No. S194121

IN THE
SUPREME COURT OF THE STATE OF CALIFORNIA

ELK HILLS POWER, LLC,

Plaintiff and Appellant

v.

CALIFORNIA STATE BOARD OF EQUALIZATION,

COUNTY OF KERN,

Defendants and Respondents.

After A Decision By The Court of Appeal,
Fourth Appellate District, Division One, No. D056943

The San Diego Superior Court, No. 37-2008-00097074-CU-MC-CTL
The Honorable Ronald L. Styn

REPLY IN SUPPORT OF PETITION FOR REVIEW

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INTRODUCTION

Under California law, all intangibles are exempt from taxation, regardless of their kind or variety, and regardless of whether they are "necessary" to the beneficial and productive use of taxable property. (Cal. Const. art. XIII, §2; Rev. & Tax. Code §212.) There are no qualifications or exceptions to this important constitutional exemption, and the Fourth District Court of Appeal was simply wrong to create an exception permitting the taxation of intangibles that are "necessary" to the beneficial or productive use of tangible property.

In its Answer to Elk Hills Power's ("EHP") Petition for Review ("Answer"), the California State Board of Equalization ("Board") erroneously argues that this Court "should decline Elk Hills' invitation to . . . create a **previously-unknown tax exemption** for using an intangible asset to increase the production and pollution of taxable property." (Answer p.11) (emphasis added) This is a gross distortion of EHP's position.[1] EHP is not seeking to create a "previously-unknown tax exemption." To the contrary, EHP is asking this Court to uphold and enforce the longstanding constitutional exemption for intangibles, reinforced by California statute and repeatedly upheld by this Court and every appellate district in the state.

In its Answer, the Board attempts to convince this Court that the court of appeal's published opinion ("Opinion") is nothing more than "a straightforward

[1] It also mischaracterizes EHP as a "polluter," a proposition that is completely belied by the record.

application of existing precedent." (Answer, p.4) Nothing could be further from the truth. In fact, there has never before been a decision from this Court (or any of the state's appellate districts) that permits the express inclusion of intangible value to the assessment of taxable, tangible property. Despite this, in each of the five tax years at issue herein, the Board added a line-item replacement cost for intangible ERCs to its cost approach and it failed to deduct any income attributable to ERCs from its income approach. The Board has cited no prior California decision in which it (or an assessor) has been permitted to do this, because no such decision exists. Thus, contrary to the Board's assertion, the Opinion marks a radical departure from existing precedent and creates a direct conflict that will undoubtedly affect business property taxpayers and taxing authorities throughout the State of California, resulting in more litigation on this issue in the future.[2]

Simply stated, the Opinion misinterprets one phrase from Subdivision §110(e) – "assume the presence of." However, those words cannot be construed to permit the express addition of intangible values that are prohibited by the Constitution and other subdivisions of the same statute. In the words of Senator Maddy, author of the 1995 amendments to Section 110, "assume the presence of"

[2] The several *amicus curiae* letters submitted to this Court in support of EHP's Petition reflect the adverse repercussions the Opinion portends.

means that "property need not be valued at salvage value but at its value when put to beneficial or productive use."[3] (2 CT 450)

To use Senator Maddy's example (taken from this Court's decision in *Roehm v. County of Orange* (1948) 32 Cal.2d 280), "the assessor may assume the presence of a [liquor] license so that a bar's taxable property may be taxed as a bar and not at salvage value (*i.e.*, as a warehouse)." (2 CT 450) But, as he explained: "[U]nder the terms of the bill, an assessor could not use a liquor license to enhance the value of taxable property." (*Id.*) These statements by the author of this legislation, explain the proper interpretation of Subdivisions 110(d) and 110(e) and harmonize them in a manner that is consistent with California's constitutional exemption for intangibles.

The California Constitution, Sections 110 and 212 of the Revenue and Taxation Code, and a long line of cases prohibit the taxation of intangible assets. The Opinion's misapplication of Subdivision 110(e) and the phrase "assume the presence of" cannot be permitted to eradicate this constitutional exemption for intangible assets. This Court affirmed that exemption more than sixty years ago in *Roehm*, and it has been the law of this state ever since. (*Roehm,* 32 Cal.2d at 290.)

