebuttably presumed to constitute a single appraisal unit* . . . . [¶] (3) In rebutting this presumption, the assessor may consider evidence that: [¶] (A) The land and improvements including fixtures and other machinery and equipment classified as improvements are not under common ownership or control and do not typically transfer in the marketplace as one economic unit; or, [¶] (B) When the fixtures and other machinery and equipment classified as improvements are not

functionally and physically integrated with the realty and do not operate together as one economic unit." (Rule 474, subd. (d); italics added [in original opinion].)

The difference between treating fixtures as a separate appraisal unit (Rule 461(e)) and treating fixtures and land together as a single appraisal unit (Rule 474) may be illustrated by a hypothetical drawn from a Board staff report. (For brevity, we will use the term "land" to refer to land and "non-fixture" improvements considered together unless otherwise indicated.) Suppose that following the purchase of a petroleum refinery property, the assessed value in "Year 1" of the land is $ 2 million and the assessed value of the fixtures is $1 million. Now suppose the land appreciates at $ 100,000 per year while the fixtures, when appraised separately, depreciate at $ 100,000 per year. Under Rule 461(e), the treatment of fixtures as a separate appraisal unit means that the assessed value of the fixtures will decline by $ 100,000 each year, while the land, though appreciating at $ 100,000 per year, will yield an assessed value that increases by only 2 percent each year, the maximum increase allowed by Proposition 13. The results are shown in the following table:

Year	Land	Assessed Value Fixtures	Total
1	$ 2,000,000	$ 1,000,000	$ 3,000,000
2	$ 2,040,000	$ 900,000	$ 2,940,000
3	$ 2,080,800	$ 800,000	$ 2,880,800
4	$ 2,122,416	$ 700,000	$ 2,822,416
5	$ 2,164,864	$ 600,000	$ 2,764,864
6	$ 2,208,162	$ 500,000	$ 2,708,162

By contrast, if land and fixtures were treated as a single appraisal unit under Rule 474, the total assessed value of petroleum refinery property beyond Year 1 would be greater than the values shown above. When such property is treated as a single unit, fixture depreciation ($ 100,000 per year) may be offset by the full amount of land appreciation ($ 100,000 per year), resulting in a total assessed value of $ 3 million each year. The total assessed value may be even greater than $ 3 million beyond Year 1 (though no greater than a 2 percent annual increase) to the extent that fixture values decline by less than $ 100,000 per year when petroleum refinery fixtures are bought and sold in the open market as a single unit with the underlying land. Thus, owners of petroleum refinery property pay higher property taxes under Rule 474 than under Rule 461(e).

Before adopting Rule 474, the Board held a hearing at which several public officials testified in favor of the rule. Typical was the testimony of Rick Auerbach, the Los Angeles County Assessor, who stated that in his experience "refineries in California . . . are bought and sold as a unit. . . . I am not aware of one that has not been sold as a unit. If we have a case where there is the potential for a refinery to be dismantled and sold–where the fixtures are sold separately, the

proposed rule is a rebuttable presumption and we would take that into account. And we would value the fixtures separately."

The Board concluded in its final statement of reasons before adopting the rule that "sufficient evidence in the rulemaking record exists to determine that proposed Rule 474 is necessary to obtain assessments more accurately reflecting how petroleum refinery properties would actually trade in the marketplace. . . . At the June 27, 2006 Property Tax Committee meeting, Thomas Parker, Deputy County Counsel, Sacramento County; Rick Auerbach, Los Angeles County Assessor and President of the California Assessor's Association; Lance Howser, Chief Assessor, Solano County; and Robert Quon, Director of Major Appraisals for the Los Angeles County Assessor's office, all testified that refineries are in fact bought, sold, and valued as a single unit. In the same meeting, Mr. Auerbach testified that refineries are different from other heavily-fixtured manufacturing industries such as breweries, canneries, and amusement parks and toy manufacturing. Refineries are unique in that up to 80 percent of their values are contained in the fixtures and because the land and fixtures are so integrated, it is difficult to physically separate the fixtures from the land. Further, the land and fixtures are also so economically integrated that a buyer normally would not, in a fair market transaction, purchase the land separately from the fixtures or the fixtures separately from the land. [¶] Since petroleum refineries are bought and sold as a unit consisting of land and fixtures, to value the fixtures separate and apart from the land may result in assessed values either below or above fair market value in violation of Propositions 8 and 13."

Petroleum industry counsel submitted evidence to the Board, mostly in the form of for-sale advertisements and newspaper articles, showing that refinery fixtures are sometimes dismantled and sold separately.

In November 2007, the Office of Administrative Law approved the regulation, and it became effective in December 2007. (*WSPA v. BOE*, pp. 409-413.)

Procedural History Regarding WSPA v. BOE

In *WSPA v. BOE*, the California Supreme Court also explained that in December 2008, the Western States Petroleum Association (WSPA) filed a complaint challenging the validity of Rule 474 and seeking a declaration that the Board violated the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.) in adopting the rule because: (1) "Rule 474 is inconsistent with California Constitution, article XIII A and section 51(d), and is not necessary to implement such law; (2) Rule 474 violates article XIII A's cap on year-to-year increases in assessed value of real property; (3) Rule 474 violates article XIII A's requirement of a two-thirds vote of the Legislature for raising real property taxes; and (4) Rule 474 violates petroleum refiners' constitutional right to equal protection and uniformity of laws." (WSPA v. BOE, pp. 413-414.) And, "[i]n October 2009, the Board and WSPA filed cross-motions for summary judgment. WSPA argued that Rule 474 violates section 51(d) and California Constitution, article XIII A, and that the Board failed to provide an adequate statement of economic impact as required by the

APA. The trial court granted WSPA's summary judgment motion on both grounds, and the Court of Appeal affirmed on both grounds" before the California Supreme Court granted review. (*WSPA v. BOE*, p. 414.)

California Supreme Court Held that Rule 474 is Consistent with Existing Property Tax Law

In *WSPA v. BOE*, the California Supreme Court disagreed with all of WSPA's arguments as to why Rule 474 violates Revenue and Taxation Code (RTC) section 51, subdivision (d) (hereafter section 51(d)) and California Constitution, article XIII A. The Court specifically concluded that "Rule 474's market-based approach to determining the proper appraisal unit for petroleum refinery property ensures that reductions in property values are measured according to fair market value. Thus, Rule 474 appears consistent with articles XIII and XIII A." (*WSPA v. BOE*, pp. 416-417.)

The California Supreme Court specifically concluded that "Rule 474 is also consistent with section 51(d)." (*WSPA v. BOE*, p. 417.) The Court said that "[b]y its terms, the statute provides two alternative methods of determining the appraisal unit that constitutes taxable real property: it is either (1) a unit 'that persons in the marketplace commonly buy and sell as a unit' or (2) a unit 'that is normally valued separately.' Rule 474 applies the first method to petroleum refinery property." (*WSPA v. BOE*, p. 417.)

In addition, the California Supreme Court found that "the Legislature enacted section 51(d) on the understanding that real property values may 'rise and fall ... [to] any point below [the Proposition 13] cap, should actual market values so dictate," "Rule 474 furthers the long-standing mandate to appraise real property according to 'actual market values,'" and "Rule 474's market-based approach to determining the proper appraisal unit was in fact the traditional method for making such determinations before Proposition 13." (*WSPA v. BOE*, p. 419.) The Court also specifically found that "Rule 474 thus represents no change in the method of determining the appropriate appraisal unit. In adopting this exception to Rule 461(e) for petroleum refinery property, the Board sought to align the concept of 'appraisal unit' with the settled rule that when real property declines in value, it should be appraised according to its actual market value. There is no evidence that section 51(d) was intended to freeze or codify the treatment of industrial fixtures as a separate appraisal unit." (*WSPA v. BOE*, p. 421.)

Further, the California Supreme Court expressly held that "no constitutional or statutory provision precludes the Board from treating land and fixtures as a single appraisal unit when substantial evidence indicates that a particular type of property is bought and sold as a single unit in the marketplace." (*WSPA v. BOE*, p. 422.) The Court also held that Rule 474 does properly take into account reductions in value due to "depreciation" as required by RTC section 51, subdivision (a)(2). (*Ibid.*) The Court stated that:

> To account for fixture depreciation separately when land and fixtures are actually bought and sold as a single unit would allow the owner to claim a reduction in real property value that is economically fictitious, resulting in a tax windfall. Neither California Constitution, article XIII A nor section 51 nor traditional appraisal practices require the unit of appraisal to be defined in a manner that

maximizes the depreciation of fixtures in contravention of economic reality. To the contrary, the law and consistent practice have long required appraisal of real property in the declining value context to reflect its "full cash value"—that is, the value "property would bring if exposed for sale in the open market." (§§ 51(a)(2), 110.) Rule 474 is consistent with this principle. (*WSPA v. BOE*, p. 423.)

Furthermore, the California Supreme Court held that the Board's adoption of Rule 474 did not violate section 3, subdivision (a), of article XIII A of the California Constitution, which prohibits tax increases without a two-thirds vote of both houses in the Legislature. The Court said that "By its terms, article XIII A, section 3(a) applies only to a 'change in *state statute* which results in any taxpayer paying a higher tax.' (Italics added [in original opinion].) It does not apply to an agency's decision to modify an administrative rule in response to substantial evidence that such modification is reasonably necessary to faithfully implement an existing statute." (*WSPA v. BOE*, pp. 423-424.)

California Supreme Court Held that Rule 474 is Procedurally Invalid

Although the California Supreme Court held that Rule 474 was substantively valid in *WSPA v. BOE*, the Court still concluded that the Board's adoption of Rule 474 was procedurally invalid under the APA. (*WSPA v. BOE*, pp. 408-409.) The Court held that the Board did not properly assess the economic impact of Rule 474 and that the Board's initial determination that Rule 474 would not have a significant adverse economic impact on businesses did not substantially comply with the APA (Gov. Code, §§ 11346.2, subd. (b)(5)(A), 11346.3, 11346.5, subd. (a)(8)) because:

- "The Board relied on a 2006 document titled 'Revenue Estimate' concerning proposed Rule 474. According to the document, which was prepared by Board staff, WSPA reported that there are 20 major refineries located in California, with five in Los Angeles County and four in Contra Costa County. (Bd. of Equalization, Revenue Estimate, Issue No. 6-001 (June 7, 2006) p. 2.) County data indicated that the total assessment in these two counties was over $ 14 billion, with about 80 percent of that value enrolled as fixtures. Projecting figures statewide, the Board staff estimated that there was $ 32 billion of refinery property, of which $ 25 billion consisted of fixtures and $ 7 billion in land and nonfixture improvements. To 'conservatively estimate' the incremental amount of taxable assessed value resulting from the proposed rule, the Board staff multiplied the $ 7 billion in land value by a 2 percent appreciation factor to conclude that Rule 474 would yield 'at least $ 140 million' in additional assessed value. (Revenue Estimate, at p. 3.) The Board staff then multiplied $ 140 million by the 1 percent tax on real property permitted under article XIII A to arrive at $ 1.4 million as the annual estimated revenue effect of Rule 474, while acknowledging that '[t]he actual revenue effect could be considerably higher or lower depending on the number of properties [affected] and the actual amount of offsetting values.' (Revenue Estimate, at p. 3.) Based on these calculations, the Board concluded that Rule 474 'will not have a significant adverse economic impact on businesses.'" (*WSPA v. BOE*, pp. 429-430.);
- The Court concluded that "[e]ven assuming the Board could reasonably project $ 32 billion as the total value of 20 refineries statewide based on data showing $ 14 billion as

the total value of nine refineries in two counties, the Board's analysis offers no explanation why multiplying $ 7 billion in land value by a 2 percent appreciation factor is, empirically or conceptually, a valid or reasonable way to estimate the amount of fixture depreciation that would be offset by appraising land and fixtures as a single unit." (*WSPA v. BOE*, p. 430.); and

