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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

WESTERN STATES PETROLEUM ASSOCIATION, Plaintiff and Respondent, v. STATE BOARD OF EQUALIZATION, Defendant and Appellant.	B225932 (Los Angeles County Super. Ct. No. BC403167)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert L. Hess, Judge. Affirmed.

Kamala D. Harris, Attorney General, Paul D. Gifford, Senior Assistant Attorney General, Felix E. Leatherwood, W. Dean Freeman, and Brian D. Wesley, Deputy Attorneys General, for Defendant and Appellant.

Cahill Davis & O'Neall, C. Stephen Davis, Cris K. O'Neall and Andrew W. Bodeau for Plaintiff and Respondent.

For more than 25 years, the State Board of Equalization (SBE) directed county assessors to assess the value of the "real property" at petroleum refineries by applying valuation formulas generally applicable to all industrial and manufacturing properties. (See Cal. Code Regs., tit. 18, § 461.) Then, responding to entreaties from a number of county-level government officials, SBE concluded that it had become necessary to adopt new valuation formulas uniquely applied to petroleum refineries. (See Cal. Code Regs., tit. 18, § 474 (hereafter Rule 474).) The current litigation by the Western States Petroleum Association (WSPA) followed. WSPA filed a complaint for declaratory relief that Rule 474 was invalid for several reasons, including that SBE had violated various requirements of the Administrative Procedures Act (APA; see Gov. Code, § 11340 et seq.) in adopting Rule 474 and/or that Rule 474 was inconsistent with constitutional law (see Cal. Const., art. XIIIA) and statutory law (see Rev. & Tax. Code, § 51, subd. (d)). On materially undisputed facts presented in the context of cross-motions for summary judgment (MSJ), the trial court declared Rule 474 invalid, and entered judgment in favor of WSPA. SBE appeals. We affirm.

FACTS

Background: The Valuation of Real Property

From California's earliest days, its residents and business enterprises have pursued their economic activities and expectations in light of the constitutional principle that "'all property in this state shall be taxed in proportion to its value, to be ascertained as directed by law . . . .'" (*State Bd. of Equalization v. Board of Supervisors* (1980) 105 Cal.App.3d 813, 820, quoting Cal. Const. of 1849, art. XI, § 13.) This constitutional principle remains in influence in present times. (See Cal. Const., art. XIII, § 1, subd. (a) ["All property is taxable . . . ."].) At the same time, however, the defining or classifying of what constitutes "real property," or "tangible personal property," or any other cognizable property interest subject to taxation, is largely a legislative and/or regulatory function, as is the establishment of the rules that prescribe the formulas by which the value of real property or other types of taxable property is to be determined. Created by state constitutional amendment in 1879, SBE is an elective body with the authority, among its

other powers, to assure that real property assessment practices — i.e., valuation formulas — are equalized and made uniform across our state so that real property owners share the load equally when it comes time to pay their real property taxes. (See Cal. Const., art. XIII, §§ 17, 18; and see also Gov. Code, § 15606.)

The issues in case before us today grow out of the valuation intricacies involved when assessors assess the value of the real property at an industrial or manufacturing property. These valuation intricacies involve the interplay between valuing the land, valuing the improvements, i.e., buildings and structures, and valuing the fixtures on the site such as machinery and equipment, which are more-or-less affixed. As a general proposition, the definition of real property for purposes of ad valorem real property taxes encompasses all three of the components noted in the previous sentence. (See Rev. & Tax. Code, §§ 104, 105; and see generally *Morse Signal Devices v. County of Los Angeles* (1984) 161 Cal.App.3d 570, 577.) The noted interplay is the result of the long-recognized accounting realities that fixtures typically depreciate in value year-to-year, whereas land and improvements typically appreciate in value year-to-year, the last few years of our state's history notwithstanding.

As best as we are able to discern from the parties' briefs on appeal and the appellate record, assessors for many years leading up to the late 1970's assessed the value of land and improvements as one appraisal unit, and assessed the value of fixtures as a separate appraisal unit in order to account for depreciation. And, it appears from the appellate record that while the owner of a manufacturing or industrial property may have received a single real property tax bill each year, the bill would have been the reflection of an assessed value for land and improvements, and an assessed value for fixtures. The total assessed value of the real property would then be computed by adding the two distinct appraisal units, with the ad valorem real property tax then imposed on the total assessed value. As a result of the practice of applying these separate appraisal units valuation formulas, the value of the fixture-related appraisal unit of an industrial or manufacturing property would, in the absence of the addition of new fixtures, decline

each year to reflect depreciation. This means that the amount of real property taxes attributable to fixtures would also decline.[1]

In June 1978, the voters of California adopted Proposition 13 (Prop. 13), adding article XIIIA to the California Constitution.[2] Broadly summarized, Prop. 13 restricts the "maximum amount of any ad valorem tax on real property" to a prescribed percent of the "full cash value of such property," and requires that the "full cash value" of real property be measured as of the time of acquisition. (See art. XIIIA, § 1.) This acquisition value is commonly known as the base year value. Prop. 13 also limits any year to year increase in the base year value to a prescribed inflation factor, not to exceed two percent per year. (See art. XIIIA, § 2). In short, Prop. 13 changed our state's real property tax system from a system based on the current market value of real property, to a system based on the acquisition value of real property, plus an allowable, trended or indexed increase over time. Basically, that means that real property owners do not pay property taxes on unrealized or non-monetized increases in the value of their real property as it is defined under the law. After Prop. 13, as it was before, the task of classifying or defining what constitutes real property for purposes of any ad valorem real property tax, as well as the adoption of formulas by which the value of a taxable unit of such real property is to be computed, largely remains a legislative and/or regulatory function, but restricted by Prop. 13.

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[1] Any decline in taxes associated with a decline in the value of the fixture-related appraisal unit would not necessarily mean that the total property tax bill would decline. If the value of the appraisal unit for land and improvements increased, and the increased taxes associated with the land and improvements appraisal unit outpaced any decline in taxes associated with the fixtures appraisal unit, then the overall tax bill would increase.

[2] All references to article XIIIA are to that article of the California Constitution.