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[3] In its Answer, the Board accuses EHP of seeking "refuge in so-called 'legislative history' provided by special interest lobbyists." (Answer, p.9) In fact, the legislative history EHP relied upon in its Petition was entered into the record below by the Board (2 CT 387-388, 450), not provided by Cal-Tax.

ARGUMENT

I. The Court of Appeal's Interpretation of Subdivision 110(e) Renders That Statute Unconstitutional.

Pursuant to the California Constitution, the Legislature is granted authority to tax tangible property, but it is also **expressly prohibited** from taxing intangible assets and rights other than those specifically enumerated in Article XIII, §2. (Cal. Const. art. XIII, §2.) In *Roehm*, this Court stated that Article XIII, §2 "is a grant of power to the Legislature to provide for the assessment, levy, and collection of taxes, but it does **not** grant power to provide for the taxation of intangible assets other than those listed [in Article XIII, §2]."[4] (*Roehm*, 32 Cal.2d at 285 (emphasis added).) There is simply no "exception" to this constitutional exemption for assets or rights that are deemed "necessary" to the beneficial and productive use of taxable property as the Board argues and the Opinion holds.

The Opinion erroneously concludes that the Board's actions here were proper under Subdivision 110(e), which permits a taxing authority to "assume the presence of" intangible assets and rights that are "necessary" to put taxable property "to beneficial and productive use." Specifically, the court held that because ERCs are "necessary" for the real and personal property of the Plant to be put to beneficial or productive use "[t]here is no basis to remove the value of the ERCs from the value of the unit." (Opinion p.40)

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[4] Although the specific intangibles enumerated in Article XIII, §2 could be taxed, the Legislature has chosen not to. (Rev. & Tax. Code §212(a).)

However, the court of appeal **mis**interpreted the phrase "assume the presence of" the intangible ERCs to mean "expressly add the value of" those ERCs to the value of the taxable property. In its Answer, the Board accuses EHP of failing "to grasp the statutory distinction between two different categories of intangible assets—those necessary to the beneficial use of the taxable property and those not necessary to such use." (Answer, p.7) EHP understands the statutory distinction. The Board and court of appeal do not.

Subdivision 110(e) only allows taxing authorities to "assume the presence of" assets necessary to the beneficial and productive use of taxable property, *i.e.* to "assume" the existence of intangibles needed to put the property to its highest and best use, but that is all they may do. Nothing in the statute allows the Board to ignore the constitutional prohibition against taxation of intangibles by expressly *adding* their value into a taxpayer's assessment as happened here.

Under the California Constitution and more than sixty years of case law, there is no distinction between "necessary" and "unnecessary" intangibles. All intangible assets/rights are exempt from taxation under the Constitution whether "necessary" to the beneficial and productive use of the property or not. Hence, the court of appeal's interpretation of Subdivision 110(e) as allowing for the taxation of "necessary" intangibles renders the statute unconstitutional.

II. There Is No Prior California Case Law Sanctioning The Express *Addition* Of Intangible Value To The Assessment Of Taxable Property.

Prior to the Opinion in this case, there has never been a single California decision that upheld the express *addition* of an identifiable intangible asset to the value of tangible, taxable property. Given that California jurisprudence on taxation of intangibles extends back more than sixty years to *Roehm*, it is no exaggeration to suggest that the Opinion represents a radical departure from settled case law on this subject.

The Board fails to cite even a single case in which any court has condoned the express *addition* of intangible value to the assessment of tangible property. The Opinion cites no such case. Despite this, the Board asserts: "It has long been established that intangible assets and rights necessary to the beneficial or productive use of the taxable property being assessed should be included in that assessment, while intangibles not necessary to the use of taxable property may not be included." (Answer, p.4) (emphasis added) Although the Board cites **five** California cases, **none of them** support its assertion.

First, the Board cites *Michael Todd v. County of Los Angeles* (1962) 57 Cal.2d 684, which was decided by this Court almost fifty years ago. (Answer, p.4) The issue in *Michael Todd* was whether the assessor could include the value of the intangible copyright in its assessment of a tangible motion picture. (*See Michael Todd,* 57Cal.2d at 691.) Notably, the assessor chose to value the motion picture using a production **cost approach**. (*See id.* at 697.) Critically, in *Michael Todd,*

the assessor did not expressly add the cost of the intangible copyright to the production cost of the motion picture. In contrast, the Board added the replacement cost of the ERCs to its valuation of EHP's plant here. Rather, the approach taken by the Court in *Michael Todd* is the same concept codified by the California Legislature in Subdivision 110(e), *i.e.* the Assessor should value the motion picture "assuming the presence" of the intangible copyright, which permitted the property to be put to beneficial and productive use, but not expressly including its value. (*See id.* at 696.)

