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June 28, 1978

No. 78/111

TO COUNTY ASSESSORS:

SENATE BILL 154 AND ATTORNEY GENERAL'S OPINION NO. CV 78/76

Senate Bill 154

The Legislature has passed Senate Bill 154, copy enclosed, dealing with the implementation of Proposition 13, Article XIIIA of the Constitution. This bill was signed by Governor Brown on June 24, 1978, and it is currently in effect.

The following sections of the Revenue and Taxation Code have been amended or added (beginning with Section 26 of Senate Bill 154):

Section 110, "Full Cash Value" - Amended
Section 110.1 (base year value) - Added
Section 110.5, "Full Value" - Amended
Section 110.6 (change in ownership) - Added

Attorney General's Opinion No. CV 78/76

On June 14, 1978 the State Controller requested an Attorney General's opinion in regard to the tax rate to be applied to unsecured property. The Attorney General's Office has rendered Opinion No. CV 78/76, copy enclosed, which states that the 1 percent tax rate applies to both real and personal property on the unsecured roll for the 1978-79 fiscal year.

If you have any questions on these items, please let us know.

Sincerely,

Jack F. Eisenlauer

Jack F. Eisenlauer, Chief
Assessment Standards Division

JFE:ce
Enclosures

EVELLE J. YOUNGER
ATTORNEY GENERAL

STATE OF CALIFORNIA

OFFICE OF THE ATTORNEY GENERAL
Department of Justice
STATE BUILDING, SAN FRANCISCO 94102
(415) 557-2544

June 26, 1978

Kenneth Cory
Controller of the
State of California
P. O. Box 1019
Sacramento, CA 95805

Re: Opinion No. CV 78/76

Dear Mr. Cory:

Enclosed is our Opinion No. CV 78/76 issued in response to your request dated June 14, 1978.

Very truly yours,

N. Eugene Hill

N. EUGENE HILL
Chief Assistant Attorney General

NEH:rdw

Encl.

OFFICE OF THE ATTORNEY GENERAL
State of California

EVELLE J. YOUNGER
Attorney General

OPINION of EVELLE J. YOUNGER Attorney General EDWARD P. HOLLINGSHEAD Deputy Attorney General	CV 78/76

HONORABLE KENNETH CORY, CONTROLLER OF THE STATE OF CALIFORNIA, has requested an opinion on the following question regarding the effect of Proposition 13 (Jarvis-Gann Initiative), which added article XIIIA to the Constitution of California, on the tax rate applicable to unsecured property for the 1978-79 fiscal year:

Is the one percent limitation provided for in section 1(a) of article XIIIA applicable to personal property on the unsecured roll or should the secured rate for the preceding year be applied as provided for in subdivision (a) of section 12, article XIII, of the California Constitution and section 2905, Revenue and Taxation Code?

The conclusion is:

The one percent limitation provided for in section 1(a) of article XIIIA is applicable to both real and personal property on the unsecured roll in the 1978-79 fiscal year. This conclusion is predicated on the assumption that the Legislature has or will have enacted legislation to make sections 1 and 2 of article XIIIA operative on July 1, 1978. Section 1 of article XIIIA is not self-executing and failure to enact such implementing legislation would postpone the effect of the one percent limitation for at least a year.

ANALYSIS

Sections 1(a) and 2(a) of article XIIIA provide:

> "Section 1. (a) The maximum amount of any ad valorem tax on real property shall not exceed One percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties."
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> " . . . . . .
>
> "Section 2. (a) The full cash value means the County Assessors valuation of real property as shown on the 1975-76 tax bill under 'full cash value,' or thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occured after the 1975 assessment. All real property not already assessed up to the 1975-76 tax levels may be reassessed to reflect that valuation."

Sections 1(a) and 2(a) thus provide that "any ad valorem tax" on "real property" is subject to the one percent rate limitation whether such real property is on the secured roll or the unsecured roll. The one percent rate limitation is to be applied to the "full cash value" as shown on the 1975-76 tax bill, or thereafter, to "the appraised value of real property" if the property is purchased, newly constructed, or a change of ownership occurs after the 1975 assessment.