- "[T]he Board's calculation failed to consider prior land appreciation and the full tax impact that would occur if land were valued at actual market value rather than adjusted base year value." (*Ibid.*)

Repeal and Proposed Re-Adoption of Rule 474

During the Board's September 10, 2013, meeting, the Board considered a Chief Counsel Memorandum dated August 28, 2013. In the Chief Counsel Memorandum, Board staff explained that the Board adopted Rule 474 on September 27, 2006, to clarify that, consistent with California Constitution article XIII, section 1, article XIII A (which contains Proposition 13 as amended by Proposition 8), RTC section 51, and Rules 461, *Real Property Value Changes*, and 324, *Decision*, refinery property consisting of land, improvements, and fixtures is rebuttably presumed to be a single appraisal unit in determining Proposition 8 declines in value below the Proposition 13 adjusted base year value for property tax valuation purposes. In the Chief Counsel Memorandum, Board staff also explained that the California Supreme Court held that Rule 474 was substantively valid in *WSPA v. BOE*. However, nevertheless, the Court also invalidated Rule 474 on procedural grounds, finding that the Board failed to provide an adequate assessment of the rule's economic impact during the rulemaking process as required by the APA. In particular, the Supreme Court held that Rule 474 is procedurally deficient because the Board did not make a reasoned estimate of all the cost impacts of the rule on affected parties. Therefore, in the memorandum, Board staff requested the Board's authorization to repeal Rule 474 pursuant to California Code of Regulations, title 1, section 100 (Rule 100). Board staff also requested the Board's authorization to initiate the rulemaking process to re-adopt Rule 474 following the APA's regular notice and public hearing process after Board staff reassessed the economic impact of Rule 474 on affected businesses in accordance with the APA and *WSPA v. BOE*.

The Board also received a letter dated August 20, 2013, from Sharon Moller, the Chief Deputy Assessor for the Los Angeles County Assessor's Office, which was attached to the August 28, 2013, Chief Counsel Memorandum. In the letter, Ms. Moller explained that the California Supreme Court's opinion in *WSPA v. BOE*, which upheld the substantive validity of Rule 474, but still invalidated the rule on procedural grounds, created an issue (or problem within the meaning of Gov. Code, § 11346.2, subd. (b)(1)) for county assessors in counties with petroleum refinery property as to:

- Whether petroleum refinery land, improvements, and fixtures constitute a single appraisal unit for determining declines in value, under RTC section 51 and the substantive policy expressed in Rule 474, because petroleum refineries are commonly bought and sold as a unit in the marketplace; or
- Whether petroleum refinery fixtures constitute a separate appraisal unit, as provided in Rule 461, subdivision (e) (hereafter Rule 461(e)).

In the letter, Ms. Moller also requested that the Board initiate the rulemaking process to re-adopt Rule 474 to clarify that petroleum refinery land, improvements, and fixtures are rebuttably presumed to constitute a single appraisal unit for determining declines in value.

In addition, the Board received the following written statement from Robert Cooney, Appraiser Specialist with the Los Angeles County Assessor's Office:

> I have been involved with refinery valuations for the last eight years. In that time, I have become something of a specialist in the application of the Sales Comparison Approach to refinery valuations. I have spoken or am scheduled to speak to groups such as the SAA, IAAO, and the most recent WSPA Conference on refinery and oil valuation. I have interacted with staff from the other two counties with large refinery properties, as well as every owner of a large refinery in California and their representatives.
>
> We at the County of Los Angeles are strongly in favor of the repeal and re-initiation of the Rule 474 rulemaking process.
>
> The purpose of Rule 474 is, from our point of view, to codify a practice already employed at the County of Los Angeles. In my time at the County, we have always viewed these properties as the market does, with land, improvement, and fixture operating as a unit. This is not a novel practice, though it is a contraversion of the typical rebuttable presumption that land and improvement are bought and sold and therefore valuable separately from fixtures. Passage of this rule allows us to continue to operate in harmony with market realities for refinery properties without having to overcome the rebuttable presumption each time these matters appear before an Assessment Appeals Board.
>
> It has been stated that there are exceptions to the norm that refinery assets operate and are sold as a unit. The assumption is that, in the case of such an exception, the use of this rule will create an unfair burden on the Taxpayer. The reality is that when we have evidence that a refinery has ceased to operate, and the land and improvements would not sell in the market with the fixtures, we have applied the normal valuation supposition that the fixtures are a separate appraisal unit and valued them as such. Rule 474 would not force us to value them as one unit when they would not sell that way.
>
> It is true that the implementation of any new rule should proceed with prudence, but this rule was not created capriciously. The substance of this rule has been in discussion and debate for the last several years. The matter has been heard in the judicial system all the way to the Supreme Court of the State of California. They indicated that the rule as already prepared was substantially valid and consistent with applicable constitutional and statutory provisions. The only impediment to the validity of this rule as it was then proposed was the necessity to adequately

> estimate all cost impacts on affected parties to meet the requirements for an Economic Impact Statement. It is a disservice to that opinion, to the effort so far expended, and to the people of the State of California not to take this rule over this final hurdle. We would beg the board to simply follow the advice so kindly proffered by the State Supreme Court and reintroduce the rule with a sufficient Economic Impact Statement to allow its passage.

Therefore, at the conclusion of the Board's discussion of the Chief Counsel Memorandum dated August 28, 2013, during its meeting on September 10, 2013, the Board Members unanimously voted to authorize staff to repeal Rule 474 pursuant to Rule 100, and initiate the rulemaking process to re-adopt Rule 474 after Board staff reassessed the economic impact of Rule 474 in accordance with the APA and *WSPA v. BOE*. The Board determined that it is reasonably necessary to re-adopt Rule 474 for the specific purpose of addressing the issue (or problem) identified in Ms. Moller's August 20, 2013, letter by clarifying that petroleum refinery land, improvements, and fixtures are rebuttably presumed to constitute a single appraisal unit for determining declines in value because petroleum refineries are commonly bought and sold as a unit in the marketplace. The Board anticipates that the re-adoption of Rule 474 will clarify the treatment of petroleum refinery property for purposes of measuring declines in value, and thereby benefit county assessors and the owners of petroleum refineries by promoting fairness and uniformity in the assessment of petroleum refinery property throughout the state.

The Board subsequently repealed Rule 474 pursuant to Rule 100, effective October 30, 2013. However, regardless of the repeal of Rule 474, county assessors are still authorized to determine that refinery property (land, improvements, and fixtures) constitutes a single appraisal unit for measuring declines in value when persons in the marketplace commonly buy and sell refinery property as a unit, in accordance with RTC section 51(d) as interpreted by the California Supreme Court in *WSPA v. BOE* (discussed in detail above).

The proposed re-adoption of Rule 474 is not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Rule 474.

DOCUMENTS RELIED UPON

The Board relied on the California Supreme Court's opinion in *WSPA v. BOE*, that Rule 474's market-based approach to determining the proper appraisal unit for petroleum refinery property is consistent with RTC section 51(d) and articles XIII and XIII A of the California Constitution because it ensures that reductions in property values are measured according to fair market value, in deciding to propose to re-adopt Rule 474. The Board relied on the Chief Counsel Memorandum dated August 28, 2013 (referred to above), Ms. Moller's August 20, 2013, letter, which was attached to the Chief Counsel Memorandum, the written statement from Robert Cooney (referred to above), and the comments made during the Board's discussion of the Chief Counsel Memorandum during its September 10, 2013, Board meeting in deciding to propose to re-adopt Rule 474. The Board also relied upon the documents (referred to above) and the information in attachments A through F to this initial statement of reasons (identified below) in assessing the economic impact of the re-adoption of Rule 474 and determining that the re-adoption of Rule 474 will not have a significant adverse economic impact on business.

ALTERNATIVES CONSIDERED

The Board considered whether to begin the formal rulemaking process to re-adopt Rule 474 at this time or, alternatively, whether to take no action at this time. The Board decided to begin the formal rulemaking process to re-adopt Rule 474 at this time because the Board determined that the re-adoption of Rule 474 is reasonably necessary for the reasons set forth above.

The Board did not reject any reasonable alternative to Rule 474 that would lessen any adverse impact the proposed action may have on small business or that would be less burdensome and equally effective in achieving the purposes of the proposed regulation in a manner that ensures full compliance with the laws being implemented and made specific by the proposed regulation. No reasonable alternative has been identified and brought to the Board's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

INFORMATION REQUIRED BY GOVERNMENT CODE SECTION 11346.2, SUBDIVISION (b)(5) AND ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

Background Information Regarding the Petroleum Refining Industry

Prior to beginning the formal rulemaking process, Board staff reviewed relevant background information regarding the California petroleum refining industry. First, staff reviewed information available in the "Energy Almanac" published by the California Energy Commission, which provides both a quick overview and in-depth statistics regarding California's energy industries.[1] The Energy Almanac explains that "California's [petroleum] refineries are located in the San Francisco Bay area, Los Angeles area and the Central Valley." The Energy Almanac provides the following current table showing that there were 20 total refineries in California as of October 2012:

California Oil Refinery Locations and Capacities
Classification of refiners based on crude oil capacity (barrels per day)
Information as of October 2012

Refinery Name	Barrels Per Day	CARB Diesel	CARB Gasoline
BP West Coast Products LLC, Carson Refinery	240,000	Yes	Yes
Chevron U.S.A. Inc., El Segundo Refinery	276,000	Yes	Yes

[1] Attachment A contains the Energy Almanac information regarding California's petroleum refineries quoted directly below.

Chevron U.S.A. Inc., Richmond Refinery	245,271	Yes	Yes
Tesoro Refining & Marketing Company, Golden Eagle Martinez/Avon Refinery	166,000	Yes	Yes
Shell Oil Products US, Martinez Refinery	156,400	Yes	Yes
ExxonMobil Refining & Supply Company, Torrance Refinery	149,500	Yes	Yes
Valero Benicia Refinery	132,000	Yes	Yes
ConocoPhillips, Wilmington Refinery	139,000	Yes	Yes
Tesoro Refining & Marketing Company, Wilmington Refinery	103,800	Yes	Yes
Valero Wilmington Refinery	78,000	Yes	Yes
ConocoPhillips, Rodeo San Francisco Refinery	78,400	Yes	Yes
ALON USA, Bakersfield Refinery	66,000	Yes	Yes
Paramount Petroleum Corporation, Paramount Refinery	50,000	No	Yes
ConocoPhillips, Santa Maria Refinery	41,800	No	No
Edgington Oil Company, Long Beach Refinery	26,000	No	No
Kern Oil & Refining Company, Bakersfield Refinery	26,000	Yes	Yes
San Joaquin Refining Company Inc., Bakersfield Refinery	15,000	Yes	No
Greka Energy, Santa Maria Refinery	9,500	No	No
Lunday Thagard, South Gate Refinery	8,500	No	No
Valero Wilmington Asphalt Refinery	6,300	No	No

Note: Data on this table represents total crude oil capacity not gasoline, distillate production, diesel fuel production or production of other products. Production potential varies depending on time of year and status of the refinery. A rule of thumb is that roughly 50 percent of total capacity is gasoline production (about 1.0 million barrels of gasoline - 42 million gallons - is produced per day).

Source: California Energy Commission Fuels Office Staff.

