Mr. Ray Mrotek January 14, 1985

James M. Williams

Reappraisals of Possessory Interests

In your memo of September 12, 1984 to Mr. Richard Ochsner, Assistant Chief Counsel, you ask questions of possessory interest reappraisal in five situations. Our response follows:

Situation #1: The holder of a possessory interest has an annual permit. He asks for and is granted an increase in the acreage (say from 350 to 500 acres) of his exclusive right. We understand the annual permit to mean annual renewal; therefore, a reappraisal of the total holding (500 acres in the example) is appropriate. Do you agree? (See Jim William's letter to San Bernardino County Assessor dated May 11, 1982.)

Response: Here you describe a renewal of a 350 acre possessory interest and the creation of an additional 150 acre possessory interest both of which are subject to reappraisal under Rule 462 (e). In the alternative, it could be concluded that it is the creation of a new 500 acre unit possessory interest, but the result is the same.

Situation #2: Same as above except the lease (permit) term is 25 years and the change in acreage takes place sometime (let's say in the tenth year) before the expiration of the 25 years. The remaining term of the lease remains unchanged. Does the appraiser reappraise the whole (500 acres) or only the increase (150 acres in example).

Response: Under a strict interpretation of the California Landlord-Tenant law a court would conclude that the expansion of the acreage term from 350 to 500 would constitute the creation of a new lease. The better view from the appraiser's standpoint would be to draw an analogy to the similar problem in deciding what is routine maintenance vs. new construction. If the additional 150 acres is independent and does not alter the on-going use and capabilities of the basic 350, then only it should be reappraised. However, if, in fact, a new 500 acre unit-operation that operates in an integrated manner has been created, then the entire leasehold should be reappraised.

Situation #3: What reappraisal of lessee-owned improvements in both situations #1 and #2 above? Assume the improvements lie within the original (350 acres) land area. (See Legal Correspondence #281)

Response: There is no legal basis for reappraisal of the improvements.

Situation #4: A master lessee possessed an original 25-year term and had constructed various improvements at his (the lessee's) expense. In the second year he subleases the entire premises to three different concessionaires for the remaining 25 years. Do the subleases trigger a reappraisal of the three subconcessions? Is the master lessee no longer an assessee? Are both land and improvements reappraised? (See Legal Correspondence #1033)

Response: Rule 467 requires reappraisal as of the date the sub-lessee obtains the right to occupancy. Revenue and Taxation Code Section 405 provides for multiple assesses. Rule 462 (f) (2) (A) (i) provides no reappraisal of improvements.

Situation #5: Same as #4, but the subleases are for shorter (10-year) terms. If the appraiser reappraises the three concessions for a term of 10 years, the master lessee has a deferred 13-year term. (This can become a complex multiple-assessment problem:)

Response: Same as #4. Rule 467 requires a full value reappraisal of the possessory interest at the time of the sublease creation. There is no need to create multiple assessments.

It seems to us that many of these situations and variations thereupon were contemplated when Rule 467 was formulated. If concrete problems have arisen and the rule is not providing sufficient guidance to the appraiser, then perhaps a revision of the rule is in order.

JMW:fr
cc: Mr. Gordon P. Adelman
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