Assessor's Case The Vons Companies Inc Appeal #19-018 - Willits

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 Willits location that there is 74.19% of the equipment that is 12 or more years of age and for assessment year of 2018 shows 76.73% 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.

Willits		Total Assets 2019	Total Assets 2018											
Building SF	34661	2019	2018											
M&S cost per SF Cost based on M&S	<u>\$</u> 59_ 2,044,999	<mark>3,197,274</mark>	3,191,568	Cost based or	n cost of purcha	se								
Appraised Value ba	sed on BOE/CAA Tables	<mark>1,109,88</mark> 4	1,209,547											
	12 Year Costs 12 Year Asset %	<mark>2,371,949</mark> <mark>74.19%</mark>	2,448,872 76.73%											
Grocery 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	1 2
			7											
	2018	37,769												
	2017	37,947	37,317											
	2016	71,898	65,610	65,611										
	2015	56,524	56,524	63,582	63,582									
	2014	191,524	191,524	199,728	1 9 9,728	199,728								
	2013	27,307	29,307	28,941	28,941	32,339	36,721							
	2012	46,678	43,827	43,82 9	43,829	43,829	45,162	48,155						
	2011	18,557	18,557	10,753	10,753	10,753	26,704	38,796	38,796					
	2010	3,000	3,000	9,000	15,000	15,000	15,000	15,000	15,000	15,000				
	2009	15,742	15,742	15,742	15,742	15,742	25,356	25,356	25,356	25,356	25,356			
	2008	11,081	13,581	13,582	13,582	13,582	28,098	29,100	29,100	29,100	29,100	30,246		
	2007	243,249	244,616	244,617	244,617	244,617	249,111	263,855	263,855	263,855	264,863	265,933	265,933	
Remodel Year	2006	1,386,142	1,426,864	1,434,287	1,464,021		1,626,445.		1,622,592	1,622,592	1,625,784		1,658,365	
	2005	24,002	24,002	24,002	24,002	24,002	32,246	32,267	32,267	32,267	36,971	38,561	39,935	41,698
	2004	26,706	27,837	27,837	27,837	27,837	27,837	27,837	27,837	28,351	28,351	28,351	41,139	68,610
	2003	5,530	5,530	5,530	5,530	5,530	14,869	14,869	14,869	14,869	14,869	14,869	14,869	27,141
	2002	17,314	17,314	17,314	17,314	17,314	17,314	15,484	15,484	15,484	15,484	15,484	19,771	24,759
	2001	36,206	36,206	36,206	36,206	36,206	40,787	40,787	40,787	40,787	40,787	41,622	41,622	61,960
	2000	10,753	10,753	10,753	10,753	10,753	10,753	11,732	14,553	14,553	14,553	20,479	36,815	64,975
	1999	1,209	1,209	1,209	1,209	1,209	1,209	1,209	1,209	1,209	1,209	1,209	1,209	5,696
	1998	7,151	7 ,1 51	7,151	15,305	15,305	15,305	15,305	15,305	15,305	15,305	15,305	19,382	63,505
	19 97	-	-	-	-	-	-	-	-	-	-	-	-	8,744
	Prior	129,877	129,877	129,877	129,877	129,877	129,877	129,877	129,877	129,877	130,524	133,945	162,086	296,693
		2,406,166	2,406,348	2,389,551	2,367,828	2,389,230	2,342,794	2,286,374	2,286,887	2,248,605	2,243,156	2,241,804	2,301,126	2,322,146
		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

- i

Service Station Excluding Tanks Assets per 571L (or Audit 2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007
Age	0				4	5		7	8		10	11	12
2018													
2017													
2016													
2015							•						
2014													
2013													
2012													
2011													
2010													
2009													
2008							1,146	1,146	1,146	1,146			
2007							20,984	20,984	20,984	20,984	20,894	20,984	
2006	136,168	136,168	136,166	136,166	136,166	136,166	233,418	233,418	233,418	233,418	233,418	233,418	233,418
2005													
2004													
2003													
2002													
2001													
2000													
1999													
1998													
1997													
Prior	400 400	126 169	130 100	120 166	126 166	126 166	255 549	255 540	755 549	255 549	254 212	354.403	222.419
	<mark>136,168</mark>			136,166 Den Audit	136,166 Per Audit	136,166 Per Audit	255,548 Per Audit	255,548 Per Audit	255,548 Per Audit	255,548 Per Audit	254,312 Per Audit	254,402 Per Audit	233,418 Day Audit
	Per 571L	Per 571L	Per Audit	Per Audit	rer Audit	Per Audit	rer Augit	rer Augit	rer Audit	rer Auuit	ret Audit	Fer Augit	Per Audit

.

