Assessor's Case Safeway Inc Appeal #19-017 – Ukiah

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 Ukiah location that there is 47.37% of the equipment that is 12 or more years of age and for assessment year of 2018 shows 50.16% 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 2005.

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

Ukîah Building SF	55256	2019	2018											
M&S cost per SF Cost based on M&S	\$ 59 3,260,104	<mark>3,353,54</mark> 9	3,213,360 (Cost based on	cost of purch	ase								
Appraised Value base	ed on BOE/CAA Tables	1,324,408	1,331,511											
	12 Year Costs 12 Year Asset %	1,588,590 47.37%	1,611,963 50.16%											
	Grocery Equipment Assets pe		2018	2017	2016	2015	2014	2012	2012	2011	2010	2000	2008	2007
	Age	2019 0	2018 1	2017	3	2015 4	2014 5	2013 6	2012 7	2011	2010	2009 10	2008	12
	2018	18,068												
	2017	2 7 9,187	203,602											
	2016	99,369	90,987	88,894										
	2015	50,846	50,846	41,721	41,721									
	2014	401,742	401,742	401,751	401,751	401,751								
	2013	190,171	190,171	185,442	185,442	185,442	189,824							
	2012	27,032	39,122	39,123	39,123	39,123	40,456	44,438						
	2011	128,450	128,450	136,428	136,428	136,428	155,269	159,105	159,105					
	2010	115,500	115,500	130,478	130,478	130,478	131,321	135,094	135,094	135,094				
	2009	23,903	26,003	62,289	62,289	62,28 9	63,004	63,003	63,003	63,003	63,003			
	2008	84,816	87,316	87,315	87,315	87,315	104,888	109,678	110,817	110,817	110,817	110,817		
	2007	25,989	25,989	27,693	27,693	27,693	30,395	37,269	37,269	37,269	38,795	38,795	38,795	
	2006	142,796	150,490	246,403	246,403	246,403	260,672	273,628	282,877	288,677	295,445	295,445	295,844	295,844
	2005	619:304	624,077	665,350	665,350	665;350	1,010,229	1,059,575	1,061,338	The second secon		1,140,109	*******************************	4,111,555
	2004	59,682	61,148	67,192	67,192	67,192	86,745	86,169	86,745	91,783	92,019	100,071	102,004	102,004
	2003	9,058	9,058	23,067	23,067	23,067	23,067	8,314	8,314	8,314	9,658	9,658	9,658	9,658
	2002	859	859	859	859	859	859	859	3,565	6,373	6,373	6,373	6,373	6,373
	2001	10,726	10,726	19,535	19,535	19,535	19,535	19,535	19,535	27,159	27,159	27,159	29,653	29,653
	2000	54,551	54,551	54,551	54,551	54,551	69,150	66,779	69,352	71,529	93,082	94,525	94,525	99,750
	19 9 9	2,565	2,565	3,121	3,121	3,121	24,103	24,103	24,103	24,103	24,103	25,040	25,040	25,040
	1998	32,997	32,997	35,083	35,083	33,314	33,314	35,083	35,083	35,485	35,485	38,711	38,711	40,206
	1997	532,727	\$39,595	608,750	608,750	643,204	652,689	652,689	662,057	696,459	700,579	736,217	781,388	788,159
	Prior	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000

2,916,338 2,851,794 2,931,045 2,842,151 2,833,115 2,901,520 2,781,321 2,764,257 2,703,237 2,612,118 2,598,920 2,539,546 2,514,242

Per 571L Per Audit Per Au

Forklift Assets per 571L or Aud		2010	2017	2016	7015	2014	2012	2012	2011	2010	2000	2008	2007
Age	2019 0			2016 3	2015 4	2014 5		7	2011 8	2010	2009 10	2008	2007 12
2018													
2017													
2016													
2015													
2014		·											
2013													
2012													
2011													
2010													
2009													
2008													
2007													
2006													
2005													
2004													
2003													
2002													
2001													
2000													
1999													
1998													
1997			20,567	20,567	20,567	20,567	20,567	20,567	20,567	20,567	20,5 6 7	20,567	20,567
Prior													
	-	-	20,567	20,567	20,567	20,567	20,567	20,567	20,567	20,567	20,567	20,567	20,567
•	Per 571L	Per 571L	Per Audit	Per Audit	Per Audit								

Vending Equpipment Assets													
	2019	2018								2010	2009	2008	2007
Age	0	1	2	3	4	5	6	7	8	9	10	11	12
2018	9,768								-				
2017													
2016													
2015													
2014	5,130	5,130											
2013	11,749	11,749											
2012	5,070	1,400											
2011													
2010													
2009		1,780											
2008		2,287											
2007	7,093	7,093											
2006													
2005							2,532	2,532	2,532	2,532	2,532	2,532	2,532
2004	11,230	11,230											
2003							744	744	744	744	744	744	744
2002													
2001													
2000							2,371	2,371	2,371	2,371	2,371	2,371	2,371
1999													
1998													
1997													
Prior													
	50,040	40,669	-	-	-	-	5,647	5,647	5,647	5,647	5,647	5,647	5,647
	Per 571L	Per 571L	Per Audit										

