ASSESSMENT OF LEASEHOLD INTERESTS IN TAX-EXEMPT REALTY IN CALIFORNIA

The California constitution requires that all real property be assessed at its full cash value or some uniform proportion thereof. Property exempt from taxation under the laws of the United States and certain properties owned by the state and its governmental subdivisions are specifically exempted from taxation. But if exempt property is leased to a private party the lessee must pay a tax on the full cash value of the leasehold interest.

Since "full cash value" is synonymous with market value, the assessor must determine what the leasehold would bring in an arm’s length transaction between a willing buyer and a willing seller. If there has been no recent sale of a comparable leasehold to guide the assessor, the market value may be determined in other ways, the most significant of which is the "capitalization of income" method. Under this method of valuation the net income which the lessee expects to earn over the remaining life of his lease is capitalized, and the resulting value is presumed to be an estimate of the market value of the leasehold interest. In 1932, Blinn Lumber Co. v. County of Los Angeles held that the rent to be paid by the lessee is an expense to be deducted in determining the income to be capitalized. But in a 1955 decision, De Luz Homes, Inc. v. County of San Diego, the Cali-

1 Cal. Const. art. XI, § 12, provides: "All property subject to taxation shall be assessed at its full cash value." Article XIII, § 1, provides: "All property in the State except as otherwise in this Constitution provided . . . shall be taxed in proportion to its value, to be ascertained as provided by law . . . ." These sections have been interpreted to mean that all taxable real property must be assessed at the same percentage of market value without any special classifications by the legislature prescribing taxation at a different rate or by a different method of valuation. See De Luz Homes, Inc. v. County of San Diego, 45 Cal. 2d 546, 562-63, 290 P.2d 544, 554-55 (1955); Cal. Rev. & Tax. Code §§ 201-20, 401.


3 El Toro Dev. Co. v. County of Orange, 45 Cal. 2d 586, 290 P.2d 569 (1955); Victor Valley Housing Corp. v. County of San Bernardino, 45 Cal. 2d 580, 290 P.2d 565 (1955); Fairfield Gardens, Inc. v. County of Solano, 45 Cal. 2d 575, 290 P.2d 562 (1955); De Luz Homes, Inc. v. County of San Diego, 45 Cal. 2d 546, 290 P.2d 544 (1955); Blinn Lumber Co. v. County of Los Angeles, 216 Cal. 474, 14 P.2d 512 (1932).

4 See De Luz Homes, Inc. v. County of San Diego, 45 Cal. 2d 546, 290 P.2d 544 (1955), particularly the statements of the court at 45 Cal. 2d 561-62, 290 P.2d 554.

5 "Full cash value . . . means the amount at which property would be taken in payment of a just debt from a solvent debtor . . . ." Cal. Rev. & Tax. Code § 110. The California Supreme Court has paraphrased this section as follows: "It provides . . . for an assessment at the price that property would bring to its owner if it were offered for sale on the open market under conditions in which neither the buyer nor seller could take advantage of the exigencies of the other." De Luz Homes, Inc. v. County of San Diego, 45 Cal. 2d 546, 562, 290 P.2d 544, 554 (1955).

6 The price obtained for a similar lease at a foreclosure sale, while not indicative of its value in an arm’s length transaction, constitutes evidence of what it is worth. See San Diego Land & Town Co. v. Jasper, 189 U.S. 439 (1902). Unaccepted offers are weak evidence of market value. See Emerald Oil Co. v. Commissioner, 73 F.2d 681 (10th Cir. 1934).

7 Blinn Lumber Co. v. County of Los Angeles, 216 Cal. 474, 14 P.2d 512 (1932).

8 Ibid.

California Supreme Court held that rent could not be deducted because it represented the purchase price of the leasehold interest.

Prior to *De Luz*, many taxpayers had entered into leases of tax-exempt property containing rentals fixed upon the assumption that the rental cost would be deducted in valuing their possessory interests for tax assessment purposes. The *De Luz* decision affected a change in their expectations. The 1957 legislature attempted to return these taxpayers to their prior position by enacting section 107.1 of the Revenue and Taxation Code. This code section recognizes the *De Luz* formula, which allows no rental cost deduction, as the proper method of estimating the market value of a leasehold interest in tax exempt realty. For leases entered into prior to *De Luz*, however, the full cash value for assessment purposes is defined to be only that part of the market value, if any, which exceeds the present worth of the total rentals during the unexpired term of the lease. This formula restores the assessed valuations of pre-*De Luz* leaseholds to substantially what they would have been under the *Blinn* formula, because under either method the rental cost of the leasehold interest is deducted in order to determine the full cash value.

