RECEIVED
MAR 24 2016
ASSESSORS OFFICE
HUMBOLDT COUNTY

(1)

From: Tim Phillis
[redacted]

To: Mari Wilson Humboldt County Assessor March 24, 2016

Re: State Board of Equalization Annual Property Taxpayer Bill of Rights Hearing.

My plan is to attend the Bill of Rights Hearing scheduled for May 24, 2016 at 1:30 pm in Sacramento, Ca.

I'm asking for your attendance at this hearing in case The Board of Equalization has questions in regard to my presentation.
If the financial situation in Humboldt County presents a challenge for you to attend, I'm willing to reimburse the County for your reasonable airfare to Sacramento. In the event that you cannot make it to the hearing, a written notification would be appreciated.

Thanks,

Tim

cc: Dan Leddy, Todd Gilman, Mark Sutter of The Property Taxpayer Rights Advocates Division of The California State Board of Equalization

STATE BOARD OF EQUALIZATION
~~Appeal~~ Name: Property Taxpayer Bill of Rights
~~Case ID:~~ Tim Phillis ITEM #. P3
Date: 5/24/16 Exhibit No: 5.8
TP FTB DEPT PUBLIC COMMENT

s Angeles Times ARTICLE COLLECTIONS

(2)

MMENTARY : Property Taxpayers Need Rights

26, 1992 MATTHEW K. FONG

ayers' Bill of Rights legislation has been on the books in California for several years. These laws protect those who pay income and sales taxes. But erty taxpayers have not been given similar protections, even though they pay more tax than any other group in California.

Becky Morgan (R-Los Altos Hills) has introduced a bill (SB 1557) that will correct this obvious disparity, and it deserves serious consideration.

nilar bill was defeated last year, principally because county assessors lobbied against it. The assessors are out again to defeat SB 1557 because the status gives them advantages over property taxpayers that income and sales tax authorities do not have.

member of the State Board of Equalization, I have the responsibility to set guidelines governing local county assessors. From this position, I see firsthand need for legislation to protect the rights of California's property taxpayers.

sider this. If the government disputes your income or sales tax return, you don't have to pay the amount in dispute until the matter is resolved. In times as today, when people and businesses are short of cash, this is an important right.

property tax system is much different. The assessor sends you a statement of how much you supposedly owe. The tax bill you receive does little to explain the tax was calculated. It is very difficult to determine whether a mistake has been made.

ike a restaurant giving you the stub at the bottom of your tab, rather than the full statement. Most don't know enough about property taxes even to stion their bills. The system operates, in part, by keeping taxpayers in the dark.

n though property values have declined recently, you won't see a decrease in your assessed value unless you have specifically asked for a reassessment. If are a homeowner, you won't know your assessment is too high until you receive your tax bill in the mail, and by then it will be too late to do anything but your bill and complain later.

disagree with your tax bill, the assessor is presumed to be right, and you must pay the disputed tax before you can contest it by way of appeal. The or can tie up your property without advance notice based on a faulty tax bill.

u withhold payment, even if you do not legally owe the tax, a lien can be placed on your property. You will most likely have no idea a lien is being attached l after it is done.

is seems unfair, it is. Unlike income and sales tax procedures, the property tax system places too much power in the hands of the tax authorities. The ing field needs leveling.

le some assessors' offices are moving in the right direction, legislation is needed to ensure that taxpayers' rights are uniformly protected.

Property Taxpayers' Bill of Rights restores needed balance. It protects taxpayers against surprise tax statements. The assessor cannot change the method lculating your taxes without notifying you first. The taxpayer is given a fair opportunity to object to tax changes before the changes mature into a bill that t be paid prior to appeal.

er the present system, assessors can send out assessments at the last minute, leaving taxpayers no time to object before a bill is generated.

bill of rights ensures that taxpayers are given adequate time to object to last-minute assessments without first having to pay the bill.

y, assessors are not required to respond in writing to taxpayer inquiries. The bill of rights requires assessors to respond in writing, and holds them to their d.

xpayers' rights advocate is created to ensure these new rights are respected by the bureaucracy. This mirrors the rights advocates now working for ayers in the California income and sales tax arenas. Even the IRS has a rights advocate.

rm in California is long overdue. The existing property tax system promotes misunderstanding and distrust. It is shrouded in secrecy and obscure nicalities. The bill changes the rules in ways that will encourage tax authorities to become more user-friendly and customer-oriented.

nportant step in the direction of solving California's current fiscal crisis is in showing real concern for the rights of property taxpayers who are largely nsible for keeping government afloat today.

, 38, of Hacienda Heights, is a member of the State Board of Equalization.

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Laws, Regulations & Annotations

SECTION 5907

5907. Employee evaluations. No state or local officer or employees responsible for the appraisal or assessment of property shall be evaluated based solely upon the dollar value of assessments enrolled or property taxes collected. However, nothing in this section shall be construed to prevent an official or employee from being evaluated based upon the propriety and application of the methodology used in arriving at a value determination.

(4)

Laws, Regulations & Annotations

SECTION 5911

5911. **Legislative intent.** It is the intent of the Legislature in enacting this part to ensure that:

(a) Taxpayers are provided fair and understandable explanations of their rights and duties with respect to property taxation, prompt resolution of legitimate questions and appeals regarding their property taxes, and prompt corrections when errors have occurred in property tax assessments.

