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TO COUNTY ASSESSORS:

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Interim Executive Director

No. 2003/039

HIERARCHY OF PROPERTY TAX AUTHORITIES

Recently, we have received numerous requests to document the hierarchy or "chain of command" of various authorities that govern California's property taxation system. The property tax assessment process is governed by substantive and procedural law derived from constitutional provisions and implemented by statutes, regulations, and local county ordinances. General principles of legal construction determine the proper order of precedence accorded those laws.

Constitutional and Statutory Law

United States Constitution

The property tax assessment process, though a function of state law, derives from federal constitutional principles. Under article VI, section 2 of the United States Constitution, commonly known as the *supremacy clause*, states are prohibited from enacting statutes that conflict with the United States Constitution. The 14th Amendment of the Constitution requires that no state "shall...deprive any person of life, liberty, or property, without due process of law." In the context of property tax assessments, the United States Supreme Court¹ has held that the due process clause requires that, prior to the tax becoming final and irrevocable, the taxpayer is afforded notice and hearing on the assessment before a judicial or quasi-judicial body such as a court or a board of equalization.

Federal Statutes and Treaties

Where Congress chooses to preempt state law, a federal statute will prevail over a state's constitution and statutes. In this context, *preemption* is the doctrine adopted by the U.S. Supreme Court holding that certain matters are of such a national, as opposed to local, character that federal laws preempt or take precedence over state laws. For example, the 4-R Act² prohibits a state from, among other activities related to taxation, "assessing rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property."³

¹ *Midstate Theatres, Inc. v. Board of Supervisors* (1975) 46 Cal.App.3d 204, at 208, citing *Nickey v. Mississippi* (1934) 292 US 393.

² Federal Railroad Revitalization and Regulatory Reform Act of 1976.

³ *County of Los Angeles v. State Board of Equalization* (2003) 105 Cal.App.4th 1.

Likewise, treaties and international agreements executed by the U. S. Government preempt state law.⁴ In determining the meaning of the language of a treaty or international agreement and its effect on domestic law, such as state or local property tax, the courts will look at the ramifications of local taxation to determine whether there is a substantial risk of international multiple taxation, if it would have a significant impact on other states, and if it would inhibit the federal government from speaking with one voice when regulating commercial relations with foreign governments.⁵

California Constitution

The California Constitution is the highest authority of law within the state. It is the absolute rule of action and decision for all branches of California government in respect to all the points covered by it. The Legislature enacts statutes to implement, interpret, and clarify the provisions of the Constitution. Neither the Legislature nor any local governmental entity may enact statutes or ordinances that are in conflict with constitutional provisions. Article XI, section 7 of the Constitution states that "[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws."

Amendments to the Constitution must be approved by the voters via a ballot initiative. Many of California's property tax laws have been enacted as constitutional amendments, such as Proposition 13, Proposition 58, and Proposition 60.

Revenue and Taxation Code and Other Statutes

The legislative implementation and interpretation of the state constitutional provisions applicable to property tax assessment matters are found in the Revenue and Taxation Code. These statutes provide the framework of the property tax assessment process. In addition, the Revenue and Taxation Code sections may incorporate and follow the provisions of other codes; for example, Government Code sections 15602 and following sections implement the constitutional provisions relating to the authority of the State Board of Equalization. In the event of a conflict between any code and a provision of the California Constitution, article III, section 3.5 of the Constitution provides that an administrative agency has no power to declare a statute unconstitutional or to declare a statute unenforceable or to refuse to enforce a statute unless an appellate court has made a determination that the statute is unconstitutional.

Revenue and Taxation Code section 538, subdivision (a), requires that an assessor bring an action in court if the assessor believes that application of a statute will require property to be assessed in a manner contrary to the California Constitution, another statute, or a Property Tax Rule, or if the assessor believes that a statute is unconstitutional or invalid.

