## Assessor's Case Safeway Inc Appeal #19-016 – Fort Bragg

The Applicant is requesting a reduction of value to store equipment.

The Assessor has calculated changes in assets per year for the store equipment at all the three stores located in Mendocino County. The data came from three audit periods over a 10-year span from 2007 – 2017 (January 1st assessment years) and 571-L form filed by the applicant for 2018 & 2019 assessment years. The store equipment assets were not completely replaced in a twelve-year period. As of assessment year of 2019 the applicant shows at the Fort Bragg location that there is 66.87% of the equipment that is 12 or more years of age and for assessment year of 2018 shows 69.31% of the equipment 12 or more years of age. Nevertheless, the applicant is asking for a reduction in value. The data also shows that the last major store renovations were done in 2006.

The Applicant has stated that they did an analysis. The data they used came from auctions of stores that were closing. The Applicant has submitted industry articles stating that stores should remodel every 5-10 years due to competition. We have not seen major remodels at the stores in Mendocino County since 2006. The article also states that in areas of little competition, a renovation will remain fresh for a much longer period. Is this why we do not see quicker turnover of assets in Mendocino County? The Applicant has given us information on the sale of used equipment at auctions. The assets sold for less than 10% of the roll values (2007-2014 data). The reasons for the sale of assets was due to the stores closing. Assets will still have a useful life when turned over because of competition. Does Safeway/Vons purchase equipment from these auctions when they remodel stores? Any equipment bought from these auctions would be valued at the purchase from the auctions and not new prices. If new items are purchased there should be no reason to have to reduce the value to an auction item cost when the company is purchasing new products. According to the Assessment - Valuation Methodology Letter from the State Board of Equalization "The court has distinguished an "open market transaction" from "a sale resulting from the submission of bids where the seller sells to the highest bidder or the buyer buys from the lowest bidder." Auctions are usually for quick sale of assets and not sales in an open market. These sales do not support the claims on additional physical, functional and economic obsolescence.

We do not see justification for a reduction in value. The county uses a cost approach using the California Assessors Association and the California State Board of Equalization life tables which ensures uniformity of assessment to all grocery stores in our county and throughout the state.

Ft Bragg		2019	2018											
Building SF	48589													
M&S cost per SF Cost based on M&S	\$ 59 2,866,751	2,795,150	2,923,569	Cost based or	n cost of purc	hase								
Appraised Value base	ed on BOE/CAA Tables	820,167	917,400											
						•								
	12 Year Costs	1,869,161	2,026,396											
	12 Year Asset %	<mark>66.87</mark> %	69.31%											
	Grocery Equipment Asse	•												
		<b>2019</b>	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007
	Age	0	1	2	3	4	5	6	7	8	9	10	11	12
	2018	4,444												
	2017	122,945	122,945											
	2016	88,418	88,451	88,452										
	2015	33,317	33,317	31,250	31,250									
	2014	116,165	116,165	116,167	116,167	116,167								
	2013	26,287	26,287	28,120	28,120	28,120	32,502							
	2012	21,797	31,036	31,037	31,037	31,037	32,370	30,953						
	2011	21,241	21,241	21,241	21,241	21,241	42,209	43,261	43,261					
	2010	7,428	7,428	145,130	145,130	145,130	152,636	157,148	157,148	157,148				
	2009	31,208	31,208	31,209	31,209	31,209	31,924	31,922	31,922	47,574	47,574			
	2008	165,040	179,280	178,445	178,445	178,445	179,558	183,067	183,067	183,067	183,067	181,954		
	2007	5,318	5,318	5,318	5,318	5,318	6,950	17,438	18,763	18,763	20,289	26,368	26,368	
Remodel Year	2006	1,157,387	1,206,940	1,205,697	1,248,379	ARREST AND A STATE OF THE PARTY	1,300,296		1,451,435	1,451,436	1,457,538	1,449,753	1,455,049	
	2005	10,135	12,719	12,719	12,719	12,719	23,377	26,536	29,133	30,019	40,520	40,520	41,542	43,764
	2004	46,022	46,022	46,023	46,023	46,023	51,579	51,579	51,579	51,579	51,579	51,579	57,272	60,007
	2003	6,880	6,880	6,881	6,881	6,881	6,881	6,880	6,880	6,880	6,880	6,880	6,880	6,880
	2002	6,300	6,300	12,412	12,412	12,412	12,412	12,412	15,118	15,118	15,118	15,118	15,977	16,268
	2001	18,203	18,203	18,203	18,203	18,203	18,203	18,203	18,203	18,203	18,203	18,203	18,203	18,203
	2000	86,074	89,556	89,556	89,556	94,341	94,341	98,619	98,619	106,819	116,201	159,794	233,121	238,816
	1999	337,918	337,918	355,516	382,019	384,417	384,417	366,819	366,819	373,031	385,060	393,343	493,681	529,689
	1998	7,210	7,210	7,210	7,210	7,210	7,210	7,210	7,210	7,210	7,210	7,210	8,562	8,562
	1997	650	650	650	2,672	2,672	2,672	2,022	2,022	2,022	2,022	5,406	20,240	20,240
	Prior	123,661	123,661	123,661	123,661	123,661	96,921	123,661	123,661	125,613	156,179	156,179	204,955	204,955
		<mark>2,444,04</mark> 8	2,518,735	2,554,897	2,537,652	2,557,882	2,476,458	2,554,616	2,604,840	2,594,482	2,507,440	2,512,307	2,581,850	2,608,256
		Per 571L	Per 571L	Per Audit	Per Audit	Per Audit	Per Audit	Per Audit	Per Audit	Per Audit	Per Audit	Per Audit	Per Audit	Per Audit