Since the *De Luz* case had held that a rental cost deduction violated the "full cash value" requirement of the constitution it was not reasonable to suppose that the legislature could, by simply enacting a statute, allow such a deduction. For this reason the assessors of most counties disregarded section 107.1 and assessed all possessory interests in tax-exempt property in accordance with the *De Luz* formula. In the recent case of *Forster Shipbuilding Co. v. County of Los Angeles*, however, the California Supreme Court upheld the constitutionality of section 107.1 on the theory that even though the constitution requires an assessment based upon full cash value, the legislature has the power to prescribe a deviation for the limited purpose of restricting a change in the case law to have prospective effect only. The court reversed the board of equalization for Los Angeles County, which had held that the leasehold was properly assessed at its full cash value even though no deduction was allowed for the present worth of the rentals. In *Star-Kist Foods, Inc. v. Quinn*, decided eighteen days later, the taxpayer had not appeared before a board of equalization prior to seeking judicial relief. Instead, it sought a writ of mandate to compel the assessor to make the rental deduction. The court held that this writ would not lie because the taxpayer had another remedy, specifying that it should have paid the tax under protest and then sued for a refund.

Thus, in 1960, the California Supreme Court has held in *Forster* that a 1957 statute which appeared to be unconstitutional was actually valid, and has indicated in *Star-Kist* that a remedy is available to taxpayers whose property was not assessed in accordance with that statute, even though the deadline for equalization proceedings may have passed. Whether these decisions were correct, what remedies might be available to taxpayers who have already paid their taxes for prior years without securing a rental deduction from their assessments, and the scope of permissible judicial inquiry into these matters will be considered in this Comment.

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11 See note 1 *supra*.
14 54 A.C. 503, 6 Cal. Rptr. 545, 354 P.2d 1 (1960).
15 *Id.* at 507, 6 Cal. Rptr. at 547, 354 P.2d at 3.
I

DID THE LEGISLATURE HAVE THE POWER TO PRESCRIBE A DEVIATION FROM THE FULL CASH VALUE REQUIREMENT?

In deciding that the legislature had the power to make case law prospective, the court in Forster presented a persuasive and logical argument:

We have hitherto recognized that the California Constitution permits an appellate court to apply an overruling decision prospectively only, even though it thereby temporarily preserves and applies a mistaken interpretation of the Constitution . . . . Such temporary application of the rule of an overruled case may be prescribed by appropriate legislation as well as by judicial decision, for the Legislature is no less competent than the Court to evaluate the hardships involved and decide whether considerations of fairness and public policy warrant the granting of relief.16

Somewhat less persuasive is the court's conclusion that the legislature exercised this power in enacting section 107.1, because by its own terms, this section was enacted under section 14 of article XIII of the California constitution,17 which permits statutory classifications of personal property for purposes of taxation without regard to the full cash value requirement. Section 107.1 provides:

A possessory interest, when arising out of a lease of exempt property, consists of the lessee's interest under such lease and is hereby declared to be personal property within the meaning of Section 14 of Article XIII of the Constitution of the State of California.

The full cash value of such possessory interest is the excess, if any, of the value of the lease on the open market, as determined by the formula contained in the case of De Luz Homes, Inc. v. County of San Diego (1955), 45 Cal2d 546, over the present worth of the rentals under said lease for the unexpired term thereof.

A possessory interest taxable under the provisions of this section shall be assessed to the lessee on the same basis or percentage of valuation employed as to other tangible property on the same roll.

This section applies only to possessory interests created prior to the date on which the decision of the California Supreme Court in De Luz Homes, Inc. v. County of San Diego (1955), 45 Cal2d 546, became final. It does not, however, apply to any of such interests created prior to that date that have thereafter been, or may hereafter be, extended or renewed.18

Forster held that the first paragraph of this section was unconstitutional on the ground that it declared leaseholds in tax-exempt realty to be personal property when, in fact, they were real property, and thus was an invalid attempt to extend by legislative definition the terms used in the constitution.10 This, in effect, constituted an amendment of the constitution without observance of the formal pro-

