STATE OF CALIFORNIA

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June 23, 2000

No. 2000/037

TO COUNTY ASSESSORS:

Notice of Board Action
GUIDELINES FOR THE ASSESSMENT OF TAXABLE GOVERNMENT-OWNED PROPERTIES

On June 15, 2000, the Board of Equalization approved the following guidelines pertaining to the assessment of taxable government-owned properties. These guidelines supersede Letters To Assessors Nos. 79/40, 79/187, and 82/136, and any information presented in the 1990 Assessment Practices Survey, *A Report on Section 11 and PERS Properties*.

Article XIII, section 11 of the California Constitution generally provides that real property owned by a local government that is located outside its boundaries is taxable if it was taxable when acquired, and specifically prescribes a method for the valuation of taxable government-owned lands. In addition to the value standard established by the express language of section 11, the California Supreme Court in *City and County of San Francisco* v. *County of San Mateo et al.* (1995) 10 Cal.4th 554 held that the value limitation standard of article XIII A of the California Constitution also applies to taxable government-owned lands in counties other than Inyo and Mono. Hence, taxable government-owned lands located in counties other than Inyo and Mono are assessed at the lowest of (1) the current fair market value, (2) the factored base year value, or (3) the 1967 assessed value multiplied by the appropriate Board-announced rate (Phillips Factor).

Board staff drafted these guidelines in consultation with interested parties and, after discussions, three unresolved issues remained for Board decision. Those issues were (1) whether the value limitations prescribed by article XIII, section 11 (Phillips Factor value), are applicable to properties acquired after March 1, 1975, (2) whether the base year values for Section 11 properties acquired after March 1, 1975, are determined in the same manner as for privately owned, locally assessed real properties, and (3) whether taxable government-owned properties are subject to supplemental assessments.

The Board decided that (1) the value limitations prescribed by article XIII, section 11 (Phillips Factor value), are applicable to taxable government-owned properties acquired after March 1, 1975, (2) base year values for taxable government-owned properties acquired after March 1, 1975 are established at the lower of current fair market value as of the date of change in ownership, or the 1967 assessed value multiplied by the appropriate Phillips Factor as of the date of change in ownership, and (3) taxable government-owned properties are not subject to supplemental assessments. The enclosed guidelines reflect the Board's decision on these issues.

We hope this information proves useful and promotes uniformity of assessment for these properties. If you have any questions, please contact Mr. Benjamin Tang at (916) 324-2720.

Sincerely,

/s/ Richard C. Johnson

Richard C. Johnson
Deputy Director
Property Taxes Department

RCJ:bt
Enclosures

GUIDELINES FOR THE ASSESSMENT OF TAXABLE GOVERNMENT-OWNED PROPERTIES

CONSTITUTIONAL BASIS FOR ASSESSMENT

GOVERNMENT-OWNED PROPERTIES TAXABLE WHEN ACQUIRED

Article XIII, section 11 of the California Constitution generally provides that lands, water rights, and any other interests in lands owned by a local government that are located outside its boundaries are taxable if they were taxable when acquired by the local government.[1] Section 11 also provides that improvements owned by a local government are taxable if they were taxable when acquired or were constructed to replace improvements that were taxable when acquired. Whether land or improvements, these taxable government-owned properties are generally referred to as "Section 11" properties.

GOVERNMENT-OWNED PROPERTIES NOT TAXABLE WHEN ACQUIRED

The provisions of section 11 do not apply to properties that were not taxable when acquired by the local government. Thus, for example, property receiving the welfare exemption at the time it was acquired by the local government is not taxable as Section 11 property. Any portion of the property that was not exempt when it was acquired is, however, taxable under section 11. This treatment is consistent with the spirit of section 11, the purpose of which is to prevent the erosion of a county's property tax base and consequent loss of property tax revenues that would otherwise result from the acquisition of lands and improvements by tax-exempt local governments.

ASSESSMENT

LAND

For lands located in Inyo and Mono counties, section 11 prescribes a value derived from a specific formula ("the Phillips Factor formula") set forth in section 11 and based upon the 1966 assessed value of the lands if located in Inyo County or on the 1967 assessed value of the lands if located in Mono County.[2] For lands located in all other counties, section 11 prescribes a value

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[1] Extraterritorial government-owned lands in either Inyo or Mono counties are taxable on a basis different than Section 11 property in the rest of the state. Specifically, lands, water rights, and any other interests in lands in Inyo or Mono County owned by local government that are outside its boundaries are taxable if they were assessed for taxation to the local government as of the 1966 or 1967 lien date, respectively, or if they were subsequently acquired by the local government and were assessed to a prior owner as of that lien date and each subsequent lien date.

