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No. 2001/024

TO COUNTY ASSESSORS AND INTERESTED PARTIES:

DELEGATION OF ASSESSMENT JURISDICTION OF
WIRELESS COMMUNICATION TOWER SITES

On March 29, 2001, the Board of Equalization (Board) decided to delegate the duty to assess leased wireless communication tower sites to county assessors whenever constitutionally permissible. As a result, wireless communication tower sites that are used but not owned by state assessees on which the property taxes are paid by a local assessee have been delegated to county assessors. The Board's decision is effective with the January 1, 2001, lien date.

The purpose of this letter is to: 1) notify assessors of the Board's decision, 2) provide background on the issue, 3) provide information on coordination issues among state assessees, county assessors, and the Board, and 4) provide answers to common questions.

Background

The Board's assessment jurisdiction is prescribed in section 19 of article XIII of the California Constitution. Section 19 requires the Board to annually assess certain described types of property, divided into two categories.

The first category of property consists of specific types of improvements: pipelines, flumes, canals, ditches, and aqueducts lying within two or more counties. The important qualification with regard to this category is that the properties are located "within two or more counties," without regard to the nature of the property owner.

The second category of property consists of all taxable property, excluding franchises, owned or used by regulated railway, telegraph, or telephone companies, car companies operating on railways in the state, and companies transmitting or selling gas or electricity. Rather than being based on the type of property to be assessed, this category includes all of the property that is owned or used by specified types of companies. Under this category, all of the property owned or used by a specified company is subject to the Board's assessment.

While there is no constitutional provision allowing the Board to delegate the assessment of property *owned* by a state assessee to local assessors, in limited and specific situations the Board may delegate the assessment of property *used* by state assessees. As stated in section 19 of article XIII of the California Constitution:

The Board may delegate to a local assessor the duty to assess a property used but not owned by a state assessee on which the taxes are to be paid by a local assessee.

Thus, the Board may delegate to a local assessor the duty to assess property leased by a state assessee if a local assessee owns the property and a local assessee pays the property taxes.

Historically, the Board's practice has been to assess all land that is used by state assessees and to delegate assessment duty to the local assessor in cases where a building or other improvement is not entirely leased by a state assessee and taxes are paid by a local assessee. With the recent emergence of aggregators,¹ this practice has generated controversy.

Staff analyzed trends in the wireless communication industry and evaluated reporting requirements and existing policies regarding the delegation of property used but not owned by state assessees. Based on the analysis, staff concluded that it should recommend that the Board delegate the duty to assess leased wireless communication tower sites to county assessors, whenever constitutionally permissible.

On March 29, the Board of Equalization decided to delegate the duty to assess leased wireless communication tower sites to county assessors whenever constitutionally permissible effective with the January 1, 2001 lien date. As part of the Board's decision, wireless communication assessees are required to provide Board staff with supplemental information in order to provide sufficient detail to allow for an efficient transition to local assessment. Further, the Board directed staff to issue a Letter To Assessors to provide information and direction on the implementation of the change in jurisdiction.

Coordination Issues

The Board's delegation includes only those wireless communication tower sites that are used but not owned by a state assessee and on which the property taxes are to be paid by a local assessee. Such sites include taxable possessory interests that are held by an aggregator and subleased by a state assessee. Taxable possessory interests that are held by an aggregator can be delegated because the aggregator is a local assessee that can pay the property taxes as required for delegation pursuant to section 19. However, possessory interests held by a state assessee cannot be delegated because there is no local assessee that can pay the property taxes. Thus, possessory interests held by state assessees will continue to be assessed by the Board.

The Board's delegation does not include any property owned by a state assessee. Pursuant to section 19, the assessment duty for property that is owned by a state assessee cannot be

¹ Aggregator refers to a new type of business entity that acquires or builds towers in order to provide space (leases space) on towers to other communication companies. This arrangement allows communication companies to concentrate on the core business and allows the aggregator to efficiently market tower space to the communication industry.

delegated. Thus, property owned by a state assessee such as antennas and radio equipment will continue to be assessed by the Board even if they are housed in a delegated wireless communication tower.

The Board's Valuation Division will supply the assessors with the following information related to the wireless communication tower sites to be delegated this year:

- List of wireless communication tower sites delegated to local assessment
- Rental and term of possession data on possessory interests
- List of wireless communication tower sites occupied by state assessees since the 2000 lien date

To facilitate the local assessment of this land the Board's Valuation Division will annually collect from state assessees information regarding the affected sites and convey that information to the assessors via a confidential letter. This information includes a list of all new sites (established within the year) leased by the state assessee, the effective date of the lease, the situs address or assessor's parcel number, name of the lessor of the site, name of the lessor of the tower, and the term(s) of the lease/sublease. Additionally, the assessor should collect information from the local assessee (aggregator) via the annual filing of the 571-L, Business Property Statement.