(b) The board designate a taxpayer's advocate position independent of, but not duplicative of, the board's existing property tax programs, to be specifically responsible for reviewing property tax matters from the viewpoint of the taxpayer, and to review and report on, and to recommend to the board's executive officer any necessary changes with respect to, property tax matters as described in this part.

CHAPTER 3: COMPLETION OF THE ROLL

TIME FOR COMPLETION AND APPLICATION FOR EXTENSION

The local assessment roll must be completed on or before July 1. The unsecured roll is deemed complete at the same time as the secured roll. The assessor certifies the roll as complete (See Revenue and Taxation Code, section 616), signs it, and delivers it to the auditor.

If the assessor cannot meet the July 1 deadline, he or she must request an extension of time from the State Board of Equalization or risk a $1,000 fine.[36] The application for extension should be made prior to the statutory completion date but not so far in advance that the necessity for an extension is speculative. It should indicate the length of time needed for completion and state the reasons for the extension. Acceptable reasons include but are not limited to:

- Loss or destruction of assessment records
- Great volume of mandatory reassessments due to catastrophe
- Shortage of staff due to causes beyond the assessor's control
- Failure of the county's roll-printing machinery

Ordinarily a ten-day extension of time is approved. Up to 30 days may be granted in a severe case and 40 days in case of public calamity. Should the extension allowed under the law prove insufficient, an assessor's recourse would be an appeal to the legislature for emergency legislation.

ESCAPE ASSESSMENTS

An escape assessment is an assessment made after the assessor has certified the completed local roll prepared pursuant to section 601 of the Revenue and Taxation Code (see Revenue and Taxation Code, sections 531 through 535 and Appendix 6, *De Luz Homes, Inc.* v. *San Diego Co.*, 45 Cal. 2d 546, (11/55); and *Jensen* v. *Byram*, 229 Cal. App. 2d 651, (9/64).

An assessor must not knowingly defer making an assessment until after completion of the roll and then add it as an "escape". In case a property statement is not returned, an assessor's estimate of value should be made and the 10-percent penalty added.[37] If the assessee eventually returns a property statement, the assessee is liable for any underassessment (plus 10-percent penalty) that has occurred.

Upon discovery of property escaping assessment, the assessor must immediately add the escape assessment and any applicable penalty and interest to the roll prepared, or being prepared, in the current assessment year. Section 531 unequivocally states:

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[36] Revenue and Taxation Code, sections 155 and 1366 ($1,000 forfeiture); and Property Tax Rule 1051.

[37] Revenue and Taxation Code, section 463.

6

MARI A. WILSON, ASSESSOR
COUNTY OF HUMBOLDT
825 5th Street, Room 300, Eureka, CA 95501-1153
Telephone (707) 445-7663 Toll Free (866) 240-0485
Fax (707) 445-7410

July 2, 2014

I, Mari A. Wilson, Assessor of Humboldt County, swear that between the lien date, and July 2, 2014, I have made diligent inquiry and examination to ascertain all the property with the county subject to assessment by me, and that it has been assessed on the roll, according to the best of my judgment, information, and belief, at its value as required by law; and that I have faithfully complied with all the duties imposed on the Assessor under the revenue laws; and that I have not imposed any unjust or double assessment through malice, ill will, or otherwise; nor allowed anyone to escape a just and equal assessment through favor, reward, or otherwise.

Mari A Wilson

Mari A. Wilson, Humboldt County Assessor

7

[redacted] Hi Tim. This is Lyndon with the County Assessor's Office. I am in Ferndale for an appointment at 930 and will be available shortly afterwords (10:00 - 10

Received

[redacted] :15) if you have time for me to come out

Received

Me Yes I can meet you at oeschger and centerville at between

Comp Spreadsheet

	Subject Property	Sylvia To ?			
Address		691 Oeschger			
AP#	101-131-001, 101-122-006	101-093-018	101-261-017	101-291-008	106-151-003
Sales Price	$153,806	$300,000 EXAL	$250,000	$130,000	$361,150
Sales Date	Jul-13	Oct-13	Oct-12	Jul-13	Nov-10
Quality	MH 6	MH 6.5	VL	VL	VL
Sq Ft	1508	2193			
Year Built	2001	2004			
BR	3	3			
BA	2	2			
Condition	fair	avg			
Lot size	160 ac	20 ac	160	152	160
$ per ac			1562	855	2257
Out Buildings	lots of sheds approx 9000				
Amnt	logged in the 90's	Small lot	20 ac Graze 140 ac TPZ	1/2 Graze 1/2 TPZ	
Characteristics	Steep sloped lot, many structures in avg to fair condition, MH is avg to fair condition	Unknown Transaction condition, Flat lot, closer to ferndale, structure in better condition	Brkr, Mostly steep, some relativly flat area	DFS, Very steep lot, further from town, no structures.	

07-21 14 L.P. After review of market data, the market indicates the value to be $275,000

Quoted 275,000.00 on Aug 6th

July 10th ?