The Energy Almanac also provides the history of California's petroleum refineries.[2] As relevant here, the history, which is current through October 2012, indicates that existing refineries are periodically bought and sold as a unit (land, improvements, and fixtures) and that none of the 20 refineries listed above has changed ownership since June 2010, when Alon USA Energy, Inc., acquired its Bakersfield refinery. For example, the history shows that Chevron's El Segundo refinery, which has the greatest capacity of any of the 20 refineries, was owned by Standard Oil

[2] Attachment B contains the history of California's petroleum refineries from the Energy Almanac.

Company from 1912-1926, Standard Oil Company of California from 1926-1977, Chevron USA Inc. from 1977-2001, Chevron Texaco Corporation from 2001-2005, and Chevron Corporation from 2005 to the present.

Second, Board staff reviewed information regarding the United States' petroleum refineries available from the United States Energy Commission (U.S.E.C.). The U.S.E.C.'s information for the entire United States indicates that the country had 142 operable petroleum refineries as of January 1, 2014, and that the newest United States refinery began operating in Douglas, Wyoming, in 2008.[3] The California specific information from the United States Energy Commission indicates that:

- California's newest refinery was built in 1979 and began operating in Wilmington, California in 1980;
- California has had between 18 and 20 operable petroleum refineries from 2008 to 2014; and
- At least one of California's operable petroleum refineries has been idle, but not shutdown, at some point during each year from 2008 to 2014.[4]

Third, Board staff reviewed the current state of the United States' market for operating petroleum refineries. Staff found that while there are individual pieces of refinery equipment available for sale, there are still significant sales of entire petroleum refineries occurring. The most recent sale in California is the June 2013 sale of BP's Carson, California refinery and related logistics and marketing assets in the region to Tesoro Corporation for approximately $2.4 billion.[5] Therefore, Board staff concluded that persons in the marketplace still commonly buy and sell operable California petroleum refineries as a unit, just as they did when the Board first adopted Rule 474.

Economic Impact of the Re-Adoption of Rule 474

Prior to beginning the formal rulemaking process, Board staff also determined how the re-adoption of Rule 474 might change (or effect) the current assessment of petroleum refining property and thereby have an economic impact on county assessors and the California petroleum refining industry. Board staff determined that, in the absence of Rule 474, county assessors are currently authorized by RTC section 51(d), as interpreted by the California Supreme Court in *WSPA v. BOE*, to determine that petroleum refinery property (land, improvements, and fixtures) constitutes a single appraisal unit for measuring declines in value when persons in the marketplace commonly buy and sell refinery property as a unit. Therefore, Board staff determined that, as a result, county assessors are currently required to monitor the market for petroleum refinery property. However, in the absence of substantial changes in the California petroleum refinery market (discussed above), it is also currently reasonable for a county assessor to generally value petroleum refinery property as a single appraisal unit, for purposes of measuring declines in value, and rely on each petroleum refinery owner to produce evidence,

[3] Attachment C contains the information regarding United States' petroleum refineries from the U.S.E.C.
[4] Attachment D contains the information regarding California's petroleum refineries from the U.S.E.C.
[5] Attachment E contains BP's June 3, 2013, press release regarding the sale of the Carson, California, refinery to Tesoro Corporation.

when available, to establish that some or all of its refinery's fixtures should be valued as a separate appraisal unit because those fixtures are not commonly bought and sold as a unit with the refinery's land and improvements.

Board staff determined that the re-adoption of Rule 474 does not materially change the treatment of petroleum refinery property under RTC section 51(d) as interpreted by the California Supreme Court in *WSPA v. BOE*. Instead, the re-adoption of Rule 474 has the effect of clarifying that, based upon the California petroleum refinery market (discussed above):

- "The land, improvements, and fixtures and other machinery and equipment classified as improvements for a petroleum refining property are rebuttably presumed to constitute a single appraisal unit" for purposes of determining declines in value because doing so is generally consistent with RTC section 51(d) as interpreted by the California Supreme Court in *WSPA v. BOE*; and
- Rule 461(e)'s provisions providing that "fixtures and other machinery and equipment classified as improvements constitute a separate appraisal unit" for purposes of determining declines in value do not apply to petroleum refinery property, unless there is evidence that treating specific fixtures as a separate appraisal unit would be consistent with RTC section 51(d) as interpreted by the California Supreme Court in *WSPA v. BOE*.

In addition, Board staff determined that, after the re-adoption of Rule 474, a county assessor would still need to continue to monitor the market for petroleum refinery property because Rule 474 does not supersede RTC section 51(d) and because the presumption in Rule 474 is rebuttable. Staff determined that, after the re-adoption of Rule 474 and in the absence of substantial changes in the California petroleum refinery market, county assessors could continue to generally value petroleum refinery property (land, improvements, and fixtures) as a single appraisal unit. Board staff also determined that, after the re-adoption of Rule 474 and in the absence of substantial changes in the California petroleum refinery market, county assessors could continue to rely on each petroleum refinery owner to produce evidence to establish that some or all of its refinery's "fixtures" should be valued as a separate appraisal unit because those fixtures are not commonly bought and sold as a unit with the refinery's land and improvements, when available. Therefore, Board staff concluded that the re-adoption of Rule 474 is fully consistent with the existing mandates of RTC section 51(d), and that there is nothing in the proposed re-adoption of Rule 474 that would significantly change how individuals and businesses, including county assessors and petroleum refinery owners, would generally behave due to the current provisions of RTC section 51(d) as interpreted by the California Supreme Court in *WSPA v. BOE*.

As a result, the Board has determined that the re-adoption of Rule 474 does not impose any costs on any persons, including businesses, in addition to whatever costs are imposed by RTC section 51(d) as interpreted by the California Supreme Court in *WSPA v. BOE*, and there is nothing in Rule 474 that would impact revenue. The Board also estimates that the proposed re-adoption of Rule 474 will not have a measurable economic impact on individuals and business, including county assessors and petroleum refinery owners, that is in addition to whatever economic impact the enactment of RTC section 51(d), as interpreted by the California Supreme Court in *WSPA v. BOE*, has and will have on individuals and businesses. And, the Board has determined that the

proposed re-adoption of Rule 474 is not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, because the Board has estimated that the proposed amendments will not have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars ($50,000,000) during any 12-month period. Therefore, based on these facts and all of the information in the rulemaking file, the Board has determined that the proposed re-adoption of Rule 474 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

Finally, Rule 474 does not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has also determined that the re-adoption of Rule 474 will not affect the benefits of Rule 474 to the health and welfare of California residents, worker safety, or the state's environment.

The forgoing information also provides the factual basis for the Board's initial determination that the re-adoption of Rule 474 will not have a significant adverse economic impact on business.

The proposed re-adoption of Rule 474 may affect small businesses.

Tax Effect of Treating Petroleum Refinery Property as One Appraisal Unit

Although the Board has determined that there is no economic impact associated with the re-adoption of Rule 474 due to the mandates of RTC section 51(d), the Board is aware that fixture depreciation can be offset by appreciation in land and improvements when petroleum refinery property (land, improvements, and fixtures) is valued as a single appraisal unit, as the California Supreme Court indicated in *WSPA v. BOE*. Therefore, the Board recognizes that there is sometimes an increase in the total assessed value of petroleum refinery property when fixtures are valued as part of the same appraisal unit with land and improvements under RTC section 51(d) and Rule 474, instead of valued as a separate appraisal unit under Rule 461(e). The Board also recognizes that property taxes increase by one percent of each increase in assessed value.

As a result, Board staff determined that it needed to obtain the available data regarding the market values and adjusted base year values for petroleum refinery land, improvements, and fixtures so that Board staff could accurately compare the total assessed value of a petroleum refinery when its fixtures are valued as a separate appraisal unit under Rule 461(e) and valued as part of the same appraisal unit with land and improvements under Rule 474. Therefore, Board staff contacted the California Assessors' Association and requested that the county assessors provide Board staff with the available data for 2009 through 2013 without identifying specific petroleum refineries. In response, the California Assessors' Association provided all of the data for nine petroleum refineries for 2009-2013, and all the data for one additional petroleum refinery for 2009-2012, including many of California's largest refineries.

Board staff subsequently reviewed the available data for the 10 refineries.[6] Board staff determined that valuing petroleum refinery fixtures as part of the same appraisal unit with land

[6] Attachment F contains Board staff's economic impact assessment of the available data.

and improvements under RTC section 51(d) and Rule 474, instead of valuing fixtures as a separate appraisal unit under Rule 461(e), only results in a higher total assessed value:

1. When the current market value of the fixtures is less than the adjusted base year value of the fixtures; and

2. Either:

    A. The combined current market value of land and improvements is more than the combined current adjusted base year value of the land and improvements; or
    B. The combined current market value of land, improvements, and fixtures is more than the combined current adjusted base year value of the land, improvements, and fixtures.

Otherwise, valuing petroleum refinery fixtures as part of the same appraisal unit with land and improvements under RTC section 51(d) and Rule 474, instead of valuing fixtures as a separate appraisal unit under Rule 461(e), does not result in an increase in assessed value.[7]

In addition, Board staff determined what the assessed values would be for 2009 through 2013, under RTC section 51(d) and Rule 474, and under Rule 461(e), for each of the 10 California petroleum refineries for which data is available.[8] However, the data did not indicate that valuing petroleum refinery fixtures as part of the same appraisal unit with land and improvements under RTC section 51(d) and Rule 474, instead of valuing fixtures as a separate appraisal unit under Rule 461(e), has a consistent tax effect in any given year or from year-to-year. Instead, staff determined that the owners of one of the 10 refineries would not pay higher property taxes under RTC section 51(d) and Rule 474, than under Rule 461, in any of the five years.[9] Staff also determined that the owners of nine of the 10 refineries would pay higher property taxes under RTC section 51(d) and Rule 474, than under Rule 461, in at least two of the five years. Specifically, staff determined that:

- The owners of two of the 10 refineries would pay higher property taxes under RTC section 51(d) and Rule 474, than under Rule 461, in two of the five years;
- The owners of two of the 10 refineries would pay higher property taxes under RTC section 51(d) and Rule 474, than under Rule 461, in three of the five years;
- The owners of three of the 10 refineries would pay higher property taxes under RTC section 51(d) and Rule 474, than under Rule 461, in four of the five years; and
- The owners of two of the 10 refineries would pay higher property taxes under RTC section 51(d) and Rule 474, than under Rule 461, in all five years.[10]

In addition, Board staff determined that the owners of 9 of the 10 refineries would collectively pay the following additional property taxes for 2009 through 2013 if their refineries were valued under RTC section 51(d) and Rule 474, rather than under Rule 461, and determined that the

[7] See Attachment F, pages 1 through 8.
[8] See Attachment F, pages 7 and 8.
[9] See Attachment F, pages 7 and 9.
[10] See Attachment F, pages 7 through 10.

additional taxes represented the following percentage increases in their collective property taxes for each year:

2009:	$4,633,805	2.78%
2010:	$5,221,876	3.79%
2011:	$5,159,918	3.46%
2012:	$4,045,140	2.52%
2013:	$2,816,552	2.40%[11]

Finally, as noted above, Board staff concluded that the tax effect of valuing petroleum refinery fixtures as part of the same appraisal unit with land and improvements under RTC section 51(d) and Rule 474, instead of valuing fixtures as a separate appraisal unit under Rule 461(e), depends entirely upon:

- Whether and to what extent the current market value of a particular petroleum refinery's fixtures is less than the adjusted base year value of the fixtures; and
- Whether and to what extent the: (A) the combined current market value of the same petroleum refinery's land and improvements is more than the combined current adjusted base year value of the land and improvements; or (B) the combined current market value of the same petroleum refinery's land, improvements, and fixtures is more than the combined current adjusted base year value of the land, improvements, and fixtures.

