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No. 2019/011

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TO COUNTY ASSESSORS:

2018 LITIGATION

This letter summarizes court cases involving property tax issues that were decided in 2018 by one of California's Courts of Appeal or the United States Bankruptcy Court.

Durante v. County of Santa Clara (2018) 29 Cal.App.5th 839

Two sisters inherited a property when their mother died in 2003, each owning a 50 percent undivided interest as tenants in common. One sister (sister 1) resided at the property. In 2009, the other sister (sister 2) granted a life estate in her 50 percent interest in the property to sister 1, so that sister 1 had possession and use of 100 percent of the property for sister 1's life. The appellate court held that the deed granting a life estate was a transfer of an interest in real property, and that this transfer met the Revenue and Taxation Code section 60 definition of a change in ownership.

Glovis America, Inc. v. County of Ventura (2018) 28 Cal.App.5th 62

Glovis began leasing land from the U.S. Navy in 2007. In 2013, Glovis and the Navy signed a lease with an initial term of five years and two five-year options. The assessor determined that Glovis's reasonably anticipated term of possession was 15 years and valued the lease based on the 15 year term. The appellate court held that when a lease of federal lands includes an option to extend its term and the assessor reasonably concludes that the option will likely be exercised, the value of the leasehold interest is properly based on the extended term. The appellate court determined that it was reasonable for the assessor to assume that Glovis would extend its initial lease for an additional ten years. This was because, although the Navy could terminate the lease at any time, the Navy had renewed all previous leases with Glovis. Additionally, the parties had anticipated a long term business relationship, the current lease was not subject to the federal five year contract term limit, and the renegotiation terms implied an exemption from competitive bidding.

In re La Paloma Generating Company, et al. (Bankr. D. Delaware 2018) 588 B.R. 695.

La Paloma challenged the Board of Equalization's (BOE) assessment of its unitary property for tax years 2012-2016, and later filed an action in superior court seeking a refund of taxes previously paid based on the challenged valuation. After filing for bankruptcy relief, La Paloma pursued the refund action in the United States Bankruptcy Court for the District of Delaware. The court held, among other things, that: (1) La Paloma was barred from seeking a refund for the tax year in which it consented to the BOE's unitary value of the property, since it had consented to the valuation that

year and failed to exhaust its administrative remedies; (2) La Paloma was limited to seeking the amount sought (\$3.5 million) before the BOE; and (3) the BOE had not waived its sovereign immunity defense.

Land Partners, LLC, et al. v. County of Orange (2018) 19 Cal.App.5th 741

After winning in the trial court on the merits of a valuation dispute, Land Partners, LLC sought recovery of attorney fees under Revenue and Taxation Code sections 5152 and 538. The trial court denied the attorney fees award, interpreting section 5152 as requiring Land Partners, LLC to show that the assessor failed to apply a particular law, rule, or regulation because the assessor *subjectively* believed it was unconstitutional or invalid. The trial court expressly declined to make the necessary finding. Instead, it concluded that the assessor "just applied [the law] wrongly." The appellate court affirmed the lower court's decision.

Next Century Associates, LLC v. County of Los Angeles (2018) 29 Cal.App.5th 713

Taxpayer purchased a hotel in mid-2008 and sought a reduction of its 2009 lien date value due to the economic downturn in late 2008. The assessment appeals board (AAB) denied the application and left in place the enrolled value, even though no party thought it correctly reflected the property's 2009 lien date value. The appellate court concluded that the AAB's rejection of the taxpayer's valuation was arbitrary, as was its decision to leave in place the enrolled value that had been repudiated by the assessor and was unsupported by any evidence.

The full text of the California court cases may be viewed from the California Courts website at www.courts.ca.gov/opinions-slip.htm. The *La Paloma* court case may be viewed from the United States Bankruptcy Court District of Delaware website at www.deb.uscourts.gov. If you have any questions regarding these court cases, please contact our Assessment Services and Training Unit at 1-916-274-3350.

Sincerely,

/s/ David Yeung

David Yeung
Deputy Director
Property Tax Department

DY:gs