(8)

HUMBOLDT COUNTY 2014-2015 PROPERTY TAX BILL
JOHN BARTHOLOMEW, HUMBOLDT COUNTY TAX COLLECTOR
825 FIFTH STREET, ROOM 125, EUREKA, CA 95501

Pay Taxes by Credit Card or E-Check
Online @ http://humboldtgov.org/tax
or Call 877-486-7163
The processing company will charge a service fee

(9)

PROPERTY INFORMATION

ASMT NUMBER: 101-122-006-000 TAX RATE AREA: 083-002
FEE NUMBER: 101-122-006-000 ACRES: 0.00
LOCATION: East 1/2 of SE Qtr Sect 16 T2N R2W
LIEN DATE OWNER: PHILLIS TIM & KATHY HWJT

2A-04777 SA
PHILLIS TIM & KATHY HWJT
[redacted]

IMPORTANT MESSAGES

SEE REVERSE OF THIS STATEMENT FOR IMPORTANT INFORMATION.

Orig. bill date: 09/09/2014

2014-2015

COUNTY VALUES, EXEMPTIONS AND TAXES

TAX DEPARTMENTS INFORMATION:
707-441-3020

VALUE DESCRIPTION	ASSESSED VALUE
LAND	294,137
	294,137

VALUES X TAX RATE (1.000000) = COUNTY TAXES $2,941.36

HUMBOLDT COUNTY 2014-2015 PROPERTY TAX BILL
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ASMT NUMBER: 101-131-001-000 TAX RATE AREA: 083-002
FEE NUMBER: 101-131-001-000 ACRES: 0.00
LOCATION: 1484 OESCHGER RD
LIEN DATE OWNER: PHILLIS TIM & KATHY HWJT

78,003
94,137
72,140

14/15 Value on Roll

IMPORTANT MESSAGES

SEE REVERSE OF THIS STATEMENT FOR IMPORTANT INFORMATION.

Orig. bill date: 09/09/2014

2014-2015

COUNTY VALUES, EXEMPTIONS AND TAXES

VALUE DESCRIPTION	ASSESSED VALUE
LAND	78,357
STRUCTURAL IMPROVEMENTS	106,646
HOMEOWNERS EXEMPTION	-7,000
	178,003

VALUES X TAX RATE (1.000000) = COUNTY TAXES $1,780.02

TAXING AGENCY DIRECT CHARGES AND SPECIAL ASSESSMENTS

Section 50:
For purposes of base year values as determined by Section 110.1, values determined for property which is purchased... shall be entered on the roll for the lien date next succeeding the date of the purchase or change in ownership.

Section 110.1
"full cash value" of real property...means the fair market value as Determined pursuant to Section 110...

Section 110(b):For purposes of determining the "full cash value"...
..."full cash value" or "fair market value" is the purchase price paid in the transaction...

Property Tax Rule 460 states:

(a) Sections 1 and 2 of Article XIII A of the Constitution provide for a LIMITATION on property taxes.

NOTE: The "full cash value" determined pursuant to Section 110 for property... purchased, newly constructed or which changes ownership shall be enrolled on the next succeeding lien date unless the "full cash value" on THAT lien date is less, in which case the lien date value shall be enrolled.

(B)(6) Taxable value means the base year full value adjusted for any given lien date as required by law or the full cash value for the same lien date, whichever is less.

(12)

COUNTY ASSESSOR
COUNTY OF HUMBOLDT
825 5TH STREET, ROOM 300
EUREKA, CALIFORNIA 95501 PHONE (707) 445-7276
TOLL FREE (866) 240-0485

October 20, 2014

Mr. Tim Phillis
[redacted]

Mr. Phillis,

In response to your request at today's meeting enclosed please find copies of California Revenue and Taxation Code section 75.11 and California State Board of Equalization Property Tax Rule 462.260.

California Revenue and Taxation Code section 75.11 pertains to the statute of limitations for enrolling supplemental assessments for change in ownership or completion of new construction.

California State Board of Equalization Property Tax Rule 462.260 pertains to the date to be used as the date of ownership change.

I hope you will find this information helpful.

Sincerely,

Mari A Wilson

Mari A. Wilson
Humboldt County Assessor

CC: Estelle Fennell, 2nd District Supervisor
Rex Bohn, 1st District Supervisor

Enclosures

HUMBOLDT COUNTY 2014-2015 PROPERTY TAX BILL
JOHN BARTHOLOMEW, HUMBOLDT COUNTY TAX COLLECTOR
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TAX RATE AREA: 083-002
ACRES: 0.00

2A-04777 8A
PHILLIS TIM & KATHY HWJT
[redacted]

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TAXING AGENCY DIRECT CHARGES AND SPECIAL ASSESSMENTS

TRANSACTIOI RECORD

DATE	DTT	INDICATED PRICE	TRUST DEED	GRANTEE	SOURCE	IMPROVEMENT VALUE	TBR VOL.	TBR VALUE	BARE LAND	ACRES	BARE LAND PER ACRE
8-21-97				Philbrick, J&W-Tr	1997 20609	also see 101-122-05					
5-31-2000			Split by deed	Philbrick, J&W Tr	2000 11613	also see 101-122-05					
5-31-2000	137.50		100%	Laloli, D&KG	2000 11613	also see 101-131-001					
8807	305.00		100%	Orcad D. & T.G. 50 50	2007 23764						
10-07-2008	308		100%	Laloli, D 50 & KG 50	2008 24124						
7-12-13	101.20		100%	PHILLIS, T&K	2013-16165	ALSO SEE: 101-131-001					
		*TRUSTEE'S DEEDS		UNPAID DEBT: $245,179.00 / PAID DEBT $153,806.41							