[11] See Attachment F, page 11.

California's Oil Refineries

California's refineries are located in the San Francisco Bay area, Los Angeles area and the Central Valley. Each day approximately two million barrels (a barrel is equal to 42 U.S. gallons) of petroleum are processed into a variety of products, with gasoline representing about half of the total product volume. (A list of refineries, their location and capacity is shown in the table below.)

Refineries can be classified as topping, hydroskimming or complex. Topping refineries are the least sophisticated and contain only the atmospheric distillation tower and possibly a vacuum distillation tower. The topping refiner's ability to produce finished products depends on the quality of the petroleum being processed. A hydroskimming refinery has reforming and desulfurization process units in addition to basic topping units. This allows the refiner to increase the octane levels of motor gasoline and reduce the sulfur content of diesel fuel. Complex refineries are the most sophisticated refinery type and have additional process units to "crack" the heavy gas oils and distillate oils into lighter, more valuable products.

Using a variety of processes including distillation, reforming, hydrocracking, catalytic cracking, coking, alkylation and blending, the refinery produces many different products. The four basic groups are motor gasolines, aviation fuel, distillate fuel and residual fuel. On a statewide average, about 12 percent of the product from California's refineries is aviation fuel, 13 percent is distillate fuel and 9 percent is residual fuel.

Complex refineries have the highest utilization rate at approximately 95 percent. Utilization rate is the ratio of barrels input to the refinery to the operating capacity of the refinery. Complex refineries are able to produce a greater proportion of light products, such as gasoline, and operate near capacity because of California's large demand for gasoline. Permitting Issues. It is unlikely that new refineries will be built in California. In fact, from 1985 to 1995, 10 California refineries closed, resulting in a 20 percent reduction in refining capacity. Further refinery closures are expected for small refineries with capacities of less than 50,000 barrels per day. The cost of complying with environmental regulations and low product prices will continue to make it difficult to continue operating older, less efficient refineries.

To comply with federal and state regulations, California refiners invested approximately $5.8 billion to upgrade their facilities to produce cleaner fuels, including reformulated gasoline and low-sulfur diesel fuel. These upgrades received permits since low-sulfur diesel fuel regulations went into effect in 1993. Requirements to produce federal reformulated gasoline took effect at the beginning of 1995, and more stringent state requirements for CARB reformulated gasoline went into effect statewide on April 1, 1996. That requirement was removed by Governor Gray Davis when it was found that the oxygenate, methyl tertiary butyl-ether or MTBE, was leaking from some underground storage tanks and polluting water supplies. MTBE was phased out and removed as of December 31, 2003, and replaced by ethanol.

For information about oil production and imports to refineries, please see our main oil page.

Refineries Outside of California That Can Produce California Gasoline

Domestic sources include refineries located in Washington State and the US Gulf Coast. Foreign sources include Eastern Canada, Finland, Germany, US Virgin Islands, Middle East, and Asia.

California Oil Refinery Locations and Capacities

Classification of refiners based on crude oil capacity (barrels per day)

Information as of October 2012

Refinery Name	Barrels Per Day	CARB Diesel	CARB Gasoline
BP West Coast Products LLC, Carson Refinery	240,000	Yes	Yes
Chevron U.S.A. Inc., El Segundo Refinery	276,000	Yes	Yes
Chevron U.S.A. Inc., Richmond Refinery	245,271	Yes	Yes
Tesoro Refining & Marketing Company, Golden Eagle Martinez/Avon Refinery	166,000	Yes	Yes
Shell Oil Products US, Martinez Refinery	156,400	Yes	Yes
ExxonMobil Refining & Supply Company, Torrance Refinery	149,500	Yes	Yes
Valero Benicia Refinery	132,000	Yes	Yes
ConocoPhillips, Wilmington Refinery	139,000	Yes	Yes
Tesoro Refining & Marketing Company, Wilmington Refinery	103,800	Yes	Yes
Valero Wilmington Refinery	78,000	Yes	Yes
ConocoPhillips, Rodeo San Francisco Refinery	78,400	Yes	Yes
ALON USA, Bakersfield Refinery	66,000	Yes	Yes
Paramount Petroleum Corporation, Paramount Refinery	50,000	No	Yes
ConocoPhillips, Santa Maria Refinery	41,800	No	No
Edgington Oil Company, Long Beach Refinery	26,000	No	No
Kern Oil & Refining Company, Bakersfield Refinery	26,000	Yes	Yes
San Joaquin Refining Company Inc., Bakersfield Refinery	15,000	Yes	No
Greka Energy, Santa Maria Refinery	9,500	No	No
Lunday Thagard, South Gate Refinery	8,500	No	No
Valero Wilmington Asphalt Refinery	6,300	No	No

Note: Data on this table represents total crude oil capacity not gasoline, distillate production, diesel fuel production or production of other products. Production potential varies depending on time of year and status of the refinery. A rule of thumb is that roughly 50 percent of total capacity is gasoline production (about 1.0 million barrels of gasoline - 42 million gallons - is produced per day).

Source: California Energy Commission Fuels Office Staff.

Terminal Facilities

California's nearly 100 terminals receive petroleum and petroleum products by tanker, barge, pipeline, rail or truck. Most of California's terminals are marine terminals. At these facilities petroleum or product is transferred from or to tankers or barges. Tankers loaded with Alaska North Slope petroleum, for example, enter marine terminals in northern and southern California, where the crude oil is then sent to refineries by pipeline for processing. An example of pipeline receipts of petroleum at a terminal is heavy California petroleum produced in the Bakersfield area that is sent by pipeline to a refinery at Martinez.

Terminals also serve as refiner's wholesale distribution points for products. Product, such as gasoline, is sold to distributors (jobbers) who then sell to consumers through the distributors' own retail stations. The distributor may also resell the gasoline to other station dealers. Gasoline can also be sold directly to station dealers from the terminal. The marketing structure differs depending on the type of product being sold.

A terminal can be linked with several refineries and storage facilities and be supplied by privately-owned pipelines or a common carrier line. Total capacity at a terminal can range from a few thousand barrels to a few million barrels. The most apparent equipment at a terminal are the tanks used for storage and separation of different product grades. The number of tanks can range from a few to more than 70. Other equipment found includes piping, pumps, valves, and meters needed for bulk receipts and for loading racks used for small deliveries to trucks. Marine terminals have vessel length and water depth limits that dictate the size of tankers that can off-load at the facility.

Permitting Issues. Some of the environmental and safety issues associated with permitting petroleum and petroleum product terminals include:

- Changes in visual quality
- Disturbances to vegetation and wildlife
- Emissions from floating roof tanks
- Potential water and soil contamination from earthquake-damaged tanks
- Increased tanker traffic and potential for spills at marine facilities

References

1. **U.S. Petroleum Refining, Meeting Requirements for Cleaner Fuels and Refineries**, Volume I, National Petroleum Council, August, 1993. This document is a comprehensive assessment of how environmental regulations impact the petroleum refining industry and U.S. consumers.
2. **Fuels Report**, California Energy Commission, December, 1995, Publication No. P300-95-017. The Fuels Report describes emerging trends and long range forecasts of the demand, supply and price of petroleum, petroleum products, natural gas, coal and synthetic and other fuels. It is the state's principal fuels policy document.
3. Petroleum Industry Information Reporting Act submittals from the petroleum industry to the California Energy Commission.
4. **Quarterly Oil Report**, Fourth Quarter 1993, April 1994, California Energy Commission, Publication No. P300-94-003. This report describes petroleum fuels market trends, price trends, refinery activity, oil production trends and petroleum company financial performance. It contains aggregated petroleum statistics for California based on industry submittals to the Commission including refinery utilization rates.
5. **1994 Annual Report**, Western States Petroleum Association.

Sources:

Refinery list - California Energy Commission staff, updated regularly.

Background information and discussion - *Energy Aware Planning Guide II: Energy Facilities*, California Energy Commission, Publication No. 700-96-006, December 1996, Appendices B-24 and B-25.in

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ENERGYALMANAC.CA.GOV / PETROLEUM / REFINERY HISTORY

California Oil Refinery History
Information current as of August 2012.

Note: Information for some refineries about start-up date and ownership prior to 1981 is not available.

Refineries highlighted in yellow are currently operational. Light blue indicates re-refiner.

This chart is also available to download as an Excel spreadsheet. Current as of December 2012. (36 kb).

California Refinery Facilities	Began Operations	Ownership Information	Current Crude Capacity (Barrels/Day)[1]
Anchor Refining, McKittrick Refinery**(Closed)**	Prior to 1981	Anchor Refining: 1981-1984	
Alon USA Energy, Inc., Bakersfield Refinery	1932	Mohawk Petroleum Corp: 1932-1975 Reserve Oil & Gas Co: 1975-1980 Getty Oil Co: 1980-1984 Texaco, Inc: 1984-2000 Equilon: 2000-2001 Shell Oil Co: 2001-2005 Big West of Calif. (Flying J): 2005-June 2010 Alon USA Energy Inc: June 2010-Present	66,000
BP West Coast Products, Carson Refinery	1938	Richfield Oil Corp: 1938-1966 Atlantic Richfield Company (ARCO): 1966-2000 BP West Coast Products: 2000-Present	240,000
Chemoil Refining Corporation, Signal Hill Refinery **(Closed)**	Prior to 1981	MacMillan Ring-Free Oil Co: 1981-1988 Chemoil Refining Co: 1988-1994	
Chevron, Bakersfield Refinery **(Closed)**	1913	Standard Oil Co: 1913-1926 Standard Oil Company of California (Socal): 1926-1977 Chevron USA Inc: 1977-1986	
Chevron, El Segundo Refinery	1912	Standard Oil Co: 1912-1926 Standard Oil Company of California (Socal): 1926-1977 Chevron USA Inc: 1977-2001 ChevronTexaco Corp: 2001-2005 Chevron Corp: 2005-Present	276,000
Chevron, Richmond Refinery	1902	Pacific Coast Oil: 1902-1906 Standard Oil Co: 1906-1926 Standard Oil Company of California (Socal): 1926-1977 Chevron USA Inc: 1977-2001 ChevronTexaco Corp: 2001-2005 Chevron Corp: 2005-Present	245,271
Conoco (formerly Fletcher), Paramount Refinery **(Closed)**	Prior to 1981	Conoco: 1981-1983	46,500

