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The Honorable Steve Glazer
California Senate, 7th District
State Capitol, Room 5108
Sacramento, CA 95814

Dear Senator Glazer:

Several county assessors, public officials, and governmental-related trade organizations have asserted that your proposed bill, SB 1431, would be unconstitutional. These assertions have been superficial, seemingly based on the literal words "physically damaged" now found in Article XIII, Section 15 of the California Constitution, and the case of *Slocum v. State Bd. of Equalization* (2005) 134 Cal. App. 4th 969, which disapproved a regulation adopted by the California State Board of Equalization ("SBE") to include economic loss resulting from the 9/11 attacks within the ambit of "misfortune or calamity." The fact that COVID-19 is an environmental contaminant and the scope of the Legislature's broad authority to implement Constitutional provisions, especially in the area of taxation, seem to have been overlooked. I am writing to address, and hope to put to rest, the assertion that your bill violates the Constitution.

There is long-standing precedent for the Legislature's plenary (unqualified) power, especially in the context of taxes, to interpret Constitutional provisions susceptible to more than one meaning. That interpretation must be respected unless it is unreasonable or opposed to the Constitution. The California Supreme Court has held as such:

> "Generally the Legislature is supreme in the field of taxation, and the provisions on taxation in the state Constitution are a limitation on the power of the Legislature rather than a grant to it. [Citations.] Its power in the field of taxation is limited only by constitutional restrictions. [Citations.] Those principles are a part of the broader concept that '. . . Our Constitution is not a grant of power but rather a limitation or restriction upon the powers of the Legislature. . . . .' [Citation.] As a result constitutional restrictions on the power of the Legislature must be strictly construed against the limitation."

E. Gottschalk & Co. v. County of Merced (1987) 196 Cal.App.3d 1378, 1383 (where the court found that "change in ownership" under Article XIIIA requires construction because

"ownership" was undefined for purposes of the provision and its meaning was subject to the almost limitless variety of particular human experiences), *citing Delaney v. Lowery* (1944) 25 Cal.2d 561, 568; *see also Armstrong v. County of San Mateo* (1983) 146 Cal.App.3d 597, 617 (The Legislature's interpretation will be respected as long as it is reasonable and not in conflict with the voters' intent to adopt the constitutional provision). In other words, if the Constitution does not constrain an act, and that act does not directly conflict with the voters' intent, it will be deemed valid.

Since the term "physically damaged" is not defined by the Constitution, its meaning must be discerned based on the intent of the voters. Review of the available history shows that the voters intended to provide property tax relief for widespread natural disasters or natural physical forces. What has become known as the "misfortune or calamity" clause was added to the California Constitution in 1964 as Article XIII, section 2.8. That first version provided for relief when "taxable property is damaged or destroyed *by fire, flood, earthquake or other act of God*." That provision was amended in 1966 to replace that italicized text with "a major misfortune or calamity." Then, in 1974, the provision was further amended by voter-approval to the current language and renumbered to Section 15, providing relief if "taxable property is physically damaged or destroyed."

The 1964 ballot materials make plain that the voters intended to create broad relief as a matter of simple equity and fairness: "if privately owned property is destroyed after the first Monday in March by fire, floor, earthquake or other Act of God, the owner is required to pay the full amount of the taxes levied for the support of local government for a full fiscal year beginning the following July 1st. The fact that the value existed and was owned by the taxpayers on the first Monday of March ***should not according to any reason of equity or fairness require payment of taxes upon such value when the value was subsequently destroyed. In such a situation a property owner is penalized at the very time when he needs assistance most to restore his property to its original value.***" These exact same concerns arise in connection with the present pandemic crises caused by the environmental contaminant, COVID-19.

The widespread impact of the pandemic has been well documented by the Governor. For example, "[T]he economic impacts of COVID-19 have been significant, and could threaten to undermine Californians' housing security and the stability of California businesses; and [¶] . . . many Californians are experiencing substantial losses of income as a result of business closures, the loss of hours or wages, or layoffs related to COVID-19, hindering their ability to keep up with their rents, mortgages, and utility bills." Executive Order N-28-20. Thus, the COVID-19 Pandemic and the government's efforts to control the pandemic are well within the scope of events for which the voters' intended to provide relief.

There is no voter indication concerning what was intended or meant by the 1974 amendment adding the words "physically damaged" to the Constitution. While the Court of Appeal found that requirement to have been implied even in the original 1966 version, there is no available information about what was intended. This is the "blank slate" for which the Legislature's power is broadest to interpret.

Having addressed the voters' intent to provide broad relief for natural disasters, which would include a pandemic, and demonstrated that no limiting intent exists concerning the meaning of "physically damaged," the next issue is whether the term "physically damaged" is sufficiently broad so as to be susceptible to interpretation. That phrase has been "interpreted" on three previous occasions: (1) in 1970 when the Legislature added "restricted access" to section 155.1 of the Revenue and Taxation Code—a predecessor to what is now section 170; (2) in 2002 when the SBE adopted Rule 139 to define "restricted access" to include normal business activities being suspended due to a directive, order or other exercise of power by the government; and (3) finally, in 2016 when the Legislature amended section 170 to extend to environmental contamination the definition of "damage" in the context of the Porter Ranch/Aliso Canyon natural gas leak (SB 1304 – Huff). The Legislative Counsel's Digest described SB 1304 as follows: "The bill would specify that 'damage' includes a diminution in the value of property as a result of environmental contamination." Each of these efforts required "interpretation" of the "physically damaged" requirement under Article XIII, Section 15.

While Rule 139 was found to be invalid in *Slocum*, that was so because the SBE did not have the power to vary the terms of the statute. That ruling did not change the fact that the SBE determined that a broader interpretation was appropriate. As to SB 1304, the Governor vetoed the bill, but not because the Legislature did not have the power to extend the definition of "physically damaged" to include environmental contamination. In sum, the Legislature has twice passed legislation to make specific the term "physically damaged," and the SBE has done so as well.

By specifying that COVID-19 is an environmental contaminant that causes physical damage, your bill is entirely consistent with other well accepted tax concepts. For example, the Legislature uses the term "epidemic" in its definition of disaster (Government Code sections 8680.3 and 8558(b)), and section 170(a)(1) refers to the Gubernatorial declaration of disaster. Further, assessors are expressly required to consider the effect of "enforceable restrictions" imposed by the government on the use of real property. Rev. & Tax. Code § 402.1. Moreover, the impact of environmental contamination on real property has long been recognized for property tax purposes. *Firestone v. County of Monterey* (1990) 223 Cal.App.3d 382, 392 ["[T]he salient question remains whether the contamination affected the fair market value of the property, and if so, to what extent."]; SBE Assessor's Handbook ("AH") § 501, Basic Appraisal

(2002) p. 45 ["[C]ontamination[] may result in negative physical effects and can impair a property's utility and value."]; SBE AH § 502, Advanced Appraisal (1998) p. 43 ["Environmental contamination, which may be viewed as a negative physical characteristic of a property, often has a substantial effect on property value."] None of these concepts are novel or unusual.

SB 1431 should readily withstand judicial review under the forgoing principles. Please contact me should you have any questions.

Respectfully submitted,

Bradley R. Marsh