In its original, initiative version, Prop. 13 contained no language on the subject of what would occur when the market value of real property declined below its trended or indexed taxable value — its Prop. 13 value — due to a disaster or economic conditions. In November 1978, the voters of California addressed this issue by adopting Proposition 8 (Prop. 8), which amended Prop. 13. Prop. 8 provides that the taxable trended or indexed value of real property enrolled on an assessor's books, its Prop. 13 value, may be adjusted down to reflect its actual fair market value when the actual fair market value of the property declines below its taxable trended or indexed value, i.e., its Prop. 13 value, due to a disaster or economic conditions. (See art. XIIIA, § 2, subd. (b).)

After the voters of California adopted Prop. 13 and Prop. 8 in the 1978 elections, the Legislature formed a task force to study the implementation of the new real property tax system mandated under the propositions. In January 1979, the task force submitted a report and recommendations to the Assembly Committee on Revenue and Taxation, the so-called "Task Force Report." The Task Force Report is well-recognized as a statement of legislative intent for purposes of the interpretation of the statutes enacted to implement Prop. 13 and Prop. 8. (See, e.g., *Auerbach v. Assessment Appeals Bd. No. 1* (2006) 39 Cal.4th 153, 161.)

Among its myriad elements, the Task Force Report recommended that any statute governing the formulas to be used for determining whether a particular taxable unit of real property had suffered a decline in value should be based on a continuation of the then widely-followed practice of assessing the value of real property by the appraisal unit approach. In the words of the Task Force Report: " . . . [T]he purpose of Prop. 13 was to place a cap on the value of [real] property in any one year, while Prop. 8 sought to allow the values [of real property] to rise and fall without restriction at any point below this cap, should actual market values so dictate. [¶] The purpose of the 'appraisal unit'

concept is to ensure that these increases or declines in value *be measured in the same manner as such property was appraised prior to Prop. 13*." (Italics added.)[3]

Effective July 1979, the Legislature enacted a number of Revenue and Taxation Code sections to implement the property tax system mandated by Prop. 13 and Prop. 8. (See Stats. 1979, ch. 242, p. 506.) Within this legislation, Revenue and Taxation Code section 51 prescribes the formulas for fixing the two real property value figures which are to be compared in determining whether a decline in value has occurred.[4] It provides that an assessor should compare the actual current market value of a particular unit of real property against its enrolled "Prop. 13 value" in order to determine whether the former figure is less than the latter figure, thus evidencing a decline in value.

Under section 51, subdivisions (a)(1) and (a)(1)(D), the Prop. 13 value of real property as of the lien date (a given tax year), is its "base year value, compounded annually since the base year by an inflation factor" which in "no event shall . . . exceed 2 percent of the prior year's value." Under section 51, subdivision (a)(2), the current market value of real property as of the lien date, is measured as its "full cash value [in the event it was exposed for sale in an open market transaction in which neither the buyer or seller had an unfair advantage] . . . , taking into account reductions in value due to

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[3] The Task Force's recommendation was eminently sensible. In enacting Prop. 13 to render change to the tax system on real property, the voters presumably had in mind the then-existing definition of real property, and the then-existing methods for valuing real property, and they voted to constitutionally restrict taxes on real property within such a framework. If definitions and valuation formulas could be changed at will by the Legislature, or regulators, it would undermine the voters' clear intent to restrict taxes on real property as then defined and valued. In summary, an owner of a taxable appraisal unit of real property before Prop. 13 could expect that he or she would receive the benefit of restricted taxes on the same "appraisal unit" of "real property" after Prop. 13.

[4] All references to section 51 are to that section of the Revenue and Taxation Code.

damage, destruction, depreciation, obsolescence, removal of property, or other factors causing a decline in value."[5]

This brings us to section 51, subdivision (d),[6] which provides: "For purposes of this section [governing the valuation of real property in a decline-in-value examination], 'real property' means that *appraisal unit* that persons in the marketplace *commonly buy and sell as a unit*, or that is *normally valued separately*." (Italics added.) Here ends our historical review of the constitutional and statutory underpinnings of the current case.

SBE and Its Regulations

As noted above, SBE tries to equalize and make uniform throughout the state the real property assessment practices employed by assessors. To that end, SBE adopts rules that "govern assessors when assessing . . . ." (See Cal. Code Regs., tit. 18, § 1.) In 1979, after the voters adopted Prop. 13 and Prop. 8, and after the Legislature enacted statutes to implement the tax system which was constitutionally-mandated by the propositions, SBE adopted California Code of Regulations, title 18, section 461 (hereafter Rule 461).[7] From then until now, Rule 461 has prescribed (with exceptions that are discussed below) the valuation formulas that are to be applied when determining "real property value changes" resulting from a "purchase, change of ownership or a decline in value." From 1979 to the present day, Rule 461 has remained materially the same, with minor changes that mostly deal with format.

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[5] The "taking into account" language included in section 51, subdivision (a)(2), is interesting. On the one hand, we cannot lightly disregard the language as meaningless. (*Manufacturers Life Ins. Co. v. Superior Court* (1995) 10 Cal.4th 257, 274 [statutory interpretation should not render any part of a statute meaningless].) On the other hand, all of the expressly cited elements found in section 51, subdivision (a)(2), would appear to be factors which would be considered in any event by a buyer and seller, without regard to any statute, in a hypothetical sale of a property in a fair, open market sale.

[6] Hereafter, section 51(d).

[7] All references to Rule 461(e) are to Rule 461, subdivision (e).

Rule 461(e) provides: "Declines in values will be determined by comparing the current lien date full value of the appraisal unit [i.e., its value in the event it was exposed for sale in a fair, open market transaction] to the indexed base year full value of the same unit [i.e., the taxable value of the appraisal unit as measured and enrolled under Prop. 13] for the current lien date. *Land and improvements constitute an appraisal unit . . . .* For purposes of this subdivision, [i.e., for purposes of determining a decline in value] *fixtures and other machinery and equipment classified as improvements constitute a separate appraisal unit*." (Italics and underscoring added.)

