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December 23, 1996

The Honorable Doris Ward  
County Assessor, San Francisco County  
875 Stevenson Street, Third Floor  
San Francisco, CA 94103

Attn: Mr. Verne Walton

Re: Historical Properties/Change in Ownership

Dear Ms. Ward:

This is in response to the June 3, 1996 letter sent to Lawrence Augusta, Assistant Chief Counsel, State Board of Equalization. We apologize for the delay in response.

Your questions concern an initial application and contract presently being processed by your office involving potential historical property contracts. You present the following facts:

Certain property, owned by (A), has a 1975 base year value; (A) plans to sell the property to (B) immediately following completion of the historical property contract and acceptance of the property into the historical property assessment program. The sale would constitute a change in ownership under the provisions of Article XIII A of the California Constitution. (B) will then convert storage area into condominium units which will qualify as assessable new construction under the provisions of Article XIII A.

(A) and (B) believe that the transfer from (A) to (B) and the new construction are not assessable under either the historical property assessment program or the Mills Act.

Based on the following analysis, the change in ownership and the new construction are both events which determine base year value. If the change in ownership occurs in 1996, the new base year for the property would be 1996, and the base year value would be determined by market value at the time of transfer. If the change in ownership and new construction occur in 1996, the new base year would be 1996, and the new base year value for the new construction would be added to the 1996 base year value for the property in 1996 and combined with it in 1997.

Additionally, section 439.2 provides a formula for calculating the value of historical properties for property tax purposes.<sup>1</sup> Section 439.2 calculations are made annually, and there is no statutory provision for post-lien date section 439.2 calculations or adjustments as the result of changes in ownership or new construction which produce changes in base year values. As indicated herein, assuming the facts set forth, the lower of either the combined base year value factored for inflation, current market value, or the value determined by the section 439.2 calculation would become the 1997 value for the property.

As a point of clarification, we note that section 439.2 provides for calculation of values on an annual basis; subdivision (a) of that section provides that "The annual income to be capitalized shall be determined as follows: . . .". There is no provision in section 439.2 for calculation of a section 439.2 value at a time other than the lien date. Thus, unlike Proposition 13/Article XIII A of the California Constitution which provides for supplemental assessments for changes in ownership and new construction, there is no immediate reassessment for a historical property when a historical property becomes subject to a historical property contract in mid-year. The lien date status and income information pertaining to the property would be relevant for property that became subject to a historical property contract in 1996 on January 1, 1997, the 1997 lien date.

## ANALYSIS

Your first question is:

Is a new base year value calculated at the time of change in ownership?

Yes, a new base year value is calculated at the time of change in ownership. The usual rules set out in section 50 apply to historical properties for the purpose of establishing base year value. The value of an historical property each year for assessment purposes is the lower of either the base year value factored for inflation, current market value, or the value determined

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<sup>1</sup> All statutory citations are to the Revenue and Taxation Code unless otherwise specified.

pursuant to section 439.2.<sup>2</sup> Therefore, it is necessary to establish a base year value for historical properties; if the factored base year value is lower than the current market value and the section 439.2 value in a given year, or if the restriction is removed, the availability of a factored base year value is critical.

Your second question is:

Should the new construction be appraised and incorporated in the Article XIII A value and also included when measuring current market value?

By Article XIII A value, we assume you mean the base year value. As stated above, the usual rules apply for establishing base year value. Thus, as to new construction, section 75.10 applies and results in a base year value for the newly constructed property. Applied to the facts at issue, when the conversion from the storage area to the condominium units is complete, the new construction should be assessed and added to the base year value of the entire property. Similarly, the value of the newly constructed condominium units would also be included when measuring current market value of the entire property in 1997.

Your third question is:

Do supplemental assessments apply to property under the historical property program if such property is assessed based on Article XIII A value at the time of change in ownership or completed new construction?

This question is a bit unclear. As stated above, it is necessary to establish a base year value; change in ownership and new construction are reassessable events and impact base year value. Supplemental assessments are made when there is a reassessable event after the lien date; subject properties are reassessed and taxes levied for a portion of the year. Section 75.14 addresses supplemental assessments and provides:

A supplemental assessment pursuant to this chapter shall not be made for any property not subject to the assessment limitations of Article XIII A of the California Constitution. All property subject to the assessment limitations of Article XIII A of the California Constitution shall be subject to the provisions of this chapter, except as otherwise provided in this article.

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<sup>2</sup> See section 52.

