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April 14, 1998

The Honorable Glenn E. Gray
 Ventura County Assessor
 Attention: Mr. James Dodd
 800 South Victoria Avenue
 Ventura, CA 93009-1270

Re: Assessment of Possessory Interest in Redevelopment Project Leased to One Tenant by Redevelopment Agency: Health & Safety Code Section 33673.

Dear Mr. Dodd:

This is in response to your October 2, 1997 fax transmittal, requesting our opinion regarding the proper interpretation and application of Health and Safety Code Section 33673 to the assessment and valuation of possessory interests in redevelopment projects. Please excuse the delay in responding.

The following facts are submitted for purposes of our analysis:

a.) In the *Ventura County Assessment Practices Survey*, May 1997, the Board's survey team published the following recommendation with respect to the valuation of possessory interests in redevelopment projects:

"RECOMMENDATION 9: Revise the possessory interest assessment program by properly valuing redevelopment agency properties in accordance with the Health and Safety Code."

"The Ventura County Assessor's Office is currently assessing as a possessory interest a property leased from a redevelopment agency. This property is being incorrectly assessed as a possessory interest."

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"Health and Safety Code Section 33673 clearly states:

'Whenever property in any redevelopment project has been redeveloped and thereafter is leased by the redevelopment agency to any person or persons, or whenever the agency leases real property in any redevelopment project to any person or persons for redevelopment, the property shall be assessed and taxed in the same manner as privately owned property, and the lease or contract shall provide that the lessee shall pay taxes upon the assessed value of the entire property and not merely the assessed value of his or its leasehold interest.'

"We recommend that the county revalue redevelopment properties in accordance with the above mentioned Health and Safety Code Section. The property should be valued in fee and the tenant should pay property taxes on the entire property."

b.) The focal point of this Recommendation is the valuation of an office building with six suites, only one of which was leased on the lien date. Because the office building 1) is in a redevelopment project, 2) has been redeveloped, and 3) is leased by a redevelopment agency to a private person(s), the conclusion appears to be that the provisions in Health and Safety Code section 33673 require the entire building (and parking lot) to be assessed (and taxed) in fee to the sole tenant, currently leasing one suite.

c.) The position of your staff is that the Recommendation is erroneous and that the proper interpretation of the phrase "*entire property*" in Health and Safety Code Section 33673, means simply, "the prorated share of the fee estate under lease by each tenant." (Memo of Bruce Gray, Chief Deputy Assessor to Chief Appraiser Participants, Sept. 25/26, 1997, p.3.)

Your questions are:

1.) Are counties required by Health and Safety Code Section 33673 to assess the value of vacant space in a redeveloped building, i.e., the total square footage, to the tenant(s) rather than to the redevelopment agency? If so, how are the allocations to be made?

2.) What is the meaning of the phrase, "*the property shall be assessed and taxed in the same manner as privately owned property,*" in Health and Safety Code Section 33673? If the phrase refers to the provisions of Proposition 13, doesn't the law mandate that each lessee, i.e., the owner of each leasehold interest, receive a separate base year value and supplemental assessment?

3.) May assessors utilize Health and Safety Code Section 33673.1 to obtain lease information from redevelopment agencies and then use the effective date of the lease for purposes of establishing a base year value for that leasehold?

For the reasons hereinafter explained, we agree that "Recommendation 9" in the *Ventura County Assessment Practices Survey*, May 1997, is unclear, and that the language of Health and Safety Code Section 33673 does not require the value of the vacant space in a redeveloped

building to be assessed to the tenant(s), and that the Recommendation should be read and construed in the manner set forth hereinafter. The proper assessment practice should be consistent with the mandates of Proposition 13 and relevant statutory authority in the Revenue and Taxation Code. Your questions are answered accordingly.

Question 1.

Are counties required by Health and Safety Code Section 33673 to assess the value of vacant space in a redeveloped building, i.e., the total square footage to the tenant(s), rather than to the redevelopment agency?

Answer: No.

This issue was first discussed in Letter to Assessors No. 77/73 (copy attached), in answer to the question of whether the lessee of real property leased from a redevelopment agency should be assessed in accordance with the market value of the property based upon the lessee's restricted use (in redeveloped property), or based upon its unrestricted highest and best use. The Board's legal staff at the time answered the question in LTA No. 77/73 as follows:

"... the intent of the law is that whenever redevelopment has proceeded and leases to this end are let, then the lessee shall be required to pay property taxes based upon a measure of market value (which is the value of the rights to the highest and best use of the property)."

"Highest and best use in this instance is qualified, in that it is that highest and best use to which the property can be put within the terms of the lease. In other words, the leased property is to be appraised as if owned in fee, except the appraiser shall consider the effect upon value of any enforceable restrictions to which the use of the land may be subjected (Section 402.1, Revenue and Taxation Code)."

