



STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082
949-241-9088 • FAX 916-323-3387
www.boe.ca.gov

BETTY T. YEE
First District, San Francisco

SEN. GEORGE RUNNER (RET.)
Second District, Lancaster

MICHELLE STEEL
Third District, Orange County

JEROME E. HORTON
Fourth District, Los Angeles

JOHN CHIANG
State Controller

CYNTHIA BRIDGES
Executive Director

August 30, 2012

**Re: *Revenue and Taxation Code Section 423.7
Assignment No. 12-093***

Dear Mr. _____ :

This is in response to your request for our opinion on the application of Revenue and Taxation Code¹ sections 421, subdivision (f) and 423.7 to your client's property in _____ County known as _____ Ranch (the Property).² As detailed below, since the Property is Williamson Act property, its value may be determined under section 423, subdivision (a)(2), regardless of whether it is deemed to be subject to a wildlife habitat contract.

Facts

You represent the owner of _____ Ranch (Landowner). The Landowner and the Assessor disagree on the proper application of sections 421, subdivision (f) and 423.7 to the Property. The Assessor's position is that the special valuation method of section 423.7 applies to the Property, while you assert that it does not and that the Property must be valued by the income method under section 423, subdivision (a)(2).

The Property is Williamson Act property, meaning that it is subject to a contract under the California Land Conservation Act, which restricts its use in exchange for a reduced valuation for property tax purposes. The Property is also subject to a Warranty Easement Deed in favor of the United States, dated November 5, 2003 (the Easement). The easement is a wetlands reserve program easement pursuant to the federal Wetlands Reserve Program (WRP) administered by the United States Department of Agriculture, Natural Resources Conservation Services. The WRP provides payments and cost sharing to farmers in exchange for restoring farmed wetlands. You provided a copy of the Easement to us.

¹ All section references are to the Revenue and Taxation Code.

² This opinion is being requested in connection with a hearing before the Yolo County Assessment Appeals Board. Both parties are aware that we will be issuing this opinion, have examined and/or provided the facts set forth herein, and were given an opportunity to provide additional information in connection with this letter. The parties anticipate that this opinion will be issued prior to any hearing.

The Easement states that:

The purpose of this easement is to restore, protect, manage, maintain, and enhance the functional values of wetlands and other lands, and for the conservation of natural values including fish and wildlife *and their* habitat, water quality improvement, flood water retention, groundwater recharge, open space, aesthetic values, and environmental education.

(Emphasis in original.)

The Easement grants to the United States the following interest: "[A]ll rights, title and interest in the lands comprising the easement area described in Part I and appurtenant rights of access to the easement area, but reserving to the Landowner only those rights, title and interest expressly enumerated in Part II." In Part II, the Easement reserves to the Landowner record title, quiet enjoyment, control of access, recreational use, and the right to certain subsurface resources.

There is no express provision in the Easement that provides that the Property is eligible to receive water for waterfowl or waterfowl management purposes from the federal government. In addition, there is no provision in the Easement that would prohibit the Property from receiving such water.

The Property does not have an established income stream.

Law & Analysis

California Constitution, article XIII, section 8 states, in part:

To promote the conservation, preservation and continued existence of open space lands, the Legislature may define open space land and shall provide that when this land is enforceably restricted, in a manner specified by the Legislature, to recreation, enjoyment of scenic beauty, use or conservation of natural resources, or production of food or fiber, it shall be valued for property tax purposes only on a basis that is consistent with its restrictions and uses.

Consistent with this express constitutional grant of authority, in 1965 the Legislature enacted the California Land Conservation Act, Government Code sections 51200-51294, commonly known as the Williamson Act, which authorizes cities and counties to enter into contracts with landowners to restrict their use for a minimum of 10 years in exchange for favorable property tax treatment. (Property Tax Annotation 210.0005 (OAG June 5, 1984).)

For property tax purposes, "open-space land" includes land "that has been restricted by a political subdivision or an entity of the state or federal government, acting within the scope of its regulatory or other legal authority, for the benefit of wildlife, endangered species, or their habitats." (Rev. & Tax. Code, § 421, subd. (g)(4).)

Section 422 provides, in relevant part, that:

For the purposes of this article [Division 1, Part 2, Chapter 3, Article 1.5, §§ 421-430.5] and within the meaning of Section 8 of Article XIII of the Constitution, open-space land is "enforceably restricted" if it is subject to any of the following:

- (a) A contract;
- ...
- (e) A wildlife habitat contract.

A "contract" is defined as a contract executed pursuant to the Williamson Act. (Rev. & Tax. Code, § 421, subd. (b).) Since it is subject to a contract executed pursuant to the Williamson Act, the Property constitutes *enforceably restricted open-space land* under section 422, subdivision (a).

Section 423 details how to value enforceably restricted open-space land and provides, in relevant part:

Except as provided in Sections 423.7 and 423.8, when valuing *enforceably restricted open-space land*, other than land used for the production of timber for commercial purposes, *the county assessor shall not consider sales data on lands*, whether or not enforceably restricted, *but shall value these lands by the capitalization of income method* in the following manner:

- (a) The annual income to be capitalized shall be determined as follows:
 - ...
 - (2) Where sufficient rental information is not available, the income shall be that which the land being valued reasonably can be expected to yield under prudent management and subject to applicable provisions under which the land is enforceably restricted. There shall be a rebuttable presumption that "prudent management" does not include use of the land for a recreational use, as defined in subdivision (n) of Section 51201 of the Government Code, unless the land is actually devoted to that use.