Forklifts Assets per 571	LL or Audit												
	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007
Age	C	) 1	2	3	4	5	6	7	8	9	10	11	12
2018													
2017													
2016													
2015													
2014													
2013													
2012													
2011													
2010													
2009													
2008			2,662	2,662	2,662	2,662	2,661	2,661	2,661	2,661	2,661		
2007													
2006													
2005													
2004													
2003													
2002													
2001													
2000													
1999			13,244	13,244	13,244	13,244	13,244	13,244	13,244	13,244	13,244	13,244	13,244
1998			11,312	11,312	11,312	11,312	11,312	11,312	11,312	11,312	11,312	11,312	11,312
1997													
Prior												_	
	-	_	27,218	27,218	27,218	27,218	27,217	27,217	27,217	27,217	27,217	24,556	24,556
	Per 571L	Per 571L	Per Audit										

Vending Equipment per	571L or Audit												
	2019	2018				2014							
Age	0	1	2	. 3	4	5	6	7	7 8	9	) 10	11	12
2018													
2017													
2016													
2015													
2014													
2013													
2012													
2011													
2010													
2009	•												
2008													
2007													
2006													
2005													
2004													
2003												1,488	1,488
2002													
2001													
2000													
1999													
1998													
1997													
Prior												4 400	1 400
	-	- D 5744	- 	- D A	- Dan Audia	- 0 Adia	- Dan Amelia	- D Adia	- 	-	Dan Avella	1,488	1,488
	Per 571L	Per 571L	Per Audit	Per Audit	Per Audit	Per Audit	Per Audit	Per Audit	Per Audit	Per Audit	Per Audit	Per Audit	Per Audit

Labs Assets per 571L or a													
	2019	2018			2015				2011	. 2010			
Age	0	1	2	3	4	5	6	7	8	9	10	11	12
2010	7144												
2018 2017	7,144												
2017						•							
2016													
2013													
2014	6,900	6,900	6,900	6,900	6,900	6,900							
2013	5,070	1,400	2,756	2,756	2,756	3,409							
2012	2,070	1,400	2,730	2,730	2,730	5,405							
2010	3,763	3,763	3,763	3,763	3,763	3,763							
2009	3,703	3,703	3,,03	3,703	3,703	3,703							
2008													
2007	5,979	5,979	5,980	5,980	5,980	5,980							
2006	3,515	5,515	68,815	68,815	68,815	68,815							
2005			00,013	00,013	00,013	00,013							
2004													•
2003													
2002													
2001													
2000													
1999													
1998													
1997													
Prior		584											
	28,856			88,214	88,214	88,867	-	-	-	-	-	-	-
	Per 571L	Per 571L	Per Audit										