[2] The Board annually calculates and announces the constitutionally prescribed factor, which is commonly referred to as the Phillips Factor. The Phillips Factor formula for a current lien date is as follows: The previous year's assessed valuation of California land value only is divided by California's previous year civilian population, and the resultant statewide per capita value (1) is divided by $766 (the 1966 per capita value) to find the factor based upon the 1966 lien date and (2) is divided by $856 (the 1967 per capita value) to find the factor based upon the 1967 lien date. This formula is derived to operate upon a 1966 and 1967 assessed value of 25 percent of market value to arrive at a current assessed value of 100 percent of market value.

standard requiring assessment at the lower of current fair market value or the value determined by applying the Phillips Factor to the 1967 assessed value.[3]

In addition to the express language of section 11 establishing a value standard, the California Supreme Court in *City and County of San Francisco* v. *County of San Mateo et al.* (1995) 10 Cal.4th 554 held that the value limitations of article XIII A of the Constitution apply to Section 11 lands in counties other than Inyo and Mono.[4] Thus, the value standard applicable to Section 11 assessments in those counties is the lowest of either (1) the current fair market value, (2) the factored base year value, or (3) the 1967 assessed value multiplied by the appropriate Phillips Factor.

For taxable government-owned land acquired *before* March 1, 1975, the base year value is the value on the 1975-76 roll, which is the lower of the value obtained by applying the appropriate Phillips Factor to the 1967 assessed value or the fair market value as of March 1, 1975. For land acquired *after* March 1, 1975, the base year value is the lower of the value obtained by applying the appropriate Phillips Factor to the 1967 assessed value as of the date of change in ownership or the full cash value as of the date of change in ownership.

RECONSTRUCTED VALUES

For taxable properties in counties other than Inyo or Mono, where the 1967 assessed value and/or the 1975 fair market value are not available, it may be necessary to reconstruct those values for purposes of deriving a Phillips Factor value and establishing a 1975 base year value using the best information available.

IMPROVEMENTS

Taxable When Acquired Requirement

Improvements owned by a local government and located outside its boundaries are taxable if they were taxable when acquired. Furthermore, improvements are taxable if they were constructed by the local government to replace improvements which were taxable when acquired. Improvements are not taxable if they were added after the original acquisition and do not replace improvements that were taxable when acquired.[5]

Assessment

In general, section 11 provides no procedure or standard for the valuation of improvements (except taxable improvements constructed after March 1954, to replace taxable improvements that were owned by or in the possession of a local government). Because section 11 fails to prescribe any specific assessment procedure or standard (with the single noted exception),

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[3] Subdivision (b) of section 11 states in part:

> Taxable land belonging to a local government and located outside Inyo and Mono counties shall be assessed at the place where located and in an amount that does not exceed the lower of (1) its fair market value times the prevailing percentage of fair market value at which other lands are assessed and (2) a figure derived in the manner specified in this section for land located in Mono County.

[4] The Court expressed no view on the application of article XIII A to Section 11 lands in Inyo or Mono counties.

[5] *Sacramento Municipal Utility District* v. *El Dorado County* (1970) 5 Cal.App.3d 26

improvements are subject to the valuation standard applicable to all other real property that is not specifically restricted by constitutional or statutory provisions. Thus, with the exception noted above, the provisions of article XIII A apply to improvements taxable pursuant to section 11.

Improvements built *after* March 1, 1954, that replace taxable improvements, are taxable at the lowest of either (1) current market value, (2) factored base year value, or (3) the highest full value ever used for the taxation of the improvements that have been replaced. For purposes of this calculation, the full value for any year prior to 1967 is defined by subdivision (d)(2) of section 11 as four times the assessed value for that year.

APPLICATION

To summarize the proper application of section 11, the roll value for taxable government-owned extraterritorial property in counties other than Inyo and Mono is the lowest of:[6]

- The Fair Market Value (FMV) of the land and improvements
- The Factored Base Year Value (FBYV) of the land and improvements
- The 1967 assessed value of the land multiplied by the appropriate Phillips Factor, plus the lesser of either (1) the FMV of the improvements, (2) the FBYV of the improvements, or (3) for improvements built after March 1, 1954 that replace taxable improvements, the highest full value ever used for the taxation of the improvements that have been replaced.

SPECIAL ISSUES

BOUNDARY CHANGES

In some cases, a governmental entity extends its boundaries to annex property taxable to it pursuant to section 11. This issue was addressed in *City of Long Beach* v. *Board of Supervisors* (1958) 50 Cal.2d 674, 678 where the Supreme Court held:

> When municipally owned properties located outside the city limits are annexed to the city, they are in legal effect discharged from existing tax liens.

[6] • To determine the roll value for taxable government-owned extraterritorial property in Inyo County:
Apply the appropriate Phillips Factor established by the Board of Equalization to the 1966 assessed value of the land; plus, the lesser of the FMV of the improvements, the FBYV of the improvements, or, for replacement improvements built after March 1, 1954, that replace taxable improvements, the highest full value ever used for the taxation of the improvements that have been replaced (subdivision (d)(2) of section 11 of article XIII).
• To determine the roll value for taxable government-owned extraterritorial property in Mono County:
Apply the appropriate Phillips Factor established by the Board to the 1967 assessed value of the land; plus, the lesser of the FMV of the improvements, the FBYV of the improvements, or, for replacement improvements built after March 1, 1954, that replace taxable improvements, the highest full value ever used for the taxation of the improvements that have been replaced (subdivision (d)(2) of section 11 of article XIII).