This interpretation clearly indicates that the language in Health and Safety Code Section 33673 was to be applied consistently with the language in the Revenue and Taxation Code. That is, a leasehold estate leased from a redevelopment agency to a private party is taxable at market value based on its highest and best use within the terms of the lease. As with other possessory interests, the property leased from a government agency, including a redevelopment agency, is to be appraised as if owned in fee by the lessee of the leasehold estate. There is absolutely no authority either in the Constitution or in the Revenue and Taxation Code for applying Health and Safety Code section 33673 to justify the appraisal of leased redeveloped property at 1) greater than market value, (e.g., higher value than the leasehold space would rent for in the market place), or 2) more than its highest and best use, (e.g., more area or square footage than rented in the leasehold estate).

The language in Health and Safety Code Section 33673 was examined in the Ochsner Memorandum dated April 2, 1994, copy enclosed. Mr. Ochsner points out that at first glance the

language of section 33673 which provides that whenever a property in a redevelopment project has been redeveloped and thereafter leased by the redevelopment agency to any person, the property shall be assessed and taxed in the same manner as privately-owned property, "appears to be a direct statement as to how redevelopment agency property shall be assessed by the assessor," indicating that it would be "incongruous" with the existing constitutional provisions for the exemption of publicly owned property. However, on further analysis, Mr. Ochsner makes several observations which support the conclusion that such language may be interpreted consistently with constitutional and statutory mandates and the interpretation stated in LTA No. 77/73, above.

First, he notes that section 16 of Article XVI of the California Constitution expressly recognizes that publicly-owned property, including property "owned" by a redevelopment agency, is not subject to taxation, but retains its exempt status as publicly-owned property. Secondly, in *Redevelopment Agency v. County of San Bernardino* (1978) 21 Cal.3d 255, the California Supreme Court squarely recognizes that property of the redevelopment agency as well as property leased by the redevelopment agency to a city (also an exempt entity) is "constitutionally exempt from taxation". Then referencing the section 33673 language providing that the redevelopment agency property shall be "assessed and taxed in the same manner as privately-owned property," the court states, that the statute (section 33673) "merely prevents the transfer of the agency's tax-exempt status to private parties." (*Redevelopment Agency*, supra, p. 264.)

Finally, as to the last clause in section 33673, that the lease of the redevelopment property "shall provide that the lessee shall pay taxes upon the assessed value of the *entire property* and not merely the *assessed property* of the leasehold interest," Mr. Ochsner concludes that it refers to provisions which must be included in the rental agreement (between the agency and the private lessee), and does not instruct the assessor as to how to assess the property leased to a tenant(s), which the court has addressed, above. The authorities governing the appraisal of possessory interests have been well settled since the decision of the California Supreme Court in *DeLuz Homes Inc. v. County of San Diego* (1955) 45 Cal 2d 546, which held:

"Since the possessory interest must be assessed in accord with the standard of valuation applicable to all other property, its estimated value is the price it would bring if offered on an open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other, and this hypothetical market price is its value even though a sale of the property has not been made or contemplated."

Thus, the method established in *De Luz*, the standard of full cash value, is consistent with the statutory scheme of taxing fee interests in all properties and applies equally to possessory interests, which are assessed and taxed in the same manner as privately-owned property.

Question 2.

(a.) What is the meaning of the phrase, "the property shall be assessed and taxed in the same manner as privately owned property," in Health and Safety Code Section 33673?

Answer: Detailed answer given in Question 1 above.

As with other possessory interests, property leased by a government agency, including a redevelopment agency, is to be appraised as if owned in fee by the lessee or owner of the possessory interest. The last clause in section 33673 refers to provisions which must be included in the rental agreement, not instructions to the assessor as to how to assess the property.

(b.) If the phrase refers to the provisions of Proposition 13, doesn't the law mandate that each lessee, i.e., the owner of each leasehold interest, receive a separate base year value and supplemental assessment?

Answer: Yes.

This interpretation is consistent with the views expressed by the California Supreme Court, and the constitutional and statutory premise that taxable possessory interests may be assessed only at their market value, per Revenue and Taxation Code requirements.

Question 3.

May assessors utilize Health and Safety Code Section 33673.1 to obtain lease information from redevelopment agencies and then use the effective date of the lease for purposes of establishing a base year value for that leasehold?

Answer: Yes.

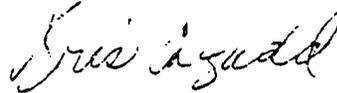
Health and Safety Code section 33673.1 creates a duty on the part of the redevelopment agency to notify the assessor whenever agency property is leased for redevelopment. That language states:

“Every redevelopment agency shall provide notice to the local assessor within 30 days whenever the agency leases real property in a redevelopment project to any person or persons for redevelopment. The notice shall provide the date on which the lessee acquires the beneficial use of the leased property. The notice shall be accompanied by a memorandum of lease and a map of the leased property.”