Ironically, the Board itself properly described the *Michael Todd* holding in its parenthetical, which states: "copyright properly **considered** in assessment as necessary for the 'beneficial or productive' use of taxable film at its highest and best use as a master film negative." (Answer, p.4) The Board is correct, an intangible right can be "considered" (or "assumed") in the assessment of tangible property, but it may not be expressly added.[5]

Second, the Board cites *American Sheds v. County of Los Angeles* (1998) 66 Cal.App.4th 384, in support of its statement that necessary "intangible assets and rights necessary to the beneficial or productive use of the taxable property . . . should be included in that assessment." (Answer, p.4) However, in *American Sheds*, involving site-specific operating permits, the assessor did not add a

[5] The Board uses the words "consider," "considered," or "consideration" not less than ten times in its Answer. (Answer, p.1 (twice); p.2; p.4 (twice); p.6; p.7; p.9; p.11; p.13) EHP agrees that the Board may "consider" the presence of intangible ERCs, but it may not expressly add their value in taxing the tangible property.

separate value component for the permits. Rather, the local assessor employed a royalty valuation method, which purposefully **excluded** income associated with the intangibles:

> The [assessment appeals] board permissibly **considered** the permits in appraising the property at beneficial and productive use. The board conducted that appraisal by capitalizing the income attributable to the property by means of the royalty method, **to avoid including income that represented the fruits of the intangibles alone** rather than the property itself.

(*American Sheds*, 68 Cal.App.4th at 396 (emphasis added).)

As the Second District in *American Sheds* properly determined, the issue was not whether plaintiffs' intangible rights had been **expressly included** in the valuation of the property, but rather whether plaintiffs' intangible rights had been properly **subsumed** (or assumed) in the valuation. (*Id.* at 391.) In this case, the Board's valuation of EHP's Plant has not merely "assumed the presence of" the intangible ERCs. Rather, the Board **expressly included** their value by adding its own estimate of ERC replacement costs to its cost approach value for each tax year, and it failed to deduct the value of the ERCs from its income approach in the three tax years it also used that method.

Third, the Board cites *Service America Corp. v. County of San Diego* (1993) 15 Cal.App.4th 1232, for the proposition that "business enterprise value and superior management acumen [should be] excluded from assessment," presumably drawing the distinction that these intangibles are distinguishable from ERCs because they are not "necessary" to the beneficial and productive use of

tangible property. (Answer, p.4) What the Board fails to mention is that *Service America* also involved an intangible concession agreement with the ballpark, which was indisputably "necessary" to the plaintiff's beneficial and productive use of its taxable property. (*Service America*, 15 Cal.App.4th at 1236-37.) Despite the "necessity" of the asset, the Fourth District ruled that the income derived from the concession agreement had to be **excluded** from an income approach. (*Id.* at 1242 ("[T]he exclusive nature of Service America's concession agreement and its going-business value undoubtedly constitute a major factor in its profitability. The County cannot overlook or ignore these values, **which are not taxable**, when assessing value.") (emphasis added).)

Fourth, the Board cites *Los Angeles SMSA v. Board of Equalization* (1992) 11 Cal.App.4th 768 for the proposition that "value added by FCC permit [was] properly **considered** in assessment of cellular telephone plant and system." (Answer, p.4-5) (emphasis added) Again, the Board utilized the word "consider," which is similar to "assume the presence of." However, "consider" is vastly different from "expressly-adding-the-value-to" which is what the Board undeniably did with the ERCs in this case.

In the 1995 amendments to Section 110, the Legislature made clear that "[t]he exclusive nature of a **concession**, **franchise**, or similar agreement . . . is an intangible asset that shall not enhance the value of taxable property, including real property." (Rev. & Tax. Code §110(d)(3) (emphasis added).) Yet, under the Opinion, the value of a concession or a franchise can be expressly included in the

valuation because it is deemed "necessary" to the beneficial and productive use of tangible property. Although the issue of how the Opinion conflicts with Subdivision 110(d)(3) was raised by EHP in its Petition, the Board does not even address this conflict in its Answer.