Office Equipment Asset	s per 571L or A	udît											
	2019	2018											2007
Age	0	1	. 2	2 3	3 4	. 5	6	7	8	9	10	11	12
2018													
2017													
2016													
2015													
2014													
2013	1,833	1,833											
2012							2,103						
2011													
2010													
2009													
2008													
2007							384	1,479	1,479	1,479			
2006													
2005													
2004									11,224	11,224			
2003													
2002													
2001													
2000													
1999													
1998													
1997													
Prior								584	584	4,113		4,043	4,043
	1,833			•	-	-	2,487	2,063	13,287	16,816	4,043	4,043	4,043
	Per 571L	Per 571L	Per Audit										

		2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007
Age		0	1			4	5		7					12
	2018													
	2017													
	2016													
	2015													
	2014						•							
	2013													
	2012	5,057	5,057					539						
	2011													
	2010	4,080	4,080					3,763	3,763	3,763				
	2009	88,149	88,149											
	2008	2,575	2,575											
	2007	8,321	8,324											
	2006		68,814											
	2005							9	9	9	9	9	9	9
	2004				14,102	14,102	14,102	14,102	14,102	14,102	14,102	14,102	14,102	14,102
	2003												•	
	2002													
	2001													
	2000	4,278	4,278		26,397	26,397	26,397	26,397	26,397	26,397	26,397	26,397	26,397	26,397
	1999	30,842	30,842					17,598	17,598	17,598	17,598	17,598	17,598	17,598
	1998	11,312	11,312								•	•	-	-
	1997	-												
	Prior													
		154,614	223,431	_	40,499	40,499	40,499	62,408	61,869	61,869	58,106	58,106	58,106	58,106
		Per 571L	Per 571L	Per Audit										

Shopping Carts Equipme	ent Assets per S	71L or Audit											
	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007
Age	0	1	2	3	4	5	6	7	8	9	10	11	12
2010													
2018	777	2.005									•		
2017	2,065	2,065											
2016													
2015	2.400	2 400	2 700	2 200	2 200								
2014	2,199	2,199	2,200	2,200	2,200	4 220							
2013	2 522	4,330	4,330	4,330	4,330	4,330	c 700						
2012	3,690	6,798	6,798	6,798	6,798	6,798	6,798	4 700					
2011	1,765	1,765	1,766	1,766	1,766	1,766	1,766	1,766					
2010		1,331	1,331	1,331	1,331	1,331							
2009													
2008	1,826	1,826											
2007	2,671	7,481	7,480	7,480	7,480	7,480	4,810	4,810	6,682	6,682	6,682	6,682	
2006		22,708	22,708	22,708	22,708	22,708	22,708	25,358	25,358	25,358	22,708	22,708	22,708
2005								981	981	981	981	981	981
2004									645	645	645	645	645
2003											1,428	1,428	1,428
2002													
2001													
2000													
1999											4,020	4,020	4,020
1998											1,996	1,996	1,996
1997													
Prior											602	602	602
	14,993	50,503	46,613	46,613	46,613	44,413	36,082	32,915	33,666	33,666	39,062	39,062	32,380
	Per 571L	Per 571L	Per Audit										

Network/LAN Equipm	ent Assets per 57	71L or Audit											
	2019	2018	2017		2015	2014							
Age	0	1	2	3	4	5	6	7	8	9	10	11	. 12
2018	13,613	•											
2017	15,375	8,462											
2016	1,629	2,306	2,306										
2015	7,674	7,674	7,675	7,675									
2013	8,580	7,074	,,,,,	,,0,5									
2014	1,649												
2013	1,045						8,572						
2012							1,355	1,355					
2010							2,000	_,					
2009	5,480	2,342	2,342	2,342	2,342	5,349	5,603	5,603	5,603	5,603			
2008	3,100	3,138	_,	_,,	_,,_	-,	-,		-,	-,			
2007		2,233											
2006													
2005			3,138	3,138	3,138	3,138							
2004			0,200	-,	2,414	2,414	2,414	2,414	2,414	2,414			
2003					_,	_,	-,	_,	•	-,			
2002													
2001													
2000													
1999													
1998													
1997													
Prior													
	54,000	23,922	15,461	13,155	7,894	10,901	17,944	9,372	8,017	8,017		-	-
	Per 571L	Per 571L	Per Audit										

