

When in Doubt, File an Appeal

David L. Gangloff Jr., Esq. CEO & Principal

The California Supreme Court recently issued an opinion in a case clarifying when an assessment appeal application must be filed. (*William & Fickett v County of Fresno*, S224476, Ct.App. 5 F068652.). As a general rule, an assessment appeal has to be filed as a prerequisite to seeking tax relief in the courts. However, historically there was an exception made when an assessment was a "nullity as a matter of law" (not legally enforceable). This case presented the question of whether the nullity exception applies when an assessment is challenged on the ground that the taxpayer does not own the property involved.

The Court determined that, prospectively, taxpayers have to file an assessment appeal application in these circumstances even if the taxpayer does not own the property in question, before they can avail themselves of the Court.

In 1997 the taxpayer went bankrupt and many assets were seized by their creditors. Notwithstanding the fact that the taxpayer no longer owned the assets the Fresno County assessor continued to assess the property to the taxpayer. The taxpayer did not file appeals and did not pay the taxes. Eventually the tax liens for the unpaid tax bills were secured to other property that was owned by the taxpayer in Fresno County.

In 2012 the taxpayer cleared the liens by paying the disputed taxes, including interest and penalties, and filed a claim for refund. The claim for refund was denied and this action ensued.

The taxpayer argued that since the assessment should be a "nullity as a matter of law" (not enforceable by law) there was no reason for the taxpayer to have to file an assessment appeal application. After all, why should a taxpayer have to file an appeal if they do not own the property in question?

The Court ultimately concluded that even if the taxpayer does not own the property they must file at the assessment appeals board before they go to court. The court based their decision primarily on the legislative scheme that has been put in by the legislature and to ease the burden on the court system by maximizing the expertise and capability of the assessment appeals board.

COMMENTARY

There was a strongly worded dissent by Justice Chin in this case in which Justice Corrigan concurred. I agree with the dissent. It seems to me to be the more reasoned position. Under the majority opinion a taxpayer who receives a tax bill on a property that he does not own must, in a short period of time, file an assessment appeal application. If the taxpayer does not file the appeal on something he does not even own he will be forced to pay a tax that he does not own simply to ease the burden on the courts. The question has to be asked -what is a court for if not to right a wrong? The government will be able to make a mistake and the innocent taxpayer will pay the price if he is not sophisticated enough to know that he has to file an appeal on a property he does not own. This is just another example of our government looking after government interests at the expense of its citizens. If you are interested in this case you can read the Court Brief here: <http://www.property-taxes.com/wp-content/uploads/2017/06/Williams-and-Fickett-v-Fresno.pdf>



Will Prop 13 be removed?

Sean P. Keegan, EVP & Principal

As California has emerged from the recession with both real estate and certain industries including technology leading the economic improvement however, the State's budget requirements have continued to increase which has sent an alarm to legislators to look for more revenue sources. The State relies on income, sales, property, and other taxes for its revenues. Governor Brown's 2018 State Budget proposes \$179.5 billion in spending. There will be an estimated \$1.5 billion deficit. The "2018 State Budget seeks an increase of 53% compared to the 2010 State Budget". The State Budget issues are centered in a couple of areas, infrastructure (limited monies allocated), health care, public employee pensions, and taxes. He stated that "The trajectory of revenue growth is declining." (California's Spending May Doom the Boom, by Terry Jones, IBD, 03/13/17).

It has raised the question, "What will happen to our property taxes in 2018?" We are often asked by our clients (asset managers, property managers, owner-users, and institutions) about whether Proposition 13 Protections for non-homeowner properties will change this year. Most property owners and managers know their annual property tax budget very well. The same people know that the higher property tax expenses will affect both the tenant and the owner/user if Proposition 13 Protections are removed. Currently, all property owners with property that has not had an ownership change or new construction enjoy the assessment increases limited to a maximum of 2% per year. We expect that the Assessors will continue with restoring property values after prior year declines, reviewing construction permits for assessable new construction, confirming legal entity ownership changes, and completing business personal property audits which increases assessments. These activities also increase taxes.