An "Assessors' Handbook" issued by SBE in October 2002 explains Rule 461 in these terms: "Measuring declines in value can be simple when only one appraisal unit is involved. Fixtures, for example, as a separate appraisal unit are valued at current market value on the lien date and at the indexed base year value [i.e., the Prop. 13 value], and the lower value is enrolled." The Assessors' Handbook then explains that, when measuring declines in values "in a total property appraisal" situation, i.e., where land and buildings are examined in an appraisal unit, and fixtures are examined in a separate appraisal unit, the task "may become more difficult" because each appraisal unit must be examined "separately." The Assessors' Handbook provides a decline in value example in which the land and buildings are examined as an appraisal unit ("Unit 1') and measured by a current market value ($575,000) and a Prop. 13 factored or indexed base year value ($185,000), with the lower figure ($185,000) enrolled as the assessed value of that appraisal unit. In the example, fixtures are examined as a separate appraisal unit ("Unit 2") and measured by a current market value ($40,000) and a Prop. 13 factored or indexed base year value ($52,000), with the lower figure ($40,000) enrolled as the assessed value of that appraisal unit. The example concludes by calculating a total assessed property value consisting of "Unit 1 + Unit 2" which measures in at $225,000 ($185,000 for land and improvements and $40,000 for fixtures).

In September 2006, after Rule 461 had been applied to petroleum refineries for more than 25 years, SBE's board members voted 3-2 to adopt Rule 474 to address specifically "the valuation of the real property, personal property, and fixtures used for the refining of petroleum." In December 2006, SBE submitted Rule 474 to the Office of Administrative Law (OAL) for review. In February 2007, SBE withdrew its submission. In April 2007, SBE resubmitted Rule 474 to the OAL. In June 2007, the OAL rejected Rule 474 upon determining that SBE's "Initial Statement of Reasons" (ISR) why it was adopting the rule (see Gov. Code, § 11346.2, subd. (b)) was inadequate. In September 2007, SBE submitted Rule 474 with a revised ISR. SBE thereafter submitted a "Final Statement of Reasons," including two addenda. (Gov. Code, § 11346.9.) Broadly summarized, SBE's Final Statement of Reason's for Rule 474 is the agency's official proclamation that it had determined it was necessary to adopt a special rule applicable to petroleum refineries in order to implement Prop. 8's decline in value provisions correctly.

In November 2007, the OAL approved Rule 474 for transmittal to the Secretary of State and publication in the California Code of Regulations. Rule 474 became effective in December 2007.

Rule 474

Rule 474 reads:

> "(a) The provisions of this rule apply to the valuation of the real property, personal property, and fixtures used for the refining of petroleum.
>
> "(b) General.
>
> "(1) The unique nature of property used for the refining of petroleum requires the application of specialized appraisal techniques designed to satisfy the requirements of article XIII, section 1, and article XIIIA, section 2, of the California Constitution. To this end, petroleum refineries and other real and personal property associated therewith shall be valued pursuant to the principles and procedures set forth in this section.
>
> "[¶] . . . [¶]
>
> "(c) Definitions For the purposes of this section.

" [¶] . . . [¶]

(2) *'Appraisal unit' consists of the real and personal property that persons in the marketplace commonly buy and sell as a unit.*

"(d) Declines in Value. For the purposes of this section:

"(1) Declines in value of petroleum refining properties will be determined by comparing the current lien date full value of the appraisal unit [i.e., its value in the event it was sold in an open market transaction] to the indexed base year full value [i.e., the Prop. 13 value] of the same unit.

"(2) *The land, improvements, and fixtures and other machinery and equipment classified as improvements for a petroleum refining property are rebuttably presumed to constitute a single appraisal unit . . . .*

"(3) In rebutting this presumption, the assessor may consider evidence that:

"(A) The land and improvements including fixtures and other machinery and equipment classified as improvements are not under common ownership or control and do not typically transfer in the marketplace as one economic unit; or,

"(B) When the fixtures and other machinery and equipment classified as improvements are not functionally and physically integrated with the realty and do not operate together as one economic unit." (Italics added.)

SBE's Final Statement of Reasons (FSR) for Rule 474

SBE's FSR for the adoption of Rule 474, inclusive of two addenda, summarizes the public comments received by SBE during the rule-making process,[8] and sets forth SBE's responses to those public comments, along with SBE's analysis and reasons for

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[8] The "rule-making file" for Rule 474, submitted to the trial court for review in connection with the cross-MSJs, ostensibly contains the "record" of the rule-making process, i.e., the underlying testimony and written submissions, received and complied by SBE.

adopting Rule 474. SBE's FSR shows that representatives from the petroleum refining industry, including WSPA, voiced opposition to Rule 474 during the rulemaking process. Summarized, the industry representatives' asserted reason against a special valuation methodology applicable to petroleum refinery properties was that such properties should not be considered unique from other manufacturers, such as breweries or sawmills, for purposes of assessing the taxable value of "real property." Further, that Rule 474 would violate Prop. 13, Prop. 8, and section 51(d). As one industry representative testified: At an oil refinery, raw material goes in, it's heated, and a finished product comes out; at a brewery, raw material goes in, it's heated, and a finished product comes out.

On the other side of the aisle, SBE heard from government related and aligned witnesses, including a number of county assessors, who offered testimony and written submissions showing that the land, improvements, and fixtures at a petroleum refinery is typically bought and sold as "a single unit" in the marketplace. In other words, a buyer ordinarily would not buy the land and improvements apart from a refinery's piping and heating and other refining equipment, and would not buy a refinery property and then dismantle its refining equipment and convert the land and improvements to a different purpose. The assessors further testified that a predominant part of the value of a refinery is in its fixtures, that is, the refining machinery, and that this differentiates refineries from other manufacturing industries, where the opposite is typically the situation. As one assessor explained by an example: The value at a refinery is in its fixtures, whereas, at a "cannery operation," the "value is typically in the land and in the structures." Essentially, the assessors proffered the proposition that refineries should not be allowed to claim a "decline in value" on fixtures (equipment) as a separate appraisal unit based on depreciation because the value of the land, improvements and fixtures would be better fixed by lumping all these elements together and viewing them as a single appraisal unit. There was no evidence that market factors affecting refineries had changed between the 1970's and 2000's.

As noted above, SBE's FSR includes its conclusion that it was "necessary" to adopt Rule 474 to comport with assessors assessment practices to section 51, subdivision (d), and to the decline in value provisions of Prop. 8, i.e., article XIIIA, section 2, subdivision (b).