Underground Tanks Assets per 571L or Audit													
	2019	2018		2016				2012	2011	2010		2008	2007
Age	0	1	2	3	4	5	6	7	8	9	10	11	12
2018													
2017													
2016													
2015													
2014													
2013													
2012													
2011													
2010													
2009													
2008													
2007													
2006	268,609	268,609	256,942	256,942	256,942	256,942	268,612	268,612	268,612	268,612	268,612	268,612	268,612
2005													
2004													
2003													
2002													
2001													
2000													
1999													
1998													
1997													
Prior					250.042	255.042	260 612			200 (12	200 012	259 612	269.612
	268,609		256,942	256,942	256,942	256,942	268,612	268,612	268,612	268,612	268,612	268,612 Bos Audit	268,612
	Per 571L	Per 571L	Per Audit	Per Audit									

Forklift Assets per 571L or Audit													
	2019												
Age	() 1	1 2	3	4	5	6	7	8	9	10	11	12
2018													
2017													
2016													
2015													
2014													
2013													
2012													
2011			9,852	9,852	9,852	9,852	9,852	9,852					
2010													
2009							1,248	1,248	1,248	1,248	1,248		
2008													
2007			2,229	2,229	2,229	2,229							
2006													
2005													
2004													
2003													
2002													
2001													
2000							3,897	3,897	3,897	3,897	3,897	3,897	3,897
1999													
1998													
1997												12,120	12,120
Prior			<u></u>										978
	-	-	12,081	12,081	12,081			14,997	5,145	5,145		16,017	16,995
	Per 571L	Per 571L	Per Audit										

Labs Assets per 571L or Audit

•

		<mark>48,022</mark> Per 571L	53,570 Per 571L	94,855 Per Audit	74,941 Per Audit	Per Audit	Per Audit	- Per Audit	Per Audit	Per Audit				
	Prior	49 033	53,570	34,855	74,941	74,856	77,843			<u> </u>				
	1997													
	1998													
	199 9													
	2000		1,805	1,805	1,805	1,805	1,805							
	2001		527	527	527	442								
	2002													
	2003													
	2004													
	2005			216	216	216	216							
	2006	1,850	2,622	2,623	44,192	44,192	44,192							
	2007	7,075	7,075	14,818	16,163	16,163	27,777							
	2008													
	2009													
	2010													
	2011		·	703	703	703	703							
	2012	1,400	1,400	2,054	2,054	2,054	2,708							
	2013	18,132	25,032	,	•									
	2014	9,281	9,281	6,281	9,281	9,281								
	2015	0,020	0,020	2,020										
	2017	5,828	5,828	5,828										
	2018 2017	4,456												
Age		0		2		4) 11	
		2019	2018	2017	2016	2015	2014	2013	3 2012	2 2011	L 2010) 2009	2008	2007

Vending Equipment Assets per 571L or Audit													
	2019			2016	2015			2012		2010			
Age	0	1	2	3	4	5	6	7	8	9	10	11	12
2018													
2017													
2016													
2015													
2014													
2013		-											
2012													
2011													
2010													
2009													
2008													
2007													
2006													
2005													
2004													
2003													
2002							1,830	1,830	1,830	1,830	1,830	1,830	1,830
2001													
2000							2,789	2,789	2,789	2,789	2,789	2,789	2,789
1999													
1998													
1997													
Prior							4 640			4.540	4 6 4 4	4 (10	4.610
	-	- Dor 5711	- Des Audit	- Dor Audit	- Dor Audit	- Dor Audit	4,619 Per Audit						

Per 571L Per 571L Per Audit Per Audit

Office Equipment Assets per 571L or Audit	

1,829	1,829	15,966	15,966	15,966		527 1,805 6,978	527 1,805 6,916	527 1,805 16,859	527 1,805 16,859	527 1,805 2,332	527 1,805 2,332	527 1,805 2,332
						527	527	527	527	527	527	527
							62 9	11,274	11,274			
						216	216	216	216			
		5,437	5,437	5,437	5,437							
						2,328	3,037	3,037	3,037			
		10.529	10.529	10.529	10,529		702					
1,025	1,025					1,400						
1 879	1 829											
U	T	2	. 3	4	5	0	/	8	9	10	11	12
												2007
		0 1	0 1 2 1,829 1,829 10,529	0 1 2 3 1,829 1,829 10,529 10,529	0 1 2 3 4 1,829 1,829 10,529 10,529 10,529	1,829 1,829 10,529 10,529 10,529 10,529	0 1 2 3 4 5 6 1,829 1,829 10,529 10,529 10,529 10,529 702 2,328 5,437 5,437 5,437 5,437	0 1 2 3 4 5 6 7 1,829 1,829 10,529 10,529 10,529 10,529 10,529 702 702 702 702 2,328 3,037 5,437 5,437 5,437 5,437 216 216	0 1 2 3 4 5 6 7 8 1,829 1,829 10,529 10,529 10,529 10,529 10,529 702 5,437 5,437 5,437 5,437 5,437 2,328 3,037 3,037 216 216 216	$\begin{array}{c ccccccccccccccccccccccccccccccccccc$	$\begin{array}{c ccccccccccccccccccccccccccccccccccc$	$\begin{array}{c ccccccccccccccccccccccccccccccccccc$