Computer Equipmen	t Assets per 571L	or Audit											
	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007
Age	0	1	2	3	4	5	6	7	8	9	10	11	12
2018	2,359												
2017	1,237	1,237											
2016	5,721	608			٠								
2015	6,471	6,471	5,615	6,471									
2014	8,608	8,608	8,608	8,608	9,701								
2013	6,982	3,489	3,489	3,489	3,489	3,489							
2012	10,248	12,095	12,704	12,704	13,692	13,692	5,889						
2011	641	641	803	803	1,975	3,685	4,128	4,128					
2010	618	1,136	951	951	2,554	4,834	4,400	4,400	4,400				
2009		1,439	1,685	2,673	3,123	4,074	5,301	5,301	5,301	5,301			
2008		13,688	935	935	935	1,423	488	488	1,521	1,521	1,521		
2007			448	448	448	448	2 <b>4</b> 4	244	244	244	727	727	
2006			12,525	14,451	15,664	17,298	15,036	15,745	16,472	16,472	16,472	16,871	16,871
2005			30	798	798	798	768	768	768	768	768	2,214	2,214
2004			1,599	1,599	1,599	1,599	1,599	1,599	6,866	6,866	9,280	10,322	10,906
2003									3,012	3,012	3,012	3,504	3,504
2002					869	869	869	869	5,715	5,715	20,145	20,145	20,418
2001									2,401	4,775	6,137	6,137	6,137
2000													
1999			2,046	2,046	2,046	2,046	2,046	2,046	2,046	2,046	2,046	2,046	2,046
1998											334	2,572	2,572
1997							650	650	650	3,844	5,343	5,343	5,343
Prior												1,680	1,680
	42,885	49,412	51,438	55,976	56,893	54,255	41,418	36,238	49,396	50,564	65,785	71,561	71,691
	Per 571L	Per 571L	Per Audit	Per Audit	Per Audit	Per Audit	Per Audit	Per Audit	Per Audit				

POS Equipment Assets	per 571L or Aud	dit											
	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007
Age	0	1	2	3	4	5	6	7	8	9	10	11	12
2040													
2018	3,932												
2017	10,756												
2016	12,247	9,021	9,018		•								
2015	586	500	2,085										
2014													
2013	13,115	1,596				2 000							
2012	8,775	8,775	8,771		3,096	3,096	4,513						
2011	2,431	2,894	6,484	7,286	7,687	8,088	12,705	12,705					
2010	409	409	2,242	2,242	2,242	2,242	3,139	3,139	3,139				
2009													
2008	670	8,215	12,578	12,578	14,714	16,934	34,535	40,225	40,225	44,226	43,116		
2007			244	244	244	244	6,546	6,930	7,639	7,639	9,703	9,703	
2006		2,934	2,931	2,931	2,931	2,931							
2005													
2004		1,153	1,728	1,728	1,728	1,728	1,728	8,640	19,565	20,090	31,314	34 <b>,</b> 39 <b>7</b>	34,397
2003													
2002		610	610	610	610	610	610	610	610	610	610	610	610
2001			791	791	791	791	791	2,727	2,727	2,727	10,569	10,569	10,569
2000													
1999												25,290	25,290
1998												42,989	42,989
1997													
Prior											329	12,93 <u>9</u>	17,645
	52,921	36,107	47,482	28,410	34,043	36,664	64,567	74,976	73,905	75,292	95,641	136,497	131,500
	Per 571L	Per 571L	Per Audit	Per Audit									

