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No. 2017/016

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TO COUNTY ASSESSORS:

**TREATMENT OF PROPERTIES WITH CONTRACTUAL  
 ASSESSMENTS LEVIED BY ENERGY FINANCING DISTRICTS<sup>1</sup>**

Recently, we have received inquiries regarding the treatment of properties with energy-saving improvements financed under Property-Assessed Clean Energy (PACE) programs. This letter (1) describes PACE programs generally and (2) discusses the effect upon value of the assessments that attach to PACE program properties.

***Background***

The Improvement Act of 1911<sup>2</sup> ("the 1911 Act"), as amended, authorizes cities and counties to form special districts within which they may finance a variety of improvements using "voluntary contractual assessments."<sup>3</sup> Currently, the 1911 Act authorizes such assessments in order to provide for the repayment of funds used for, among other things, energy efficiency and water conservation improvements to real property.<sup>4</sup> Programs for financing these improvements are typically known as PACE programs.

***PACE Programs***

In general, PACE financing programs exist to enable long-term financing of privately owned improvements that increase energy efficiency or water conservation. PACE assessments create liens on the real property. Property owners pay a portion of the assessment annually as part of their property tax payments. When the property is transferred, sold, or foreclosed upon, any amount that is delinquent is due. The remainder of the assessment remains as a lien on the property.

Financing under PACE programs may be achieved by the issuance of bonds by the public agency, or by an advance from the public agency's own funds. Oftentimes, the local agencies use third-party program administrators to issue the bonds and supply the funds to property owners.<sup>5</sup>

<sup>1</sup> *Energy Financing Districts* is a catch-all term that includes or has included special districts better known by program names such as "Property-Assessed Clean Energy" (PACE); "Clean Energy Assessment Districts" (CEAD); and Sustainable Energy Financing. Today, PACE is the predominant term in use for such programs.

<sup>2</sup> Streets and Highways Code, § 5000, et seq.

<sup>3</sup> See, generally, Streets and Highways Code section 5898.12.

<sup>4</sup> See Streets and Highways Code section 5898.12, subdivisions (b) and (c).

<sup>5</sup> Revenue and Taxation Code section 163 requires any entity that receives revenue from assessment liens created under the 1911 Act to notify the assessor of the details of such liens.

***Recommended Treatment of Properties with PACE-Financed Improvements***

Letter To Assessors 99/12, "Treatment of Improvement Bonds in Determining the Fair Market Value of Real Property Being Appraised Upon a Purchase," advises that a 1999 amendment to Revenue and Taxation Code section 110<sup>6</sup> shifts to the assessor the burden of proving that the value of public improvements financed by bonds under the 1911 Act is not already reflected in the stated purchase price. Legally, the burden placed on the assessor to rebut the purchase price presumption can be overcome by a preponderance of the evidence.

Financing through PACE programs is similar to the financing contemplated by the 1999 amendment to section 110. Thus, upon a change in ownership of real property that is encumbered by PACE financing, the rebuttable presumption provided for in section 110 should likewise be applied. Accordingly, as with public improvements financed with bonds issued under the 1911 Act, for improvements financed under a PACE program (also authorized by the 1911 Act) that undergo a change in ownership the assessor likewise has the burden of proving that the value of the financed improvements is not already reflected in the stated purchase price. The presumption could be overcome, for example, by a paired-sales analysis showing that comparable properties *without* PACE assessments sell for more than properties *with* PACE assessments.

Of course, many improvements under PACE programs will qualify for exclusion from assessment as new construction. For example, an active solar energy system may be excluded if it meets the requirements under section 73. Since PACE financing can also be used to pay for seismic strengthening improvements, the exclusion from new construction under section 74.5 may be applicable in those instances.

If you have any questions about the guidance in this letter, please contact the County-Assessed Properties Division at 916-274-3350.

Sincerely,

/s/ Dean R. Kinnee

Dean R. Kinnee  
Deputy Director  
Property Tax Department

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<sup>6</sup> All statutory references are to the Revenue and Taxation Code unless otherwise indicated.