



STATE OF CALIFORNIA

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September 11, 2000

Honorable Ken Stieger
Sacramento County Assessor
700 H Street
Sacramento, CA 95814

Attention: Mr. Mike Kelley
Senior Real Property Appraiser

RE: Jurisdictional Issues -- Sale/Lease of Property from Local Assessee to State Assessee.

Dear Mr. Kelley:

This is in response your letter dated May 9, 2000, to Mr. Dick Johnson commenting on the first draft of AH 541, *Assessment of Public Utilities*.¹ You requested that we address the actions to be taken when the assessor discovers property that is currently on the local roll but should be state assessed.

Your letter raised seven questions regarding the jurisdiction to assess property that becomes subject to state assessment due to a sale or lease to a state assessee. You suggest that the discussion in the draft AH 541 be expanded to the extent necessary and reasonable to address the concerns raised by these questions. Although we have proposed some additional language for the *State Assessment Manual* (formerly AH 541) in Appendix B, pages 67-72, to briefly explain our position on these jurisdictional issues, the detailed answers to your questions are set forth in this letter. We have rephrased your questions in some instances.

Based on the applicable law and analysis, the answers to your questions, as we understand them, are as follows:

1. Does the county assessor have any authority to continue assessing property on the local roll once it has become subject to state-assessment?

Answer: No. Property acquired by a state assessee through purchase or lease becomes subject to assessment by the State Board of Equalization (Board) at the

¹ AH 541 has been renamed *State Assessment Manual* as part of the current updating.

time of the transfer of ownership or use; however, the property remains on the local roll until the next lien date.

While there is no specific law on the issue of continuing authority, it is our opinion that this is the only answer that can follow from a reading of Article XIII, section 19 and Revenue and Taxation Code section 722.5²

Article XIII, section 19 mandates that the Board assess pipelines, flumes, canals, ditches and aqueducts, and property owned or used by certain companies specified in that section (generally referred to as “public utilities”). Section 19 does not state when that assessment jurisdiction is to begin, but for purposes of our discussion it is only logical that assessment jurisdiction begins when ownership or use of the property a specified company begins.

Section 722.5 specifies how property is to be assessed when it changes from local assessment to state assessment or vice versa. Subdivision (b) provides that real and personal property “...that becomes subject to board assessment on and after January 1, and on or before the following January 1, shall not be state assessed until the assessment year commencing on the latter January 1.”

While the Board’s *assessment* authority begins on date of the transfer that subjects the property to state assessment, the *enrollment* of the property on the Board roll does not occur until the fiscal year commencing after the next lien date. Though subject to Board assessment jurisdiction upon the transfer, the property remains on the local roll.

2. If BOE wants us to leave the property on the local roll until BOE assumes jurisdiction, then under what methodology is the Assessor supposed to assess the property during the lull between discovery and the jurisdictional switch? Should the Assessor continue assessing the property under Proposition 13, or at full market as required by the Constitution for a state-assessed property?

Answer: The property remains on the local roll at the value established by the county assessor pursuant to Proposition 13 (Article XIII A) until the following assessment year when the property becomes state assessed.

As set forth in Section 722.5 (b) and for the reasons explained above, the locally assessed value of the property remains on the local roll until the assessment year commencing on the next January 1 lien date after the property’s transfer to a state assessee. This is, in effect, exactly the same system applicable to all real property (both state and locally assessed) prior to the establishment of the supplemental assessment roll in 1983, in which the same assessment remained on the roll after a change in ownership, until the assessment year of the following lien date – since the assessor had no authority to enroll a new base year value until that lien date.

3. If a property becomes state-assessed as the result of a change in ownership, should supplemental assessments be issued?

Answer: No.

² All references are to the Revenue and Taxation Code unless otherwise indicated.

In *ITT World Communications, Inc. v. City and County of San Francisco* (1985) 37 Cal.3d 859, the California Supreme Court held that Article XIII A (Proposition 13) applies only to *locally* assessed property.

Section 75.14 states in part: “A supplemental assessment pursuant to this chapter shall not be made for any property not subject to the assessment limitations of Article XIII A of the California Constitution.” Since Article XIII A does not apply to state assessed property, the supplemental assessment statutes also do not apply to state assessed property.

The property is subject to the Board’s assessment jurisdiction as of the transfer date to the state assessee. The fact that the property will remain on the local roll for tax collection purposes does not mean the county has the continuing authority to assess it or to issue supplemental assessments. (See Letter to Assessors No. 85/75, questions 3 and 4, attached.)

4. If a building permit is issued before or during the “limbo” period, should the county issue supplemental assessments on any new construction if applicable?

Answer: No.

