State of California

Board of Equalization
Legal Division

Memorandum

To : Mr. Verne Walton, MIC:64

Date: August 24, 1994

From : James M. Williams

Subject: **Applicability of Supplemental Assessments to Williamson Act Nonrenewal**

This is a delayed response to your memo of January 21, 1994 because it took an hour with before I could even approach the problem. The survey team contends that once nonrenewal has begun on a parcel restricted by the Land Conservation Act (LCA), a Revenue & Taxation Code, Section 426 increase in value should only be assessed on the lien date following a change in ownership. To the contrary, the team found that the County Assessor was making a supplemental assessment pursuant to Section 75 et seq. The assessor was acting on the basis of a June 18, 1993 opinion of the county counsel which you forwarded for our review.

Initially, the county counsel states and we agree:

> Section 75.14 of the Revenue and Taxation Code provides the following: A supplemental assessment pursuant to this Chapter shall not be made for any property not subject to the assessment limitations of Article XIIIA of the California Constitution. All property subject to the assessment limitations of Article XIIIA shall be subject to the provisions of this chapter, except as otherwise provided in this Article. For example, personal property and state assessed property are not subject to Article XIIIA. Consequently, no supplemental assessments are issued on such property. If Williamson properties also **are not subject to Article XIIIA**, then the State Board position would be correct.

restricti

He then cites Section 52, found in Part 0.5 of the code which implements Article XIIIA:

> (a) Notwithstanding any other provision of this division, property which is enforceably restricted pursuant to Section 8 of Article XIII of the California Constitution shall be valued for property tax purposes pursuant to Article 1.5 (commencing with Section 421) and Article 1.9 (commencing with Section 439) of Chapter 3 of Part 2.

Although the plain meaning of this provision is to remove Williamson LCA parcels from the provisions of Article XIIIA and subject them to the specified special sections, the county counsel asserts that this is incorrect because the court of appeal in **Los Angeles Country Club v. Pope, 175 Cal. App. 3d 278 (1985)** held that golf courses, which were covered by subsection (c) of Section 52, were still subject to certain parts of Article XIIIA. He then concludes:

> The notice of non-renewal, however, does trigger the applicability of Section 426, which blends the limitations of Article XIIIA and Section 110.1 with the restricted valuation methodologies under Section 421. Thus, once the notice of non-renewal is filed, the limitations under Article XIIIA come into effect. In other words, Article XIIIA becomes applicable, at least in part, to Williamson properties undergoing non-renewal. Since under Section 75.14 properties subject to XIIIA restrictions must be supplementally assessed, it is reasonable to conclude that supplemental assessments are applicable to non-renewed Williamson Act properties valued pursuant to Section 426.

There are two ways to respond to the foregoing analysis: the short and quick or the long and tedious. Let's first be brief. Revenue & Taxation Code, Section 426, specifies the method of valuation of LCA parcels after the serving of the notice of nonrenewal. It says that county assessors shall value the land "as provided in this section". It was last substantively amended in 1983 to provide for a phase-in of the base year value so that corrected base year will be the basis of assessment at the time of contract expiration. The Legislature is well aware of the **Pope** case. If it wanted to provide for a supplemental assessment, it would have done so with a one sentence amendment to this section. It did not and clearly there is no explicit indication of any such intent on the Legislature's part.

Now the long and tedious. Section 52(a) unequivocally removes LCA valuation from the statutes that implement Article XIIIA and directs that specific sections (Articles 1.5 and 1.9 of the code) be applied. The **Pope** case did **not** interpret this section; it dealt only with subdivision (c). The County of Sacramento has no authority to apply the rationale of **Pope** to subsection (a) by analogy. If the assessor does not intend apply the plain meaning of subsection 52(a), he is first required to follow the procedures of Section 538 and he has not done so. Section 3.5 of article III of the California Constitution provides that an administrative agency has no power to refuse to enforce a statute (i.e. section 426) without benefit of an appellate court decision regarding the specific statute being applied. The reasoning relied upon by the county counsel seems to directly conflict with the purpose of section 3.5.

Let's look at what is reasonable in practical application. Most likely the LCA parcel is being assessed at its "in use" valuation when the owner serves notice of nonrenewal. Under Section 426 the assessor will raise the assessment in a curvilinear fashion on the subsequent nine lien dates so that on the tenth lien date the parcel will be removed from LCA and be assessed at the factored base year value. What does, in the case of a change in ownership during the nonrenewal period, is to make a calculation of the additional increment that will be applied as a result of the change in ownership and use that increment as the basis for a supplemental assessment. There is no express authority that outlines this procedure; it is a creation of the County Assessor.

Finally, let's examine the concluding rationale of the county counsel as stated above. The use of a factored base year increment in the Section 426 methodology manifests a legislative intent to mandate supplemental assessments on LCA parcels that are undergoing nonrenewal. Without any direct expression that proposition is not reasonable. While section 426 does make use of Section 110.1 in calculating the nonrenewal value, it is rather clear that the latter value is

entirely inconsistent with the value mandated by section 75.10 (full cash value). Thus, any attempt to use supplemental assessments is clearly contrary to the plain language of section 426.

JMW:jd
precednt/restrict/94003.jmw

cc: Ms. Jennifer Willis, MIC:70
Mr. John Hagerty, MIC:62
Mr. Verne Walton, MIC:64
Mr. Pete Gaffney, MIC:64