The Litigation

In December 2008, WSPA filed a complaint challenging Rule 474's validity by way of four causes of action: first, it sought declaratory relief that SBE had violated the APA in adopting Rule 474 because the rule was inconsistent with constitutional law (Prop. 13) and statutory law (section 51(d)), and not necessary to implement such law; second, it sought declaratory relief that Rule 474 violated Prop. 13's cap on year-to-year increases in assessed value of real property; third, it sought declaratory relief that Rule 474 violated Prop. 13's requirement for a two-thirds vote of the Legislature for raising real property taxes; and the fourth sought declaratory relief that Rule 474 violated petroleum refiners' constitutional right to equal protection and uniformity of laws.

In October 2009, SBE and WSPA filed cross-motions for MSJ. Reduced to its essence, WSPA's MSJ argued that Rule 474's treatment of the land, improvements and *fixtures* at a petroleum refinery as a single "appraisal unit" in valuing the refinery's "real property" was inconsistent with section 51(d). WSPA also argued that, by changing the methodology for *valuing* a refinery, Rule 474 caused an increase in real property value, and, thus, an increase in property taxes, in violation of Prop. 13. SBE's cross-MSJ argued that it had the authority under Prop. 8 and section 51(d) to treat the land, improvements and *fixtures* at petroleum refineries as a single "appraisal unit" in the decline-in-value context.

On March 29, 2010, the trial court entered a minute order and extensive statement of reasons granting WSPA's MSJ. On April 27, 2010, the court entered judgment in favor of WSPA in accord with its order granting summary judgment. The court's judgment includes these declarations concerning the validity of Rule 474:

> " . . . Rule 474 is invalid for the following reasons:

"1. Rule 474 does not meet all six of the criteria in Government Code section 11349.1[, subdivision] (a). A thorough review of the Rulemaking File, taken as a whole, persuades the Court that the necessity, authority, consistency and reference prongs have not been met;

"2. Government Code section 11349.1[, subdivision] (d)(2), requires that [SBE] comply with Government Code section 11346.3. The Economic Impact Statement prepared by . . . SBE does not comply with this requirement because the calculation of costs contained therein bears no relationship to the actual effect of the change from the Rule 461 methodology to the Rule 474 methodology, and also because . . . SBE did not determine the cost (tax) that a representative refinery would necessarily incur in reasonable compliance with the new rule (Gov. Code, § 113465.5[, subdivision] (a)(9)), but instead . . . SBE attempted to determine the cumulative economic impact of the new rule based on the aggregate assessed value of all California refineries;

"3. Rule 474 is inconsistent with . . . section 51 because it omits a material portion of the statutory definition of 'appraisal unit' ('normally valued separately') . . . and fails to fully account for reductions in value due to depreciation and obsolescence or other factors . . . by permitting increases in land value to offset declines in fixtures value. Rule 474 is also inconsistent with other regulations and procedures — notably Rule 461[, subdivision] (e), predating section 51 — which are consistent with section 51.

"4. Rule 474, in purpose and effect, violates article XIIIA, section 3, . . . in that it is enacted for the purpose of increasing revenues by means of a change in the method of computation, without the necessary vote of the Legislature . . . ." (Italics omitted.)

SBE filed a timely notice of appeal.

DISCUSSION

I. The Deference Issue

SBE contends the judgment in favor of WSPA must be reversed because the trial court "committed error by substituting its judgment in place of [SBE's judgment]." We understand SBE to argue that the trial court should have done nothing more than review the rule-making file compiled in connection with SBE's adoption of Rule 474. Further, if the rule-making file contained substantial evidence supporting SBE's conclusion that it had become necessary and was reasonable to have a specific valuation methodology applied to petroleum refineries, then the court should have confirmed the validity of Rule 474. We disagree that the issue is as simple as SBE is trying to lead one to believe.

As the Supreme Court has explained, "there are two categories of administrative rules . . . ." (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 10 (*Yamaha*).) "Quasi-legislative rules" represent a form of substantive lawmaking, where an adopting agency "has been delegated the Legislature's lawmaking power." (*Ibid*.) In such a situation, "[b]ecause agencies granted such substantive rulemaking power are truly 'making law,' their quasi-legislative rules *have the dignity of statutes*." (*Yamaha, supra*, at p. 10, italics added.) Given this "dignity," when a court addresses the validity of a quasi-legislative rule, the scope of its review is "narrow." More specifically, if a court is satisfied a rule is within the lawmaking authority delegated by the Legislature, and that there is support for the adopting agency's conclusion that the rule is reasonably necessary to implement the purpose of the controlling statute, judicial review largely comes to an end. (*Id.* at pp. 10-11.) Narrow review, however, still depends on context in that "even quasi-legislative rules are reviewed independently for consistency with controlling law." (*Id.* at p. 11, fn. 4.)

The other category of administrative rule reflects an agency's *interpretation* of a controlling statute. (*Yamaha, supra,* 19 Cal.4th at p. 11.) Unlike quasi-legislative rules, an agency's adoption of a rule interpreting a statute "does not implicate the exercise of a delegated lawmaking power." (*Ibid*.) On the contrary, the agency's action in adopting an

interpretative rule represents the agency's legal opinion of the statute's meaning and effect, and those questions always lie in the end "within the constitutional domain of the courts." (*Ibid*.) "Because an interpretation is an agency's *legal opinion*, . . . rather than the exercise of a delegated legislative power to make law, it commands a commensurably lesser degree of judicial deference." (*Ibid*.)

With nothing more than a citation to *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 568 (*Western States Petroleum Assn.*), SBE argues Rule 474 is a "quasi-legislative" rule, and, as such, that it should have been subject only to narrow judicial review which included a "strong presumption of regularity." For a number of reasons, SBE's legal argument is not helpful to us in addressing the correctness of the trial court's judgment in the current case. First, *Western States Petroleum Assn.* was a discovery and admissibility of evidence case decided under the California Environmental Quality Act (CEQA); it did not involve a regulation adopted by SBE. In *Western States Petroleum Assn., supra*, 9 Cal.4th 559, the Air Resources Board (ARB) adopted regulations, and a petroleum industry association sought *administrative review afforded under the CEQA* for repeal of the regulations. (*Id*. at pp. 565-566.) The association then brought an action for traditional and administrative mandate in the trial court as is proper under the CEQA, where issues arose on whether the ARB's decisions on adoption and non-repeal of the regulations had been a "quasi-judicial" decision or a "quasi-legislative" decision. The association also sought resolution of whether it would be allowed discovery on matters not involved during the administrative rule-making process, and on whether the association could introduce evidence at trial of its mandate action in the court from outside the administrative record. (*Id*. at pp. 566-579.) The Supreme Court ruled that evidence from outside the administrative record in the CEQA-related mandate action was not admissible in the trial court because the claims that the ARB had failed to comply with CEQA were required to be decided based upon the materials included in the administrative record. (*Ibid*.)