Security Equipment Ass	ets per 571L o	r Audit											
	2019	2018	2017	2016	2015	2014		2012		2010			
Age	C	) 1	. 2	3	4	5	6	7	8	9	10	11	12
2018													
2017													
2016													
2015													
2014													
2013													
2012			4,354	4,354	4,354	4,354	2,548						
2011													
2010			4,080	4,080	4,080	4,080	899	899	899				
2009			88,149	88,149	88,149	88,149	88,149	88,149	88,149	88,149			
2008			2,575	2,575	2,575	2,575							
2007			8,321	8,321	8,321	8,321							
2006													
2005													
2004													
2003													
2002													
2001													
2000			4,278	4,278	4,278	4,278					29,256	29,256	29,256
1999													
1998													
1997													
Prior										·			
	-	-	111,757	111,757	111,757	111,757		89,048	89,048	88,149	29,256	29,256	29,256
	Per 571L	Per 571L	Per Audit										

848.0003



STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082 1-916-322-1982 • FAX 1-916-323-3387 www.boe.ca.gov SEN. GEORGE RUNNER (RET.)
First District, Lancaster

FIONA MA, CPA Second District, San Francisco

JEROME E. HORTON Third District, Los Angeles County

DIANE L. HARKEY Fourth District, Orange County

BETTY T. YEE State Controller

CYNTHIA BRIDGES Executive Director

January 4, 2016

Mr.

Re:

Assessment - Valuation Methodology Assignment No.: 15-415

Dear Mr.

This is in response to your email, forwarded to us by the Taxpayers' Rights Advocate's Office, requesting our opinion regarding the application of the purchase price presumption to property purchased at auction, as well as an Assessor's duties in valuing such property. Specifically, your email set forth three questions, which are quoted and addressed below. As explained below, it is our opinion that the purchase price presumption does not apply to properties that are purchased at auction because they are not "open market" transactions as contemplated by Revenue and Taxation Code<sup>2</sup> section 110, subdivision (b).

1. "Are Assessors required to follow [the] Revenue and Taxation Code when valuing property? (If not, please explain.)"

Yes. Article XIII, section 1, of the Constitution provides in relevant part that "All property... shall be taxed in proportion to its value." This value is determined by assessment, and the duty to assess is placed on the assessor who must perform the duty "in compliance with... [those] statutes prescribing the method by which property is to be assessed," namely, the Revenue and Taxation Code. (See *County of Sacramento v. Irene Hickman* (1967) 66 Cal.2d 841, 845-846; Rev. & Tax. Code, §§ 401 and 405.)

2. "Would it be correct that the very first preponderance of evidence an Assessor is required to have when determining value is in regard to the purchase price in an open market transaction? (If not, please explain.)"

We are uncertain what you are asking, however, we believe you may be seeking clarification regarding the application of the purchase price presumption, as described in section 110, subdivision (b) and Property Tax Rule<sup>3</sup> (Rule) 2, to property purchased at auction.

We do not opine on matters that are the subject of an appeal before a county board of equalization or assessment appeals board. Furthermore, we do not opine on matters that are the subject of pending litigation unless asked to do so by the court hearing the matter. We have been informed by our Taxpayers' Rights Advocate Office that you are engaged in litigation against the County Assessor on this matter. Therefore, we have answered your questions generally and do not address your specific factual situation.

<sup>&</sup>lt;sup>2</sup> All statutory references are to the California Revenue and Taxation Code unless otherwise indicated.

<sup>&</sup>lt;sup>3</sup> All subsequent references to "Rules" are to the Property Tax Rules promulgated under title 18 of the California Code of Regulations.

Assessors have a statutory duty to assess all property subject to general property taxation at its full value. (See Rev. & Tax. Code, § 401.) The words "full value," "full cash value," and "fair market value" are defined in section 110, subdivision (a) and Rule 2, subdivision (a) as the price at which a property, if exposed for sale in the open market with a reasonable time for the seller to find a purchaser, would transfer to a buyer for cash or its equivalent. Thus, fair market value is "the value in exchange *under certain stipulated conditions.*" (See Assessors' Handbook Section 501, *Basic Appraisal* (Jan. 2002), p. 10.)

Section 110, subdivision (b) establishes a rebuttable presumption that the property's fair market value is its purchase price if the terms of the transaction were negotiated under specific conditions reflecting an "open market transaction." This is known as the purchase price presumption. If the purchase price presumption is applied at an appeals hearing, it is assumed that a property's purchase price is in fact the fair market value, and whoever wishes to assert a different value (be it taxpayer or assessor) bears the burden of overcoming that presumption by a preponderance of the evidence.