ConocoPhillips, Rodeo Refinery	1896	Union Oil Co of Calif: 1896-1983 Unocal: 1983-1997 Tosco Corp: 1997-2001 Phillips: 2001-2002 ConocoPhillips: 2002-Present	78,400
ConocoPhillips, Santa Maria Refinery	1955	Union Oil Co of Calif: 1955-1983 Unocal: 1983-1997 Tosco Corp: 1997-2001 Phillips: 2001-2002 ConocoPhillips: 2002-Present	41,800
ConocoPhillips, Wilmington Refinery	1917	Union Oil Co of Calif: 1917-1983 Unocal: 1983-1997 Tosco Corp: 1997-2001 Phillips: 2001-2002 ConocoPhillips: 2002-Present	139,000
DeMenno/Kerdoon, Compton Refinery **(Reprocesses Waste Oil as Oil Re-Refiner)**	Prior to 1981	DeMenno/Kerdoon: 1981-1984	
ECO Petroleum, Signal Hill Refinery **(Closed)**	Prior to 1981	ECO Petroleum: 1981-1984	11,000
Edgington Oil Company/Alon USA Energy Inc, Long Beach Refinery	1932	Apex Oil Co: 1932-1941 Edgington Oil Co: 1941-2006 Alon USA Energy Inc: 2006-Present	26,000
ExxonMobil, Torrance Refinery	1907	Vacuum Oil Co: 1907-1929 General Petroleum Corporation of Calif: 1929-1931 Socony-Vacuum Corp: 1931-1934 Socony-Vacuum Oil Company, Inc: 1934-1955 Socony Mobil Oil Co: 1955-1966 Mobil Oil Corp: 1966-2000 ExxonMobil: 2000-Present	149,500
Fletcher Oil & Refining, Wilmington Refinery **(Closed)**	Prior to 1981	Fletcher Oil & Refining: 1981-1991	
Gibson Oil & Refining, Bakersfield Refinery **(Closed)**	Prior to 1981	Gibson Oil & Refining: 1981-1986	
Golden Bear, Oildale Refinery **(Closed)**	Prior to 1981	Witco Chemical Corp: 1981-1997 Golden Bear: 1997-2001	
Golden Eagle Refining, Carson Refinery **(Closed)**	1947	Sunset Oil: 1947 - 1958 Golden Eagle Refining: 1958-1984	
Golden Eagle Refining, Hanford Refinery **(Closed)**	Prior to 1981	Golden Eagle Refining: 1981-1985	
Golden West Refining Company, Santa Fe Springs Refinery **(Refinery Closed in 1992, Continued Operating as a Terminal Until 1997)**	1936	Wilshire Oil Co: 1936-1960 Gulf Oil Corp USA: 1960-1983 Golden West Refining Co: 1983-1997	
Greka Energy, Santa Maria Asphalt Refinery	1935	Conoco: 1981-1992 Saba Petroleum Co: 1995-1999 Greka Energy: 1999-Present	9,500
Independent Valley Energy Company (IVEC), Bakersfield Refinery (Became Part of Big West Refinery))	? 1982	Independent Valley Energy Co: 1982-1987	
Kern Oil & Refining Company, Bakersfield Refinery	1934	El Tejon Oil & Refinign Co: 1934-1943 Kreiger Oil Co: 1943-1945 Douglas Oil Co: 1945-1962 Continental Oil: 1962-1966 Edgington Oil/Signal Oil & Gas: 1966-1971 Kern County Refinery Inc. (Charter Oil Co.): 1971-1976 Kern County Refinery Inc. (Privately Held): 1976-1982	26,000

		Kern Oil & Refining Co: 1982-Presentt	
Lunday Thagard Oil Company, South Gate Refinery	Prior to 1981	Lunday Thagard Oil Co: 1981-Present	8,500
Marlex Oil & Refining Company, Long Beach Refinery **(Closed)**	Prior to 1981	Marlex Oil & Refining Co: 1981-1984	19,000
Newhall Refining Company / Pauley Petroleum Inc, Santa Clarita Refinery **(Closed)**	Prior to 1981	Newhall Refining Co: 1981-1989	
Pacific Refining, Hercules Refinery **(Closed)** Ceased refinery operations August 1995. Continued limited storage and terminal operations until 1997	1967	Sequoia Refining Corp: 1967-1968 Gulf Oil Corp USA: 1968-1976 Pacific Refining: 1976-1997	50,000
Paramount Petroleum Corporation, Paramount Refinery	1930s	Ajax Oil Company: 1930s-1937 Kreiger Oil Co: 1937-1940s Douglas Oil Co: 1940s-1961 Continental Oil Company (Conoco): 1961-1982 Pacific Oasis, Inc: 1982-1984 Paramount Petroleum Corp: 1983-2006 Alon USA Energy Inc: 2006-Present	50,000
Powerine Oil Company, Santa Fe Springs Refinery **(Closed)** Ceased refinery operations early July, 1995. CENCO is offering the refinery equipment for sale, as of April 2007.	1934	Rothchild Oil Co/Powerine Oil Co: 1934-1984 Closed bankruptcy: 1984-1986 Powerine Oil Co: 1986-1993 Castle Energy Corp: 1993-1995 Kenyen Resources: 1995-1996 Energy Merchant Corp: 1996-1998 Creative Energy Company (CENCO): 1998-Present	
San Joaquin Refining Company, Bakersfield Refinery	1969	San Joaquin Refining Co: 1969-Present	15,000
Shell Oil Products US, Carson Refinery **(Closed)**	1923	Shell Company of Calif: 1923-1939 Shell Oil Company Inc: 1939-1949 Shell Oil Co: 1949-1992	
Shell Oil Products US, Martinez Refinery	1915	Shell Company of Calif: 1915-1939 Shell Oil Company, Inc: 1939-1949 Shell Oil Co: 1949-1998 Equilon Enterprises (joint venture of Shell Oil Co. & Texaco Inc.): 1998-2002 Shell Oil Co: 2002-Present	156,400
Sunland Refining Corporation, Bakersfield Refinery **(Closed)**	Prior to 1929	Sunland Refining Corp: ?1929-1995	12,000
Tenby Incorporated, Oxnard Refinery **(Closed)**	Prior to 1981	Tenby Inc: 1981-December 2011	
Tesoro Refining & Marketing Co., Golden Eagle Refinery, Martinez/Avon	1913	Associated Oil Co: 1913-1937 Tidewater Associated Oil Co: 1937-1966 Phillips Petroleum: 1966-1976 Tosco Corp: 1976-2000 Ultramar Diamond Shamrock: 2000-2002 Valero Refining Co: 2002 Tesoro Refining: 2002-Present	166,000
Tesoro Refining & Marketing Co., Wilmington Refinery	1923	California Petroleum Corp. 1923-1928 Texas Company 1928-1959	103,800

		Texaco, Inc. 1959-1998 Equilon Enterprises 1998-2002 Shell Oil Company 2002-2007 Tesoro Corp. 2007-Present	
Tosco, Bakersfield Refinery (Became Part of Big West Refinery)	Prior to 1981	Tosco Corp: 1981-1984	
Ultramar Oil, Hanford Refinery **(Closed)**	1931	HH Bell Refinery Co. 1931-1932 Caminol Oil Co: 1932-1967 Beacon Oil Co: 1967-1982 Ultramar Oil Co: 1982-1987	
USA Petrochem Corporation, Ventura Refinery **(Closed)**	Prior to 1981	USA Petrochem Corp: 1981-1984	27,900
Valero, Benicia Asphalt Refinery **(Part of Valero Benicia Refinery)**	1982	Huntway Refining: 1982-2001 Valero Refining Co: 2001-Present	
Valero, Benicia Refinery	1968	Exxon Co USA: 1968-2000 Valero Refining Co: 2000-Present	132,000
Valero, Wilmington Asphalt Refinery	Prior to 1981	Huntway Refining: 1981-2001 Valero Refining Co: 2001-Present	6,300
Valero, Wilmington Refinery	1969	Champlin Petroleum Co: 1969-1987 Union Pacific Resources Co: 1987-1988 Ultramar Refining: 1988-1997 Ultramar Diamond Shamrock: 1997-2002 Valero Refining Co: 2002-Present	78,000
West Coast Oil Company, Oildale Refinery **(Closed)**	Prior to 1981	West Coast Oil Co: 1981-1988	

Source: Compiled by California Energy Commission Transportation Energy Office

Notes: 1. Atmospheric crude oil distillation processing capacity as measured in barrels per calendar day - source: Energy Information Agency - Refinery Capacity Report

Attachment C

U.S. Energy Information Administration

Frequently Asked Questions

When was the last refinery built in the United States?

There were 142 operable petroleum refineries in the United States as of January 1, 2014.

The "newest" refinery in the United States began operating in 2008 in Douglas, Wyoming with an initial capacity of 3,000 barrels per calendar day (bbl/cd). As of January 1, 2014, the facility has 3,800 bbl/cd of capacity. However, the newest complex refinery with significant downstream unit capacity began operating in 1977 in Garyville, Louisiana. That facility came online in 1977 with an initial atmospheric distillation unit capacity of 200,000 bbl/cd and as of January 1, 2014 had capacity of 522,000 bbl/cd.

Ground was broken in March 2013 for construction of a new refinery in Dickinson, North Dakota. The 20,000 barrel per stream day (bbl/sd) Dakota Prairie facility is scheduled to open in December 2014. Kinder Morgan plans to start up a 50,000 bbl/sd condensate processing facility on the Houston ship channel by the end of 2014.

Capacity has also been added to existing refineries through upgrades or new construction. The most recent examples include

- In 2012, Motiva upgraded its refinery in Port Arthur, Texas, making it the largest refinery in the United States with a capacity of 600,250 bbl/cd.
- In 2009, Marathon upgraded its Garyville, Louisiana refinery. As of January 1, 2014, the capacity (bbl/cd) is more than double its original 1977 capacity.

The newest refineries currently operating in the United States are as follow

Year Built	First Operated	Location	Original Owner	Original Capacity Bbl/cd	Current Owner	2014 Capacity Bbl/cd	Type
2008	2008	Douglas, WY	Interline Resources	3,000	Antelope Refining	3,800	Simple
1998	1998	Atmore, AL	Goodway	4,100	Goodway	4,100	Simple
1993	1993	Valdez, AK	Petro Star	26,300	Petro Star	55,000	Simple
1991	1992	Ely, NV	Petro Source	7,000	Foreland	2,000	Simple
1986	1987	North Pole, AK	Petro Star	6,700	Petro Star	19,700	Simple
1985	1986	Prudhoe Bay, AK	ARCO	12,000	ConocoPhillips	15,000	Simple
1981	1982	Thomas, OK	OK Refining	10,700	Ventura	12,000	Simple
1979	1980	Wilmington, CA	Huntway	5,400	Valero	6,300	Simple
1978	1979	Vicksburg, MS	Ergon	10,000	Ergon	23,000	Simple
1978	1979	North Slope, AK	ARCO	13,000	BP Exp AK	10,500	Simple
1978	1978	North Pole, AK	Earth Resources	22,600	Flint Hills	126,535	Simple
1977	1978	Lake Charles, LA	Calcasieu	6,500	Calcasieu	78,000	Simple

1976	1977	Garyville, LA	Marathon	200,000	Marathon	522,000	Complex
1976	1977	Krotz Springs, LA	Gold King	5,000	Alon	80,000	Complex
1975	1975	Corpus Christi, TX	Saber	15,000	Valero	200,000	Complex

Learn more:

Refinery Capacity Report, Table 1

Last updated: June 25, 2014

Other FAQs about Diesel

- Does EIA have projections for energy production, consumption, and prices for individual states?
- Does EIA publish off-road diesel fuel prices?
- How do I calculate diesel fuel surcharges?
- How many gallons of diesel fuel does one barrel of oil make?
- How much biodiesel is produced, imported, exported, and consumed in the United States?
- How much carbon dioxide is produced by burning gasoline and diesel fuel?
- When was the last refinery built in the United States?
- Why are the retail pump prices for gasoline and diesel fuel in increments of 0.9 cents?
- Why don't fuel prices change as quickly as crude oil prices?
- Why has diesel fuel been more expensive than gasoline?
- What are the projected diesel fuel prices for 2014 and for 2015?