Labs Assets per 571L or Audit			2017	2246			2040		2014				2007
Age	2019 0		2017 2		2015 4	2014 5							
2018	9,768												
2017													
2016													
2015													
2014	5,130	5,130	5,130	5,130	5,130								
2013	11,749	11,749	11,749	11,749	11,749	11,749							
2012	5,070	1,400	1,400	1,400	1,400	2,054							
2011			1,373	1,373	1,373	1,373							
2010													
2009		1,780	1,780	1,780	1,780	1,780							
2008		2,287	2,287	2,287	2,287	2,287							
2007	7,093	7,09 3	7,093	7,093	7,093	7,093							
2006			8,538	8,538	8,538	8,538							
2005						48,495							
2004	11,230	11,230	11,231	11,231	11,231	11,231							
2003													
2002													
2001													
2000													
1999													
1998													
1997													
Prior			_			_							
	50,040		50,581	50,581	50,581	94,600	-			-			
	Per 571L	Per 571L	Per Audit										

Office Equipment Assets per													
	2019												
Age	0	1	2	3	. 4	. 5	6	7	8	9	10	11	12
2018													
2017													
2016													
2015													
2014													
2013	1,829	1,829											
2012	·	-					1,865						
2011							1,372	1,372					
2010													
2009													
2008													
2007													
2006													
2005													
2004							11,230	11,230	11,230	11,230			
2003													
2002													
2001													
2000													
1999													
1998													
1997	872	872										1,045	1,045
Prior													
	2,701		-	-	-	- ·	14,467	12,602	11,230	11,230	-	1,045	1,045
	Per 571L	Per 571L	Per Audit										

Phone & Postage Meter Equ	ipment 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
2010													
2018													
2017	0.117	0.113											
2016 2015	9,113	9,113											
	11.047	11.047											
2014	11,047	11,047											
2013	24,351	24,351					539						
2012	3,805	3,805					223						
2011	1,372	1,372	4 204	4 304	4 204	4 204	4 204	4 204	4 204				
2010	64,131	64,131	4,281	4,281	4,281	4,281	4,281	4,281	4,281				
2009													
2008	2,911	2,911											
2007	1,928	1,928											
2006	17,598	17,598					17,598	17,598	17,598	17,598	17,598	17,598	17,598
2005													
2004													
2003							14,009	14,009	14,009	14,009	14,009	14,009	14,009
2002													
2001	2,184	2,184											
2000													
1999													
1998													
19 9 7	29,264	29,264											
Prior													
	167,704	167,704	4,281	4,281	4,281	4,281	36,427	35,888	35,888	31,607	31,607	31,607	31,607
	Per 571L	Per 571L	Per Audit										

Shopping Carts Equipment A	ssets per 571L or A	Audit											
	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007
Age	0	1	2	3	4	S	6	7	8	9	10	11	12
2010	2.020		*										
2018	3,839	7.044											
2017	14,354	7,811											
2016	24,230	24,230											
2015			***	- 505	~ ~								
2014		7,695	7,695	7,695	7,695								
2013		7,573	7,573	7,573	7,573	7,573							
2012			3,129	3,129	3,129	3,129							
2011			4,327	4,327	4,327	4,327							
2010			3,774	3,774	3,774	3,774							
2009													
2008	2,549	3,285	3,286	3,286	3,286	3,286	1,406	1,406	1,406	1,406	1,406		
2007						3,370							
2006	2,844	2,844	2,844	2,844	2,844	2,844	2,844	2,844	2,844	2,844	2,844	2,844	2,844
2005		2,572	26,113	26,113	26,113	26,113	25,175	25,175	25,175	25,175	25,175	25,175	25,175
2004													
2003													
2002													
2001											•		
2000													
1999				-									
1998													
1997						4,064	4,064	4,064	4,064	4,064	4,064	4,064	4,064
Prior													
	47,816	56,010	58,741	58,741	58,741	58,480	33,489	33,489	33,489	33,489	33,489	32,083	32,083
	Per 571L	Per 571L	Per Audit										

Network/LAN Equipment Ass	sets per 571L or At	udit											
	2019	2018	2017	2016	2015	2014	2013			2010	2009	2008	
Age	0	1	2	3	4	5	6	7	8	9	10	11	12
2010	401												
2018	481												
2017	6,531	F 207	F 70¢										
2016	12,543	5,307	5,306	10.077									
2015	1.0,976	10,976	10,977	10,977									
2014	8,580												
2013	3,477												
2012							8,572						
2011													
2010													
2009	2,342	2,342	2,927	2,927	2,927	5,544	7,647	7,647	7,647	7,647			
2008							2,287	2,287	2,287	2,287			
2007													
2006													
2005													
2004					2,414	2,414							
2003													
2002													
2001													
2000													
1999													
1998													
1997													
Prior													
	44,930	18,625	19,210	13,904	5,341	7,958	18,506	9,934	9,934	9,934		-	
	Per 571L	Per 571L	Per Audit										