REMARKS

7-21-14 LP: Spoke w/ owner, property purchased in auction. Property was in poor condition, owner will appeal anything over purchase price. Sold w/ # 101-131-001

11-3-14 LP: Valued both properties at $415,000, due to disagreement in value and app for appeal, reviewed for 2013 and 2014 Prop B. 2013 value set at $415,000, and 2014 value remains at $415,000. To place on 2013 Prop B, value for land had to be adjusted.

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(15)

BOARD MEMBERS

GREG ANDERSON

BRIAN MITCHELL

RICHARD PHILLIS

ALTERNATES:

LARRY PARKER
KELLY WALSH

COUNTY STAFF

MARI WILSON
Assessor

TRACY D'AMICO
Deputy Clerk of the Board

GUY GIN
Chief Appraiser

ASSESSMENT APPEALS BOARD
Humboldt County
July 20, 2015 Meeting

FACTS OF FINDING FOR:

Application No. 13-26, 14-68, 14-72 and 14-73 – Tim Phillis

The Assessment Appeals Board approved a motion to place the value on APN# 101-131-001 & 101-122-006 at $250,000.00. The Assessment Appeals Board states their facts of findings are:

1. **A foreclosure sale is not a fair market value sale. {Please see the attached document (Attachment A) from the State Board of Equalization with a revised date of March 26, 1999 regarding: Application of Rev. & Tax Code Section 110 presumptions to property sold at execution and/or foreclosure sale.}**
2. **The comparable sales provided by the Assessor's office were of marginal help due to condition, location, topography and parcel size.**

Agreed to and certified by:
Greg Anderson
Brian Mitchell
Larry Parker

Tracy D'Amico

Tracy D'Amico
Deputy Clerk of the Board

(16)

Laws, Regulations & Annotations

PTLG Table of Contents (../property-taxes-law-guide.html) > Property Tax Annotations—Table of Titles

PROPERTY TAXES LAW GUIDE – REVISION 2016

Property Tax Proposed Annotations – *Current Legal Digest* (boe.ca.gov/proptaxes/cld.htm)

Board Rule 5700: *Annotations* (boe.ca.gov/meetings/pdf/5700.pdf)

APPLICABILITY OF ANNOTATIONS AND SOURCE DOCUMENTS

Annotations are primarily summaries of the conclusions reached in selected legal rulings of counsel. "Legal rulings of counsel" means a legal opinion written and signed by the Chief Counsel or an attorney who is the Chief Counsel's designee, addressing a specific tax application inquiry from a taxpayer or taxpayer representative, a local government, or Board of Equalization staff.

Property Taxes annotations are a research tool to locate selected legal rulings of counsel. Annotations are intended to provide guidance regarding the interpretation of statutes and Board rules as applied to specific factual situations. They do not have the force or effect of law. Although annotations are synopses of past advice provided by the Board's legal staff, the advice is not binding and may be revised at any time. The date appearing at the end of an annotation reflects the agency's interpretation of statutes existing as of that date. In any instance where there is an inconsistency between the statute and an annotation, statutory law is controlling.

Following the advice provided in an annotation is not reasonable reliance upon written advice for purposes of obtaining relief from a failure to pay tax, interest, and penalty.

TABLE OF TITLES

A (#A) B (#B) C (#C) D (#D) E (#E) F (#F) G (#G) H (#H) I (#I) L (#L) M (#M) N (#N) O (#O) P (#P) R (#R) S (#S) T (#T) U (#U) V (#V) W (#W)

A

Subject	Annotation
AGRICULTURE *See Business Inventory Exemption*	
AIR TAXI *See Certificated Aircraft*	
AIRCRAFT (100-0000-all.html) *See Aircraft of Historical Significance Exemption; Business Inventory Exemption; Certificated Aircraft*	100.0000 (100-0000.html)

(17)

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BRIAN MITCHELL

RICHARD PHILLIS

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Agreed to and certified by:
Greg Anderson
Brian Mitchell
Larry Parker

Tracy D'Amico

Tracy D'Amico
Deputy Clerk of the Board

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reconsideration are denied, may refile an appeal of the base year value during the next regular filing period in accordance with Revenue and Taxation Code section 80.

(b) If the applicant or the applicant's agent is present, the chair or the clerk shall announce the nature of the application, the assessed value as it appears on the local roll and the applicant's opinion of the value of the property. The chair may request that either or both parties briefly describe the subject property, the issues the board will be requested to determine, and any agreements or stipulations agreed to by the parties.

(c) In applications where the applicant has the burden of proof, the board shall require the applicant or the applicant's agent to present his or her evidence first, and then the board shall determine whether the applicant has presented proper evidence supporting his or her position. This is sometimes referred to as the burden of production. In the event the applicant has met the burden of production, the board shall then require the assessor to present his or her evidence. The board shall not require the applicant to present evidence first, when the hearing involves:

(1) A penalty portion of an assessment.