The "Split-Roll" proposals have received substantial opposition from the business community and voters who rejected a proposal in 1992. In 2015, the last "Split Roll" measure was titled the "Property Tax Fairness" amendment or Senate Constitutional Amendment (SCA) 5, which would have affected the 2018/2019 fiscal year (Proposed by Hancock /Mitchell-Inactive 11/30/16). The supporters of a "Split Roll" seek a higher tax rate for certain real property (prior proposals - residential property - excluded from the higher rates). Any "Split-Roll" proposal would still require the "Supermajority" vote (2/3rds) to pass, which is difficult (pertains to property, sales, and income tax increases). Based on the information available, there does not appear to be any major change to Proposition 13 in this calendar year.

California's Board of Equalization (BOE) is being threatened by Senate Bill 86 and AB 102 titled, "Taxpayer Transparency and Fairness Act" which was meant to reform the BOE. These measures "would undermine important protections in the CA Taxpayer's Bill of Rights." Also, "[T]ax appeals ... would be adjudicated by a panel of civil service judges who would not be accountable to the public" (See CalTax Letter, T. Twomey, Opposition to SB 86 & AB 102 dated 06/12/17; www.caltax.org/homepage/pressrelease_6.12.17.pdf).

On June 15, the deadline for the Legislature to send a budget bill to the governor, AB 102 was tacked on to the budget spending bill. It was not immediately approved with a majority vote. Unfortunately, the budget bill was pushed through with the bill stripping the BOE's duties without adequate time to debate. Review the pertinent changes to the BOE and how it may affect your business (http://caltax.org/homepage/061617_budget.html).

Second Chances

Mandy Ingram, Tax Consultant

May and June are typical months for any pending Audits on your Business Division (aka Personal Property) to be finalized. After receiving your preliminary findings, review them closely. Were there any increases? Did the county move more value over to a different classification that increased the value? Is that new classification move correct? Is the life table used, the table that best describes the equipment in question? Is the estimated life being used correctly? Besides reviewing and reconciling the reported amounts to your books and records, the auditor-appraiser should also be able to discuss valuation with you. Even if the audit is mechanically correct, is your equipment really worth the amount that is being assessed? Audits are a great opportunity to have your assessments reviewed again.

Still unsatisfied with the final results? You may be able to file appeals to protect your rights, even if the audit did result in a refund. There may be line item increases that will allow you to file an appeal and formally contest the values. This will then allow more time and possibly another appraiser to review your assessments and begin deeper discussions for valuation. This process is more time consuming, and it's not a guarantee, but even small refunds may be beneficial, as it can set precedent for future filing years.

For each location that underwent audit, is the underlying Real Property Assessment correct? The Audit could be another opportunity to ask the Assessor's Office for a review of the Real Property.

Audits don't have to be a negative or burdensome experience. They can be used to help bring relief of tax liabilities and to give yourself a second chance for reviewing them. We encourage you to take every opportunity to ensure you're not overpaying your property taxes. When your company's bottom line is affected, every dollar counts!



Tax Tidbits

California County Assessment Appeals Filing Periods for 2017

The clerks of county Assessment Appeals Boards and county Boards of Equalization have certified the assessment appeals filing period for their counties, pursuant to the requirements of Revenue and Taxation Code section 1603. The regular appeals filing period will begin on

July 2, 2017 in each county and will end either on September 15 or November 30, depending on whether the county assessor has elected to mail assessment notices, by August 1, 2017, to all taxpayers with property on the secured roll.

For a chart of counties and deadlines, please go to:

<http://www.boe.ca.gov/proptaxes/pdf/filingperiods.pdf>



TOOTING OUR HORN

Although this is an informational newsletter, we would like to take the opportunity to brag about a sampling of our successes, from various industries, in the last quarter. These are a few **examples of the refunds** that our clients have received from the county, due to our work.