Fifth, the Board cites *GTE Sprint Communications v. County of Alameda* (1994) 26 Cal.App.4th 992, to support its assertion that "the value of intangible property may be included in the valuation of otherwise taxable tangible property."[6] (Answer, p.5) This statement fundamentally mischaracterizes the holding of *GTE Sprint*. The First District actually held that: "the Board's appraisers are required by law to **identify and value intangible assets**, if any, and **exclude these values from the appraisal of the taxpayer's property**." (*GTE Sprint*, 26 Cal.App.4th at 999 (emphasis added).) This direct quote from *GTE Sprint* exposes the falsity of the Board's misrepresentative parenthetical summarizing its holding.

In summary, before the Fourth District issued its Opinion, no California court has ever permitted the express addition of value associated with an identifiable intangible asset to the valuation of tangible, taxable property. Accordingly, the Opinion in this case not only violates the California Constitution and Section 110(d) of the Revenue and Taxation Code, it is a radical departure from more than sixty years of California jurisprudence on this subject.

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[6] Notably, the Board includes no pin-cite for this citation (Answer, p.5), presumably because there is no support for it found in *GTE Sprint*.

III. The Opinion's Unprecedented "Necessary" Test Creates A Direct Split In Authority And It Will Cause A Lack Of Uniformity.

In its Answer, the Board claims that EHP is exaggerating the import of the Opinion by ignoring the fact that "most intangible assets (*e.g.,* commercial paper, professional licenses, banked ERCs) are not related to the use of specific taxable property, and therefore, under existing law as applied by the Court of Appeal, remain outside the property tax valuation process." (Answer, p.9) The Board then goes on to refer to the "trademarked Golden Arches" as unnecessary to the use of a hamburger stand. (*Id.*) Later in its Answer, the Board accuses EHP of relying "on cases requiring exclusion of intangible assets *not* necessary to use of taxable property." (Answer, p.13) The Board is wrong. EHP did not rest its arguments on cases involving "unnecessary intangibles." Moreover, the examples of "unnecessary" assets listed by the Board bear no resemblance to the intangible ERCs at issue herein.

Conversely, in its Petition, EHP cited numerous cases involving intangible assets and rights that are undeniably **necessary** to the beneficial and productive use of tangible property, pointing out that a long line of California cases would have been decided differently applying the Fourth District's unprecedented "necessary" test. Under this new test, the following intangible assets, previously deemed **nontaxable** by California courts, would now become **taxable**:

- liquor license–necessary to bar, restaurant or liquor store (*Roehm,* 32 Cal.2d at 290);

- copyright–necessary to motion picture film (*Michael Todd,* 57 Cal.2d at 693);
- concession rights–necessary to airport-based rental car agency or stadium-based food and beverage business (*County of Los Angeles v. County of Los Angeles Assessment Appeals Bd.* (1993) 13 Cal. App.4th 102, 113; *Service America,* 15 Cal. App.4th at 1242);
- franchise–necessary to cable television company's tangible property (*County of Orange v. Orange County Assessment Appeals Bd. No. 1* (1993) 13 Cal. App.4th 524, 533; *Shubat v. Sutter County Assessment Appeals Bd. No. 1* (1993) 13 Cal. App.4th 794, 802-04; *County of Stanislaus v. County of Stanislaus Assessment Appeals Bd.* (1989) 213 Cal. App.3d 1445, 1454); and
- broadband leases–necessary to telephone company's unitary property. (*GTE Sprint,* 26 Cal. App.4th at 998-99.)

Accordingly, the Opinion creates a direct conflict with existing precedent. This Court should grant review to prevent the surge in litigation that will ensue from this split in authority and to prevent the lack of uniformity that widespread adoption of the Fourth District's "necessary" test will inevitably cause.[7]

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[7] Notably, the First District just issued a decision permitting the California Air Resources Board to move forward with implementation of "cap-and-trade" pending appeal of the trial court's decision, thus creating another category of intangibles that would now be subject to taxation under the Opinion. (*Association of Irritated Residents v. California Air Resources Bd.,* First District, Division 3, Case No. A132165, Order dated June 24, 2011.)