17 "The Legislature shall have the power to provide for the assessment, levy and collection of taxes upon all forms of tangible personal property . . . not exempt from taxation under the provisions of this Constitution, in such manner, and at such rates, as may be provided by law, and in pursuance of the exercise of such power the Legislature . . . may classify any and all kinds of personal property for the purpose of assessment and taxation in a manner and at a rate or rates in proportion to value different from any other property in this State subject to taxation and may exempt entirely from taxation any or all forms, types or classes of personal property." CAL. CONST. art. XIII, § 14.
18 (Emphasis added.)
A necessary implication of the holding in the Forster case is that the first paragraph is severable from the remainder of section 107.1. Yet the second paragraph uses the word "such" which refers to the types of possessory interests defined in the first paragraph. Since the first paragraph is necessary to make the statute intelligible, the Forster decision cannot be taken as physically severing it from the following paragraphs, but only as invalidating the declaration of the constitutional power under which the statute was purportedly enacted. Hence, the court has really rewritten, rather than struck down, the first paragraph of section 107.1. It is at least arguable that an entire statute should fail if it is unconstitutional in part and not easily divisible. Certainly it would be less confusing if, instead of judicially rewriting statutes, the courts would strike them down and force the legislature to pass new laws in keeping with its constitutional powers.

B. Period of Application of the Statute

An important question which arises under section 107.1 is whether it applies from the date of the De Luz decision, 1955, rather than from the date of its enactment, 1957. If the statute is retroactive, pre-De Luz leaseholds should have had their rental costs deducted on tax lien dates falling between 1955 and 1957. But if the statute governs only from the date of its enactment, pre-De Luz leaseholds were properly assessed at a higher value for the two-year period.

The legislature probably intended to make the application of the statute prospective, since that would be the logical result of a new statute classifying personal property. The court held in Forster, however, that the legislature's intention to make case law prospective, which was unexpressed, replaced its expressed intention to classify personality. It must be decided whether this replacement carries with it a like replacement of the intention to make the statute applicable only from the date of its enactment. In other words, if the legislature had intended to enact section 107.1 under its power to make case law prospective, it undoubtedly would have intended that its provisions be retroactive to the date De Luz was handed down. Logic, if not justice, would seem to require such an interpretation of the legislative intent.

C. Scope of Application of the Statute

Section 107.1 purports to prescribe an exclusive method for valuing leasehold interests in tax-exempt realty. Thus, it would appear that the legislature intended

20 See Cal. Const. art. XVIII.
22 But see text at notes 40-42 infra indicating that this problem may be largely moot due to a three-year statute of limitations on suits for a refund. Therefore, presumably only those who did not pay their taxes when due, but who waited until the last three years to do so, could sue for a refund. Since taxpayers could not have known that a subsequent statute would entitle them to a rental deduction, they would have had no justifiable reason for not paying the full tax on time. A retroactive application of the statute would lead to the result that only delinquent taxpayers would be benefited, which would be questionable as a matter of policy. Furthermore, any refund of taxes collected prior to the statute's enactment might be construed an unconstitutional gift of public funds (See Cal. Const. art. IV, § 31), unless it could be held to be within the rule that an appropriation of public funds for a public purpose is not a gift. See Alameda County v. Jansen, 16 Cal. 2d 276, 106 P.2d 11 (1940).
the capitalization method to be the sole means of estimating the market value of pre-De Luz leaseholds, irrespective of the existence of other methods for valuing such interests. This broad interpretation of the statute would have some support had the legislature acted under its power to classify personal property. But because Forster held that the statute's only valid function was to make De Luz inapplicable to pre-existing leaseholds in exempt property, the scope of section 107.1 has been narrowed to those situations involving facts similar to those present in De Luz, i.e., where the assessor has relied upon the capitalization formula in determining value.

D. Justification for Reliance Upon the Blinn Case

By holding that the legislature had exercised its power to make a change in case law prospective, the court in Forster indicated that the legislature found that a taxpayer was justified in relying upon the belief that a portion of the value of his leasehold equal to its rental cost would never be taxed during the existence of the lease. It is difficult, however, to understand how a taxpayer could have reasonably relied upon such a belief. First, the decision in Blinn Lumber Co. v. County of Los Angeles, which held that the rental cost could be deducted, was clearly wrong. Obviously, the purchase price of property, here represented by rent, cannot be deducted in order to determine its full cash value; if it could, a building costing $40,000 and worth the same amount would have no market value at all. The Blinn case confused income for accounting purposes with income for appraisal purposes. Nevertheless, it might be argued that when the California Supreme Court renders a decision a taxpayer is justified in relying upon it. The court has been known to reverse itself, however, and it would seem particularly likely to do so where an earlier opinion was clearly erroneous.