U.S. Energy Information Administration

PETROLEUM & OTHER LIQUIDS

OVERVIEW | DATA | ANALYSIS & PROJECTIONS

Number and Capacity of Petroleum Refineries

Area: California **Period:** Annual (as of January 1)

Show Data By: Data Series / Area	Graph / Clear	2009	2010	2011	2012	2013	2014	View History
Number of Operable Refineries								
Total Number of Operable Refineries		20	20	20	18	18	18	1982-2014
Operating		19	18	18	16	16	17	1982-2014
Idle		1	2	2	2	2	1	1982-2014
Atmospheric Crude Oil Distillation Capacity								
Operable (Barrels per Calendar Day)		2,060,718	2,047,218	1,959,271	1,955,971	1,954,971	1,960,671	1982-2014
Operating		1,994,218	1,859,718	1,874,771	1,865,171	1,625,200	1,876,171	1982-2014
Idle		66,500	187,500	84,500	90,800	329,771	84,500	1982-2014
Operable (Barrels per Stream Day)		2,148,500	2,134,000	2,059,900	2,078,000	2,073,000	2,073,000	1982-2014
Operating		2,078,500	1,939,000	1,969,900	1,981,500	1,725,800	1,983,000	1982-2014
Idle		70,000	195,000	90,000	96,500	347,200	90,000	1982-2014
Downstream Charge Capacity (Barrels per Stream Day)								
Vacuum Distillation		1,273,556	1,273,556	1,250,656	1,227,556	1,231,756	1,230,756	1982-2014
Thermal Cracking		534,000	524,500	506,900	507,700	501,200	501,200	1982-2014
Total Coking		529,000	519,500	501,900	502,700	496,200	496,200	1987-2014
Delayed Coking		477,000	467,500	449,900	450,700	444,200	444,200	1987-2014
Fluid Coking		52,000	52,000	52,000	52,000	52,000	52,000	1987-2014
Visbreaking		5,000	5,000	5,000	5,000	5,000	5,000	1987-2014
Other (Including Gas Oil)		0	0	0	0	0	0	1987-2014
Catalytic Cracking - Fresh Feed		735,600	716,000	716,000	716,300	716,500	716,300	1982-2014
Catalytic Cracking - Recycle Feed		1,000	13,400	13,400	13,400	13,400	13,400	1982-2014
Catalytic Hydro-Cracking		536,500	484,300	474,900	484,500	487,000	487,100	1982-2014
Distillate		209,600	209,600	185,700	191,500	191,400	191,500	2004-2014
Gas Oil		261,900	274,700	289,200	293,000	295,600	295,600	2004-2014
Residual		65,000	0	0	0	0	0	2004-2014
Catalytic Reforming		456,100	434,100	430,500	430,500	431,500	431,500	1982-2014
Low Pressure		220,100	220,100	213,800	213,800	214,800	214,800	1987-2014
High Pressure		236,000	214,000	216,700	216,700	216,700	216,700	1987-2014
Catalytic Hydrotreating/Desulfurization		1,993,100	2,050,100	2,063,700	2,090,600	2,091,200	2,096,900	1982-2014
Naphtha/Reformer Feed		447,900	447,900	443,600	443,600	443,100	443,100	1987-2014
Gasoline		142,100	202,400	228,300	228,300	228,300	228,000	2004-2014
Heavy Gas Oil		642,500	699,200	687,200	711,200	711,200	714,200	1987-2014
Distillate Fuel Oil		634,600	639,400	648,900	651,800	652,900	655,900	1987-2014
Kerosene/Jet Fuel		185,800	194,100	196,100	196,100	196,100	196,100	2004-2014
Diesel Fuel		330,300	326,800	332,800	335,200	336,300	339,300	2004-2014
Other Distillate		118,500	118,500	120,000	120,500	120,500	120,500	2004-2014
Residual Fuel Oil/Other		126,000	61,200	55,700	55,700	55,700	55,700	1987-2014
Residual Fuel Oil		0	0	0	0	0	0	2006-2014
Other		126,000	61,200	55,700	55,700	55,700	55,700	2004-2014
Fuels Solvent Deasphalting		66,000	66,000	66,000	66,000	56,000	56,000	1987-2014

Downstream Charge Capacity (Barrels per Calendar Day)							
Catalytic Reforming		396,146	371,308	373,756	379,406	378,160	2010-2014
Total Coking	496,408	484,055	460,500	459,500	451,600	451,100	1987-2014
Catalytic Cracking - Fresh Feed	692,315	666,158	669,600	670,700	662,800	661,400	1987-2014
Catalytic Hydro-Cracking	490,272	432,080	429,760	436,656	439,410	442,000	1987-2014

- = No Data Reported, -- = Not Applicable, NA = Not Available, W = Withheld to avoid disclosure of individual company data

Notes: Idle refineries represent refineries where distillation units were completely idle but not permanently shutdown as of January 1 of the year See Definitions, Sources, and Notes link above for more information on this table

Release Date 6/25/2014
Next Release Date 6/30/2015

Attachment E

BP Completes Sale of Carson Refinery and Southwest U.S. Retail Assets to Tesoro

Release date: **03 June 2013**

BP has completed the previously announced sale of its Carson, California refinery and related logistics and marketing assets in the region to Tesoro Corporation for approximately $2.4 billion as part of a plan to reshape BP's U.S. fuels business. Cash proceeds from the sale include approximately $1.075 billion for assets and an estimated $1.35 billion primarily for inventory at market value and other working capital.

"With the completion of this divestment the strategic refocusing of our U.S. fuels portfolio is essentially complete" said Iain Conn, chief executive of BP's global refining and marketing business. "BP's U.S. fuels business is now anchored around three, highly sophisticated northern refineries, which are crude feedstock-advantaged, and tied to strong marketing businesses."

BP will continue to maintain a number of business interests in California, including a large ARCO retail and logistics presence that includes approximately 270 retail sites in the northern part of the state. BP will also continue the distribution and marketing of lubricants through its Castrol brand and remain active in the California natural gas and power sector.

"California remains an important state for us and we remain committed to supplying our customers in Northern California and the rest of the Pacific Northwest with the quality fuels they depend on," said Jeff Pitzer, BP's Northwest Fuels Value Chain president. "We've recently upgraded our Cherry Point, Washington refinery to produce cleaner-burning diesel fuel and are building a new rail terminal at the plant to take advantage of growing supplies of domestically produced crude oil."

In addition to marketing conventional fuels and lubricants in the state, BP will also continue to support the development of renewable energy sources in California through its Global Biofuels Technology Center in San Diego, and the Energy Biosciences Institute at UC Berkeley.

With the transaction's closing on June 1st, Tesoro took ownership of the 266,000 barrel per day (bpd) refinery near Los Angeles as well as the associated logistics network of pipelines and storage terminals and the ARCO-branded retail marketing network in Southern California, Arizona and Nevada.

While the sale included BP's ARCO retail brand rights, BP has exclusively licensed those rights from Tesoro for Northern California, Oregon and Washington.

BP retains ownership of the ampm convenience store brand and has franchised it to Tesoro for use in the Southwest.

About BP in the US

Over the past five years, BP has invested more than $55 billion in the U.S. – more than any other energy company. BP is the nation's second-largest producer of oil and gas and provides enough energy annually to light nearly the entire country for a year. Directly employing more than 20,000 people in all 50 states, BP supports nearly a quarter of a million jobs through all of its business activities. For more information, visit:

www.bp.com/us

Notes to editors

- The Carson Refinery is one of the largest on the U.S. West Coast, with a crude distillation capacity of 266,000 bpd. It became part of BP through the 2000 acquisition of ARCO. It employs over 1,100 staff and in total the divested business employs approximately 1,750 staff.
- The transaction includes the refinery and integrated terminals and pipelines, as well as marketing agreements with about 800 retail sites in Southern California, Arizona and Nevada.
- The refinery is located on 650 acres in Los Angeles County, near the Long Beach and Los Angeles Harbors. The

refinery began operations in 1938. It processes crude oil from Alaska s North Slope, the Middle East and West Africa Processing equipment includes the largest fluid catalytic cracker in California, two cokers and distillate hydrocracking.

- BP's 51 percent interest in a nominal 400 megawatt cogeneration facility located at the refinery is included in the sale.

  BP's Wilmington Coke Calciner located about five miles from the refinery is also part of the sale. The plant occupies about 17 acres. The plant employs approximately 40 people and produces 350,000 metric tons of calcinated coke per year

- Logistics assets included in the sale include ownership of Berth 121 facility improvements and equipment, Marine Terminals 2 and 3 and the LA basin pipelines system that moves crude, products and intermediates to and from the refinery.

- Terminals included in the sale are Carson Crude, East Hynes, West Hynes, Hathaway, Carson Products, Colton, Vinvale and San Diego.

- BP announced plans to divest its Carson, California and Texas City, Texas refineries in February 2011 as part of a strategic refocusing of the company's global refining portfolio. BP completed the sale of Texas City to Marathon Petroleum Corporation on February 1st.

- BP is completing a number of major investments in its other US refineries, including a large investment program to transform its 413,000 bpd capacity Whiting, Ind., refinery to process heavy, sour crudes, expected to come on stream in the second half of this year; a recently-completed clean diesel upgrading project at its 234,000 bpd Cherry Point, Wash., refinery; and the recent start-up of a continuous catalytic reformer to the 160,000 bpd capacity Toledo, Ohio, refinery (a 50 50 joint venture with partner Husky Energy Inc.).

Cautionary Statement

This press release contains certain forward-looking statements, including upgrades and anticipated timing of its Whiting and Cherry Point refineries and other statements which are generally, but not always, identified by the use of words such as 'want', 'intended to', 'expected to', and similar expressions. Forward-looking statements involve risks and uncertainties because they depend on circumstances that will or may occur in the future. Actual results may differ materially from those expressed in such statements, depending on a variety of factors, including general economic conditions; the actions of regulators and other factors discussed in BP's First Quarter Results 2013 (SEC File No 13794367) and, 2012 Annual Report and Form 20F as filed with the United States Securities and Exchange Commission

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Economic Impact Assessment for Rule 474
10 Refineries with Current Fair Market Values and Adjusted Base Year Values

Fixtures
Market Value and Adjusted Base Year Value

Refinery A
Fixtures

	2009	2010	2011	2012	2013
Current Market Value	1,880,122,646	1,887,388,187	1,679,071,617	1,595,492,029	1,359,876,090
Current Adjusted Base Year Value	1,895,202,435	2,019,590,926	2,047,580,436	1,968,969,582	2,030,485,296
Adjusted Base Year Value > Market Value	15,079,789	132,202,739	368,508,819	373,477,553	670,609,206

Refinery B
Fixtures

	2009	2010	2011	2012	2013
Current Market Value	2,061,450,203	1,732,213,864	1,501,047,975	1,467,055,023	1,437,067,764
Current Adjusted Base Year Value	2,268,184,680	2,338,828,060	2,353,095,330	2,160,958,795	2,133,967,819
Adjusted Base Year Value > Market Value	206,734,477	606,614,196	852,047,355	693,903,772	696,900,055

Refinery C
Fixtures

	2009	2010	2011	2012	2013
Current Market Value	1,332,461,979	1,139,931,321	1,082,912,858	1,019,025,632	1,011,250,213
Current Adjusted Base Year Value	1,396,924,823	1,319,486,606	1,334,919,321	1,372,911,135	1,376,130,580
Adjusted Base Year Value > Market Value	64,462,844	179,555,285	252,006,463	353,885,503	364,880,367

Refinery D
Fixtures

	2009	2010	2011	2012	2013
Current Market Value	1,163,881,804	1,109,118,357	1,114,109,115	1,071,086,534	1,087,148,510
Current Adjusted Base Year Value	1,271,901,010	1,325,751,649	1,376,123,449	1,361,932,926	1,400,580,867
Adjusted Base Year Value > Market Value	108,019,206	216,633,292	262,014,334	290,846,392	313,432,357