-

		2019	2018	2017						2011		2009		
Age		0	1	2	3	4	5	6	7	8	9	10	11	12
	2018													
	2017													
	2016													
	2015	278												
	2014													
	2013	10,555	10,555	25,032	25,032	25,032	25,032							
	2012							539	-					
	2011													
	2010													
	2009													
	2008													
	2007													
	2006							932	932	932	932	932	932	932
	2005													
	2004													
	2003				14,009	14,009	14,009	14,009	14,009	14,009	14,009	14,009	14,009	14,009
	2002													
	2001													
	2000													
	1999													
	1998													
	1997													
	Prior							45 100						
		10,833	10,555	25,032		39,041		15,480	14,941	14,941	14,941	14,941		14,941
		Per 571L	Per 571L	Per Audit										

-

.

Age

	<mark>6,111</mark> Per 571L	37,792 Per 571L	37,794 Per Audit	37,794 Per Audit	37,794 Per Audit	48,949 Per Audit	26,702 Per Audit	26,702 Per Audit	25,493 Per Audit	25,493 Per Audit	25,699 Per Audit	24,327 Per Audit	28,393 Per Audit
Prior				27.704	27.704	48.040	76 702	26 202		25 403	25 600	24.227	
1997													4,066
1998													
199 9													
2000													
2001													
2002													
2003											1,470	1,470	1,470
2004													
2005													
2006		22,857	22,857	22,857	22,857	22,857	22,857	22,857	22,857	22,857	22,857	22,857	22,857
2007						12,905							
2008	1,148	2,395	2,395	2,395	2,395	2,395	1,372	1,372	1,372	1,372	1,372		
2009	1,264	1,264	1,264	1,264	1,264	1,264	1,264	1,264	1,264	1,264			
2010													
2011	1,209	3,207	3,208	3,208	3,208	3,208	1,209	1,209					
2012		2,358	2,359	2,359	2,359	2,359							
2013		3,961	3,961	3,961	3,961	3,961			,				
2014		1,750	1,750	1,750	1,750								
2015													
2016													
2017	-,												
2018	2,490												
	0	1	2	3	4	5	6	7	8	9	10	11	12
	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007

Network/LAN Equipment Assets per S71L or Audi	t												
	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	3 2007
Age	0	1	2	3	4	5	6	7	8	9	10	D 11	L 12
2018	481												
2013	2,246												
2016	4,630	3,001	3,000										
2015	16,385	16,385	16,385	16,385									
2014	8,580	,	,	,									
2013	3,477												
2012	-,												
2011													
2010													
2009	2,342	2,342	2,342	2,732	2,732	4,959	5,129	5,129	5,129	5,129			
2008	•			-			-		-	-			
2007													
2006													
2005					2,414	2,414							
2004													
2003													
2002													
2001													
2000													
199 9													
1998													
1997													
Prior													
	<mark>38,141</mark>	21,728	21,727	19,117	5,146	7,373	5,129	5,129	5,129		-	-	-
	Per 571L	Per 571L	Per Audit										

Computer Equipment Assets per 571L or Audit													
	2019	2018	2017	2016	2015	2014		2012	2011	2010	2009	2008	2007
Age	0	1	2	3	4	5	6	7	8	9	10	11	12
2010	6 4 9 9												
2018	6,198	610											
2017	1,445	619	F 000										
2016	15,908	6,782	-	7 050									
. 2015	7,170	7,959	7,959	7,959	40.004								
2014	13,638	12,614	12,616	12,824	12,824	4 775							
2013	6,982	3,489	4,725	4,725	4,725	4,725	44 630						
2012	10,231	11,424	10,771	10,771	11,498	11,498	11,628						
2011		231			2,363	2,933	443	443					
2010	185	1,227	.524	524	1,296	3,180	3,178	3,178	3,178				
2009		68		1,582	2,032	3,077	3,895	3,895	3,895	3,895			
2008		7,055			935	1,911	2,581	2,581	2,581	2,581	2,581		
2007			692	692	692	692	448	448	448	448	1,943	1,943	
2006			8,358	10,284	11,497	11,497	19,722	22,941	22,941	22,941	22,304	22,703	22,703
2005			21	21	21	21						1,446	1,446
2004					2,325	4,338	6,752	6,752	9,027	9,027	9,027	10,653	10,653
2003					3,012	3,012	3,012	3,012	3,012	3,012	3,012	3,504	3,504
2002					869	869	869	869	869	869	12,367	12,367	12,367
2001			791	791	791	791			6,164	6,164	6,164	8,652	8,652
2000													465
1999													
1998													4,067
1997													1,466
Prior													
	<mark>61,757</mark>	51,468	51,614	50,173	54,880	48,544	52,528	44,119	52,115	48,937	57,398	61,268	65,323
	Per 571L	Per 571L	Per Audit										