Property Tax Rules

Government Code section 15606 provides that the "State Board of Equalization shall ... [p]rescribe rules and regulations to govern local boards of equalization when equalizing, and assessors when assessing, including uniform procedures for the consideration and adoption of written findings of fact by local boards of equalization...." Title 18, Public Revenues, of the California Code of Regulations contains the body of regulations that the Board has adopted to

⁴ *Scandinavian Airline System, Inc. v. County of Los Angeles* (1961) 56 Cal.2d 11.

⁵ *Japan Line, Ltd. v. County of Los Angeles* (1979) 441 U.S. 434.

implement, interpret, and make specific the statutes governing the property tax assessment process, change in ownership, and the functions of assessment appeals boards and boards of equalization. These regulations are commonly referred to as *Property Tax Rules*.

Property Tax Rule 1 provides, in part, that "[t]he rules in this subchapter govern assessors when assessing, county boards of equalization and assessment appeals boards when equalizing...." Property Tax Rules may not conflict with constitutional or statutory law and are binding on state and local governmental entities. The Office of Administrative Law reviews⁶ all regulations adopted, amended, or repealed by state agencies to ensure that the agency has demonstrated a need for the regulation to effectuate the purpose of the statute, court decision, or other provisions of law that the regulation implements, interprets, or makes specific.⁷

Revenue and Taxation Code section 538, subdivision (a), requires that an assessor bring an action in court if the assessor believes that application of a Property Tax Rule will require property to be assessed in a manner contrary to the California Constitution, a statute, or another rule, or that the assessor believes a Property Tax Rule is unconstitutional or invalid.

Courts are required to apply Property Tax Rules⁸ and enforce compliance with them unless the court finds the rule violates either constitutional or statutory law. Generally, a court's standard of review in a challenge to a Property Tax Rule is narrow. An appellate court is required to uphold a rule as the Board's exercise of its quasi-legislative rulemaking power if it is satisfied that the rule in question lay within the lawmaking authority delegated by the Legislature, and that it is reasonably necessary to implement the purpose of the statute.⁹ These quasi-legislative rules have the "dignity of statutes."¹⁰

Local County Ordinances and Rules of Procedure

County boards of supervisors may enact, by ordinance, local supplementary regulations that are enforceable within that board's jurisdiction, provided such regulations do not conflict with general laws (the Constitution, statutes, and rules). The court in *Mann v. Scott* held that "[w]here the Legislature has assumed to regulate a given course of conduct by prohibitory enactments, a municipality with subordinate power to act in the matter may make such new and additional regulations in aid and furtherance of the purpose of the general law as may seem fit and appropriate to the necessities of the particular locality and which are not in themselves unreasonable."¹¹ The courts have consistently upheld local regulations in the form of additional reasonable requirements when they do not conflict with the provisions of general laws.

Further, article XIII, section 16 of the Constitution specifically directs county boards of supervisors to adopt rules of notice and procedure to facilitate the work of local appeals boards under the county's control and to ensure uniformity in the processing and decision of applications before those local appeals boards. Local rules of notice and procedure are valid if they are not

⁶ Government Code section 11349.1.

⁷ Government Code section 11349.

⁸ Government Code section 11344.6.

⁹ *Yamaha Corp. of America v. State Board of Equalization* (1998) 19 Cal.4th 1.

¹⁰ *Id.*

¹¹ *Mann v. Scott* 180 Cal. 550.

expressly prohibited by section 16, are not preempted by or in conflict with state statutes, regulations, or county ordinances, and comport with due process.¹²

Case Law

Superior Courts

Superior court is the state's *trial* court and is the next level of appeal after an appeals board's decision becomes final. If the superior court reverses an appeals board's decision, the court will remand the case to the appeals board with instructions, or the court will decide the case itself in those instances where no issue of property valuation remains to be determined. Superior court decisions bind the parties before the court but do not set legal precedent.