(2) The assessment of an owner-occupied single-family dwelling or the appeal of an escape assessment, and the applicant has filed an application that provides all of the information required in regulation 305(c) of this subchapter and has supplied all information as required by law to the assessor. An owner-occupied single-family dwelling means a single-family dwelling that is the owner's principal place of residence and qualifies for a homeowners' property tax exemption pursuant to Revenue and Taxation Code section 218. "Property that qualifies for a homeowners' property tax exemption" also includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by Revenue and Taxation Code section 205.5. In those instances, the chair shall require the assessor to present his or her case to the board first. With respect to escape assessments, the presumption in favor of the applicant provided in regulation 321(d) of this subchapter does not apply to appeals resulting from situations where an applicant failed to file a change in ownership statement, a business property statement, or to obtain a permit for new construction.

(3) A change in ownership and the assessor has not enrolled the purchase price, and the applicant has provided the change of ownership statement required by law. The assessor bears the burden of proving by a preponderance of the evidence that the purchase price, whether paid in money or otherwise, is not the full cash value of the property.

(d) All testimony shall be taken under oath or affirmation.

(e) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Failure to enter timely objection to evidence constitutes a waiver of the objection. The board may act only upon the basis of proper evidence admitted into the record. Board members or hearing officers may not act or decide an application based upon consideration of prior knowledge of the subject property, information presented outside of the hearing, or personal research. A full and fair hearing shall be accorded the application. There shall be reasonable opportunity for the presentation of evidence, for cross-examination of all

Single-Family Homeowner Hearings

As stated above, pursuant to section 167 and Rule 321, the assessor bears the burden of proof if the matter in issue is the full value of an owner-occupied single-family dwelling. Owners of single-family residences generally represent themselves at appeals hearings without assistance from an attorney or tax representative. Usually, these applicants are novices to the assessment appeals process and have limited knowledge of property tax appraisal and appeals hearing procedures.

Penalty Hearings

When an applicant protests a penalty assessment, the burden of proof is on the assessor to justify the imposition of that penalty. Rule 313, subsection (c), provides that the "board shall not require the applicant to present evidence first when the hearing involves ... a penalty portion of an assessment." Thus, the assessor is required to present evidence to justify imposition of the penalty.

This rule is particularly helpful in situations where imposition of the penalty is mandatory upon the assessor even though the assessor believes the taxpayer acted in good faith. For example, a taxpayer may have started a new business and was unaware of the mandatory requirement for filing a property statement. The assessor discovers the existence of the property after the final filing date and requests that the taxpayer file a business property statement. In response to the assessor's request, the taxpayer promptly files a completed property statement; however, the assessor is required to add a penalty because the property statement was not timely filed. The taxpayer appeals the penalty, and the assessor recommends abatement of the penalty because the taxpayer acted in good faith.

Escape Assessment Hearings

When the matter in issue is the enrollment of an escape assessment which has not resulted from a taxpayer's failure to file a change in ownership statement, business property statement, or permit for new construction, the assessor bears the burden of proof and is required to present evidence first.[183] The assessor must adequately explain to the appeals board why the original assessment was incorrect and provide a reasonable description of how the escape assessment was made. If the assessor cannot establish a reasonable basis for making the escape assessment, then it should be voided by the appeals board. If the assessor establishes a reasonable basis for the assessment, then the applicant has an opportunity to persuade the board that there should be no escape assessment or that the assessment should be a different amount.

Nonenrollment of Purchase Price Hearings

Unless otherwise provided by law, if the assessor makes an assessment after a property has been sold and fails to enroll the purchase price of the property, then the assessor bears the burden of proof and must present evidence that the sale was not an open market transaction. Open market conditions which tend to produce a "full cash value" or "fair market value" as defined in section 110 include:

---

[183] Section 167.

(20)

COUNTY ASSESSOR
COUNTY OF HUMBOLDT
825 5TH STREET, ROOM 300
EUREKA, CALIFORNIA 95501 PHONE (707) 445-7276
TOLL FREE (866) 240-0485

November 21, 2014

Mr. Tim Phillis
451 Camp Weott Road
Ferndale, CA 95536

RE: Assessor's Parcel Numbers 101-122-006-000 and 101-131-001-000

Dear Mr. Phillis,

I am responding to your letter requesting copies of public records pursuant to California Government Code section 6250 received by this office on November 12, 2014, copy attached. You requested answers and/or information to the three questions contained in your request. The questions you posed and my responses are as follows:

1. "DOCUMENTED EVIDENCE THAT THE TRANSACTION ON SUBJECT PROPERTIES WAS NOT AN OPEN MARKET, ARMS LENGHT AGREEMENT, WILLING BUYER AND SELLER TRANSACTION."

Response – Our office does not have any documents responsive to this request.

2. "CALCULATIONS DONE ON WHAT THE ASSESSORS OFFICE DEEMS AS COMPARABLE PROPERTIES ON LIST DATED 11-3-14."

Response – This document has been provided to you on November 13, 2014, copy attached.

3. "IF SOME OR ALL OF THIS EVIDENCE DOES NOT EXIST, I WOULD LIKE A DOCUMENT STATING WHICH DOCUMENTS ARE NOT IN EXISTENCE."