After reading *Western States Petroleum Assn., supra*, 9 Cal.4th 559, we are not persuaded that we must —as SBE seems to argue — deem SBE's adoption of Rule 474 to have been a "quasi-legislative" action as a matter of law, with the appropriate standard of judicial review attached accordingly. Apart from this, even assuming that SBE is correct that its decision to adopt Rule 474 was a "quasi-legislative" action, it does not follow that judicial review must end upon an examination of the rule-making file for substantial evidence in support of SBE's conclusions that it was reasonable for the agency to adopt Rule 474. SBE has not persuaded us that the trial court further erred in addressing the issue of whether Rule 474 was "consistent" with overriding constitutional and statutory law. (See *Yamaha, supra*, 19 Cal.4th at p. 11, fn. 4.) In other words, we depart with SBE in its implicit proposition that it may "legislate" any rule or regulation that it desires, with only limited judicial review, provided its actions are coated with a patina of reasonableness. SBE may only adopt rules and regulations that are consistent with the laws of this state. (See generally, *Woods v. Superior Court* (1981) 28 Cal.3d 668, 679.)

The record before us on appeal shows the trial court properly addressed WSPA's allegation that Rule 474 was inconsistent with governing statutory and constitutional law. Again, assuming SBE is correct the trial court made its own qualitative evaluation of the reasonableness of adopting a regulation that prescribes specific valuation formulas for petroleum refineries, this does not necessarily require that we reverse the judgment in this case. On the contrary, apart from any allegedly improper "re-weighing" of evidence in this case affecting issues such as "necessity" or "reasonableness," the predominant issue remains whether the trial court correctly decided that Rule 474 was inconsistent with constitutional and statutory law. The correctness of the court's determination is discussed in more detail below. But at the outset, we reject SBE's contention that the judgment in this case must be reversed because the trial court "fundamentally violated the separation of powers doctrine" by acting as a legislative, rule-making body.

Because consistency with controlling law is the predominant issue in this case, we are not persuaded to reverse the judgment based upon SBE's argument that the trial court's review should have been completed as soon as it eyed substantial evidence in the rule-making file supporting SBE's conclusion that adopting Rule 474 was reasonable.

II. The Statutory Consistency Issue

SBE contends the judgment in favor of WSPA must be reversed because the trial court erred in declaring Rule 474 to be inconsistent with statutory law. We disagree.

A. The Governing Law

An administrative agency may not adopt a regulation unless it is consistent with the statutes being implemented or interpreted. (See Gov. Code, § 11342.2; and see, e.g., *Woods v. Superior Court, supra,* 28 Cal.3d at p. 679; *Nortel Networks, Inc. v. Board of Equalization* (2011) 191 Cal.App.4th 1259, 1276-1277.) Stated in other words, where administrative regulations conflict with acts of the Legislature, the regulations are void, and "no protestations that they are merely an exercise of administrative discretion can sanctify them." (*Morris v. Williams* (1967) 67 Cal.2d 733, 737.)

When a court is presented with a dispute whether a regulation is consistent with statutory law, the court's task is to determine whether the regulation conflicts with the overriding legislative mandate. (*Woods v. Superior Court, supra,* 28 Cal.3d at p. 679.) In examining whether such a conflict exists, a court is not required to give deference to the adopting agency's interpretation of the statutory law in question; instead, the court independently interprets the pertinent statutory law. (See, e.g., *Aguiar v. Superior Court* (2009) 170 Cal.App.4th 313, 323.) In short, a court "does not . . . defer to an agency's view when deciding whether a regulation lies within the scope of [the agency's] authority . . . . The court, not the agency, has 'final responsibility for the interpretation of the law' under which the regulation was issued." (*Yamaha, supra,* 19 Cal.4th at p. 11, fn. 4.) With these principles in mind, we turn to SBE's appeal.

B. Analysis

Section 51(d) provides that, in determining if there has been a decline in value of real property within the meaning of article XIIIA, section 2, subdivision (b), i.e., within

the meaning of Prop. 8, "'real property' means that appraisal unit that persons in the marketplace commonly buy and sell as a unit, or that is *normally valued separately*." (Italics added.) In light of the assessment practices which existed at the time section 51(d) was enacted, and in light the legislative history (predominantly the Task Force Report) showing the Legislature intent to carry forward existing assessment practices under Prop. 13 and Prop. 8, the second definition of "real property" found in section 51(d) — i.e., "that appraisal unit that is normally valued separately" — means that fixtures shall be assessed as a separate appraisal unit of real property because they were at the time of the adoption of section 51(d) "normally valued separately" in order to account for depreciation. Indeed, in its opening brief on appeal, SBE expressly concedes that Rule 461(e) reflects SBE's own consistent interpretation of section 51(d), covering a period of decades, "to require that fixtures be treated as a separate appraisal unit."

Rule 474, subdivision (d)(2)[9] provides that, when it comes time to assess the value of a petroleum refinery's defined real property in the "decline in value" context, the "land, improvements and fixtures . . . for a petroleum refining property are rebuttably presumed to constitute a single appraisal unit. . . ." The rebuttable presumption created by Rule 474(d) is not consistent with section 51(d). Under section 51(d), as consistently interpreted and implemented by SBE through Rule 461(e) for decades, the fixtures at a "generic" industrial property shall be assessed as a separate appraisal unit within the broader framework of real property because fixtures have always been "normally valued separately" to account for depreciation. But, under Rule 474(d)(2), the fixtures at a petroleum refinery are rebuttably presumed not to be a separate real property appraisal unit. The trial court found that assessing the value of fixtures as a separate appraisal unit and rebuttably presuming that fixtures are not to be assessed as a separate appraisal unit are inconsistent approaches. We are not persuaded by SBE's arguments on appeal to find they are consistent approaches.