Appellate Courts

If, as a result of an appeal from a superior court decision, a published opinion is issued by the California Court of Appeal (the intermediate level appellate court in California), and assuming there is no conflicting published opinion in another appellate district, that decision is binding on all trial courts and other inferior forums, including appeals boards.¹³ Occasionally, courts of appeal in different districts render contrary opinions on the same property tax issue and, for that reason, the California Supreme Court may grant a petition for review to decide the issue and resolve the conflict. Until the California Supreme Court grants review of conflicting appellate decisions, the decision of law from each particular appellate court is binding authority only within that appellate district. However, an appellate decision from another appellate district may have persuasive authority in an appellate district that has not rendered a decision on the matter.

Supreme Courts

California Supreme Court opinions interpreting California property tax law are binding on all courts and inferior tribunals as the law of the state. If the matter in dispute involves issues of federal constitutional or statutory law, it may be appealed to the United States Supreme Court. In the event that the United States Supreme Court accepts the case and renders a decision interpreting California law, that interpretation is controlling.

Informal Guidance

Assessors' Handbook and Other Board-Approved Publications

The *Assessors' Handbook* is a collection of manuals or sections adopted and published by the Board of Equalization. The manuals address property tax appraisal and assessment practices. Other publications address assessment appeals boards and other matters. Prior to adoption, each manual undergoes a process whereby interested parties participate in drafting the language, and interested parties are afforded an opportunity to submit written comments or to address the Board during a public hearing regarding the final language.

The *Assessors' Handbook* and other Board-approved publications do not have the force of law. Instead, they provide advisory notice to county assessors and appeals boards of the Board's interpretation, analyses, conclusions, and recommendations concerning problems of general concern, and often document court decisions, legislative enactments, or other legal and policy

¹² *Williamson v. Payne* (1938) 25 Cal.App.2d 497.

¹³ *Auto Equity Sales, Inc. v. Superior Ct.* (1962) 57 Cal.2d 450.

information. While Board-adopted publications are advisory only, courts have held that they may be properly considered as evidence in the adjudicatory process.¹⁴

Letters To Assessors

Government Code section 15606 mandates that the Board "prepare and issue instructions to assessors designed to promote uniformity throughout the state and its local taxing jurisdictions in the assessment of property for the purposes of taxation." In the late 1960's, the Board began issuing a series of letters to county assessors in order to comply with section 15606. This series of letters is commonly known as *Letters To Assessors* (LTA's). The LTA series covers a myriad of topics each year, including Board-approved reports, policy-setting assessment guidelines, statutorily mandated valuation rates, hearing notices, county Assessment Practices Survey reports, and *Assessors' Handbook* sections. These instructional letters are advisory notices to county assessors and are not legally binding.

State Board of Equalization Legal Opinions

Legal opinions issued by Board staff are *legal rulings of counsel* which means a legal opinion written and signed by the Chief Counsel or an attorney who is the Chief Counsel's designee, addressing a specific tax application inquiry from a taxpayer or taxpayer representative, a local government, or other Board staff. Annotations published in the Property Taxes Law Guide (Volume III) are primarily summaries of the conclusions reached in selected legal rulings of counsel.

While a legal opinion is not law, the courts typically give weight to an agency's interpretation. Among the factors that the courts consider in determining the weight given to legal opinions are the expertise of the agency in interpreting the statutory scheme, whether the position has been consistently maintained, and are of a long-standing duration. The Board has generally been recognized by the courts as possessing expertise and specific legislative authority to interpret property taxation, especially when the Board's interpretations have been maintained for an extensive period of time.¹⁵

We hope the above information will prove helpful regarding the preemption of laws and the precedential nature of information disseminated by the Board.

Sincerely,

/s/ David J. Gau

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¹⁴ *Coca-Cola Co. v. State Board of Equalization* (1945) 25 Cal.2d 918; *Prudential Ins. Co. v. City and County of San Francisco* (1987) 191 Cal.App.3d 1142; *Hunt-Wesson Foods, Inc. v. County of Alameda* (1974) 41 Cal.App.3d 163.

¹⁵ *Yamaha v. State Board of Equalization*, *supra*, 19 Cal.4th 1, at pp. 13-14.