Refinery E
Fixtures

	2009	2010	2011	2012	2013
Current Market Value	2,567,404,620	1,073,496,817	1,545,427,619	2,076,833,981	1,491,566,803
Current Adjusted Base Year Value	1,668,258,605	1,744,426,448	1,785,889,066	1,844,834,284	1,873,902,761
Adjusted Base Year Value > Market Value		670,929,631	240,461,447		382,335,958

Economic Impact Assessment for Rule 474
10 Refineries with Current Fair Market Values and Adjusted Base Year Values

Fixtures
Market Value and Adjusted Base Year Value

Refinery F
Fixtures

	2009	2010	2011	2012	2013
Current Market Value	3,332,322,123	770,703,336	972,468,868	1,831,238,968	1,116,489,844
Current Adjusted Base Year Value	1,024,434,550	1,095,349,620	1,111,470,031	1,150,061,621	1,168,955,989
Adjusted Base Year Value > Market Value		324,646,284	139,001,163		52,466,145

Refinery G
Fixtures

	2009	2010	2011	2012	2013
Current Market Value	731,794,729	890,531,323	1,248,700,977	1,373,985,234	1,052,965,123
Current Adjusted Base Year Value	612,797,999	1,472,028,746	1,491,599,252	1,539,161,819	1,564,026,688
Adjusted Base Year Value > Market Value		581,497,423	242,898,275	165,176,585	511,061,565

Refinery H
Fixtures

	2009	2010	2011	2012	2013
Current Market Value	695,911,963	678,646,696	617,298,912	606,173,986	530,401,266
Current Adjusted Base Year Value	717,588,283	738,919,289	743,612,902	757,452,420	748,369,214
Adjusted Base Year Value > Market Value	21,676,320	60,272,593	126,313,990	151,278,434	217,967,948

Refinery I
Fixtures

	2009	2010	2011	2012	2013
Current Market Value	1,057,579,171	969,147,777	893,097,601	829,822,975	848,593,083
Current Adjusted Base Year Value	941,423,513	958,968,776	953,198,497	972,895,994	993,835,283
Adjusted Base Year Value > Market Value			60,100,896	143,073,019	145,242,200

Refinery J
Fixtures

	2009	2010	2011	2012	2013
Current Market Value	3,098,233,939	1,288,224,045	2,005,502,652	3,298,620,241	0
Current Adjusted Base Year Value	4,332,613,560	3,902,234,307	3,636,891,724	2,890,193,265	0
Adjusted Base Year Value > Market Value	1,234,379,621	2,614,010,262	1,631,389,072		

Economic Impact Assessment for Rule 474
10 Refineries with Current Fair Market Values and Adjusted Base Year Values

Land and Improvements
Market Value and Adjusted Base Year Value

Refinery A

Land and Improvements

	2009	2010	2011	2012	2013
Current Market Value	242,152,633	269,717,215	260,130,901	256,328,417	173,478,961
Current Adjusted Base Year Value	227,072,844	237,433,630	239,220,840	244,005,239	248,885,338
Adjusted Base Year Value > Market Value					75,406,377

Refinery B

Land and Improvements

	2009	2010	2011	2012	2013
Current Market Value	338,981,585	358,525,175	353,147,520	347,270,684	329,279,661
Current Adjusted Base Year Value	229,737,725	229,193,212	230,919,000	235,537,350	240,248,089
Adjusted Base Year Value > Market Value					

Refinery C

Land and Improvements

	2009	2010	2011	2012	2013
Current Market Value	327,519,642	343,671,289	338,565,364	334,496,454	351,523,464
Current Adjusted Base Year Value	263,056,798	262,433,348	264,409,466	269,697,649	275,091,597
Adjusted Base Year Value > Market Value					

Refinery D

Land and Improvements

	2009	2010	2011	2012	2013
Current Market Value	260,558,100	275,013,163	269,490,803	265,963,169	204,858,509
Current Adjusted Base Year Value	280,049,795	279,386,057	281,489,824	285,538,938	292,861,986
Adjusted Base Year Value > Market Value	19,491,695	4,372,894	11,999,021	19,575,769	88,003,477

Refinery E

Land and Improvements

	2009	2010	2011	2012	2013
Current Market Value	315,932,936	315,184,155	317,551,471	323,905,599	330,386,751
Current Adjusted Base Year Value	254,857,798	279,130,902	281,231,913	285,919,612	293,965,372
Adjusted Base Year Value > Market Value					

Economic Impact Assessment for Rule 474
10 Refineries with Current Fair Market Values and Adjusted Base Year Values

Land and Improvements
Market Value and Adjusted Base Year Value

Refinery F

Land and Improvements

	2009	2010	2011	2012	2013
Current Market Value	240,773,600	243,202,949	242,011,656	246,851,871	251,772,730
Current Adjusted Base Year Value	352,166,173	372,352,043	376,147,637	383,670,590	391,343,976
Adjusted Base Year Value > Market Value	111,392,573	129,149,094	134,135,981	136,818,719	139,571,246

Refinery G

Land and Improvements

	2009	2010	2011	2012	2013
Current Market Value	254,005,577	253,403,576	255,311,692	260,417,915	265,626,264
Current Adjusted Base Year Value	177,502,453	177,081,731	178,415,207	181,983,460	185,855,911
Adjusted Base Year Value > Market Value					

Refinery H

Land and Improvements

	2009	2010	2011	2012	2013
Current Market Value	123,029,467	129,779,944	129,598,407	126,531,495	94,122,043
Current Adjusted Base Year Value	122,951,625	122,660,221	123,583,847	126,125,957	127,376,123
Adjusted Base Year Value > Market Value					33,254,080

Refinery I

Land and Improvements

	2009	2010	2011	2012	2013
Current Market Value	71,344,936	88,403,885	89,743,429	88,636,104	75,605,291
Current Adjusted Base Year Value	92,326,531	92,107,699	92,801,266	110,278,599	112,484,172
Adjusted Base Year Value > Market Value	20,981,595	3,703,814	3,057,837	21,642,495	36,878,881

Refinery J

Land and Improvements

	2009	2010	2011	2012	2013
Current Market Value	478,880,444	487,568,230	510,687,115	423,611,808	0
Current Adjusted Base Year Value	336,738,443	331,432,743	331,220,409	240,897,624	0
Adjusted Base Year Value > Market Value					

Economic Impact Assessment for Rule 474
10 Refineries with Current Fair Market Values and Adjusted Base Year Values

Total
Market Value and Adjusted Base Year Value

Refinery A

	2009	2010	Total 2011	2012	2013
Current Market Value	2,122,275,279	2,157,105,402	1,939,202,518	1,851,820,446	1,533,355,051
Current Adjusted Base Year Value	2,122,275,279	2,257,024,556	2,286,801,276	2,212,974,821	2,279,370,634
Adjusted Base Year Value > Market Value		99,919,154	347,598,758	361,154,375	746,015,583

Refinery B

	2009	2010	Total 2011	2012	2013
Current Market Value	2,400,431,788	2,090,739,039	1,854,195,495	1,814,325,707	1,766,347,425
Current Adjusted Base Year Value	2,497,922,405	2,568,021,272	2,584,014,330	2,396,496,145	2,374,215,908
Adjusted Base Year Value > Market Value	97,490,617	477,282,233	729,818,835	582,170,438	607,868,483

Refinery C

	2009	2010	Total 2011	2012	2013
Current Market Value	1,659,981,621	1,483,602,610	1,421,478,222	1,353,522,086	1,362,773,677
Current Adjusted Base Year Value	1,659,981,621	1,581,919,954	1,599,328,787	1,642,608,784	1,651,222,177
Adjusted Base Year Value > Market Value		98,317,344	177,850,565	289,086,698	288,448,500

Refinery D

	2009	2010	Total 2011	2012	2013
Current Market Value	1,424,439,904	1,384,131,520	1,383,599,918	1,337,049,703	1,292,007,019
Current Adjusted Base Year Value	1,551,950,805	1,605,137,706	1,657,613,273	1,647,471,864	1,693,442,853
Adjusted Base Year Value > Market Value	127,510,901	221,006,186	274,013,355	310,422,161	401,435,834

Refinery E

	2009	2010	Total 2011	2012	2013
Current Market Value	2,883,337,556	1,388,680,972	1,862,979,090	2,400,739,580	1,821,953,554
Current Adjusted Base Year Value	1,923,116,403	2,023,557,350	2,067,120,979	2,130,753,896	2,167,868,133
Adjusted Base Year Value > Market Value		634,876,378	204,141,889		345,914,579

Economic Impact Assessment for Rule 474
10 Refineries with Current Fair Market Values and Adjusted Base Year Values

Total
Market Value and Adjusted Base Year Value

Refinery F

	2009	2010	Total 2011	2012	2013
Current Market Value	3,573,095,723	1,013,906,285	1,214,480,524	2,078,090,839	1,368,262,574
Current Adjusted Base Year Value	1,376,600,723	1,467,701,663	1,487,617,668	1,533,732,211	1,560,299,965
Adjusted Base Year Value > Market Value		453,795,378	273,137,144		192,037,391

Refinery G

	2009	2010	Total 2011	2012	2013
Current Market Value	985,800,306	1,143,934,899	1,504,012,669	1,634,403,149	1,318,591,387
Current Adjusted Base Year Value	790,300,452	1,649,110,477	1,670,014,459	1,721,145,279	1,749,882,599
Adjusted Base Year Value > Market Value		505,175,578	166,001,790	86,742,130	431,291,212

Refinery H

	2009	2010	Total 2011	2012	2013
Current Market Value	818,941,430	808,426,640	746,897,319	732,705,481	624,523,309
Current Adjusted Base Year Value	840,539,908	861,579,510	867,196,749	883,578,377	875,745,337
Adjusted Base Year Value > Market Value	21,598,478	53,152,870	120,299,430	150,872,896	251,222,028

Refinery I

	2009	2010	Total 2011	2012	2013
Current Market Value	1,128,924,107	1,057,551,662	982,841,030	918,459,079	924,198,374
Current Adjusted Base Year Value	1,033,750,044	1,051,076,475	1,045,999,763	1,083,174,593	1,106,319,455
Adjusted Base Year Value > Market Value			63,158,733	164,715,514	182,121,081

Refinery J

	2009	2010	Total 2011	2012	2013
Current Market Value	3,577,114,383	1,775,792,275	2,516,189,767	3,722,232,049	0
Current Adjusted Base Year Value	4,669,352,003	4,233,667,050	3,968,112,133	3,131,090,889	0
Adjusted Base Year Value > Market Value	1,092,237,620	2,457,874,775	1,451,922,366		

Economic Impact Assessment for Rule 474
10 Refineries with Current Fair Market Values and Adjusted Base Year Values

Rule 474 and Rule 461 Values

Refinery A

Rule 474 and Rule 461 Values

	2009	2010	2011	2012	2013
Rule 474 Value	2,122,275,279	2,157,105,402	1,939,202,518	1,851,820,446	1,533,355,051
Rule 461 Value	2,107,195,490	2,124,821,817	1,918,292,457	1,839,497,268	1,533,355,051
Difference	15,079,789	32,283,585	20,910,061	12,323,178	
Percentage Increase in Value	0.72%	1.52%	1.09%	0.67%	

Refinery B

Rule 474 and Rule 461 Values

	2009	2010	2011	2012	2013
Rule 474 Value	2,400,431,788	2,090,739,039	1,854,195,495	1,814,325,707	1,766,347,425
Rule 461 Value	2,291,187,928	1,961,407,076	1,731,966,975	1,702,592,373	1,677,315,853
Difference	109,243,860	129,331,963	122,228,520	111,733,334	89,031,572
Percentage Increase in Value	4.77%	6.59%	7.06%	6.56%	5.31%