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[9] Hereafter, Rule 474(d)(2).

SBE's arguments are based on the position that it recently learned about the unique marketplace characteristics of petroleum refineries which differentiate them from other industrial or manufacturing properties. SBE tells us that, in conjunction with its recent acquisition of the knowledge that petroleum refineries are unique, it also has come up with a new interpretation of section 51(d) which would allow the valuation approach established by Rule 474(d)(2) to be applied consistent with section 51(d). In the words of SBE, it came to realize that Rule 461(e) did "not fit every circumstance," and, for this reason, "simply changed" its prior interpretation of section 51(d) under which fixtures were uniformly assessed as a separate appraisal unit.

In this vein, SBE argues that section 51(d) may be interpreted to require a marketplace approach to valuation in the "decline in value" context, depending upon the manner in which the marketplace values a particular type of industrial or manufacturing property. In short, SBE argues that section 51(d) commands that fixtures are not to be assessed as a separate appraisal unit if the marketplace does not value fixtures separately. SBE further argues that, because petroleum refineries are usually valued as a single unit in the marketplace, Rule 461(e) should be viewed as inconsistent with section 51(d)'s marketplace approach insofar as petroleum refineries are concerned. Thus, according to SBE, it was "obligated to adopt a new regulation" for petroleum refineries that was consistent with section 51(d)'s marketplace approach. This then is the foundation for SBE's conclusion that adopting Rule 474 was "necessary." As SBE sees it, section 51(d) says assess the value of certain real properties based on the marketplace, but Rule 461(e) does not result in a true measure of the value of real property at petroleum refineries in the marketplace. On the other hand, Rule 474(d)(2) will result in a true assessment of the value of real property at petroleum refineries in the marketplace.

Underpinning SBE's argument is its interpretation that section 51(d) authorizes the agency to exercise discretion "to choose the proper appraisal unit" from the two appraisal units of real property which are defined in section 51(d) whenever a "a changing marketplace" makes one definition more reasonable than the other. As SBE's argues: section 51(d) does not "specifically dictate how county assessors should appraise property for

decline-in-value purposes," but rather, "give[s] assessors the ability to determine the appropriate appraisal unit on a *case-by-case* basis."

SBE's argument ignores the history of assessment practices, including the history of accounting for depreciation in fixtures, and ignores the legislative history of section 51(d). SBE's suggestion that section 51(d) may be construed to mean that the value of real property at one type of industrial enterprise may be assessed using a "sold as a single unit" appraisal formula, while the value of real property at a different type of industrial enterprise may be assessed by viewing the property as having separate parts, so-to-speak, with a particular part, namely fixtures, valued separately when it is normally segregated in such a manner in the marketplace, cannot be sustained when the legislative history is examined to shed light on the statute's meaning. This is particularly true when there is no evidence that there has been an actual change in circumstances in the marketplace, rather than merely a change in SBE's perspective of the marketplace. The legislative history of section 51(d) convinces us that the Legislature's intent when it enacted the section was not what SBE now ascribes to the section.

The legislative history of section 51(d) persuades us that the Legislature, in enacting the section, did not intend to approve the use of two, alternative and disjunctive definitions of appraisal units of real property at the sole discretion of SBE. Instead, the Legislature was acknowledging that the then-existing valuation formulas contemplated valuing land and improvements as an appraisal unit, and valuing fixtures as a separate appraisal unit to allow for depreciation, and it intended that these valuation formulas would carry forward under Prop. 13 and Prop. 8, particularly in the absence of evidence of any change in circumstances justifying a change in valuation formulas. Giving such a meaning to section 51(d) makes sense when its historical context is remembered. In its effort to implement Prop. 13 and Prop. 8 in accord with the voters' intent, the Legislature reasonably concluded that it was important that the valuation formulas existing before the voters spoke would remain the same under the new tax system established by the voters. In short, the voters' conception of "real property" as it was defined and valued would remain the same under the new real property tax system as it was under the prior real

property tax system in order to assure that the restrictions imposed on real property taxes would actually result in realized restrictions on real property taxes. The Legislature well-reasoned that, if the manner in which real property was understood and valued did not remain constant in the transition from the prior real property tax system to the new real property tax system, then the voters' intended goal of restricting real property taxes might prove elusive. SBE's interpretation of section 51(d) essentially discards the statute's intent to fix in place the pre-Prop. 13 and Prop. 8 valuation formulas for real property. Instead, SBE would interpret section 51(d) to allow for the adoption of new valuation formulas by which the framework governing real property could be manipulated to avoid the restrictions on real property taxes imposed by the voters when they approved Prop. 13 and Prop. 8.

SBE's argues that its interpretation of section 51(d) — which it will apply only to petroleum refineries — is entitled to deference. We disagree for two reasons. First, the interpretation of section 51(d) now proffered by SBE is not contemporaneous with the enactment of section 51(d), and the agency's new interpretation detours from SBE's long-standing interpretation of section 51(d) as evidenced by Rule 461(e). (*Henning v. Industrial Welfare Com*. (1988) 46 Cal.3d 1262, 1278 [when an agency's interpretation of a statute is not contemporaneous with the statute's enactment, and contradicts the position which the agency had enunciated at an earlier date, close to the enactment of the statue, it cannot command significant deference].) Second, SBE is keeping its earlier interpretation of section 51(d), as reflected in Rule 461(e), in place for industrial and manufacturing properties save for petroleum refineries. SBE's continuing belief in the validity of its earlier interpretation of section 51(d) in our view further cuts against giving deference to its new interpretation. Because SBE, in adopting Rule 474, adopted a new regulation in conflict with section 51(d), no amount of protestations that it is a reasonable regulation will sanctify it.[10]

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[10] Contrary to the assertion in the concurring opinion, this statutory consistency analysis is by no means "dicta." WSPA filed a complaint seeking declaratory relief that SBE had violated the APA in adopting Rule 474 because, among other claims, it was

III. The Economic Impact Statement (EIS) Issue

SBE contends the judgment must be reversed because the trial court erred in ruling that SBE's EIS did not comply with requirements of the APA. We disagree.