Conversely, the purchase price presumption does not apply if the sale was not an "open market transaction," (See Rule 2, subd. (b).) The court has distinguished an "open market transaction" from "a sale resulting from the submission of bids where the seller sells to the highest bidder or the buyer buys from the lowest bidder." (Guild Wineries and Distilleries v. County of Fresno (1975) 51 Cal.App.3d 182, 186.) Purchases at foreclosure auctions are not considered open market transactions because they are, by definition, "forced sales" characterized by nonmarket conditions. (See Property Tax Annotation 460.0031 (Mar. 26, 1999).) Finally, even when a transaction is an open market transaction, the "presumption may nevertheless be rebutted by evidence that the fair market value is otherwise." (Dennis v. County of Santa Clara (1989) 215 Cal.App.3d 1019, 1028.)

3. "Would it be correct to say the response from HCAO dated November 21, 2014 [] clearly shows by their own admission, at the time they determined value, they had NO evidence that this was NOT an open market transaction? (if incorrect, please explain) Two values, other than the purchase price, were determined prior to the date of this statement without such evidence. (\$472,000, \$415,000)"

While that may or may not be the case, as explained in footnote 1, we do not opine on matters in pending litigation unless asked to do so by the court hearing the matter. However, even if purchases at auction are open market transactions as contemplated in section 110, subdivision (b), the purchase price presumption may be rebutted. (See *Dennis v. County of Santa Clara*, *supra*, 215 Cal.App.3d at p. 1028.)

The views expressed in this letter are only advisory in nature. They represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely,

/s/ Amanda Jacobs

Amanda Jacobs Tax Counsel AJ/yg J:/Prop/Prec/Assessment Roll/2016/15-415.doc

cc: Honorable

County Assessor

Mr. Dean Kinnee (MIC:63) Mr. David Yeung (MIC:61) Mr. Todd Gilman (MIC:70) Mr. Mark Sutter (MIC:70)





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STATE BOARD OF EQUALIZATION

N STREET, SACRAMENTO, CALIFORNIA

(IFO BOX 942879, SACRAMENTO, CALIFORNIA 94279-00XX)

TELEPHONE (916) 323-7713

FAX (916) 445-3678

January 11, 1999 REVISED: March 26, 1999

Honorable Raymond Olivarria Amador County Assessor 500 Argonaut Land Jackson, California 95642 Attn: Mr. Jack Quinn

Re:

Application of Rev. & Tax. Code Section 110 presumptions to property sold at execution and/or foreclosure sale.

Dear Mr. Quinn:

This is in reply to your phone request of December 2, 1998 for a brief summary and the transmittal of any legal opinions and relevant documents concerning the application of the "fair market value presumptions" in Section 110, including the recent amendments thereto (on the treatment of unpaid improvement bonds). Specifically, your questions relate to estimating the fair market value of property sold at execution and/or foreclosure sales.

As we understand it, the reappraisal of a largely undeveloped subdivision in your county has resulted in an appeal by the property owner on the grounds that (1) the assessed value significantly exceeds the purchase price paid at the foreclosure sale, and that (2) the purchase price is the fair market value of the property for assessment purposes. Your office believes that the correct assessed value of the property is the "fair market value" consistent with Section 110, which is appropriately derived in the instant case from the comparative sales approach methodology under Property Tax Rule 4. The appeal raises two possible questions regarding the fair market value presumptions under Section 110. First, would the price paid at a foreclosure sale be or be "presumed" to be fair market value. Secondly, would the rebuttable presumption that the purchase price already reflects the value of the unpaid bonds apply. For the reasons explained in the attached documents, the answer to both questions is no.