IV. The Board Admits That It Expressly *Added* The Value Of Intangible ERCs To Its Valuation Of EHP's Taxable, Tangible Property.

In each of the five tax years at issue, the Board utilized the cost approach in valuing EHP's Plant. (1 CT 137:15-17; 3 CT 513:12-17) In its Answer to EHP's Petition, the Board admits that in applying the cost approach, it "**included a standard estimated replacement cost for the deployed ERCs**" to its valuation of EHP's Plant. (Answer, p.3) (emphasis added)

The following table illustrates the dollar value for ERCs that the Board expressly added to the replacement cost of EHP's Plant in each tax year.

Tax Year	2004	2005	2006	2007	2008
ERC Cost*	$2,943,000	$2,825,280	$2,736,990	$9,262,426	$8,973,425

*These figures represent the cost of the ERCs after applying depreciation. (3 CT 516)

By way of analogy, the Board's actions in expressly adding the cost of the ERCs to the replacement cost of the Plant would be equivalent to an assessor expressly adding the cost of a liquor license to the value of a bar in assessing the tangible property. According to the Opinion, if the value of a bar's real and personal property was determined to be $100,000 using the cost approach, and the cost of the liquor license was $20,000, an assessor would be justified in valuing the property at $120,000, and the owner would have to pay taxes not only on the value of the tangible property, but also on the value of the intangible license. This result is plainly contrary to this Court's holding in *Roehm*, which held that an

intangible liquor license is not taxable under the Constitution.[8] (*Roehm*, 32 Cal.2d at 290.)

V. The Board Admits That It Failed To Deduct The Value Of ERCs From Its Valuation Of EHP's Property Under The Income Approach.

For tax years 2006, 2007 and 2008, the Board utilized both cost and income approaches in determining the unitary value of EHP's Plant. (3 CT 513:14-17) When using the income approach, the Board is required to take the affirmative step of excluding the value of any intangibles associated with the tangible property, because the value of all property that contributes to the income stream, whether tangible or intangible, is automatically subsumed in an income valuation. (*See South Bay Irrigation Dist. v. California-American Water Co.* (1976) 61 Cal. App.3d 944, 988.)

Because failure to exclude income associated with intangibles would violate the Constitution and Subdivision 110(d), the Board adopted a specific method for excluding value associated with intangibles from the income approach. (3 CT 530-33) The Board's Manual states: "When income to be capitalized is derived from operating a property, sufficient income shall be **excluded** to provide

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[8] In its Answer, the Board attempts to distinguish liquor licenses from ERCs by arguing that a liquor license is not "necessary to build real property intended to be used as a liquor store." (Answer, p.11) The Opinion's unprecedented "necessary" test does *not* hinge upon whether the intangible asset or right is "necessary to build" the real property. Rather, the Opinion simply states that if the intangible right or asset is "deemed 'necessary' for [the property's] beneficial and productive use" it can be included in the value of the taxable property. (Opinion, p.40) This test also applies to a bar's liquor license.

a return on any nontaxable operating assets such as **intangible items**." (3 CT 533) (emphasis added)

To ensure the Board was aware of the existence of EHP's intangible ERCs and enable it to apply its self-adopted method for excluding their value, EHP reported the actual cost of its ERCs for each of the tax years on the Board's own form (BOE Form 529-I). (1 CT 176-85) Yet, the Board admitted that it failed to follow its own method to exclude income attributable to ERCs from its income approach. (Answer, p.3 ("In estimating capitalized earning ability [under the income approach], BOE did not add any increment for the ERCs, but **neither did it deduct their value** as Elk Hills contended it should have.") (emphasis added).)

If the Board had refrained from adding the value of ERCs under the cost approach (as explained above), and if it had excluded the income attributable to the ERCs under the income approach, the unitary value of the Plant would have been directly and proportionately lower, as reflected in the following table:

Tax Year	Valuation of Plant If ERCs' Value Not Added	Value of ERCs*	Valuation of Plant With ERCs' Value
2004	$332,304,422	$2,943,000	$335,247,422
2005	$318,534,482	$2,825,280	$321,359,762
2006	$289,678,903	$4,110,637	$293,789,540
2007	$266,202,485	$9,372,399	$275,574,884
2008	$297,357,421	$9,160,586	$306,518,007

*Again, these figures represent the value of the ERCs after applying depreciation. (3 CT 512-516)