Considering that historical properties may be valued on a basis other than Article XIII A of the California Constitution, one question is whether section 75.14 applies to historical properties. First, we note that the first sentence of section 75.14 refers to state assesses and does not pertain to the facts at hand. With regard to the second sentence, as noted above, historical properties may be valued on the basis of Article XIII A. Thus, supplemental assessments in relation to base year values are utilized for historical properties.

Historical properties are provided for in Article XIII, section 8 of the California Constitution which states in part:

To promote the preservation of property of historical significance, the Legislature may define such property and shall provide that when it is enforceably restricted, in a manner specified by the Legislature, it shall be valued for property tax purposes only on a basis that is consistent with its restrictions and uses.

Article XIII, section 8 and Article XIII A of the California Constitution can be applied together, as seen in City and County of San Francisco v. County of San Mateo (1995) 10 Cal.4th 554; 41 Cal.Rptr. 2d 888. This case involved municipal land owned in another county (extraterritorial land) and subject to section 11 of Article XIII of the California Constitution for tax valuation purposes. The court held that the valuation limitations of constitutional provision Article XIII A applies to extraterritorial land and that constitutional provisions Article XIII A and Article XIII, section 11 may be also applied together without conflicting. Similarly, Article XIII A can be applied together with Article XIII, section 8 relating to historical properties.

Section 439.2 provides for the calculation of annual values of historical properties in subdivision (a); it does not address the establishment of a section 439.2 value after the lien date, and there is no statutory provision for post lien date section 439.2 calculations or adjustments as the result of changes in ownership or new construction. Thus, in the situation you pose, upon the sale of the property, there would be a change in ownership and a supplemental assessment, as appropriate. And upon the completion of new construction in 1996, there would be another supplemental assessment. As indicated in the answer to your second question, the base year value as the result of the change in ownership together with the base year value for the newly constructed property would become the 1997 base year value to be factored and compared to the 1997 current market value and to the 1997 section 439.2 calculation.

Another question arises in view of the specific facts you present, namely, "(B) will then convert storage area into condominium units which will qualify as assessable new construction under the provisions of Article XIII A." "New construction" for purposes of Article XIII A is addressed in Property Tax Rule 463, Newly Constructed Property, and means and includes, among other things:

“(b)

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(3) Any physical alteration of any improvement which converts the improvement or any portion thereof to the substantial equivalent of a new structure or portion thereof or changes the way in which the portion of the structure that had been altered is used, e.g., physical alterations to an old structure to make it the substantial equivalent of a new building without any change in the way it is used or alterations to a warehouse that makes it usable as a retail store or a restaurant. Only the value, not necessarily the cost, of the alteration shall be added to the appropriately indexed base year value of the pre-existing structure.

If the conversion of the storage area into condominium units does not affect the historical nature of the property, the storage area/condominium units will remain, presumably, historical property. If the conversion will result in structures substantially equivalent to new structures, however, it is possible that the storage area portion of the property might no longer be historical property; that the new structures would not qualify as historical properties; and that the new structures would not be assessable as historical properties but would be and remain subject to assessment under Article XIII A with base year values for both the land used in conjunction with the new structures (upon the change in ownership) and the new structures (upon the completion of new construction).

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Such would be a matter for you to determine, given the new construction and the statutory requirements pertaining to historical property contracts.<sup>3</sup> Probably the initial question would be, would the conversion of the storage area into condominium units by (B) have been consistent with the completed historical property contract and acceptance of the property into the historical property assessment program when the property was still owned by (A)?

Finally, in your letter, you refer to the Mills Act. Article 1.9 relating to valuation of historical property was added by Chapter 1040 of the Statutes of 1977 and authored by Senator James Mills. Those statutes were codified as sections 439-439.4 and are addressed above.

The views expressed in this letter are, of course, advisory only and are not binding on the assessor of the City and County of San Francisco, or any other county assessor.

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<sup>3</sup> For example, Government Code section 50280.1, defines “qualified historical property” as privately owned property that is either listed in the National Register of Historic Places or located in a registered historic district, or listed in any official register of historical or architecturally significant sites, places or landmarks; Government Code section 50281 relates to contract provisions.

Our intention is to provide timely, courteous, and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,



Janet Saunders  
Tax Counsel

JS:jd

precednt/miscelan/1996/96032.js

cc: Mr. James Speed - MIC:63  
Mr. Richard Johnson - MIC:64  
Ms. Jennifer Willis - MIC:70