Response – As stated above, our office does not have documents responsive to Item 1 and we have provided documents responsive to Item 2.

Sincerely,

Mari A. Wilson
Humboldt County Assessor

Enclosures

applicant fails to present evidence sufficient to rebut the correctness of the assessed value, at the request of the assessor, the appeals board will dismiss the case without requiring the assessor to provide evidence substantiating the assessed value. If the appeals board determines the applicant has presented evidence sufficient to make a prima facie case, the burden shifts to the assessor to present evidence to support his or her opinion of value. *Fujitisu Microelectronics, Inc.* v *Assessment Appeals Board* (1997) 55 Cal.App.4th 1120. However, if the presumption operates against the assessor and the assessor fails to present evidence sufficient to rebut the presumption, the appeals board should rule in favor of the applicant providing that there is substantial evidence in the record to support the applicant's value.

Presumption of Correctness. The property tax system is based on the assumption that county assessors properly perform their assessment duties in accordance with law and other applicable standards. Evidence Code Section 664 provides that "it is presumed that official duty has been regularly performed." With regard to assessments courts have held that "[i]t will be presumed, in absence of contrary evidence, that assessor regularly and correctly assessed property for taxation." *E.E. McCalla* Co. v. *Sleeper (*1930) 105 Cal.App. 562

The presumption of correctness operates against the applicant and the applicant may overcome it by presenting substantial, competent evidence different than the assessor's sufficient to make material the inquiry as to whether the assessor's methods were proper. *Campbell Chain Co.* v. *County of Alameda* (1970) 12 Cal. App.3d 248

Property Rule 321 relates to the burden of proof during an appeals hearing and provides, in part:

> (a) Subject to exceptions set by law [of which an owner-occupied single-family dwelling is one], it is presumed that the assessor has properly performed his or her duties. The effect of this presumption is to impose upon the applicant the burden of proving that the value on the assessment roll is not correct, or, where applicable, the property in question has not been otherwise correctly assessed. The law requires that the applicant present independent evidence relevant to the full value of the property or other issue presented by the application.

Where the assessor holds the presumption of correctness, the appeals board then proceeds with examination of the evidence to determine whether the applicant's evidence is sufficient to establish an opinion of value and that the evidence demonstrates that the assessor did not establish a correct assessment.

Exceptions. For assessment appeals hearings, there are five instances when the burden of proof shifts to the county assessor; that is, the county assessor must affirmatively establish by a preponderance of evidence the correctness of his or her opinion of value or other assessment action. Those instances are appeals involving:

- The value of owner-occupied single-family dwellings;
- Penalty assessments;
- Escape assessments;
- Nonenrollment of a purchase price; and
- When the county assessor intends to request a higher assessed value than is on the roll.

Rule 321. BURDEN OF PROOF.

Authority: Section 15606, Government Code.
Reference: Sections 110, 167, 205.5, 218 and 1601 et seq., Revenue and Taxation Code. Section 664, Evidence Code.

(a) Subject to exceptions set by law, it is presumed that the assessor has properly performed his or her duties.

Legislative Analisys 2011

Exceptions[to Rule 321(a)]. For assessment appeals hearings, there are five instances when the burden of proof shifts to the county assessor; that is, the county assessor must affirmatively establish by a preponderance of evidence the correctness of his or her opinion of value or other assessment action.
Those instances are appeals involving:
- The value of owner-occupied single-family dwellings;
- Penalty assessments;
- Escape assessments;
- **Nonenrollment of a purchase price**; and
- When the county assessor intends to request a higher assessed value than is on the roll.

If the presumption operates against the assessor and the assessor fails to present evidence **sufficient** to rebut the presumption, the appeals board should rule in favor of the applicant providing that there is substantial evidence in the record to support the applicant's value.

Wells Fargo Bank v. Cory (1980) 110 Cal.App.3d 242, 250 [167 Cal.Rptr. 778]. (last paragraph)

"[C]ourts, in interpreting statutes levying taxes, may not extend their provisions, by implication, beyond the clear import of the language used, nor enlarge upon their operation so as to embrace matters not specifically included. In case of doubt, construction is to favor the taxpayer rather than the government."

Laws, Regulations & Annotations

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CHAPTER 1. CONSTRUCTION
SECTION 110.1

110.1. "Full cash value" under Article XIII A. (a) For purposes of subdivision (a) of Section 2 of Article XIII A of the California Constitution,

"full cash value" of real property, including possessory interests in real property, means the fair market value as determined pursuant to Section 110 for either of the following:

(1) The 1975 lien date.

(2) For property which is purchased, is newly constructed, or changes ownership after the 1975 lien date, either of the following:

(A) The date on which a purchase or change in ownership occurs.

(B) The date on which new construction is completed, and if uncompleted, on the lien date.

(b) The value determined under subdivision (a) shall be known as the base year value for the property.