Questions & Answers

Following are answers to several questions raised by interested parties:

Question 1:

Do the provisions of article XIII A of the California Constitution apply to land that has been delegated to the county assessor?

Answer 1:

Yes. Unlike state assessed property, property assessed by county assessors is subject to the value restriction provisions of article XIII A of the California Constitution. Thus, when the assessment jurisdiction of a property changes, the applicability of those provisions also changes. Specifically, land used by a state assessee that is locally assessed is subject to the provisions of article XIII A as of the date of change in jurisdiction.

Question 2:

How is the base year value of land that has been delegated to the county assessor to be determined?

Answer 2:

The base year value of the delegated land depends on the date of the last change in ownership of the land. For example, if the land is subject to a lease that had an original term of 35 years or more, the county should reassess the portion of leased land and establish the base year value as of the date of the creation of the lease. Assuming no intervening changes in ownership, the

assessor should adjust that base year value for annual inflation factoring and enroll the adjusted base year value as of the January 1, 2001 lien date. Further, the base year value of the land (typically a portion of a larger parcel) should be revised, as appropriate, to reflect any new construction (any improvements to the land that would constitute new construction pursuant to subsection (b) of Property Tax Rule 463) while the property was subject to state assessment.

Question 3:

What constitutes new construction to the land?

Answer 3:

The topic of "what constitutes new construction" is addressed in Assessors' Handbook Section 502, *Advanced Appraisal* (see discussion in AH 502, p.113-118). Rule 463 defines new construction in four general categories. The first two categories presented below relate to land:

- (1) "Any substantial addition to land or improvements, including fixtures..."
- (2) "Any substantial physical alteration of land which constitutes a major rehabilitation of the land or results in a change in the way the property is used."

Following are several examples of alterations that would qualify as new construction:

- a. Land leveling
- b. Extensive site preparation prior to building
- c. Terracing of a hillside
- d. Clearing of a brush-covered parcel

Following are several examples of alterations to land that may not qualify as new construction:

- a. Releveling of existing row crop land
- b. Pulling of orchard trees for replanting. However, if trees are removed for subdivision development, the cost of removal should be considered.
- c. Rebuilding of levees or ditches
- d. Minor site preparation prior to building

Rule 463 includes an example of land valuation where the physical alteration of the land triggers the appraisal of the new construction. The basic principles are (1) only the value attributable to the new construction will be added and (2) the newly constructed property will have a new base year value determined as of the date of completion. Specifically excluded from consideration are increments of value attributable to changes in economic conditions (inflation, etc.) and changes in allowable use (zoning, etc.). For sites that have been delegated due to the Board's March 29, 2001 action, any new construction to the land should be enrolled as of the January 1, 2001 lien date.

Question 4:

Are supplemental assessments applicable to land for which the assessment duty has been delegated to the county assessor?

Answer 4:

Land that is delegated to a county assessor is subject to local assessment jurisdiction, and therefore subject to the provisions of article XIII A of the California Constitution, as of the date of change in jurisdiction. Pursuant to Revenue and Taxation Code section 75.14, property subject to article XIII A is subject to supplemental assessment. Thus, delegated wireless communication tower sites are subject to supplemental assessment. A supplemental assessment is made as a result of a change in ownership or the completion of new construction except as provided in Revenue and Taxation Code section 75.12. There is, however, no supplemental assessment for the mere delegation of the site from state to local assessment, inasmuch as the delegation is neither a change in ownership nor completion of new construction. Any change in ownership or completion of new construction after the delegation of assessment duty is subject to supplemental assessment.

Question 5:

How should the local assessor assess a delegated wireless communication tower site that is a portion of a property that is receiving some sort of exemption (e.g., church, welfare, etc.)?

Answer 5:

According to Assessors' Handbook Section 267, *Welfare, Church, and Religious Exemptions* (see AH 267, p.23), "[o]ne of the basic requirements for exemption is that property must be *used exclusively* for religious, hospital, scientific, or charitable purposes by qualifying organizations for qualifying purposes or activities." The use of a portion of a site by a state assessee (i.e., not a qualifying exempt entity) for a wireless communication tower site is not a qualifying exempt use. Thus, that portion of the site used for the nonexempt purpose is ineligible for exemption. "Where only a portion of a property qualifies for exemption, it is proper to apportion the value of the property according to its exempt and nonexempt uses and to allow the exemption on the portion used for exempt purposes and activities." (AH 267, p.26) Accordingly, the answers to questions 1, 2, 3, and 4 apply.