Therefore, local government property once subject to taxation as being outside the government's boundaries becomes exempt under subdivision (b) of section 3 of article XIII when annexed by the local government.

Conversely, the de-annexation of former Section 11 property, such that it is once again outside the government entity's boundaries, returns the property to its former taxable status pursuant to section 11.

JOINT PURCHASE OF TAXABLE PROPERTY BY MULTIPLE GOVERNMENTS

Two or more local governments may purchase and hold title to the same property or properties. In that case, those interests in the property or properties owned by a local government that lie outside the boundaries of that local government are taxable pursuant to section 11. Thus, section 11 makes taxable those extraterritorial interests in property held by local governments in both sole ownership and joint ownership.

For example, a jointly owned property may be located outside the boundaries of all the acquiring local government entities. Assuming that the property was taxable when acquired, the property is assessable to all the entities and the assessment should be apportioned according to the respective ownership interests.

If jointly owned property lies partially within the boundaries of one or more of the acquiring local government entities, the property is taxable to the extent that interests in the property are located outside the boundaries of one or more of the acquiring entities. Here, the assessment of the *taxable* interests in the property should be apportioned according to the respective taxable ownership interests of the acquiring entities.

Joint Powers Agency

Local governments may also form a "joint powers agency" pursuant to the Joint Exercise of Powers Act, which is a different method of ownership than described above. Such a joint powers agency is a local government within the meaning of article XIII, section 3, subdivision (b) of the California Constitution. As determined by the Board in the matter of the application for reassessment of *Central California Power Agency No. 1* v. *County of Sonoma*, ARA[7] No. 93-006, the boundaries of a joint powers agency under Government Code section 6500 et seq. are the combined pre-established boundaries of each of the members of the agency. Therefore, all real property acquired by the joint powers agency that is outside the pre-established boundaries of each of the members, and that was taxable when acquired, is subject to section 11 assessment. Conversely, all real property within the boundaries of each of the members of the agency is not subject to assessment under section 11.

[7] ARA is the acronym for Application for Review, Adjustment, and Equalization

PERSONAL PROPERTY

The provisions of section 11 are not applicable to personal property. Personal property acquired by a local government is exempt from property taxation pursuant to subdivision (b) of section 3 of article XIII.

POSSESSORY INTERESTS

A taxable possessory interest is typically a leasehold in tax-exempt government-owned real property. A taxable possessory interest may also exist in taxable government-owned real property and the method of determining the taxable value is set forth in subdivision (f) of section 11. A discussion of this method will be presented in the upcoming Assessors Handbook Section 510, *Assessment of Possessory Interests*, rather than in these guidelines. The guidelines are only intended to address the assessment of a local government's interest in taxable government-owned property.

SUPPLEMENTAL ASSESSMENTS

Taxable government-owned properties are not subject to supplemental assessment. Therefore, taxable property acquired by a local government is enrolled on the lien date following its acquisition.

WATER RIGHTS

Subdivision (a) of section 11 defines taxable lands to include rights to use or divert water from surface or underground sources. For purposes of taxation, water rights constitute property as that term is used in article XIII, section 1 of the State Constitution. The assessment of water rights is limited by section 11, subdivision (e), which states:

> No tax, charge, assessment or levy of any character, other than those taxes authorized by Sections 11(a) to 11(d) inclusive, of this Article, shall be imposed upon one local government by another local government that is based or calculated upon the consumption or use of water outside the boundaries of the government imposing it.

For assessment purposes the assessment situs of water rights is the point of diversion. Additionally, section 11 provides that water rights shall be assessed in the same manner as land.

CALIFORNIA LAND CONSERVATION ACT

Taxable government-owned lands may be subject to California Land Conservation Act (commonly referred to as the Williamson Act) contracts when they are acquired. In such an instance, pursuant to Government Code section 51295, the Williamson Act contract becomes null and void when the fee title to an entire parcel of land is condemned or acquired by a public agency for a public improvement. When an interest less than the fee title to an entire parcel is condemned or acquired, the contract becomes null and void as to the interest acquired or condemned. The interest not acquired by the public agency remains subject to the Williamson Act contract.

If, after acquiring land subject to a Williamson Act contract, a public agency determines that it will not locate a public improvement on such land, then the land shall be reenrolled in a new contract. In this regard, Government Code section 51295 states in part:

> If, after acquisition, the acquiring public agency determines that it will not for any reason actually locate on that land or any part thereof, the public improvement for which the land was acquired, before returning the land to private ownership, the public agency shall give written notice to the Director of Conservation and the local governing body responsible for the administration of the preserve, and the land shall be reenrolled in a new contract or encumbered by an enforceable deed restriction with terms at least as restrictive as those provided by this chapter. The duration of the restriction shall be determined by subtracting the length of time the land was held by the acquiring public agency or person from the number of years that remained on the original contract at the time of acquisition.

Under this circumstance, the land would be subject to a Williamson Act contract from the time that it is reenrolled to the date upon which the original contract would have terminated.