(c) Notwithstanding Section 405.5, for property which was not purchased or newly constructed or has not changed ownership after the 1975 lien date, if the value as shown on the 1975–76 roll is not its 1975 lien date base year value and if the value of that property had not been determined pursuant to a periodic reappraisal under Section 405.5 for the 1975–76 assessment roll, a new 1975 lien date base year value shall be determined at any time until June 30, 1980, and placed on the roll being prepared for the current year; provided, however, that for any county over four million in population the board of supervisors may adopt a resolution granting the assessor of that county until June 30, 1981, the authority to determine those values. Regardless of the foregoing restrictions, property that escaped taxation for 1975 and was not merely underassessed for that year, shall be added to the roll in any year in which the escape is discovered at its 1975 base year value indexed to reflect inflation as provided in subdivision (f). In determining the new base year value for that property, the assessor shall

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CHAPTER 1. CONSTRUCTION
SECTION 110

110. "Full cash value." (a) Except as is otherwise provided in Section 110.1, "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 the 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.

(b) For purposes of determining the "full cash value" or "fair market value" of real property, other than possessory interests, being appraised upon a purchase, "full cash value" or "fair market value" is the purchase price paid in the transaction unless it is established by a preponderance of the evidence that the real property would not have transferred for that purchase price in an open market transaction. The purchase price shall, however, be rebuttably presumed to be the "full cash value" or "fair market value" if the terms of the transaction were negotiated at arms length between a knowledgeable transferor and transferee neither of which could take advantage of the exigencies of the other. "Purchase price," as used in this section, means the total consideration provided by the purchaser or on the purchaser's behalf, valued in money, whether paid in money or otherwise. There is a rebuttable presumption that the value of improvements financed by the proceeds of an assessment resulting in a lien imposed on the property by a public entity is reflected in the total consideration, exclusive of that lien amount, involved in the transaction. This presumption may be overcome if the assessor establishes by a preponderance of the evidence that all or a portion of the value of those improvements is not reflected in that consideration. If a single transaction results in a change in ownership of more than one parcel of real property, the purchase price shall be allocated among those parcels and other assets, if any, transferred based on the relative fair market value of each.

(c) For real property, other than possessory interests, the change of ownership statement required pursuant to Section 480, 480.1, or 480.2, or the preliminary change of ownership statement required pursuant to Section 480.4, shall give any information as the board shall prescribe relative to whether

Assessment Appeals Manual Page 86

The party asserting that the full value is other than the purchase price paid bears the burden of **proving that the sale was not an open market transaction**. Furthermore, that party must establish by a preponderance of evidence that the price paid would have been different if the sale had taken place under open market conditions.

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Nonenrollment of Purchase Price Hearings
Unless otherwise provided by law, if the assessor makes an assessment after a property has been sold and fails to enroll the purchase price of the property, then the assessor bears the burden of proof and **must present evidence that the sale was not an open market transaction.**

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November 21, 2014

Mr. Tim Phillis
[redacted]

RE: Assessor's Parcel Numbers 101-122-006-000 and 101-131-001-000

Dear Mr. Phillis,

I am responding to your letter requesting copies of public records pursuant to California Government Code section 6250 received by this office on November 12, 2014, copy attached. You requested answers and/or information to the three questions contained in your request. The questions you posed and my responses are as follows:

1. "DOCUMENTED EVIDENCE THAT THE TRANSACTION ON SUBJECT PROPERTIES WAS NOT AN OPEN MARKET, ARMS LENGHT AGREEMENT, WILLING BUYER AND SELLER TRANSACTION."

Response – Our office does not have any documents responsive to this request.

2. "CALCULATIONS DONE ON WHAT THE ASSESSORS OFFICE DEEMS AS COMPARABLE PROPERTIES ON LIST DATED 11-3-14."

Response – This document has been provided to you on November 13, 2014, copy attached.

3. "IF SOME OR ALL OF THIS EVIDENCE DOES NOT EXIST, I WOULD LIKE A DOCUMENT STATING WHICH DOCUMENTS ARE NOT IN EXISTENCE."

Response – As stated above, our office does not have documents responsive to Item 1 and we have provided documents responsive to Item 2.

Sincerely,

Mari A. Wilson
Humboldt County Assessor

Enclosures

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Homeowners will be the big winners

Your recent article concerning my Assembly Bill 3382 was essentially accurate but concentrated too heavily on the benefits that may accrue to large developers. In fact, the individual homeowner will be the major beneficiary of this bill.

Right now, county tax assessors have enormous latitude in assessing homes for tax purposes. There is nothing in law that prevents them from assessing a home above the purchase price and gouging the hard-working taxpayer. The taxpayer may appeal such an assessment but is usually discouraged by the cost and time such a challenge involves.

Small over-assessments, say $1,000 a home, spread over a million homes within a county can net the tax collector $10 million of our hard-earned money. That is blatant taxpayer robbery.

Developers have the resources to fight these obnoxious Sheriff-of-Nottingham tax raids, but the average homeowner does not have the time, knowledge or financial resources to resist. AB 3382 will put an end to the possibility of taxpayer abuse by simply directing the tax collector to presume that the purchase price of a home is, in fact, the fair market value of that home.

