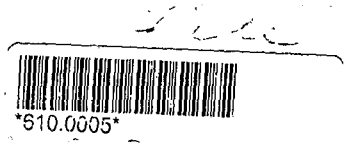
State of California



Memorandum

To : Mr. Verne Walton

Date : June 15, 1983

From : I

Subject : Cable Television

This is in response to your memo of May 10, 1988 requesting advice on questions relating to cable television. In addition to your memo, I have discussed these questions briefly with Ray Mrotek.

1. The first question has two parts. The first part asks whether the hookup of a new subscriber constitutes new construction. The second question relates to the addition of new subdivisions to the cable system and whether, for purposes of valuing the possessory interest in the public right of way, this constitutes new property.

   a) The term "new construction" is defined in Revenue and Taxation Code section 70 and Property Tax Rule 463. Further, section 75.10 requires a supplemental assessment whenever there is "new construction resulting from actual physical new construction on the site." Whether the hookup of a new cable TV subscriber constitutes new construction must be determined in accordance with the standards set forth in the statute and regulation. If the hookup involves additions to real property, then the additions would constitute new construction. If, however, the hookup does not involve any addition to real property but merely involves the connection of existing lines so the customer can receive service, then there would be no new construction under existing standards.

   In determining whether the construction is assessable to the cable television system or to the property owner, Tele-vue Systems, Inc. v. County of Contra Costa (1972) 25 Cal.App.3d 340, provides that the interior portion of the cable TV house drop is not assessable to the cable TV system.

   b) The second portion of your first question, relating to the possessory interest in the public right of way in a new subdivision, is a different problem. You have provided no information as to the nature of the possessory interest granted under the city or county franchise. If the cable TV system is granted a franchise to provide cable service to a

which is purchased, newly constructed, or changes ownership after the 1975 lien date, errors or omissions in base year value must be corrected in accordance with section 51.5. Basically, section 51.5 provides that the assessor has four years from July 1 of the assessment year for which the base year value was first established in which to correct an error or omission in base year value which involve the exercise of the assessor's judgment as to value. If the error or omission did not involve the exercise of the assessor's judgment as to value, such as where the assessor omitted placing any value on the possessory interest because of his mistake of law, then the error may be corrected at any time in accordance with the provisions of section 51.5.

3) Your third question apparently asks for reconfirmation of the statement found in AH 568 at page 21, relating to the eligibility of television converters for the business inventory exemption. The handbook states that converters held by CATV companies for lease to subscribers are eligible for the business inventory exemption.

Rule 133 provides generally that the business inventory exemption expressly refers to all tangible personal property held for sale or lease in the ordinary course of business. Nothing in Rule 133 applies specifically to converters, however. In addition to the statement found in AH 568, Letter to Assessors No. 80/69, dated April 25, 1980, states that cable television converters held for sale or lease by a cable company are eligible for the exemption. These authorities all support the AH 568 statement that <u>if</u> the converters are held by the cable company for lease to its subscribers then they are eligible for the exemption.

These authorities do not appear to answer the question, however, whether all converters should be considered to be held for lease to subscribers. In a May 30, 1980 memo to Mr. Gene DuPaul, relating to the subject of mobilephones, Glenn Rigby stated in part:

"I note that on page 21 of AH 568 relating to appraisal of cable television equipment, I find that we have concluded that the 'converters' held by the cable television companies where they make a specific charge to their customers for the use of the unit constitutes a lease of the property."

Mr. Rigby goes on to conclude that, since he cannot distinguish between converters and mobilephones, providing mobilephones for a specific charge constitutes a rental of that equipment. In addition, discussions with Mr. DuPaul and Mr. Florence in the Valuation Division indicate that we did

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   b) The second portion of your first question, relating to the possessory interest in the public right of way in a new subdivision, is a different problem. You have provided no information as to the nature of the possessory interest granted under the city or county franchise. If the cable TV system is granted a franchise to provide cable service to a

specific geographic area and granted the right to use the public right of way in only that area, then any amendment of the franchise to extend the boundaries and grant a possessory interest in rights of way not previously covered would constitute the creation of a new possessory interest which would be subject to assessment as a change in ownership under Revenue and Taxation Code section 61(b).

A different analysis applies, however, if we are talking about the possessory interest right as applied to new developments or subdivisions constructed within the originally granted geographic area after the franchise is first granted. Assuming that the franchise grants the possessory interest right to use the public right of way in all parts of the franchised area and has no geographic restrictions within those boundaries, then the possessory interest right exists from the date of the original franchise and its application to a new development or subdivision cannot be considered the creation of a new possessory interest. Although the possessory interest right exists throughout the franchise area, it would have no value insofar as undeveloped areas are concerned. These possessory interest rights do not attain value until the area is subdivided or otherwise developed. Based upon the holding in Tenneco West v. County of Kern (1987) 194 Cal.App.3d 596, and the authorities relied on therein, the possessory interest rights in newly developed territory may be first assessed as additions to property in the year in which they attain value, assuming the assessor has not previously placed a value on the rights and included it in the original base year value.

2) Your second question relates to base year value corrections. You ask whether, after the assessor has established a base year value for a cable television system the assessor may correct or change the base year value in order to reflect court decisions or other precedents which may be applicable. You cite the example of a county which had a zero value on the systems possessory interest and after the Cox case adds the possessory interest value to the system's base year value.

Sections 110.1 and 51.5 provide the controlling authority for questions relating to corrections of base year value. With respect to March 1, 1975 base year values, section 110.1(c) provides that 1975 lien date base year values must be corrected on or before June 30, 1980 unless the property "escaped taxation for 1975 and was not merely underassessed for that year." In the latter case, section 110.1 expressly provides that the escaped property shall be added to the roll in any year in which the escape is discovered at its base year value indexed to reflect inflation. With respect to property

which is purchased, newly constructed, or changes ownership after the 1975 lien date, errors or omissions in base year value must be corrected in accordance with section 51.5. Basically, section 51.5 provides that the assessor has four years from July 1 of the assessment year for which the base year value was first established in which to correct an error or omission in base year value which involve the exercise of the assessor's judgment as to value. If the error or omission did not involve the exercise of the assessor's judgment as to value, such as where the assessor omitted placing any value on the possessory interest because of his mistake of law, then the error may be corrected at any time in accordance with the provisions of section 51.5.

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Mr. Rigby goes on to conclude that, since he cannot distinguish between converters and mobilephones, providing mobilephones for a specific charge constitutes a rental of that equipment. In addition, discussions with Mr. DuPaul and Mr. Florence in the Valuation Division indicate that we did

not allow the business inventory exemption for telephones, prior to the change in the law regarding ownership of this equipment, where the telephone company did not make a separately stated charge for the telephone to the customer. Further, with respect to paging devices, the Board changed its position and allowed the inventory exemption for the devices only when the PUC permitted the paging services to make separately stated charges for the equipment. All of this leads me to the conclusion that a cable converter should be considered to be held for lease only if the cable company follows the practice of separately billing an amount to the customer for the use of the converter. If there is no separate charge for the converter, then this equipment should be treated like the telephone or the pager when no separate charge was made for the use of that type of equipment on the theory that it is not leased to the customer.

Attached for your information is a copy of Glenn Rigby's May 30, 1980 memo.

RHO:cb
1085D

Attachment

cc: Mr. James J. Delaney
Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Ray Mrotek
Mr. Gene DuPaul
Mr. J. Kenneth McManigal
Mrs. Barbara G. Elbrecht