Revenue and Taxation Code Section 110(d)(2) mandates that when unit valuation is used to value a property (which is how EHP was valued), and the unit includes intangible assets (such as ERCs), "the fair market value of the taxable property contained within the unit shall be determined by **removing from the value of the unit the fair market value of the intangible assets and rights contained within the unit**." (Rev. & Tax. §110(d)(2) (emphasis added).) Clearly, the Board's express addition of the replacement cost of ERCs under the cost approach, and its failure to remove the income attributable to ERCs under the income approach, resulted in the taxation of intangible assets, in direct violation of the Constitution and Subdivision 110(d)(2).

VI. There Is No Basis For Striking EHP's Petition As Untimely.

In its Answer, the Board claims that EHP's Petition should be stricken as untimely because EHP ostensibly served the Petition a day after it was due. (Answer, p.3-4) Not surprisingly, the Board has cited nothing in support of its request, because there is no legal basis in this Court's rules or in case law for striking EHP's timely-filed Petition.

The California Rules of Court require that a Petition for Review be *filed* on the actual deadline (Rule of Court 8.500(e)(2), ("The time to *file* a petition for review may not be extended") (emphasis added)), but the Rules establish no jurisdictional bar for late *service*. Moreover, because the Board answered the Petition and it has not suggested, let alone demonstrated, that it was prejudiced in

any respect in doing so, there is no basis for striking the Petition.[9] (*See, e.g., Carlton v. Quint* (2000) 77 Cal.App.4th 690, 697-698.)

CONCLUSION

The Fourth District's Opinion contravenes the California Constitution and statutes, and it represents a radical departure from more than sixty years of settled jurisprudence. Accordingly, this Court should grant EHP's Petition for Review to: (1) re-affirm the constitutional exemption prohibiting taxation of intangibles; (2) interpret Revenue and Taxation Code Section 110 in a manner that is consistent with the constitutional exemption and its plain language as a whole; and (3) resolve the direct conflict in existing precedent that was created by the court of appeal's new test in which an intangible asset that is deemed "necessary" for the beneficial and productive use of tangible property renders it subject to taxation in contravention of the constitutional exemption that has been uniformly upheld by the courts of this state for more than sixty years.

RESPECTFULLY SUBMITTED this 21st day of July, 2011.

LAW OFFICE of PETER MICHAELS

By: Peter Michaels
Peter W. Michaels
Attorneys for Petitioner Elk Hills Power, LLC

[9] Ironically, the Board's Answer refers to an "Exhibit A," which allegedly supports its assertion, but the Board failed to attach any Exhibit to its Answer.

CERTIFICATE OF WORD COUNT

Pursuant to Rule 8.504(d)(1) of the California Rules of Court, the undersigned hereby certifies that the foregoing Reply in Support of Petition for Review is in 13 point Times New Roman font and contains 4,192 words, including footnotes, but excluding the Table of Contents, Table of Authorities, Certificate of Service, this Certificate of Compliance, and the attached Exhibits. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

DATED: July 21, 2011.

Peter W. Michaels
Attorney for Petitioner Elk Hills Power, LLC

CERTIFICATE OF SERVICE BY MAIL

Elk Hills Power, LLC v. California State Board of Equalization, et al.

Supreme Court Case No. S194121

Court of Appeal No. D056943

Superior Court Case No. 37-2008-00097074-CU-MC-CTL

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My business address is 1201 S. Alma School Rd., Ste. 16000, Mesa, AZ 85210.

3. On July 21, 2011, I enclosed copies of

Reply In Support of Petition for Review

in envelopes and deposited the sealed envelopes with the U.S. Postal Service, with the postage full prepaid.

4. The envelopes were addressed as follows:

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Tim Nader, Esq. Deputy Attorney General P.O. Box 85266 San Diego, CA 92186-5266 *Attorneys for Defendant/Respondent, California State Board of Equalization*	1 copy
Jerri S. Bradley, Esq. Deputy County Counsel County of Kern 1115 Truxtun Ave., 4th Floor Bakersfield, CA 93301 *Attorney for Defendant/Respondent, Kern County*	1 copy

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I declare under penalty of perjury that the foregoing is true and correct.

Date: July 21, 2011

Julia Hall
Printed Name

Julia Hall
Signature