Since 1989, section 110 has generally provided that, for real property that was purchased in an open market transaction, "full cash value" or "fair market value" is rebuttably presumed to be the purchase price—that is, the cash value of the total consideration exchanged for the property. Thus, in general, where real property is purchased in an open market transaction, an assessor who sets fair market value at something other than the cash value of the total consideration exchanged for the property bears the burden of proof in an assessment appeal. The express language of the presumption, however, authorizes the assessor to presume fair market value from a property's purchase price only in an open market transaction that is not influenced by the exigencies of either buyer or seller. Moreover, even where the presumption does apply, it may be rebutted by evidence that the fair market value of the property is otherwise. (See

Apparently your office did not use the "subdivision development method" described in <u>Assessors' Handbook 501</u>, Basic Appraisal, page 68 (enclosed), since reliable data were available to apply the comparative sales method.

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Letter to Assessors No. 90/30, Dennis v. County of Santa Clara (1989) 215 Cal.App.3d 1019, copy enclosed.) <sup>2</sup>

The prerequisites necessary to raise the presumption are plainly stated in the provisions of Section 110(a) and (b) as follows:

"full cash value or fair market value means the amount of cash or its equivalent that property would bring if exposed for sale in the open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other, and both the buyer and seller have knowledge of all of the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions upon those uses and purposes"; and that

"purchase price" means "the total consideration provided by the purchaser ... valued in money, whether paid in money or otherwise."

As to the meaning of an "open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other," the discussion set forth in Assessors' Handbook 501, Basic Appraisal, page 85, is highly relevant. Of the long list of conditions which must be met, it is clear that "forced sales", like execution or foreclosure sales, fall short of meeting the listed conditions necessary to establish an open market transaction. Further, we have long held that the price paid at execution and/or foreclosure sales does not equal fair market value. For example, in a legal opinion issued on March 29, 1983 (Annotation No. 460,0030) enclosed, the price established as the minimum price for which property is offered at a tax sale and public auction is not full cash value or fair market value as defined in Section 110, since the provisions of Section 3698.5 control the sale price of such property, not the market place. By definition, an execution or foreclosure sale is a "forced sale" to cover liens or debt within a limited time, and is therefore characterized by "nonmarket conditions," including but not limited to, the requirements/complexities of the foreclosure proceedings and the seller's (creditor's) need for cash in a hurry. Such "nonmarket" forces do not shape market value, and cannot be used by the appraiser to formulate an opinion of the property's highest and best use. (The Appraisal of Real Estate, 10th Ed., pages 275-277, 380-382.)

Finally, statutory law recognizes that when a property is sold at an execution or foreclosure sale, it is sold subject to various types of debt encumbrances, which are reflected in a discounted purchase price. For example, Section 3712 states that the title transferred to the purchaser in an execution sale is, among other things, (1) not free of unpaid assessments under the Improvement Bond Act of 1915, (2) not free of any federal Internal Revenue Service liens, and (3) not free of unpaid special taxes under the Mello-Roos Community Facilities Act.<sup>3</sup> Based on the foregoing, the price paid at an execution or foreclosure sale is not valid as an indicator of fair market value and should be disregarded; the fair market presumption in Section 110(a) does not apply. (See AH 501, pages 85-91.)

<sup>&</sup>lt;sup>2</sup> Regarding fair market value, Section 2(a) of Article XIII A of the California Constitution states that "...full cash value means ... the appraised value of real property when purchased...". Revenue and Taxation Code Section 110.1(a) implements this constitutional provision by stating that, "... 'full cash value' of real property ... means the fair market value as determined pursuant to Section 110 for ... (2) (A) ..the date on which a purchase or change in ownership occurs."

<sup>&</sup>lt;sup>3</sup> The provision for unpaid special taxes under Mello-Roos was recently added to Section 3712 by AB 1224 (Thomson, 1997) which became effective on January 1, 1998. See Legislative analysis of amendment enclosed.