A second and even better reason why a taxpayer's reliance upon Blinn would not be justified is that a taxpayer entering into a lease would have no assurance that the assessor would always value his interest by the capitalization method. It must be remembered that capitalized income is only one evidence of full cash value and that a recent sale of the property interest, or a similar one, on the open market would provide a better indication of value. Therefore, the lessee must always assume that a sale of a similar leasehold may provide the assessor with better data on which to base his assessment. At best, he could only hope that the capitalization of income method would be used.

23 See De Luz Homes, Inc. v. County of San Diego, 45 Cal. 2d 546, 563-64, 290 P.2d 544, 555 (1955) stating: "Assessors generally estimate value by analyzing market data on sales of similar property, replacement costs, and income from the property, and since no one of these methods alone can be used ... the assessor ... may exercise his discretion ... and the board's decision in regard to specific valuations and the methods of valuation employed are ... reviewable only for arbitrariness, abuse of discretion, or failure to follow standards prescribed by the legislature."

24 216 Cal. 474, 14 P.2d 512 (1932).


26 Id. at 562, 290 P.2d at 554. Actually, a leasehold would probably never be sold for a lump sum. Instead, the purchaser would most likely pay the lessee for his equity and would assume the balance of the rental payments. The payments assumed, however, are a part of the purchase price.
II

WHAT REMEDY SHOULD BE AVAILABLE TO A TAXPAYER FOR NONDEDUCTION OF RENTAL COST?

While it is not clear from the Forster opinion whether the provisions of section 107.1 are retroactive to the date of the De Luz decision or whether they apply prospectively, it is certain that from the date of its enactment in 1957 rental costs should have been deducted in determining full cash value under the capitalization of income method. The question now remaining is how a taxpayer may obtain a refund for those tax years in which the assessor ignored section 107.1 and denied a rental cost deduction in determining full cash value.

Prior to Star-Kist Foods, Inc. v. Quinn the procedures for correcting an improper assessment were relatively clear. The tax lien date in California is noon of the first Monday in March, and after the taxes have been levied the taxpayer has the right to appear before a board of equalization to protest the validity or amount of the assessment. If the taxpayer appears before a board of equalization, its decision as to both the specific value of the property in question and the propriety of the method of evaluation becomes final, subject to judicial review only for arbitrariness or abuse of discretion. If the taxpayer does not appear before a board of equalization by the third Monday in July he will be forever barred from raising any question as to the value of his property for purposes of that year's assessment.

In addition to the remedy of equalization, certain statutes provide relief to taxpayers who complain that their assessments are or were illegal. Case law has defined an illegal assessment as one that is a complete nullity, such as an assessment of property outside the boundaries of the taxing jurisdiction, of property not owned by the assessee or of exempt property, or an assessment for an unlawful purpose. When one of these situations exists the taxpayer is not required to seek equalization unless he also wishes to raise a value question, nor is he subject to the July deadline for equalization.

At any time during or after the tax year of the assessment of which he is complaining the taxpayer may either pay under protest and sue for a refund within six months after such payment, or he may refuse to pay and then file for cancellation of his tax levy. If he files for a cancellation, the county board of supervisors must either reject or approve his petition, but if they reject it he may then bring

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27 54 A.C. 503, 6 Cal. Rptr. 545, 354 P.2d 1 (1960).
28 CAL. REV. & TAX. CODE § 405.
29 See note 23 supra.
30 City & County of San Francisco v. County of San Mateo, 36 Cal. 2d 196, 222 P.2d 80 (1950); Security First Nat'l Bank v. County of Los Angeles, 35 Cal. 2d 319, 217 P.2d 946 (1950); Luce v. City of San Diego, 198 Cal. 405, 245 Pac. 196 (1926); Los Angeles Shipbuilding & Dry Dock Corp. v. County of Los Angeles, 22 Cal. App. 2d 418, 71 P.2d 282 (1937).
33 City & County of San Francisco v. County of San Mateo, 36 Cal. 2d 196, 222 P.2d 80 (1950).
35 CAL. REV. & TAX. CODE §§ 5136-38.
36 CAL. REV. & TAX. CODE § 4986.
37 Ibid. Signal Oil & Gas Co. v. Bradbury, 183 A.C.A. 38, 6 Cal. Rptr. 736 (1960), indicates that the board of supervisors must either grant or deny the application, so that the taxpayer can get into court and that a writ of mandate will issue to compel the board to take action if it refuses to do so.
an action in the superior court. If the payment is made under protest, no petition is presented to the board of supervisors, and the taxpayer may institute judicial proceedings to recover the illegally assessed taxes. Where such taxes are paid, but not under protest, the taxpayer must file for a refund within three years after payment of the tax. Here again the board of supervisors acts first, subject to de novo judicial review in the superior court if the refund is denied. Thus, if a taxpayer’s claim can be classified as one raising the issue of an illegal assessment, he has at least three years in which to seek relief even though he paid the tax on time and without raising objection, and an even longer period if he does not pay the tax at all. On the other hand, if a mere question of value is raised, the taxpayer must seek timely equalization proceedings before he pays his tax bill.