Business Personal Property

Book Publishers	\$37,997.18
Commercial Printers	\$100,750.69
Data Center	\$1,420,235.35
Dairy	\$33,719.37
Food Manufacturing	\$1,170,545.35
Food Wholesalers	\$243,078.13
Glass & Glass Product Manufacturing	\$114,984.57
Grocery Stores	\$231,601.80
Hotel	\$85,070.08
Hospital	\$33,381.41
Machinery Manufacturing	\$85,280.40
Marine Terminal Management	\$56,826.91
Pet Food Manufacturer	\$714,818.58
Specialty Contractor	\$248,063.83
Steel Manufacturing	\$78,663.57
Women's Clothing	\$30,742.52

PTA Real Estate Tax Division

Real Property 03/11/17 to 06/15/17

Real Property

California

Office - Campus Prop. - Orange County	\$374,098
Storage Property - Placer County	\$15,468
Office Property - San Diego County	\$52,844

Washington

Multifamily Property - King County	\$32,421
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Proof

A woman went to a lawyer ...

A woman went to a lawyer. "My neighbor owes me \$500, and he won't pay up. What should I do?"

"Do you have an IOU for the money?" the lawyer asked.

"No, it was just a promise."

"Here's what you do," the lawyer said. "Write him a letter asking for the \$5,000 he owes you."

"But he only owes me \$500," the woman said.

"And when he writes you back to say that, you'll have your proof!"

Trade Level Issues

Cristhian Tucker, Property Tax Consultant

There are some complex issues that pop up when dealing with property tax appeals. One issue that I have seen pop up more is that of trade level. The trade level theory says that the value of a piece of machinery increases as it passes through the various levels of production (Manufacturer, Wholesale, Retail, and Consumer). State Board Rule 10 further elaborates and says that "Except as provided by the following subdivisions, tangible personal property held by a consumer shall be valued at the amount of cash or its equivalent for which the property would transfer to a consumer of like property at the same trade level if exposed for sale on the open market."

For example, a copier manufacturer sells their equipment to the consumer, but also keeps a couple of copiers for their own use. In theory, the in-house copiers should be valued at the same price that it is sold to the consumer or user level. In practice, when you deal with human beings that make judgment calls, coupled with the complexity of the R&T code, mistakes are to be expected.

Take the example of a Medical Equipment Supplier who recently hired our company to handle their appeals. When some of their equipment was returned because they were defective, the supplier was required by a quirky law to keep that equipment in their facilities for a certain amount of time and were prohibited from reselling it. The Assessor's Office valued the equipment on the books at the consumer level. The problems with doing this are obvious: 1) How can something that was originally thought of as inventory, be considered personal property? 2) Even at the consumer level, what is the value of defective equipment? 3) If outside forces restrict the sale of such equipment, shouldn't the value be put at scrap value?

Another great example on how the trade level assumption can be open to interpretation is that of a Plastic Container Manufacturer. The Assessor's Office decided to provide an arbitrary value on self-constructed molds used to create food containers. Due to the specific nature of the use of the molds, the value that other companies would place on them would be minimal. Furthermore, no data existed on what a manufacturer of molds would charge the company to produce a similar product. It is very possible that the production costs of producing those molds internally exceed those of having a secondary party produce the same product and, therefore, the Assessor's Office, without adequate market data to support their reasoning, unjustly made a trade level adjustment to the value of those molds.

As always, the answer to dealing with complex issues of this nature may lie in the hiring of a professional consultant or agent who deals with these matters on a day in, day out basis.



Quotes

A good laugh is sunshine in the house.

—William Thackeray

If you dwell on statistics you get shortsighted; if you aim for consistency, the numbers will be there at the end.

—Tom Seaver

Health is like money; we never have a true idea of its value until we lose it.

—Josh Billings

To live a creative life, we must lose our fear of being wrong.

—Joseph Chilton Pearce

Things work out best for those who make the best of how things work out.

—John Wooden

Life is 10 percent what happens to me and 90 percent how I react to it.

—Charles Swindoll

Never spend your money before you have earned it.

—Thomas Jefferson

A good laugh heals a lot of hurts.

—Madeleine L'Engle

Success is no accident. It is hard work, perseverance, learning, studying, sacrifice, and, most of all, love of what you are doing or learning to do.