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For similar reasons, the newly enacted rebuttable presumption added to Section 110 (b), that the value of public improvements financed by the sale of bonds is reflected in the purchase price, does not apply to the price of properties sold at execution or foreclosure sales. Senate Bill 1997, enacted as an urgency measure effective September 23, 1998, amended Section 110 to establish a rebuttable presumption that, where the terms of an open market purchase of real property include the purchaser's assumption of debt used to repay bonds sold to finance public improvements, the value of those improvements is reflected in the total consideration, exclusive of the assumed debt. The amendments made by this legislation mean that if an assessor sets the fair market value of real property purchased in an open market transaction at the cash value of the total consideration actually exchanged (i.e., including the purchaser's assumption of debt used to finance public improvements) then the assessor bears the burden of rebutting the presumption that the value of the financed improvements was reflected in the total consideration excluding the assumed debt.<sup>5</sup>

Based on the express language adopted however, this presumption does not arise if the property was <u>not</u> purchased in an open market transaction. Since an execution or foreclosure sale is a forced sale as noted above, it is a "nonmarket" transfer, and the price of a property sold at such a sale is not representative of fair market value. Therefore, this presumption does not apply. Moreover, even in an open market transaction, this presumption applies <u>only</u> to the purchaser's assumption bonded indebtedness for improvements financed under 1911, 1913, and 1915 assessment bonds, <u>not</u> under Mello-Roos bonds.

The requirement that is relevant and applicable to the delinquent payments under the Mello Roos bonds in instant case is Property Tax Rule 4, which states in part:

When reliable market data are available with respect to a given real property, the preferred method of valuation is by reference to sales prices. In using sales prices of the appraisal subject or of comparable properties to value a property, the assessor shall:

(b) When appraising an unencumbered-fee interest, (1) convert the sale price of a property encumbered with a debt to which the property remained subject to its unencumbered-fee price acquivalent by adding to the sale price of the seller's

to its unencumbered-fee price equivalent by adding to the sale price of the seller's

<sup>&</sup>lt;sup>4</sup> Letter to Assessors on this newly added rebuttable presumption will be issued to all counties shortly.

<sup>&</sup>lt;sup>5</sup> Under the amendments to section 110, "purchase price" means the stated price paid in an open market transaction, unless the assessor can show by evidence that the value of the improvements financed with the sale of the bonds is *not* already reflected in the stated price. To rebut the presumption and adjust the price to reflect the assumed debt, the assessor must show evidence that the value of the improvements financed by the bonds is <u>not</u> already reflected in the stated purchase price. See Legislative analysis enclosed.

<sup>&</sup>lt;sup>6</sup> As a practical matter this legislation would <u>not</u> shift to the assessor the burden of proving, in an assessment appeal, that the value of public improvements financed by debt assumed by a purchaser in a *nonmarket* transaction was *not* included in the total consideration. That is, in a nonmarket transaction, the assessor may set fair market value without regard to the total consideration paid and the assumed debt.

<sup>&</sup>lt;sup>1</sup> As stated in <u>Letter to Assessors</u> No. 89/68 and AH 501, pages 70-71, (enclosed), Mello-Roos bonds are similar to a general property tax levy and should be treated as special taxes. Under the language of Rule 4(b), no adjustment of the sale price for the unpaid cash equivalent principal of Mello-Roos bonds is implied, since the principal amount of the Mello-Roos bonds is not tied to specific parcels.

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equity the price for which it is estimated that such debt could have been sold under value-indicative conditions at the time the sale price was negotiated....

\* \* \*

Since the rule expressly requires that any existing debt encumbering a property, i.e., delinquent payments secured by liens against the property, must be added to the stated sale price in order to arrive at the actual consideration paid, (i.e., the cash equivalent "purchase price" of the property), delinquent payments under Mello Roos bonds must be treated like any other encumbrances existing on the property on the sale date. That is, delinquent payments (in contrast to future payments) on Mello Roos bonds represent an existing encumbrance or liability which must be converted under Rule 4. Therefore, in order to arrive at the consideration exchanged for the property, it is appropriate to add "delinquent" payments on MelloRoos bonds.

The views expressed in this letter are only advisory in nature, and represent the analysis of the legal staff of the Board based on present law and the facts set forth herein. They are not binding on any person or public entity.

Very truly yours,

Kristine Cazadd Senior Tax Counsel

Kriz Carrelet

KEC:jd h:/property/precednt/astandiv/1999/01kec.doc

Enclosure

CC:

Mr. Richard C. Johnson (MIC:63)

Mr. David J. Gau (MIC:64)

Ms. Jennifer L. Willis (MIC:70)