It seems clear that the problem of whether rental costs should have been deducted from the capitalized income of pre-De Luz leaseholds is one of valuation, which would restrict the taxpayer to the remedy of timely equalization. This view is borne out by the case of Los Angeles Shipbuilding & Dry Dock Corp. v. County of Los Angeles, decided prior to De Luz. The assessor, applying the rule of Blinn, misunderstood the amount of rent the lessee was paying. If the correct amount had been deducted, there would have been no income left to capitalize and the leasehold would have had no value whatever; but because of his error, the assessor assigned the leasehold a full cash value in excess of $500,000. The taxpayer did not seek equalization, but attempted to utilize the statutory procedures for correcting erroneous or illegal assessments. The court denied recovery, holding that the sole question was one of value which required timely equalization proceedings as a prerequisite to judicial action. The courts have followed this requirement strictly, even where the wrong value was assigned arbitrarily, discriminatorily, by means of a wrongful classification of the property, or by an incorrect method of evaluation.

As in Los Angeles Shipbuilding, the Star-Kist case clearly presented a question of the value of the leasehold interest in tax-exempt realty. Furthermore, the fact that the proper use of the capitalization method was in issue shows that Star-Kist raises a question of valuation, since its only function is to determine the value to be assessed. Thus, the taxpayer who did not seek equalization for the years 1955

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38 Ibid.
41 Ibid. See also Signal Oil & Gas Co. v. Bradbury, 183 A.C.A. 38, 6 Cal. Rptr. 736 (1960).
42 See cases cited at note 30 supra.
44 Luce v. City of San Diego, 198 Cal. 405, 245 Pac. 196 (1926).
46 City & County of San Francisco v. County of San Mateo, 36 Cal. 2d 196, 222 P.2d 80 (1950). In this case a dirt fill was misclassified as land rather than as an improvement. Under a peculiar law covering property owned by a city and county outside of its own boundaries, only the land and not the improvements was taxable by the assessor of the County of San Mateo. Even though the dirt fill should have been exempt from taxation, the court held that this was a value question and that the taxpayer’s action was barred because it had not appeared before the State Board of Equalization. It would seem that nondeduction of the rental cost would be an even clearer question of value than the inclusion of exempt property in the assessment of partially exempt realty. Yet the Star-Kist case concluded that no question of value is involved in the former situation. See 54 A.C. at 507, 6 Cal. Rptr. at 547, 354 P.2d at 3.
48 See notes 5-7 supra and accompanying text.
to 1960 would now be barred from raising any question as to the value assigned to his leasehold during that period.

The court in *Star-Kist* came to the taxpayer's rescue, however. By discreetly misapplying the law, it declared that the question was not one of a proper valuation, but one of an illegal assessment which could be corrected under the statutory remedies without the necessity of equalization.\(^{49}\) The court went out of its way to make this declaration, since the taxpayer had applied for a writ of mandate to compel the deduction of the present worth of the rent, and the court was only obliged to hold that a writ of mandate would not lie because other remedies were available, namely, either equalization or the statutory remedies. The court specifically stated that the appropriate remedy was payment under protest followed by suit for a refund.\(^{50}\) This, too, was not required by the court's decision, and it is arguably a dictum. In reality, however, this statement was analogous to a declaratory judgment because it told the taxpayer what its rights were and exactly how to obtain its rental deduction. In addition, it was a forecast of what the decision of the court would be if a taxpayer did in fact pay under protest and then brought suit for a refund.

How did the court manage to find that the question was not one of value? It did so by stating that the only question before it was one of law, i.e., whether section 107.1 was constitutional.\(^{51}\) Of course, that question had already been resolved by the *Forster* case eighteen days earlier.\(^{52}\) Yet the court stated that Star-Kist may pay its tax under protest and sue for a refund, since the sole issue in the subsequent suit would be one of constitutional law which a court, rather than a board of equalization, has special competence to decide.\(^{53}\) It would seem that *Forster* and *Star-Kist* have settled the constitutional question, so that all that remains to be litigated is the determination of what formula the assessor used to value the leasehold. This was previously held to be a question of value which required timely equalization.\(^{54}\) Furthermore, even if constitutionality could be raised and litigated for a third time in a suit for a refund, it would have to be raised by the county as a defense, and could not be the basis of the taxpayer's action.