Question 6:

How should the local assessor assess a delegated wireless communication tower site that is subject to a California Land Conservation Act contract (Williamson Act)?

Answer 6:

Land used for wireless communication towers, similar to land used for radio towers and television repeaters, is considered a compatible use. The income generated by land devoted to such compatible uses must be capitalized when determining the restricted value of the property (subdivision (a)(3) of Revenue and Taxation Code section 423). "Because such compatible uses produce income that lasts for a limited period of time, rather than into perpetuity, the areas devoted to such uses should be valued separately by means of income capitalization. The capitalized value of these sites should be added to the land value established for the balance of the parcel. The area of the site and its access, if not available for agricultural use, must be

deducted from the farmable acreage of the parcel." (Assessors' Handbook Section 521, *Assessment of Agricultural and Open-Space Properties*, p. II-15)

The recommended technique for valuing these compatible use sites is to estimate the probable duration of the use and to capitalize the economic rent by way of either a level annuity or discounted cash flow analysis. "The present worth of the reversionary value of the land based on its restricted use must be added to the present worth of the economic rent of the compatible use." (See discussion in AH 521, p.II-15.)

Question 7:

How should the sale of a wireless communication tower from a state assessee to a local assessee be assessed?

Answer 7:

The sale of a wireless communication tower from a state assessee to a local assessee places the property under local assessment jurisdiction.² However, the sale of a wireless communication tower is typically executed concurrently with the state assessee leasing back a portion of the tower, which places the property under the Board's assessment jurisdiction. As stated in the background above, the Board's practice has been to delegate assessment duty to the local assessor in cases where a building/improvement is not entirely leased by a state assessee and taxes are paid by a local assessee. Thus, in most cases, even though the tower is still used by a state assessee, assessment jurisdiction is delegated to the local assessor, and therefore subject to the provisions of article XIII A, as of the date of change in ownership.

Pursuant to Revenue and Taxation Code section 75.14, property subject to article XIII A is subject to supplemental assessment. Subdivision (a) of section 722.5 of the Revenue and Taxation Code contains specific reference to supplemental assessment provisions (section 75 and following):

Real property assessed by the board... which thereafter becomes subject to local assessment, shall not be assessed locally during the remainder of the assessment year, except as provided in Chapter 3.5 (commencing with section 75) of Part 0.5 of Division 1.

The amount of the supplemental assessment is the difference between the property's new base year value as established by the county assessor and the taxable value on the board roll. The taxable value on the board roll is the portion of the state-assessed value allocable to the subject property. As stated in Revenue and Taxation Code section 75.9:

² Wireless communication towers are typically situated on leased land. Improvements owned by one party and located on land owned by another party are called "foreign improvements." Foreign improvements that are owned by a local assessee are subject to local assessment if a state assessee does not use the improvements or if assessment duty is delegated (for improvements used by a state assessee). The county assessor should assess such improvements as he or she assesses other locally assessed property.

In the case of real property which, prior to the date of the change in ownership or completion of new construction, was assessed by the board pursuant to section 19 of article XIII of the California Constitution, "taxable value" means that portion of the state-assessed value determined by the board to be properly allocable to the property which is subject to the supplemental assessment.

The county assessor may contact the Board's Valuation Division to determine the allocated value.

Question 8:

Should wireless communication towers be classified as fixtures or structures for local assessment?

Answer 8:

Wireless communication towers should be classified as structures. According to Assessors' Handbook Section 502, *Advanced Appraisal* (AH 502, p.184), "[a]n improvement will be classified as a 'structure item' when its primary use or purpose is for housing or accommodation of personnel, personalty, or fixtures; or when the improvement has no direct application to the process or function of the trade, industry, or profession." In the case of a wireless communication tower, it typically has no direct application to the process or function of the trade, industry, or profession that the underlying property is used for. For example, a wireless communication tower may be located on an agricultural parcel. The tower obviously has no direct application to the process or function of agriculture. The function of a tower is to house wireless communications antennas and related equipment unrelated to the agricultural use of the underlying land. Classification of wireless communication towers as structures is consistent with the direction given in Assessors' Handbook Section 502, *Advanced Appraisal* (example given on p.185) and Assessors' Handbook Section 581, *Equipment Index and Percent Good Factors* (example given on p.30). Both handbooks list "television and radio antenna towers" as structure items.

The guidance contained within this letter represents the analysis and opinions of the Property Taxes Department staff and are intended to facilitate the transfer of assessment duty from state to county assessors, and to promote uniformity and consistency in the assessment of such property. If you have any questions or comments regarding topics covered herein, please contact Benjamin Tang at (916) 324-2720, benjamin.tang@boe.ca.gov.

Sincerely,

/s/ Richard C. Johnson

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