The obvious purpose of this provision is the imposition of a reporting requirement on redevelopment agencies. In anticipation of the fact that part of the funds for repayment of debts on redevelopment projects will be derived from rents collected under lease agreements with private parties for some or all of the properties within the projects' boundaries, the Legislature apparently determined to place this reporting responsibility on the agencies in order to insure that any possessory interests created would not escape assessment. As such, there is no reason why assessors should not contact redevelopment agencies in the county as a reminder of the importance of this reporting statutory requirement.

The views expressed herein are, of course, advisory only and are not binding on any person or entity. This is a staff opinion which is based on the existing law and the facts as we understand them, and should not be cited as representing the views of the elected Board or any of its Members.

Very truly yours,



Kristine Cazadd
Senior Tax Counsel

KEC:ba

Attachments: LTA 77/73

Ochsner Memo 4/2/94

cc: The Honorable Charles Cliburn
Mendocino County Assessor

Mr. Dick Johnson,

Mr. Arnold Fong,

Jennifer Willis

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DEPUTY DIRECTOR
PROPERTY TAXES

Memorandum

To: Mr. Verne Walton

Date: May 3, 1994

From: Richard H. Ochsner
Assistant Chief Counsel

Subject: Government Code Section 7510 - Letter From Robert R. Rubin

Attached is the March 23, 1994 letter from Robert R. Rubin who represents the Public Employees Retirement System. We have had an ongoing discussion of Government Code section 7510. Please note that Mr. Rubin indicates that subdivision (b) of section 7510 was based upon Health and Safety Code section 33673, copy attached. Mr. Rubin asks how assessors currently assess redevelopment agency property under section 33673.

I would appreciate it if your staff would make inquiries of a few counties which have redevelopment experience to find out how assessors are assessing property owned by a redevelopment agency and also how they are assessing the possessory interests of lessees renting property owned by a redevelopment agency. Further, are you aware of any advice that we might have provided in past years on these subjects? In order to save time, I suggest that whoever checks with the counties just report to me by phone. A written report is not necessary.

By way of background, I have examined the language of section 33673 and find it quite perplexing. It is quite different from subdivision (b) of Government Code section 7510 in that it appears to be a direct statement as to how redevelopment agency property shall be assessed by the assessor. It provides that whenever a property in a redevelopment project has been redeveloped and thereafter leased by the redevelopment agency (this implies the property is owned by the agency) to any person the property shall be assessed and taxed in the same manner as privately-owned property. Giving the language its ordinary meaning, the section seems to say that the redevelopment agency property is taxable when leased to a private party. It suggests that the property has somehow lost its constitutional exemption. I found that conclusion difficult to accept, however, since section 16 of Article XVI of the California Constitution, which deals with redevelopment projects, expressly recognizes that publicly-owned property is

not subject to taxation. In light of the strong affirmation of the exempt status of publicly-owned property found in the redevelopment constitutional provision it seemed incongruous for the Legislature to enact legislation suggesting that the property had lost its exemption.

In *Redevelopment Agency v. County of San Bernardino* (1978) 21 Cal.3d 255, at p. 264, footnote 4, the California Supreme Court seems to resolve this issue. In this footnote, the court squarely recognizes that the property of the redevelopment agency as well as property leased by the redevelopment agency to the city are "constitutionally exempt from taxation". Then referencing the section 33673 language providing that the redevelopment agency property shall be assessed in the same manner as privately-owned property, the court states that the statute "merely prevents the transfer of the agency's tax-exempt status to private parties". Thus, the California Supreme Court has apparently ruled that the section does not mean what it seems to say and that it does not override the exempt status of the property.

The last clause in section 33673 states that the lease of the redevelopment property shall provide that the lessee shall pay taxes upon the assessed value of the entire property and not merely the assessed property of the leasehold interest. The court doesn't give us any help in explaining this language, which is equally perplexing. First, the reference to "property" seems to be a reference to the physical property included in a redevelopment project rather than the possessory interest of a private lessee in publicly-owned property. Thus, the requirement that the lease provide that the lessee pay taxes on the assessed value of the entire property again seems to suggest assessment of constitutionally exempt property. That interpretation, of course, is contrary to the views expressed by the California Supreme Court.

PERS has apparently interpreted this language as applying to the lessee's taxable possessory interest. That is how they arrived at the language in section 7510. The problem here, of course, is that, like section 7510, the phrase refers to provisions which must be included in the rental agreement and is not a direction to the assessor as to the assessment of property. The direction to the assessor was given in the preceding clause which the California Supreme Court states merely prevents the transfer of the tax-exempt status to

private parties. Thus, I would seriously question whether section 33673 can be relied upon as authority for the proposition that either exempt property may, nevertheless, be taxed or that taxable possessory interests may be assessed at more than their market value.

I will be very interested in your report as to how county assessors may be interpreting and applying section 33673.

RHO:ba

cc: Mr. Robert R. Rubin
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555 Capitol Mall, 9th Floor
Sacramento, CA 95814
Mr. John Hagerty - MIC:63

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