POS Equipment Assets per 571L or Audit													
	2019		2017	2016		2014	2013		2011		2009	2008	
Age	0	1	2	3	4	5	6	7	8	9	10	11	12
2018	5,869												
2017	48,490	37,708											
2016	13,733	10,029	11,595										
2015	20,410	21,877	21,888	21,888									
2014	,	,		,									
2013	15,391	842				277							
2012	8,453	7,436	7,436		3,353	3,353	2,884						
2011	- ,	••••	231	2,624	8,049	9,460	12,070	12,471					
2010	389	389	185	185	185	185	185	185	185				
2009		6,936	9,635	9,635	9,635	9,635	9,635	9,635	9,635	9,635			
2008	670	4,108	8,470	14,166	14,166	15,276	27,176	30,328	30,328	31,041	31,041		
2007				7,280	7,280	7,280	13,971	13,971	13,971	14,881	18,189	18,855	
2006				13,737	13,737	13,737	12,846	17,808	18,586	18,586	18,586	18,586	18,586
2005													
2004				576	576	1,103	576	6,861	13,187	14,912	26,186	28,119	28,119
2003													
2002				610	610	610	610	610	610	610	610	610	610
2001							791	791	791	791	791	791	7,798
2000									26,475	26,475	26,475	33,981	33,981
199 9													
1998											•		1,064
1997													
Prior													3,259
	113,405	89,325	59,440	70,701	57,591	60,916	80,744	92,660	113,768	116,931	121,878	100,942	93,417
	Per 571L	Per 571L	Per Audit										

Security Assets pe	er 571L or Audit
--------------------	------------------

Age

	Per 571L	Per 5711	Per Audit										
Prior	105,233	113,176	102,272	102,272	102,272	102,272	86,606	81,129	81,129	81,129	61,584	61,584	61,584
1997													
1998					,								
1999													
2000	3,768	3,768	3,768	3,768	3,768	3,768							
2001													
2002													
2003													
2004													
2005				-							-		
2006	62,517	62,517	61,584	61,584	61,584	61,584	61,584	61,584	61,584	61,584	61,584	61,584	61,584
2007	3,823	11,565	1,594	1,594	1,594	1,594							
2008	2,374	2,374	2,374	2,374	2,374	2,374							
2009	14,745	14,745	14,745	14,745	14,745	14,745	14,745	19,545	19,545	19,545			
2010													
2011	1,007	_ ,,	,	,	,;						÷		
2012	14,307	14,307	14,307	14,307	14,307	14,307	10,277						
2014	3,699	3,900	3,900	3,900	3,900	3,900							
2013													
2016 2015													
2017													
2018													
	0	1	2	3	4	5	6	7	8	9	10	11	1
	2019	2018			2015			2012		2010			
	2010	2010	2017	2016	2015	2014	2012	2012	2011	2010	2000	2006	חר

STATE OF CALIFORNIA

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 848.0003



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

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.¹ 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).

January 4, 2016

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.)

 "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

.

County Assessor

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

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION N STREET, SACRAMENTO, CALIFORNIA 14-0 BOX 942879, SACRAMENTO, CALIFORNIA 94279-00XX) TELEPHONE (916) 323-7713 FAX (916) 445-3678



JOHAN KLEHS First District, Hayward

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

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 4.¹ 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 <u>not influenced</u> 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.

Honorable Raymond Olivarria

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 <u>Assessors' Handbook 501</u>, 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 <u>not</u> 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 <u>not</u> 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, <u>not</u> 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.

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 <u>not</u> 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 assumetion of the total consideration *excluding* the assumption of debt.

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.⁶ 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.⁷

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 <u>not</u> already reflected in the stated 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.

⁷ 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.

Honorable Raymond Olivarria

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,

Kriz Cagadel

Kristine Cazadd Senior Tax Counsel

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)