A. The Governing Law

Government Code section 11346.3, subdivision (a), provides that a state agency proposing to adopt a regulation "shall assess the potential for adverse economic impact on California business enterprises . . . ." In assessing the potential for adverse economic impact, the adopting agency "shall consider the proposal's impact on business, with consideration of industries affected including the ability of California businesses to compete with businesses in other states." (Gov. Code, § 11346.3, subd. (a)(2).)

Government Code section 11346.4, subdivision (a), provides that a state agency in proposing to adopt a regulation shall submit a "notice of proposed action" to the OAL for publication in a regulatory notice register. Section 11346.4, subdivision (a)(3), further states that the adopting agency shall distribute copies of its notice of proposed action to certain identified persons and businesses "likely to be affected" by the regulation.

Government Code section 11346.5 prescribes the information that an adopting agency shall include in a notice of proposed action. Section 11346.5, subdivision (a)(8), provides that, when an adopting agency "makes an initial determination that [a proposed regulation] will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, it shall make a declaration to that effect in the notice of proposed action." When making a declaration of no significant adverse impact, the

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inconsistent with section 51(d). Our decision in this area is therefore necessary to a full decision on the merits and is binding precedent. (*Bunch v. Coachella Valley Water Dist.* (1989) 214 Cal.App.3d 203, 212.) In addition, our determination that SBE's existing EIS is not an adequate informational document for purposes of showing the economic impact of Rule 474 will not put an end to the overriding issue of public importance presented in this case. In the event SBE hereafter resubmits an EIS which adequately informs the public of the true economic impact of the new rule, the issue of whether SBE may adopt a new formula for valuing petroleum refineries without conflicting with statutory law will still remain.

adopting agency "shall provide in the record [the] facts, evidence, documents, testimony, or other evidence" upon which the agency relied to support its declaration. (*Ibid*.) Under section 11346.5, subdivision (a)(9), the adopting agency's notice of proposed action shall include a description of "all cost impacts, known to the agency at the time the notice of proposed action is submitted to the [OAL], that a representative private . . . business would necessarily incur in reasonable compliance with the proposed action."

B. SBE's EIS

SBE's EIS is prefaced with what may fairly be described as a cover sheet. The cover sheet indicates that the EIS had been approved by SBE's chief counsel. The cover sheet includes four sentences, largely mirroring language found in the APA, summarizing Rule 474's potential economic impact: "The cost impact on private persons or businesses will be insignificant. [Rule 474] will not have a significant adverse economic impact on businesses. [¶] [Rule 474] will not be detrimental to California businesses in competing with businesses in other states. [¶] [Rule 474] will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand business in the State of California."

Beneath the cover sheet is a fill-in-the-blank, standardized state government form ("Form 399") entitled "ECONOMIC AND FISCAL IMPACT STATEMENT." A series of check-marked boxes on this form indicate that Rule 474 "will impact businesses . . . " (identified as 20 petroleum refineries); that no businesses will be created or eliminated ("none"); that no jobs will be created or eliminated ("none"); and, finally, that the rule will not affect the ability of California businesses to compete with other states by making it more costly to produce goods or services ("no"). In a section of the form reserved for information regarding "Estimated Costs," the words "See attachment" are typed in.

The referenced attachment, in its entirety, reads as follows:

"ECONOMIC AND FISCAL IMPACT STATEMENT ATTACHMENT

Section B

Petroleum refineries are projected to pay $1.4 million more in property taxes in the first year of implementation with that amount increasing

annually. Compliance costs should not increase because most refinery assessments are routinely appealed and appraisal and financial accounting costs are already incurred. Petroleum refineries have similar assessed and market values. Petroleum refineries do not change ownership frequently. Fixtures typically decrease in value. Land typically appreciates in value.

Calculations

$32	Billion total assessed value of refineries
$25	Billion fixtures
$ 7	Billion land and non fixture improvements
x .02	Maximum Prop 13 annual inflation factor
$.14	Billion in assessed value
x .01	Basic tax rate
.014	Billion in increased taxes

Section D

The proposed rule does not mandate the use of specific technologies or equipment or prescribes specific actions or procedures. Rule 474 changes only the assessment scheme for fixtures used in refineries."

C. Analysis

The trial court correctly ruled that SBE's EIS failed as an informational document. Generously construed, the EIS consists of a bald statement, devoid of any understandable foundation, that Rule 474 would cause petroleum refineries to pay $1.4 million more in property taxes in the first year of the rule's implementation. The statement is without any reference to supporting facts or evidence in the rule-making file. The "calculations" provided are little more than a numbers dump, with no explanation of how or from where the numbers are derived. It is not altogether clear in our view whether the numbers used in the "calculations" reflect actual facts. Moreover, even if the accuracy of the numbers is accepted, the calculations do not provide a comprehensible road map to follow to show how Rule 474 will impact petroleum refineries in actual implementation. The EIS leaves a reader without an understanding of what the taxes on a representative refinery would

have been under the formerly applicable Rule 461(e), and what the taxes would be under the new rule Rule 474(d)(2). (See Gov. Code, § 11346.5, subd. (a)(9) [an agency shall evaluate the costs to be incurred by a "representative business" affected by a proposed regulation].) Alternatively, even an aggregated, industry-wide comparative analysis (with estimated figures) under Rule 461(e) and Rule 474(d)(2) would have helpful to understanding economic impact. SBE would have the public simply accept the agency's ultimate conclusion ($1.4 million) without the ability to evaluate the conclusion.

Apart from the vagueness of the EIS itself, we agree with WSPA that the record in this matter, i.e., the rule-making file, does not show that SBE's actual underlying analysis of the potential economic impact of Rule 474 was based on "adequate" facts as required under the APA. (See Gov. Code, §§ 11346, subd. (a)(1); 11346.2, subd. (b)(4); 11346.3, subds. (a), (b); 11346.5, subds. (a)(8), (a)(9); 11347.3.) We agree with the trial court's conclusion that SBE's economic impact analysis lacked meaningful quantification of Rule 474's "real world" impact. That is, an economic impact based on data concerning fixture depreciation on assessed values. SBE tells us the trial court's conclusion is wrong because "[t]here is no evidence in the record in conflict with [SBE's EIS]." This may be true, but SBE misses the point. Assuming SBE is correct that there is an "absence of evidence" in the rule-making file conflicting with the final conclusions in its EIS, it does not follow that the trial court was required to give the EIS a passing grade. The trial court's better-focused examination looked for evidence in the record supporting the final conclusions set forth in SBE's EIS.