As indicated in the answer to Question 3, no supplemental assessments can be issued on a property that is subject to state assessment jurisdiction. If the property becomes subject to state assessment, any new construction that occurs during the period between the date of the transfer to the state assessee and the next lien date is under the Board’s assessment jurisdiction. The new construction will be state assessed as of the next lien date and placed on the Board roll thereafter.

5. If the assessment continues on the local roll after transfer of the property to a state assessee, does the Board issue escape assessments/refunds for the difference between the local roll value and state-assessed value during the “limbo” period?

Answer: Not if the transfer occurs in the year the transfer is discovered by the assessor. If the transfer occurs in a fiscal year prior to the year of discovery, appropriate escapes, corrections and cancellations would be made as discussed in the answer to question 6.

For the reasons previously explained, the Board begins the exercise of its assessment jurisdiction of property that becomes subject to state assessment in the assessment year commencing on the January 1 lien date following the transfer to a state assessee, per Section 722.5. While the Board has authority to issue escape assessments (Section 861), cancel assessments (Section 5011), and make roll corrections (Sections 4876-4880), this authority is limited to the time period during which the property is on the Board roll. This authority does not extend to the “limbo” period, while the property remains on the local roll even though it is subject to state assessment.

Further, as explained above under question 3, the locally assessed value remains on the roll for the remainder of the fiscal year. Any difference in value between state assessment and local assessment will not be recognized until the succeeding lien date.

The Board, of course, does not issue refunds on local property taxes. Any refunds would be made by the county auditor should the Board's cancellations or roll corrections result in a reduction of tax liability in any year.

6. If the assessor stops assessing property that becomes subject to state assessment, will the Board issue escape assessments for all applicable years subsequent to acquisition of the property by the state assessee?

Answer: The Board may issue escape assessments for any years between the year that the property became state assessed, and the year the transfer to a state assessee is discovered.

Section 861 states: "If any property subject to assessment by the Board pursuant to Section 19 of Article XIII of the Constitution escapes assessment, the Board shall assess it in accordance with Section 864 at its value on the lien date of the year in which it escaped assessment." Any escape assessments issued by the Board must be within the time period that the property was subject to state assessment i.e., the January 1 lien date following the assessment year in which the property became subject to state assessment.

If the fact that the property became subject to state assessment is not discovered for a number of years, the Board would assess the property at its value on the lien date for all the intervening assessment years within the statute of limitations and issue appropriate adjustments of the values, if any.

7. If an appeal is filed on the property during the "limbo period," who has jurisdiction to hear the appeal?

Answer: The county board of equalization, since the subject of the appeal is the value of the property on the local roll.

We have stated our view that the property remains on the local roll until the lien date following the transfer to a state assessee. That being the case, any question as to the value placed on the property by the county assessor as of the lien date prior to the transfer would remain within the jurisdiction of the county board of equalization.

Leasehold Improvements

In addition to the questions you have raised, the Board staff has proposed language for the draft *State Assessment Manual* (page 70) on a related jurisdictional issue concerning *leasehold improvements* installed by state assessees in or on buildings or structures owned by local assessees. This occurs when a state assessee leases/occupies less than 100 percent of a building or structure and the Board delegates assessment of the building to the applicable county.

The Board staff policy, as set forth in the *Manual*, provides that where a state assessee leases less than 100 percent of a locally assessed building or structure and the taxes are paid by the local assessee, the Board will delegate its assessment jurisdiction over the state assessee leasehold to the county assessor. If, for example, a state assessee leases a portion of the office space in a locally assessed building or leases a retail shop in a shopping mall, authority to assess such improvements would be delegated to the assessor. However, to the extent that there are leasehold improvements installed and owned by the state assessee on locally assessed buildings or structures, the assessment of such "state-assessee-owned" improvements may not be delegated. Pursuant to Article XIII, section 19 of the California Constitution, the authority to assess property owned by state assessees resides with the Board and the Board can delegate assessment responsibility to the appropriate assessor only for property *used but not owned* by state assessees.

The views expressed in this letter represent the position of the Board staff on the issue discussed. Those views will be the basis for any staff action on properties that are found to have been transferred to state assessees. As to the county assessor, our views are, of course, only advisory in nature.

If you have any questions, please contact me at (916) 445-6493 or Kristine Cazadd at (916) 323-7713.

Very truly yours,

/s/ Lawrence A. Augusta

Lawrence A. Augusta
Assistant Chief Counsel

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Attachment

cc: Mr. Dick Johnson, MIC:63
Mr. David Gau, MIC:64
Mr. Harold Hale, MIC:62
Mr. Charlie Knudsen, MIC:62
Ms. Jennifer Willis, MIC:70
Ms. Kristine Cazadd