Refinery C

Rule 474 and Rule 461 Values

Rule 474 Value	1,659,981,621	1,483,602,610	1,421,478,222	1,353,522,086	1,362,773,677
Rule 461 Value	1,595,518,777	1,402,364,669	1,347,322,324	1,288,723,281	1,286,341,810
Difference	64,462,844	81,237,941	74,155,898	64,798,805	76,431,867
Percentage Increase in Value	4.04%	5.79%	5.50%	5.03%	5.94%

Refinery D

Rule 474 and Rule 461 Values

	2009	2010	2011	2012	2013
Rule 474 Value	1,424,439,904	1,384,131,520	1,383,599,918	1,337,049,703	1,292,007,019
Rule 461 Value	1,424,439,904	1,384,131,520	1,383,599,918	1,337,049,703	1,292,007,019
Difference					
Percentage Increase in Value					

Refinery E

Rule 474 and Rule 461 Values

	2009	2010	2011	2012	2013
Rule 474 Value	1,923,116,403	1,388,680,972	1,862,979,090	2,130,753,896	1,821,953,554
Rule 461 Value	1,923,116,403	1,352,627,719	1,826,659,532	2,130,753,896	1,785,532,175
Difference		36,053,253	36,319,558		36,421,379
Percentage Increase in Value		2.67%	1.99%		2.04%

Economic Impact Assessment for Rule 474
10 Refineries with Current Fair Market Values and Adjusted Base Year Values

Rule 474 and Rule 461 Values

Refinery F

Rule 474 and Rule 461 Values

	2009	2010	2011	2012	2013
Rule 474 Value	1,376,600,723	1,013,906,285	1,214,480,524	1,533,732,211	1,368,262,574
Rule 461 Value	1,265,208,150	1,013,906,285	1,214,480,524	1,396,913,492	1,368,262,574
Difference	111,392,573			136,818,719	
Percentage Increase in Value	8.80%			9.79%	

Refinery G

Rule 474 and Rule 461 Values

	2009	2010	2011	2012	2013
Rule 474 Value	790,300,452	1,143,934,899	1,504,012,669	1,634,403,149	1,318,591,387
Rule 461 Value	790,300,452	1,067,613,054	1,427,116,184	1,555,968,694	1,238,821,034
Difference		76,321,845	76,896,485	78,434,455	79,770,353
Percentage Increase in Value		7.15%	5.39%	5.04%	6.44%

Refinery H

Rule 474 and Rule 461 Values

	2009	2010	2011	2012	2013
Rule 474 Value	818,941,430	808,426,640	746,897,319	732,705,481	624,523,309
Rule 461 Value	818,863,588	801,306,917	740,882,759	732,299,943	624,523,309
Difference	77,842	7,119,723	6,014,560	405,538	
Percentage Increase in Value	0.01%	0.89%	0.81%	0.06%	

Refinery I

Rule 474 and Rule 461 Values

	2009	2010	2011	2012	2013
Rule 474 Value	1,033,750,044	1,051,076,475	982,841,030	918,459,079	924,198,374
Rule 461 Value	1,012,768,449	1,047,372,661	982,841,030	918,459,079	924,198,374
Difference	20,981,595	3,703,814			
Percentage Increase in Value	2.07%	0.35%			

Refinery J

Rule 474 and Rule 461 Values

	2009	2010	2011	2012	2013
Rule 474 Value	3,577,114,383	1,775,792,275	2,516,189,767	3,131,090,889	0
Rule 461 Value	3,434,972,382	1,619,656,788	2,336,723,061	3,131,090,889	0
Difference	142,142,001	156,135,487	179,466,706		
Percentage Increase in Value	4.14%	9.64%	7.68%		

Economic Impact Assessment for Rule 474
10 Refineries with Current Fair Market Values and Adjusted Base Year Values

Tax Effect by Refinery

Refinery A

	Estimated Tax				
	2009	2010	2011	2012	2013
Tax on Rule 474 Value	21,222,753	21,571,054	19,392,025	18,518,204	15,333,551
Tax on Rule 461 Value	21,071,955	21,248,218	19,182,925	18,394,973	15,333,551
Tax Effect	150,798	322,836	209,101	123,232	
Percentage Increase in Tax	0.72%	1.52%	1.09%	0.67%	

Refinery B

	Estimated Tax				
	2009	2010	2011	2012	2013
Tax on Rule 474 Value	24,004,318	20,907,390	18,541,955	18,143,257	17,663,474
Tax on Rule 461 Value	22,911,879	19,614,071	17,319,670	17,025,924	16,773,159
Tax Effect	1,092,439	1,293,320	1,222,285	1,117,333	890,316
Percentage Increase in Tax	4.77%	6.59%	7.06%	6.56%	5.31%

Refinery C

	Estimated Tax				
Tax on Rule 474 Value	16,599,816	14,836,026	14,214,782	13,535,221	13,627,737
Tax on Rule 461 Value	15,955,188	14,023,647	13,473,223	12,887,233	12,863,418
Tax Effect	644,628	812,379	741,559	647,988	764,319
Percentage Increase in Tax	4.04%	5.79%	5.50%	5.03%	5.94%

Refinery D

	Estimated Tax				
	2009	2010	2011	2012	2013
Tax on Rule 474 Value	14,244,399	13,841,315	13,835,999	13,370,497	12,920,070
Tax on Rule 461 Value	14,244,399	13,841,315	13,835,999	13,370,497	12,920,070
Tax Effect					
Percentage Increase in Tax					

Refinery E

	Estimated Tax				
	2009	2010	2011	2012	2013
Tax on Rule 474 Value	19,231,164	13,886,810	18,629,791	21,307,539	18,219,536
Tax on Rule 461 Value	19,231,164	13,526,277	18,266,595	21,307,539	17,855,322
Tax Effect		360,533	363,196		364,214
Percentage Increase in Tax		2.67%	1.99%		2.04%

Economic Impact Assessment for Rule 474
10 Refineries with Current Fair Market Values and Adjusted Base Year Values

Tax Effect by Refinery

Refinery F

			Estimated Tax		
	2009	2010	2011	2012	2013
Tax on Rule 474 Value	13,766,007	10,139,063	12,144,805	15,337,322	13,682,626
Tax on Rule 461 Value	12,652,082	10,139,063	12,144,805	13,969,135	13,682,626
Tax Effect	1,113,926			1,368,187	
Percentage Increase in Tax	8.80%			9.79%	

Refinery G

			Estimated Tax		
	2009	2010	2011	2012	2013
Tax on Rule 474 Value	7,903,005	11,439,349	15,040,127	16,344,031	13,185,914
Tax on Rule 461 Value	7,903,005	10,676,131	14,271,162	15,559,687	12,388,210
Tax Effect		763,218	768,965	784,345	797,704
Percentage Increase in Tax		7.15%	5.39%	5.04%	6.44%

Refinery H

			Estimated Tax		
	2009	2010	2011	2012	2013
Tax on Rule 474 Value	8,189,414	8,084,266	7,468,973	7,327,055	6,245,233
Tax on Rule 461 Value	8,188,636	8,013,069	7,408,828	7,322,999	6,245,233
Tax Effect	778	71,197	60,146	4,055	
Percentage Increase in Tax	0.01%	0.89%	0.81%	0.06%	

Refinery I

			Estimated Tax		
	2009	2010	2011	2012	2013
Tax on Rule 474 Value	10,337,500	10,510,765	9,828,410	9,184,591	9,241,984
Tax on Rule 461 Value	10,127,684	10,473,727	9,828,410	9,184,591	9,241,984
Tax Effect	209,816	37,038			
Percentage Increase in Tax	2.07%	0.35%			

Refinery J

			Estimated Tax		
	2009	2010	2011	2012	2013
Tax on Rule 474 Value	35,771,144	17,757,923	25,161,898	31,310,909	0
Tax on Rule 461 Value	34,349,724	16,196,568	23,367,231	31,310,909	0
Tax Effect	1,421,420	1,561,355	1,794,667		
Percentage Increase in Tax	4.14%	9.64%	7.68%		

Economic Impact Assessment for Rule 474
10 Refineries with Current Fair Market Values and Adjusted Base Year Values

Combined Tax Effect

	Estimated Tax				
	2009	2010	2011	2012	2013
Total Combined Rule 474 Tax	171,269,520	142,973,961	154,258,766	164,378,626	120,120,124
Total Combined Rule 461 Tax	166,635,715	137,752,085	149,098,848	160,333,486	117,303,572
Total Tax Effect	4,633,805	5,221,876	5,159,918	4,045,140	2,816,552
Percentage Increase in Tax	2.78%	3.79%	3.46%	2.52%	2.40%

Proposed Text of

California Code of Regulations, Title 18, Section

474, *Petroleum Refining Properties*

(All of the text below is proposed to be added to the California Code of Regulations)

474. Petroleum Refining Properties.

(a) The provisions of this rule apply to the valuation of the real property, personal property, and fixtures used for the refining of petroleum.

(b) General.

(1) The unique nature of property used for the refining of petroleum requires the application of specialized appraisal techniques designed to satisfy the requirements of article XIII, section 1, and article XIII A, section 2, of the California Constitution. To this end, petroleum refineries and other real and personal property associated therewith shall be valued pursuant to the principles and procedures set forth in this section.

(2) Notwithstanding any other provision in this section, any appropriate valuation method described in section 3 of title 18 of this code may be applied in the event of a change in ownership in a petroleum refining property.

(c) Definitions. For the purposes of this section:

(1) "Petroleum refining property" means any industrial plant, including real property, personal property, and fixtures, used for the refining of petroleum, as identified in Standard Industrial Classification (SIC) System Codes 2911 and 2992, or North American Industry Classification System (NAICS) Codes 32411 and 324191.

(2) "Appraisal unit" consists of the real and personal property that persons in the marketplace commonly buy and sell as a unit.

(d) Declines in Value. For the purposes of this section:

(1) Declines in value of petroleum refining properties will be determined by comparing the current lien date full value of the appraisal unit to the indexed base year full value of the same unit.

(2) The land, improvements, and fixtures and other machinery and equipment classified as improvements for a petroleum refining property are rebuttably presumed to constitute a single appraisal unit, except when measuring declines in value caused by disaster, in which case land shall constitute a separate unit.

(3) In rebutting this presumption, the assessor may consider evidence that:

(A) The land and improvements including fixtures and other machinery and equipment classified as improvements are not under common ownership or control and do not typically transfer in the marketplace as one economic unit; or,

(B) When the fixtures and other machinery and equipment classified as improvements are not functionally and physically integrated with the realty and do not operate together as one economic unit.

Note: Authority cited: Section 15606(c), Government Code. Reference: Article XIII Section 1, and Article XIII A, Section 2, California Constitution; Sections 51 and 110.1, Revenue and Taxation Code; and *Western States Petroleum Association v. Board of Equalization* (2013) 57 Cal.4th 401.

Regulation History

Type of Regulation: PropertyTax
Regulation: 474
Title: *Petroleum Refining Properties*
Preparation: *Bradley Heller*
Legal Contact: *Bradley Heller*

The Board proposes to re-adopt Rule 474, *Petroleum Refining Properties*, to establish a rebuttable presumption that petroleum refining property (land, improvements, and fixtures) constitutes a single appraisal unit for determining declines in value, except when measuring declines in value caused by disaster.

Regulation History

December 17-18, 2014	Public Hearing
October 24, 2014:	OAL publication date; 45-day public comment period begins; Interested Parties mailing
September 10, 2013:	Board Meeting, Chief Counsel Matters, Board Authorized Publication. (Vote 5-0)

Support: None
Oppose: None