In its opening brief on appeal, SBE offers that it based its final conclusion upon a determination that "$1.4 million . . . would represent [the additional tax, at the basic tax rate of one percent, on] a potential increase in assessed value of $140 million spread over a value base of approximately $32 billion." What we believe SBE is saying is that the $140 million in fixture value which otherwise would have been depreciated under 461, would not be depreciated under Rule 474, and thus, would be subject to property taxes. For the most part, SBE's conclusion regarding Rule 474's impact is found in a three-page "issue paper" or "revenue estimate" prepared by SBE's Research and Statistics Section.

The issue paper explains Rule 474 in operation, and explains how its implementation would affect assessed values, and it does so far more understandably than SBE's EIS. The issue paper presents model calculations projected over a six-year period which show the difference in assessed values under rule 461 and 474. The problem with the issue paper, however, is that it is largely hypothetical — the valuation data figures used in the issue paper's calculations are assumed. Moreover, the issue paper itself shows that the figures ultimately used in the calculations in SBE's EIS (e.g., $25 billion total assessed value) are not true figures based on real world assessed values. The issue paper expressly shows that total assessed values of petroleum refineries located in Los Angeles County and Contra Costa County were compiled ($14 billion) and that this localized assessed value figure was then "project[ed] . . . on a statewide basis" to come up with a total assessed value of $25 billion for all of the refineries located in the state. It is unclear what factor was applied to make the projection from $14 billion to $25 billion, and it would appear that the projection is based on the predicate that there is uniformity in the size and composition of refineries as between Los Angeles County and Contra Costa County on the one hand, and refineries located elsewhere. Assessed values will vary depending on how long a refinery has held its existing base-year value and the amount of assessable new construction it has undertaken and other factors. Changes in the values of the elements which are input into the calculations under the formulas (depreciating fixtures/removals and additions of fixtures/appreciating land) will change the end results of the calculations.

The trial court was particularly concerned about SBE's EIS and its underlying analyses, and ordered a special hearing at which the parties were to explain whether SBE disclosed accurate and sufficient information regarding the increased taxes to be expected from Rule 474's implementation. At the hearing, the trial court and SBE's counsel engaged in extensive exchanges on the court's concern whether there was a real world foundation for the assumed figures, including those for fixture depreciation that SBE had employed to make its analysis. During these exchanges, the court expressly asked to be pointed to the part of the record showing where such information existed; we do not see

an express answer. In the end, SBE's counsel submitted that SBE had not been required to undertake an economic analysis of the nature that the court was suggesting, and that SBE's "projections," standing alone, were sufficient under the APA.

On appeal, SBE's argument is similar. Rather than directly addressing WSPA's claims about the shortcomings of SBE's EIS and the underlying analysis, SBE argues the APA is intended to advance participation in the rule-making process, and that, in SBE's words, so long as it satisfied the APA's "basic minimum procedural requirements," no more was required. According to SBE, a "[f]ailure to comply with every procedural facet of the APA" does not mean that an ensuing regulation is necessarily invalid. This is so, says SBE, because the APA gives agencies "flexibility when preparing an economic impact report." SBE cites *Pulaski v. Occupational Safety & Health Stds. Bd.* (1999) 75 Cal.App.4th 1315, 1328, 1336. We agree with SBE in the abstract that the APA does not require an adopting agency to comply with "exacting standards" in order to adopt a regulation. We depart with SBE in its implicit proposition that flexibility in making reasonable economic estimates and projects equates with hypothetical estimates and projections.

In the final examination, we reject SBE's argument that it satisfied Government Code section 11346.5 merely by making this statement in its EIS: "The cost impact on private persons or businesses will be insignificant." In our view, the APA requires more than mere statements that mirror the language of the APA. Public participation in the rule-making process requires that an adopting agency show the foundation for its conclusions, if only so that the foundation and conclusions may be subject to meaningful scrutiny. SBE did not satisfy this standard in adopting Rule 474.

V. Conclusion

Having found that the trial court correctly declared Rule 474 to be inconsistent with section 51(d), we decline to address whether the rule is unconstitutional in that it also conflicts with article XIIIA. (*Elkins v. Superior Court* (2007) 41 Cal.4th 1337, 1357.) In addition, because we have concluded that SBE's EIS for Rule 474 was not

adequate under the APA, we find it unnecessary to address SBE's remaining arguments that it did not violate the APA in adopting the rule.

DISPOSITION

The judgment is affirmed. Respondent is awarded costs on appeal.

CERTIFIED FOR PUBLICATION

BIGELOW, P. J.

I concur:

FLIER, J.

Western States Petroleum Association v. State Board of Equalization - B225932

RUBIN, J. - CONCURRING

I concur in the judgment.

The majority opinion rests on two separate holdings to affirm the trial court's grant of summary judgment in favor of respondent Western States Petroleum Association. I agree with the second of these holdings – that the trial court correctly concluded that California Code of Regulations, title 18, rule 474 (Rule 474) did not comply with the Economic Impact Statement requirement of Government Code section 11346.3, subdivision (a). I thus agree with the majority's analysis in Part II of the opinion and would affirm the judgment on that ground.

In my view the majority's analysis of whether Rule 474 is consistent with Revenue and Taxation Code section 51, subdivision (d) is dicta and need not have been considered in light of the court's resolution of the Economic Impact Statement issue.[1]

RUBIN, J.

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[1] I do not believe we need to reach the issue of Rule 474's compliance with the applicable statute. But if I were to reach the merits, I have doubts whether Rule 474 has run afoul of the statute. Rather than ignoring either part of the statutory test (bought and sold as a unit/normally valued separately), Rule 474 makes a factual determination that over the years since the passage of Revenue and Taxation Code section 51, subdivision (d), and earlier California Code of Regulations, title 18, Rule 461, it appears that petroleum refineries are now being bought and sold in one unit comprising real property, improvements and fixtures. On that factual assumption, the new rule creates a rebuttable presumption that refineries are sold in such a manner. Rule 474 still requires individual valuation based on how the marketplace actually functions, and, in my view, appears to be consistent with the statutory language.