The decision in *Star-Kist*, although not based on precedent, is kind to taxpayers who suddenly learned from *Forster* that for several years they have been entitled to a rental deduction. Even though the equalization period for 1960 has already passed, taxpayers may now file for cancellation of their tax levies to the extent of the excess taxes arising from nondeduction of rental payments where their leasehold interests were valued under the capitalization of income method. They may also pay their taxes under protest and bring suit for a refund of this excess. In addition, either of these remedies may be used to rectify wrongful assessments during prior years if the tax for those years remains unpaid. Furthermore, excess taxes paid without protest within the last three years may be recovered by filing for a refund.

There still remains a problem of recovering excess taxes paid without protest.

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\(^{49}\) *Star-Kist Foods, Inc. v. Quinn*, 54 A.C. 503, 507, 6 Cal. Rptr. 545, 547, 354 P.2d 1, 3 (1960).

\(^{50}\) *Ibid.*

\(^{51}\) *Ibid.*

\(^{52}\) When Star-Kist brought its action *Forster* had not been decided.

\(^{53}\) *Star-Kist Foods, Inc. v. Quinn*, 54 A.C. 503, 507, 6 Cal. Rptr. 545, 547, 354 P.2d 1, 3 (1960).

on which the three-year statute of limitations has now run. Here, it would seem that recovery is barred, although a court sympathetic enough to circumvent the requirement of equalization may well find a way to remedy the problem raised by the statute of limitations. If the statute of limitations is not in issue, there is the further question of whether the provisions of section 107.1 are retroactive to the date of the De Luz decision or whether they apply only prospectively. If the present trend towards rescuing the taxpayer continues, section 107.1 will probably be held effective from the date of De Luz.

III

HOW WILL THE TAXPAYER'S ACTION BE HANDLED BY THE TRIAL COURT?

In De Luz,55 and even in Star-Kist,56 the court has been careful to indicate that questions of value are to be decided only by a board of equalization. Therefore, what kind of trial should be conducted in a case where a taxpayer sues under one of the statutes for the correction of illegal assessments, but raises the issue of an improper valuation, i.e., that the assessor has made no deduction for the rental costs of a leasehold interest in tax-exempt property? Obviously, the court cannot conduct an inquiry into the full cash value of the leasehold, since that is a function of equalization proceedings, the deadline for which has now passed. Contrary to the court's declarations in Star-Kist, the sole issue before the trial court will not be the question of the constitutionality of section 107.1, since that was already decided by Forster.

The first issue which the court must decide is what formula the assessor used in valuing the leasehold interest. If it can be proved that the assessor merely capitalized income, it will be a simple matter for the trial court to order a deduction of the present worth of the rental costs. But if the assessor used another method of valuation, or if he relied upon several methods, as he has a right to do,57 the function of the court becomes less clear. The De Luz case held that the methods of valuation employed as well as the specific value of the leasehold in question are to be decided by a board of equalization and that the only function of the trial court is to review the board's decision for arbitrariness or abuse of discretion.58 In the suit for a refund suggested by Star-Kist, however, there will have been no equalization and the court, instead of the board, will review the acts of the assessor. By analogy to the normal situation where the court reviews the decision of the board, it may be argued that scope of review should be limited to determining whether the assessor abused his discretion or acted arbitrarily in valuing the leasehold, since a broader inquiry would amount to conducting an equalization proceeding in the trial court. Thus, if the assessor could show that he used two or even three methods of valuing the leasehold but did not retain a record of his computations, the court would most likely find no abuse of discretion, even though he used the capitalization of income method and rental costs were not deducted. On the other hand, even review for abuse of discretion is broader than the normal scope of review in cases brought under the statutes to correct illegal assessments. In these cases the question of value is not at issue; the court is limited to such

55 See note 23 supra.
58 Ibid.
questions as whether the property involved was subject to assessment, whether
the assessee is the owner, and whether the assessment was for a proper purpose.\textsuperscript{59}

The statement in \textit{Star-Kist} that a court may review a method of valuing lease-
holds without the necessity of equalization, under statutes not designed to cover
valuation matters, broadens the permissible scope of the trial court's inquiry with-
out precisely defining its boundaries.

\textit{Ronald S. Peterson}