State of California

848.0005

Board of Equalization
Legal Division - MIC:82

Memorandum

To : Honorable Dean Andal, MIC:78

Date: November 7, 1996

From : Mary C. Armstrong
Acting Chief Counsel

Subject: CATV Appraisal Unit for Prop 8

You recently asked for our opinion on the proper appraisal unit for measuring value declines in a cable television system pursuant to the mandate of Proposition 8. I have reviewed the applicable statutes, rules and cases and have concluded that Property Tax Rule 461 (18 Cal. Code of Regs. 461) specifies the appropriate appraisal units.

Your question arose in the context of the selection of a cable company as a sample property in a survey. When the company changed ownership, the assessor correctly valued the property as a single unit and allocated the unitary value among the various components of the system: possessory interest, fixtures and personalty. However, in subsequent years the assessor did not apply Rule 461(d) and continued to value the property as a single unit rather than treating the fixtures of the distribution system as a separate appraisal unit.

Essentially the treatment applied by the assessor eliminates any value reduction with respect to the machinery & equipment due to depreciation, and results in the enrollment of the factored base year value for the single unit. Such treatment means higher taxes.

Permit me to respond to each of the assessor's contentions with reference to the authority that controls each issue. First, he argues that in order for there to be a reduction of any real property component of the appraisal unit, it would be necessary to demonstrate that the current market value of the entire unit was less than the factored Proposition 13 Value. He cites Section 51(d),R & T Code, PT Rule 324(b)and Assessors Letter 91/59 in support of his position.

The assessor's conclusion is incorrect for value changes because Rule 461(d) specifically directs that fixtures and other machinery and equipment classified as improvements constitute a separate appraisal unit. Revenue and Taxation Code, Section 51(d) provides a clear alternative to the marketplace appraisal unit in the last clause which states: "... or which are normally valued separately..." This is an explicit exception that results from Rule 461(d). Rule 324(b) has a parallel exception that states: "...or that are specifically designated as such by law." It is clear to me that Rule 461(d) "specifically designates" the unit to be used.

Finally, LTA 91/59 does not apply to subsequent, factored valuations; it provides guidance for supplemental valuation that results from change in ownership or new construction. None of the authority cited supports the assessor's position and moreover, both the statute and the rule lead directly to the correct conclusion.

The assessor's second argument is that our interpretation is contrary to Rule 473(e)(4)(c). In our view, that rule applies only to property rights that relate to the production of geothermal energy. It is irrelevant to the valuation of any other kind of property.

In my opinion, *County of Orange v. Orange County Assessment Appeals Bd.*, 13 Cal. App.4th 524 (1993) demonstrates that the courts have approved Rule 461(d) for the appraisal of cable distribution systems. On page 530 of this case the court said

> "Relying on Revenue and Taxation Code section 51, subdivision (e)[1] the County says the Board erred as matter of law by failing to value American as one unit, 'the whole system itself.' (After pointing out the *normally valued separately* clause, the court concluded]: Taken as a whole, neither section 51 in general, or subdivision (e)[1] in particular, mandates appraisal of the property as a single unit.

[1] Subdivision (e) of §51 was relettered as (d) effective 1/1/96.

The key to this part of the opinion is that it is not fact-driven and not applicable to only this case. It undermines the assessor's position that only a single market derived unit is permissible under the statute. More importantly, it is so clear there is no way around it.

In order to understand the purpose of Rule 461(d) I reviewed our file for relevant materials at the time of adoption. Proposition 13 became effective on June 6, 1978 but was quickly modified by Proposition 8 on November 7 of the same year. Board rules, including Rule 461, had been adopted on June 29, 1978 so by LTA 78/218 of December 18, 1978 the Board disseminated proposed amendments to Rule 461 and others and requested comments and suggestions thereto on or before a public hearing on January 23, 1979. By letter of January 9, 1979, the Honorable Carl S. Rush, Assessor of Contra Costa County, submitted comments of Mr. Al Lager of his staff (who was also secretary of the Business Property Subcommittee of the Assessor's Association) which noted approval of the proposed and still current language of Rule 461(d). The Board also received a letter from the Honorable William H. Cook, Assessor of Santa Barbara County, at the time President of the California Assessors Association, which notes the approval of Rule 461(d) by the Association's Executive and Standards Committees. Based on these recommendations the Board adopted the language in question on January 25, 1979, and it has remained unchanged since that time.

The intent of Proposition 13 was to implement an "acquisition value" system of taxation. The intent of Proposition 8 was to compensate for circumstances wherein the market value fell below the factored acquisition value. By providing a separate appraisal unit for fixtures and other machinery and equipment classified as improvements in Rule 461 the Board, staff, assessors and taxpayers reached a compromise that they felt would best implement the intent of the voters. Rule 461 is the only general rule that controls real property value changes and it has done so for seventeen years. There is no statute or other rule that specifically controls the method of valuation of cable television property for years subsequent to a change in ownership. It must be concluded that Rule 461 applies.

If you have any questions regarding this opinion, please contact James William's at 916-323-7714 (CALNET 8-473-7714).

Mary Ann Lee
by Gary Jay

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