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California Supreme Court Issues Significant Opinion Concerning the Assessment of Intangible Assets in Property Taxation

On August 28, 2025, the California Supreme Court issued a significant, yet divided, opinion concerning the treatment of intangible assets in property taxation: *Olympic & Georgia Partners, LLC v. County of Los Angeles* (2025) – P.3d --, 2025 WL 2473858. Justice Groban authored the majority opinion. The divided Court also issued two separate dissents, authored by Justice Liu and Justice Kruger, respectively.

The case concerned the property tax assessment of the JW Marriott and Ritz Carlton Hotel in downtown Los Angeles. Three assets were in dispute. First, a subsidy that the City of Los Angeles paid to the hotel owner to incentivize construction, valued at approximately $80 million and referred to in the case as the "occupancy tax payment." Second, a one-time payment of $36 million that the hotel manager paid to the owner to secure the right to manage the hotel, referred to in the hotel industry and in the case as "key money." Third, a collection of business assets that included the hotel's flag and franchise, food and beverage operations, and assembled workforce, collectively valued at $34 million and referred to in the case as the "hotel enterprise assets."

The City of Los Angeles had decided decades ago that it needed a headquarters hotel adjacent to its unprofitable convention center to support conventions, revitalize downtown Los Angeles, and draw tourists and businesses to the City. The City concluded that a hotel in this specific location would be publicly beneficial but privately uneconomic: that it would yield extensive municipal benefits, but that no

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private developer would go it alone because the cost would outweigh the private payoff. So, the City solicited a developer, Plaintiff Olympic and Georgia Partners, LLC (Olympic), to develop the hotel, and it incentivized the business enterprise by investing the amount paid in transient occupancy taxes to the City by hotel guests in a unique arrangement. This public private partnership was the first of its kind in the City and realized the City's goals with success.

Key Rulings on Taxable Intangible Assets and Hotel Revenue Streams

The Court first addressed the occupancy tax and key money payments. The dispute was whether these revenue streams were non-taxable intangible assets or, instead, intangible assets that could be taxed because they derived their value from the real estate on which the hotel was located.

The majority opinion "conclude[d] that the Assessor was permitted to include the occupancy tax and key money payments when assessing the value of the hotel" because "both payments derive from a type of intangible asset that effectively enable the property itself — as opposed to the business operating the property — to generate more revenue." (*Olympic & Georgia Partners*, 2025 WL 2473858 at *2.) The majority explained, "[u]nder the occupancy tax agreement, the hotel generates an additional 14 percent in revenue every time a customer rents out a room. This revenue source will continue regardless of who owns the hotel or how they run their business." (*Id.* at *16.) As for the key money, the majority explained, "management companies routinely pay owners of hotels that have certain desirable physical features (such as location, size or overall quality) key money as a means of securing the right to manage the property and advertise the hotel under the management company's brand. Thus, much like a commercial lease, key money is a form of revenue that owners of desirable hotels expect to receive in exchange for assigning a management company the right to make beneficial use of the property." (*Id.* at *2.)

In reaching these conclusions, the majority opinion interpreted an earlier decision the California Supreme Court issued in 2013: *Elk Hills Power, LLC v. Board of Equalization* (2013) 57 Cal.4th 593.) In *Elk Hills*, the Court held that intangible assets with quantifiable value are excluded from property taxation, whether or not their value derives from a business operating real property.

In the *Olympic* case, the majority explained, "*Elk Hills* does not establish a broad, categorical rule compelling the assessor to exclude revenue that derives from any type of intangible asset that is capable of valuation." (*Olympic & Georgia Partners*, 2025 WL 2473858 at *9.) It continued, "[w]e also agree that Elk Hills does not dictate the result for evaluating the proper tax treatment of the type of asset here, which effectively enables the property itself — as opposed to the enterprise operating the property —to generate more revenue." (*Id.*)

Instead, according to the majority, "[t]he key inquiry in this case, then, is not merely whether the occupancy tax and key money payments derive from intangible assets, but rather whether those forms of revenue represent income that is primarily attributable to enterprise activity or whether they constitute 'income of the real property or on account of its beneficial use.'" (*Olympic & Georgia Partners*, 2025 WL 2473858 at *1.)

The majority explicitly clarified that its "holding does not mean that all forms of intangible assets that derive value from the use of property are taxable." (*Olympic & Georgia Partners*, 2025 WL 2473858 at *14.) The majority also tried to temper the impact of its opinion by explaining that its decision to assess the occupancy tax "does not effectuate any sea change in the tax treatment of intangible assets. Indeed, we see our holding, which is predicated on the rather unique characteristics of the Occupancy Tax Agreement, as being narrow in scope." (*Id.* at *15.)

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In particular, the majority explained the "tax treatment of other forms of government incentives is not relevant here," and specifically explained that government "subsidies incentivizing low-income housing and wind energy facilities" were not affected by the opinion. (*Olympic & Georgia Partners*, 2025 WL 2473858 at *18.) The majority continued, "[n]or does our holding create any categorical rule governing the *ad valorum* taxation of incentives that are tied to the development of publicly beneficial projects. Whether the revenue associated with a particular type of subsidy or incentive may be properly included in an income stream analysis must be evaluated based on the individual characteristics of the incentives at issue." (*Id*. at *18.)

The majority explained the distinction between the type of assets that can be assessed versus those that cannot: "our discussion and analysis in *Elk Hills* focused primarily on assets that increase the 'going concern value' of the business that operates on the property being assessed, including items such as the goodwill of a business or favorable franchise terms." (*Olympic & Georgia Partners*, 2025 WL 2473858 at *9, citing *Elk Hills*, 57 Cal.4th at 618.) It continued, "[t]he shared characteristic of the types of assets discussed in *Elk Hills* is that they increase the value of the business operating on the taxable property without necessarily increasing the amount of income that the property itself is capable of generating." (*Id.*)

Turning to the hotel enterprise assets, the Court unanimously agreed that the County used an invalid methodology to remove the full value of these assets from assessment. The County's methodology is known as the Rushmore Method. Its position was that deducting the fee paid to the hotel manager necessarily accounts for and removes all value that the hotel owner received from its management relationship with the manager.

The Court found that "the County had failed to provide sufficient 'empirical support' for the 'premise that every franchise fee wipes out all intangible benefits a franchise agreement might offer a hotel owner.'" (*Olympic & Georgia Partners*, 2025 WL 2473858 at *24.) Relying on several decisions of the California Court of Appeal that had rejected the Rushmore Method, the Court recognized that the deduction of a management fee from the income stream of a hotel does not recognize or remove the value attributable to the business enterprise that operates the hotel.

The dissenting opinion of Justice Kruger respectfully disagreed with each of the conclusions the majority reached. The dissenting opinion of Justice Liu agreed with the majority on the occupancy tax but concluded that the key money payment was a non-taxable intangible asset.

The Supreme Court's opinion reversed in part and affirmed in part the underlying decision of the Court of Appeal, which ruled in favor of Olympic on all three issues, finding that the occupancy tax and key money were intangible assets and the Rushmore Method was legally incorrect.

Implications for Hotel, Energy, and Low-Income Housing Taxpayers

Taxpayers in the hotel, energy, and low-income housing industries should pay attention to the Supreme Court's opinion. The Court narrowly tailored its holdings to address the specific means by which Olympic structured the occupancy tax and key money payments. The result is that taxpayers may structure their own agreements in ways that might avoid the tax implications that the Court applied to Olympic in this case.

Greenberg Traurig, LLP shareholders Colin Fraser and Cris O'Neall represented Olympic at the Supreme Court, Court of Appeal, and lower tribunals.

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