Solar Energy Generating Systems: Judicial Challenge of California County's Tax Assessment

Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

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Co-Author: Jalen Toms

California's Fourth District Court of Appeals considered the validity of the assessment methodology used by the San Bernardino County Assessor to calculate the annual tax on solar properties. See *Luz Solar Partner Ltd., III v. San Bernardino Cnty.*, 15 Cal. App. 5th 962, 223 Cal. Rptr. 3d 451 (2017).

The opinion addresses the California legislature's exclusion of certain active solar energy generating systems ('SEGS") property tax assessments.

The Court states SEGS units are composed of both a solar and nonsolar backup source to generate electricity. The solar component constituted 97% of the cost of the unit. The nonsolar components included natural gas boilers and furnaces. They make up the remaining 3% of the cost.

Pursuant to Revenue and Taxation Code section 73, enacted in 1980, the solar component of SEGS units are not considered for property tax purposes to be improvements that add value. The nonsolar component is subject to taxation.

Until about 2010, the San Bernardino County Assessor valued the solar property by reviewing the current market value of only the nonsolar component. The Court notes that more SEGS units were built and the market value of natural gas boilers and furnaces depreciated. An instruction was given to the county assessors to include the solar component in an estimate of full cash value of the solar property.

The Board of Equalization instructed that real property value must be determined by the lesser of two values under section 51:

1. Its base year value, compounded annually since the base year by an inflation factor, as adjusted for inflation since the base year, not to exceed 2 percent each year, to produce the "factored" base year value; or
2. Its full cash value ("the amount of cash or its equivalent that property would bring if exposed for sale in the open market…") of the lien date, taking into account reductions in value due to damage, destruction, depreciation, obsolescence, removal of property, or other factors causing a decline in value.

Plaintiff-Appellant, Luz Partners, owned seven SEGS that were built between 1986 and 1991. After the new assessment methodology was applied to his solar properties, Luz Partners' taxes increased approximately 150% for the 2011 and 2012 tax years.

Luz Partners sought a changed assessment which was denied. It then challenged in Superior Court the new assessment arguing it:

1. violates sections 51 and 73 because it does not use the same “appraisal unit” when comparing the factored base year value to the current full cash value, and
2. treats the nonsolar component as if it were appreciating.

The Court rejects both arguments. It holds the “appraisal unit” as defined by section 51 is that which “persons in the marketplace commonly buy and sell as a unit, or that is normally valued separately.” As to property improved with SEGS units, there is no separate market for the nonsolar component.

The Court determines that both section 73 and section 51 should be read together in determining the appropriate meaning of an “appraisal unit.” Further, any inconsistencies should show favor to section 51. It holds the appraisal unit includes the real property improved with the integrated SEGS unit.

Section 51 is held to require assessing the factored base year value of the solar property based on a 2% maximum index as Luz Partners’ solar properties were assessed.

The Court affirmed the trial court’s judgment in favor of the County and the Appeals Board.

A copy of the opinion can be downloaded here.