—Pele

There is only one thing that makes a dream impossible to achieve: the fear of failure.

—Paulo Coelho

Construction-In-Progress: Worth a Second Look...

Gilbert Arciba Sr. Tax Consultant

Construction in Progress (CIP) is an item required to be reported on the Business Property Statement. CIP is assessed at 100% of the reported amount as of the lien date. In other words, if you report \$1M in CIP, the associated tax liability for this cost is \$10,000. The Assessor is required to assess the cost at 100%; however, there are some circumstances in which the reported cost should not be assessed. The circumstances all vary depending on each taxpayer's particular situation. It is important to understand all the facts as they relate to the reported cost in CIP.

However, often we see a corporate location that does all the acquiring of equipment from their cost center. As of the lien date, they report a large amount of cost related to equipment not physically located on the premises. If equipment is not physically located on site as of the lien date, the reported cost is not assessable. Also, lead times for equipment vary by industries, it is not uncommon for companies to have substantial amount of cost related to equipment on order which is not physically located on site.

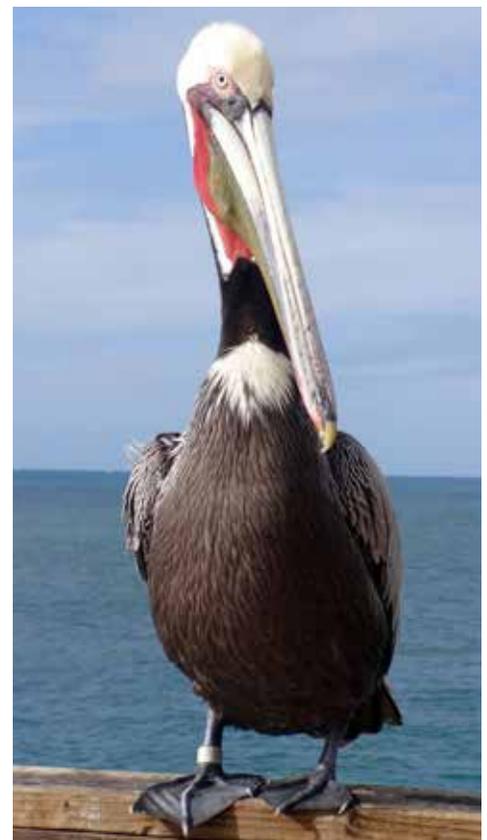
As of May 7th, the Business Property Statement, Form 571L was due to the Assessor's Office in order to avoid the 10% penalty for late filing. Upon receipt of the Property Statement, the Assessor must process the statement and issue the taxpayer a 2017 tax bill in a relatively short time frame. The Assessor does not have ample time or resources to review the CIP cost of every Property Statement submitted. Review your Business Property Statement and if the reported CIP cost is substantial, it is worth a second look by filing an Assessment Appeal. Property Tax Assistance can file on your behalf.

Our love for smartphones

You love your smartphone, but do you sleep with it?

According to a survey of 3,700 "mobile workers" conducted by mobile service provider iPass, 61 percent sleep with their smartphones, and 38 percent wake up in the middle of the night to check email.

Thirty-one percent turn to their smartphones immediately upon waking up in the morning, and 30 percent check their messages every six to 12 minutes even when they're not officially on the clock. Not surprising, 29 percent in the survey said mobile technology was causing friction in their relationships.



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David L. Gangloff Jr., Esq.
CEO & Principal
Property Tax Assistance Co., Inc.
16600 Woodruff Ave.
Bellflower, CA 90706

For information on our services please contact:

Lisa Henry:
562-282-5911
LHenry@property-taxes.com

www.property-taxes.com

Bellflower, CA (Corporate Headquarters)
Property Tax Assistance Co., Inc.
16600 Woodruff Ave.
Bellflower, CA 90706
Phone 562-920-1864 Fax 562-920-5775
PTA@property-taxes.com

Bay Area Office
Property Tax Assistance Co., Inc.
1981 N. Broadway, Suite 342
Walnut Creek, CA 94596
Phone 925-942-1004 Fax 925-942-0369

Property Tax Update