Computer Equipment 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	5,086												
2017	1,312												
2016	23,954	387	387										
2015	8,338	8,032	8,179	8,179									
2014	8,678	8,678	8,886	8,886	8,886								
2013	3,637	3,489	4,107	4,107	4,107	4,107							
2012	11,549	10,802	10,264	10,264	10,991	10,991	1,723						
2011	1,236	1,434	2,045	2,045	3,236	5,026	4,338	4,338					
2010		703	518	518	518	2,963	2,962	2,962	2,962				
2009		591	1,053	1,053	1,256	4,256	5,168	5,168	5,168	5,168			
2008		4,978				488	1,423	1,423	1,423	1,423	1,423		
2007			3,212	3,212	3,212	4,190	1,300	1,300	1,300	1,300	2,674	2,674	•
2006			4,953	4,953	6,166	6,166	6,310	12,244	12,244	12,244	11,517	11,517	11,517
2005			1,448	1,448	1,448	1,448						581	581
2004							2,414	2,414	7,014	7,014	7,014	8,056	8,056
2003									3,012	3,012	3,012	3,504	3,504
2002					868	868	868	868	3,838	3,838	11,576	11,5 7 6	11,576
2001									2,428	2,428	2,428	3,672	3,672
2000													
1999													
1998													971
1997										2,011	12,289	12,289	12,289
Prior			_										
	63,790	39,094	45,052	44,665	40,688	40,503	26,506	30,717	39,389	38,438	51,933	53,869	52,166
	Per 571L	Per 571L	Per Audit	Per Audit									

POS Equipment Assets per 5	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
2018	6,403												
2017	8,698	7,108											
2016	13,668	8,018	8,016					-					
2015	1,384												
2014													
2013	15,700	277											
2012	10,855	9,138	9,677	3,683	6,623	6,623	2,969						
2011	1,852	1,852	7,909	7,909	8,942	9,343	10,149	10,149					
2010			1,453	1,453	1,875	1,875	2,295	2,295	2,295				
2009			2,700	2,700	2,700	2,700	2,700	2,700	2,700	2,700			
2008	670	9,370	14,671	14,671	15,810	16,920	32,916	37,318	38,746	38,746	41,033		
2007			7,280	7,280	7,280	7,280	15,679	15,679	15,679	18,406	18,406	18,406	
2006													
2005											184	3,555	3,555
2004			1,152	1,152	1,152	1,152	2,304	9,792	20,667	20,667	31,897	33,623	34,198
2003													
2002									610	610	610	610	610
2001			791	791	791	791	79 1	791	791	791	8,633	8,633	8,633
2000													
1999													
1998												53,318	59,466
1.997												27,438	27,438
Prior			_										
	59,230		53,649	39,639	45,173	46,684	69,803	78,724	81,488	81,920	100,763	145,583	133,900
	Per 571L	Per 571L	Per Audit	Per Audit	Per Audit	Per Audit	Per Audit	Per Audit	Per Audit				

Security Equipment Assets p	per 571L 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
2010													
2018													
2017			0.443										
2016			9,113										
2015													
2014			11,047	11,047	11,047								
2013			24,352	24,352		24,352							
2012			3,805	3,805	3,805	3,805	2,547						
2011													
2010			59,851	59,851	59,851	59,851	59,850	59,850	59,850				
2009					-								
2008			2,911	2,911	2,911	2,911							
2007			1,928	1,928	1,928	1,928							
2006			17,598	17,598	17,598	19,573							
2005													
2004													
2003													
2002													
2001													
2000													
1999													
1998													
1997													
Prior													
	-	-	130,605	121,492	121,492	112,420	62,397	59,850	59,850		-	-	-
	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

Re:

Mr.

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 Code² 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 Rule³ (Rule) 2, to property purchased at auction.

¹ 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.

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

³ 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)





JOHAN KLEHS

DEAN F. ANDAL Second District, Stockton

> CLAUDE PARRISH Third District, Torrance

JOHN CHIANG Fourth District, Los Angeles

> KATHLEEN CONNELL Controller, Secremento

E. L. SORENSEN, JR. Executive Director

STATE BOARD OF EQUALIZATION

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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

¹ 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.) ²

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.³ 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.)

² 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."

³ 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 presumption⁴ 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.5

Based on the express language adopted however, this presumption does not arise if the property was not 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 only to the purchaser's assumption bonded indebtedness for improvements financed under 1911, 1913, and 1915 assessment bonds, not 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 equivalent by adding to the sale price of the seller's

⁴ Letter to Assessors on this newly added rebuttable presumption will be issued to all counties shortly.

⁵ 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 not already reflected in the stated purchase price. See Legislative analysis enclosed.

⁶ 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.

As stated in Letter to Assessors 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

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Enclosure

cc:

Mr. Richard C. Johnson (MIC:63)

Mr. David J. Gau (MIC:64)

Ms. Jennifer L. Willis (MIC:70)