— Charles Quackenbush
Assemblyman, 22nd District

Schoderbek v. Carlson 152 Cal. App.3d. 1027 (in 1984)

The parties also agreed that post-Proposition 13, the determination of the value of property which had been sold is based on the actual event, the sale, whereas pre-Proposition 13 the value was based on a hypothetical event, an estimate as to what would have occurred if the property had been sold. Additionally, as the parties stipulated, the values used to estimate a purchase price pre-Proposition 13 were based on information which was between six months and three years old. Necessarily, therefore, an appraisal made by the assessor which uses the purchase price of the *actual* sale of the property as one point of reference, will be more accurate, than an appraisal which is based on hypothetical events and outdated information.

In *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208 [149 Cal. Rptr. 239, 583 P.2d 1281], the Supreme Court approved relating the appraised value of property to its acquisition cost.....This `acquisition value' approach to taxation finds reasonable support in a theory that the annual taxes... should bear some rational relationship to the original cost of the property, rather than relate to an unforseen, perhaps unduly inflated, current value." (At p. 235, italics in original.)

...instead of using a hypothetical figure for the fair market value of the property being appraised, the assessor now has an actual value available, the purchase price of the property...

Since Proposition 13 ....the use of actual rather than hypothetical purchase price values, have contributed to an increased accuracy in the assessor's determination of the "full cash value."

Calculating Property Value for Ad Valorem Taxes

One of the first items listed on a property tax bill is the assessed value of the land and improvements. Assessed value is the taxable value of the property, which includes the land and any improvements made to the land, such as buildings, landscaping, or other developments. The assessed value of land and improvements is important because the 1 percent rate and voter-approved debt rates are levied as a percentage of this value, meaning that properties with higher assessed values owe higher property taxes.

Under California's tax system, the assessed value of most property is based on its purchase price. Below, we describe the process county assessors use to determine the value of local "real property" (land, buildings, and other permanent structures). This is followed by an explanation of how assessors determine the value of "personal property" (property not affixed to land or structures, such as computers, boats, airplanes, and business equipment) and "state assessed property" (certain business properties that cross county boundaries).

Local Real Property Is Assessed at Acquisition Value and Adjusted Upward Each Year. The process that county assessors use to determine the value of real property was established by Proposition 13. Under this system, when real property is purchased, the county assessor assigns it an assessed value that is equal to its purchase price, or "acquisition value." Each year thereafter, the property's assessed value increases by 2 percent or the rate of inflation, whichever is lower. This process continues until the property is sold, at which point the county assessor again assigns it an assessed value equal to its most recent purchase price. In other words, a property's assessed value resets to market value (what a willing buyer would pay for it) when it is sold. (As shown in Figure 2, voters have approved various constitutional amendments that exclude certain property transfers from triggering this reassessment.)

Figure 2

Property Transfers That Do Not Trigger Reassessment

Proposition	Year	Description
3	1982	Allows property owners whose property has been taken by eminent domain proceedings to transfer their existing assessed value to a new property of similar size and function.
50	1986	Allows property owners whose property has been damaged or destroyed in a natural disaster to transfer their existing assessed value to a comparable replacement property within the same county.
58	1986	Excludes property transfers between spouses or between parents and children from triggering reassessment.
60	1986	Allows homeowners over the age of 55 to transfer their existing assessed value to a new home, of equal or lesser market value, within the same county.
90	1988	Extends Proposition 60 by allowing homeowners to transfer their existing assessed value to a new home, of equal or lesser market value, in a different participating county.
110	1990	Allows disabled homeowners to transfer their existing assessed value from an existing home to a newly purchased home of equal or lesser market value.
171	1993	Extends Proposition 50 by allowing property owners affected by a natural disaster to transfer their existing assessed value to a comparable replacement property in a different participating county.
193	1996	Excludes property transfers between grandparents and grandchildren (when the parents are deceased) from triggering reassessment.
1	1998	Allows property owners whose property is made unusable by an environmental problem to transfer their existing assessed value to a comparable replacement property.

Most years, under this assessment practice, a property's market value is greater than its assessed value.

(31)

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.

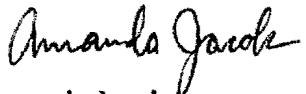
Conversely, the purchase price presumption does not apply if the sale was not an "open market transaction." (See Rule 2, subd. (b).) The court has distinguished an "open market transaction" from "a sale resulting from the submission of bids where the seller sells to the highest bidder or the buyer buys 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,



Amanda Jacobs
Tax Counsel

The Guild Wineries court summarized the law in 1975 as follows: "[W]hile a recent, open market, arm's length sale of a particular type of property may be a very important factor in determining its fair market value, the sale, by itself, does not provide sufficient, reliable data to enable the assessor to make an accurate valuation of that property [citation]; it is only a starting point in appraising the property." (51 Cal.App.3d at p. 187, 124 Cal.Rptr. 96.)

By its adoption of section 110(b), the Legislature changed that rule. The sale, by itself, is now sufficient to establish the fair market value in the absence of evidence the property would not have sold for that price in an open market transaction.

The purchase and sale of goods in such a setting is purely a "take it or leave it" proposition for any individual buyer or seller; negotiation is pointless because there is always, in economic theory, another buyer or seller willing to act at the market price if one of the present parties does not choose to do so. Yet no one would contend that the price for goods set through the forces of a perfectly competitive market was not the fair market value of the particular item.

It had the opportunity to bid or not bid on the property, and the resulting terms of sale were "negotiated" within the meaning of section 110(b)

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