(Emphasis added.)

Under this section, an assessor is prohibited from using the comparative sales method of valuation "except as provided under sections 423.7 and 423.8." We interpret this as meaning that the Assessor *may not* use the comparative sales method unless either section 423.7 or 423.8 applies; however, this does not mean that the Assessor *must* use the comparative sales method if section 423.7 or 423.8 applies. There may be situations where the property being valued also independently qualifies for valuation under section 423 because it is otherwise enforceably restricted under a provision other than section 422, subdivision (e).

In 1973, the Legislature added "wildlife habitat contracts" to the list of enforceable restrictions set forth in section 422 as subdivision (e), set forth above. (Assessors' Handbook Section 521, *Assessment of Agricultural and Open-Space Properties* (October 2003) (AH 521), p. II-60.) Section 423.7 provides that when valuing open-space land subject to a wildlife habitat

contract, as defined by section 421, subdivision (f), all assessors and the county board must value that land pursuant to the special valuation methods laid out in that section, which is "using the average current per-acre value based on recent sales including the sale of an undivided interest therein, of lands subject to a wildlife habitat contract within the same county," to be calculated as set forth more fully in that section. A particular open-space land must be subject to a "wildlife habitat contract" to be subject to this special valuation method.

Section 421, subdivision (f) defines a "wildlife habitat contract" as:

[A]ny contract or amended contract or covenant involving, except as provided in Section 423.8, 150 acres or more of land entered into by a landowner with any agency or political subdivision of the federal or state government limiting the use of lands for a period of 10 or more years by the landowner to habitat for native or migratory wildlife^[3] and native pasture. These lands shall, by contract, be eligible to receive water for waterfowl or waterfowl management purposes from the federal government.⁴

It is not clear precisely what the Legislature was requiring by including that the lands shall "be eligible to receive water for waterfowl or waterfowl management purposes from the federal government" by contract. We do not think, however, the answer is dispositive in this matter because the Property is Williamson Act property. Therefore, the Property independently qualifies for valuation under section 423.

The legislative history sheds light on the intent of these provisions. Sections 421, subdivision (f) and 423.7 were enacted as Senate Bill 702 in 1973 (Stats. 1973, Ch. 1165). The Assembly Committee on Revenue and Taxation analysis states that the bill establishes a special valuation procedure for wildlife habitats. The analysis recites the criteria from section 421, subdivision (f) that the "land must be eligible to receive water for water fowl [sic] management purposes by the federal government." The committee's comments state:

This bill is a response to a problem in Merced County. Certain "duck club" lands in the western portion of the county have long-term contracts with the federal government[,], which restricts (sic) their use to wildlife habitats. The county assessor has valued the lands at a higher value than that which would reflect the restricted use. Merced County has not implemented the provisions of the Williamson Act so that avenue of relief has been closed off.

Wildlife habitat areas and managed wetland areas are included in the properties eligible for inclusion under the Williamson Act.

This bill allows the owners of such property, where a county has refused to implement the Williamson Act or where the county or the taxpayer does not wish to contract under the Williamson Act, to sign a contract with another governmental agency to restrict the use of the property to wildlife habitat use and obtain a value for property tax purposes based on sales of similarly restricted property.

³ "Wildlife" is defined as "waterfowl of every kind and any other undomesticated mammal, fish, or bird, or any reptile, amphibian, insect, or plant." (Rev. & Tax. Code, § 421, subd. (i).)

⁴ Section 423.8 applies to properties under 150 acres. (See AH 521, p. II-61.)

In valuing properties under the Williamson Act, the capitalization of income approach must be used to determine value. For the wildlife habitat lands covered by SB 702, the use of comparable sales or sales of interests of similarly restricted property will be the method of valuation. The probability is that the use of the sales similar property will produce a higher value on these lands than would the Williamson Act.

(Emphasis added.)

It is clear from this legislative history that the purpose of enacting the special valuation method was to give relief to taxpayers whose property was *eligible* for inclusion under the Williamson Act but where the local government had not implemented the Williamson Act or the assessee chose not to enter into a Williamson Act contract with the local government to restrict the property. In our opinion, the point of enacting section 423.7 was to give taxpayers who could not use section 423 (because their property was not subject to a "contract" or some other form of enforceable restriction under section 422) another avenue for property tax relief. Given this intent, it is our opinion that section 423.7 is merely an alternative valuation method to be used where valuation under section 423 is unavailable to a taxpayer. Thus, in our view, section 423.7 is not to be used by an assessor to obtain a higher valuation on a property merely because it is subject to a wildlife habitat contract if that property may also qualify for relief under section 423. Since the Property is Williamson Act property, if valuation under section 423, subdivision (a)(2) results in a lower valuation than that obtained under section 423.7, the Landowner may obtain the lower valuation.

The views expressed in this email are only advisory in nature. They represent the analysis of the legal staff of the Board based on present law and the facts set forth in your email, and are not binding on any person or public entity.

Sincerely,

/s/ Matthew F. Burke

Matthew Francis Burke
Tax Counsel III (Specialist)

MFB/mcb
J:/Prop/Precedent/RESTRICT/2012/12-093

cc: Honorable
County Assessor

Mr.
County Counsel

Mr. David Gau MIC:63
Mr. Dean Kinnee MIC:64
Mr. Todd Gilman MIC:70