

# Property & Transfer Tax

*Planning and Controversy and Litigation Services*

Pillsbury has extensive coast-to-coast experience with property tax and transfer tax issues. We are a go-to firm for many Fortune 100 companies nationwide.

Engagements typically begin with a site visit to observe a client's properties and business operations firsthand. This approach enables us to customize tax solutions that are more efficient and ultimately lead to a higher success rate for our clients. Each of our property and transfer tax attorneys are both tax lawyers and litigators who are able to provide the highest caliber of representation at all levels of the engagement.

## Proactive Planning Services

We minimize property tax and transfer tax burdens for new construction developments and for acquisitions and dispositions of operating properties. Our relentless focus on structuring details regularly saves clients substantial sums on both sides of the transaction and is essential in preserving value for both buyers and sellers.

**Avoiding Property Tax Reassessments:** In California, Proposition 13 caps real property assessments at an acquisition base-year value (with annual increases of 2% or less) throughout a client's ownership of the property. We regularly assist clients in avoiding Proposition 13 reassessments in both acquisitions and dispositions by, for example, structuring transactions as the purchase and sale of minority membership interests in the entity-holding realty, rather than in the realty itself.

**Reducing Assessments for Technology:** We succeed in removing non-assessable costs from annual property tax returns. This is particularly important for technology equipment where the substantial portion of the value typically is attributable to intellectual property rights and software, rather than the tangible assets. We have also been successful in removing these and other non-assessable costs through the assessment appeal process in several counties, as well as through litigation and judicial appeal.

**Minimizing New Construction Assessments:** We work with assessors to make sure, first, that the proper market value is attributed to the existing entitlement and ownership rights in the property and, second, that any exempt additions to the value of the existing structures (e.g., ADA, seismic, life safety) are excluded from the assessment.

**Forecasting to Avoid or Predict Tax Issues:** Without careful planning, standard financing and 1031 structures can create expensive transfer tax and property tax events (e.g., when new entities are needed down the line). The same is true for business reorganization endeavors. We carefully construct the correct structure from the inception to head off costly transfer and property tax events. We also provide detailed property tax and transfer tax projections to support real property development and investment planning.

## Controversy and Litigation Services

We represent a significant portion of the Fortune 100 in tax controversy. Our work involves all levels of controversy, including informal negotiations with assessors and state taxing authorities, formal hearings before administrative tribunals, and litigation up through the court system.

**Exemptions and Exclusions:** We have been successful in cases involving state-owned property and equipment, as well as property qualifying for the new construction solar exclusion, welfare exemption, college exemption, and the various exemptions and exclusions related to Proposition 13 reassessments. We have secured property tax exemptions and exclusions for government contractors, research institutes, colleges and universities, health care foundations and charitable organizations.

**Multistate Central Assessment Issues:** We have significant experience with the various central assessment structures of states nationwide. We provide planning and controversy services (both at administrative and judicial litigation levels) to defeat overreaching state efforts to subject property to central assessment and unitary valuation that should rightfully remain locally assessed. We also routinely assist clients in reducing over-assessments caused by inflated unitary values.

### Our Reach and Our Clients

Our nationwide practice assists owners of multijurisdictional property, such as large companies in the technology, telecommunications, travel & hospitality, energy and health care industries. In addition to representing clients in all of California's 58 counties and before the California State Board of Equalization, we provide coast-to-coast coverage and have represented clients on property tax and transfer tax issues in all key states.

Our clients own investment or commercial properties, including:

- Corporate campuses and headquarters for some of America's largest companies,
- High-end resorts, hotels and hospitality properties,
- Condominium and apartment developments and senior housing facilities,
- Research and development facilities,
- Industrial and warehouse buildings,
- Commercial shopping and entertainment properties,
- Movie and television studios, theme parks, and
- Telecommunications, energy and other regulated companies.

We also advise on industrial and technology properties where the owner is typically the user, including:

- Clean rooms,
- Data centers,
- Biotech centers,
- Telecommunications systems and broadcast centers,
- Oil and gas fields and refineries,
- Renewable energy facilities, and
- Manufacturing plants.

### Representative Matters

#### Prominent Real Estate Developer and Investor

Reached a favorable resolution on the eve of an Assessment Appeals Board hearing challenging assessor's substantial equivalent of the new construction assessment based on the use of the Residual Value Method.

#### Major Technology Company

Advised throughout the design and construction of a marquee new corporate headquarters in Silicon Valley. Achieved a favorable post-completion assessment based on fair-market value rather than the considerable construction costs.

#### High-End Luxury Resort Owner

Obtained a superior court writ of mandate directing the Assessment Appeals Board to grant a new valuation hearing. Worked with experts on a valuation model that quantified and removed non-taxable sources of revenue (e.g., revenue from the property's brand name, vendor contractors, and resort and restaurant services) and limited the assessment to the property's taxable real estate.

#### Owner of a Mixed-Use Office and R&D Campus

Prevailed at superior court against an assessor valuation using an inflated reproduction cost method to capture significant construction costs for an obsolete clean room. The proper method of appraisal resulted in substantial tax refunds.

#### Top Service Provider with Leased Equipment throughout California

Developed a new standardized valuation table used to assess a client's leased equipment throughout California, bringing uniformity and predictability to the client's assessments, and considerable tax refunds.

#### Fortune 100 Company

Successfully appealed to exclude the value of software from the assessment on the company's cutting-edge networking equipment.

#### National CableTelevision Operator

Challenged the Assessment Appeals Board's finding of a 10% economic rent in valuing the client's possessory interest. Convinced the superior court that the evidence did not support the Board's finding.

#### Large Gas-Tank Distributor

Pursued a refund action and, on the eve of trial, entered into a joint stipulation for dismissal, refund and eligibility for the business inventory exemption. As a result, the exemption was adopted in other counties.

### **Major Stevedoring Company**

Achieved proper assessment of possessory interests (i.e., leasehold interests) in various port properties and delivered reductions in value for our client largely without the assistance of an expert and without the need for a contested hearing.

### **Leading Medical Device Company**

Achieved a landmark ruling from the California Court of Appeal finding that application computer software is not subject to property taxation even when it is bundled or prepackaged with computer hardware.

### **Fortune 50 Telecommunications Company**

Won issue of first interpretation before the California Court of Appeal confirming that California property tax law does not require a centrally assessed taxpayer to sue all counties in which it owns property to maintain a refund action. Successfully reduced centrally assessed taxpayer's property tax liability from over \$100 million to under \$10 million, spanning eight tax years.

### **Leading Media and Entertainment Company**

Successfully resolved California's then-largest local property tax dispute regarding diverse and extensive property footprint in Southern California, resulting in reduction of new base-year reassessment by almost \$1 billion.

### **Fortune 50 Technology Company**

Successfully obtained a court order directing a local property tax assessor to complete its audit after the assessor had strategically stopped an audit after one test year in an effort to avoid significant refunds. The appellate court upheld the trial court's order in favor of our Fortune 50 technology client.

### **Major U.S. Defense Contractor**

Achieved conclusion from appellate court that taxpayers, as the tax obligors under long-term leases, had standing to seek applications for reductions in assessment and refund claims from the county.

### **About Pillsbury**

Pillsbury Winthrop Shaw Pittman LLP is an international law firm with a particular focus on the technology & media, energy, financial services, and real estate & construction sectors. Recognized by legal research firm BTI Consulting as one of the top 20 firms for client service, Pillsbury and its lawyers are highly regarded for their forward-thinking approach, their enthusiasm for collaborating across disciplines and their authoritative commercial awareness.

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