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TO COUNTY ASSESSORS:

2023 LITIGATION

This letter summarizes court cases involving property tax issues that were decided in 2023 by California's Courts of Appeal.

Air 7, LLC v. County of Ventura, 90 Cal.App.5th 795 (2023)

Taxpayer sought property tax refund after the County of Ventura imposed a tax on an aircraft that was permanently removed and no longer situated in California before the tax lien date. County did not dispute that the aircraft had been permanently removed but argued that it had not established a permanent situs in another state, which allowed the county to continue taxing the property.

The Court of Appeal disagreed with the county and held that the aircraft was not "situated" or "habitually situated" in California because it was permanently removed from the state before the tax lien date with intent to be permanently removed, and it never returned to California. The requirement that the aircraft establish a permanent situs in another state is not supported by California law and impermissibly expands the county's authority to tax property. Furthermore, the county imposing property taxes on property outside its jurisdiction violates the Due Process Clause of the federal Constitution.

County of Santa Clara v. Superior Court, 87 Cal.App.5th 347 (2023)

Privately owned public utility companies sought property tax refunds from the county due to the county imposing higher tax rates on utilities than those imposed on non-utility property. Plaintiff asserted the disparity in the debt-service portion of tax rates, established by Revenue and Taxation Code (RTC) section 100(b), violated article XIII, section 19, of the California Constitution.

Section 19 of article XIII states the state-assessed property of certain regulated utility companies "shall be subject to taxation to the same extent and in the same manner as other property." Plaintiff argued this provision of the constitution mandates application of equal tax rates to utility property and to locally assessed non-utility property.

The Court of Appeal held the State Constitution does not preclude counties from imposing a different tax rate on utility property versus other property and does not render section 100(b) unconstitutional. The purpose of article XIII, section 19 had nothing to do with mandating equal tax rates, but instead was to restore public utility values to local tax rolls and alleviate local tax burden. There was no evidence in the legislative intent to tax utility property at the identical rate applied to other property.

Flightsafety International, Inc. v. Los Angeles County Assessment Appeals Board et al., 96 Cal.App.5th 712 (2023)

Taxpayer petitioned for writs of mandate ordering the County Assessment Appeals Board (AAB) to enter the taxpayer's opinion of value of its property on tax assessment rolls based on AAB's alleged failure to hold timely hearings on the taxpayer's applications for property tax assessment reductions. Taxpayer relied on RTC section 1604 to argue that it was entitled to a decision within a two-year period, which the AAB had failed to provide. The Court of Appeal held that the taxpayer had agreed to give the AAB an unlimited extension and was thus not entitled to mandamus relief. In seeking mandamus relief, the exhaustion requirement speaks to whether an adequate legal remedy exists. If an administrative remedy is available and has not yet been exhausted, then extraordinary relief is not warranted. A remedy is not inadequate simply because it requires additional time and effort through the ordinary course of the law.

Paramount Pictures Corp v. Los Angeles, 95 Cal.App.5th 1246 (2023)

During appeal, taxpayer, like the County Assessor, used the cost approach to value its personal property but contended that it was entitled to further reduction for obsolescence. As an alternative method of valuation, Paramount submitted a significantly lower appraisal using the income approach. Taxpayer challenged the AAB decision that it had failed to demonstrate additional obsolescence as warranted in the valuation of its personal property and fixtures. The taxpayer also challenged the AAB's determination that the taxpayer's income approach valuation was too unreliable to grant it any additional weight for several reasons, including the taxpayer's failure to isolate the income for its personal property. The Superior Court determined the AAB committed a methodological error, issued inadequate findings, and remanded to the AAB for further proceedings. The County of Los Angeles appealed. The Court of Appeal held that the AAB was within its discretion in declining to calculate additional obsolescence adjustments based on the income approach to assessing value of the taxpayer's personal property; the AAB's reasons for rejecting the income approach valuation in favor of the cost approach were consistent with rules and regulations governing valuation of personal property set forth in State Board of Equalization rules; and the AAB's findings were adequate.

RAR2 Villa Marina Center CA SPE, Inc. v. County of Los Angeles, 91 Cal.App.5th 1050 (2023)

Property owner filed an assessment appeal seeking a further reduction in value after the Assessor had determined a decline in value of the owner's shopping center. During the appeal process, the Assessor issued a "raise letter" advising the owner it planned to introduce evidence of a higher valuation than originally determined by the Assessor. The owner tried to withdraw the appeal which the AAB rejected and subsequently increased the value of the owner's property based on the Assessor's evidence.

The owner filed an appeal arguing the Assessor had no authority to issue a raise letter for a higher valuation more than one year after the initial assessment pursuant to RTC section 4831(c).

The Court of Appeal held that once the owner filed an appeal for the initial value, the assessment appeals process opened the door for a determination of a correct value by the AAB, which can be higher or lower. RTC section 1609.4 allows the Assessor to introduce new evidence of a higher value than what was placed on the roll as long as the Assessor notifies the taxpayer of its intent to

do so at least 10 days prior to the hearing. Thus, the Assessor was not barred by the one-year limitation in RTC section 4831(c).

SHR St. Francis LLC v City and County of San Francisco, 94 Cal.App.5th 622 (2023)

Taxpayer challenged the AAB decision which upheld the Assessor's valuation of hotel using an income method of valuation without making a deduction for various intangible assets. The Court of Appeal held that the City and County of San Francisco utilized a legally erroneous methodology for property valuation when it attempted to exclude the value of management agreement by only deducting management fees; hotel's income from guest fees for cancellation, attrition, and no shows was includable in net operating income; and net income from guest laundry services and in-room movies was required to be deducted from net operating income.

Torres v. SF AAB No. 1, 89 Cal.App.5th 894 (2023)

The County Assessor challenged the AAB's decision to deduct present value of cost of funding a reserve to prevent future functional obsolescence in using the cost approach to determine the fair market value of taxpayer's possessory interest in a ballpark that sits on public land. The Court of Appeal held that the AAB's approach to depreciation was not reasonably likely to approximate fair market value and as such was arbitrary, in excess of discretion, or in violation of standards prescribed by law.

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

Sincerely,

/s/ David Yeung

David Yeung
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Property Tax Department

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