In discussing the effective date of article XIIIA as July 1, 1978, many have assumed that section 1 thereof is self-executing. This is not the case. The Legislature must adopt legislation in order to make section 1 of Proposition 13 operative July 1, because this type of constitutional amendment falls squarely within the definition of a provision that is not self-executing. (See Taylor v. Madigan (1975) 53 Cal.App.3d 943, 951.) Sections 1 and 2 of the Proposition -- the sections containing the one percent tax limitation and the roll-back requirements -- contemplate legislation. Section 5 of the Proposition clearly states that the new tax limitations are intended to apply beginning with the 1978-79 tax year. It is therefore clear that while the voters have

issued a mandate to the Legislature to adopt the implementing legislation necessary to make Proposition 13 operative July 1, 1978, failure to do so will leave sections 1 and 2 inoperative until they are implemented.

Unsecured taxes are assessed against personal property, possessory interests, and taxable improvements on exempt land which are not a lien upon land sufficient in value to secure their payment (§ 12, art. XIII, Calif. Const., §§ 107, 109, 134, Rev. & Tax. Code; but see § 2190, Rev. & Tax. Code). They become due on the lien date (§ 2901, Rev. & Tax. Code) which by statute is the March 1st preceeding the fiscal year for which the taxes are levied (§ 2192, Rev. & Tax. Code). They become delinquent if they were on the roll as of July 31st and are not paid by August 31 at 5 p.m. (§ 2922, Rev. & Tax. Code). The tax rate for unsecured property is the secured rate for the prior tax year (§ 12, art. XIII, Calif. Const.; § 2905, Rev. & Tax. Code). The Constitution permits personal property to be taxed at a lower rate than real property but requires that "the tax per dollar of full value shall not be higher on personal property than on real property in the same taxing jurisdiction." (§ 2, art. XIII, Calif. Const.)

It has been pointed out that the assessment of unsecured taxes is deemed completed as soon as the assessor has made the prescribed written record of the assessment (§ 2902, Rev. & Tax. Code). Since the tax is due on March 1st and the initiative will not take effect until July 1, 1978, it has been argued that the passage of Proposition 13 should have no effect on unsecured taxes already levied. Since unsecured taxes will have been due for four months before Proposition 13 goes into effect, the unsecured roll would not, under this approach, be affected at all.

This argument is based on the approach that the provisions of section 12, article XIII, of the Constitution have not been repealed by Propositon 13 and that there is no manifest intent to interrupt the long-standing application of the prior year's secured tax rate to the unsecured roll. Under this approach, the one percent rate limit would, of course, apply to the unsecured roll in the second year that section 1 of article XIIIA is operative since the secured rate from its first year of operation will then become the rate for the unsecured roll.

It has been suggested that section 2, article XIII, of the Constitution should not be construed to prevent the application of the prior year's secured rate to the unsecured

roll because this section means that personal property may not be taxed at a higher rate than real property on the same roll, not that personal property on the unsecured roll may not be taxed at a higher rate than real property on the secured roll. While there are no cases construing the present language of section 2 of article XIII, cases construing the predecessor sections of article XIII, sections 2 and 12, appear to indicate that personal property on the unsecured roll may be taxed at a different rate than real property on the secured roll. This seems logical because otherwise the secured rate could never be changed without causing real and personal property on the secured roll to be taxed at a different rate than real and personal property on the unsecured roll. For example, if the secured rate were lowered, real and personal property on the unsecured roll would be taxed at a higher rate than real and personal property on the secured roll.

In Abrams v. San Francisco (1941) 48 Cal.App.2d 1, the Court upheld the application of an unsecured tax rate of $3.96 per $100 assessed valuation compared with a secured rate subsequently adopted for the same fiscal year of $3.48 per $100 assessed valuation. The Abrams case held that such result was proper under former section 9a, article XIII, of the California Constitution (the predecessor section to section 12, article XIII, of the present Constitution) and further held that there was no denial of equal protection to the assessee of personal property on the unsecured roll by reason of the difference in rates applicable to personal property on the unsecured roll and real property on the secured roll. Apparently, the taxpayer did not raise an issue over the application of former section 14, article XIII, of the California Constitution, which provided that "no tax burden shall be imposed upon any personal property . . . which shall exceed the tax burden on real property in the same taxing jurisdiction in proportion to the actual value of such property." At least, no mention of it is made in the court's opinion.

In Dawson v. County of Los Angeles (1940) 15 Cal. 2d 77, the court held that former section 14, article XIII, of the Constitution, was satisfied where real property was assessed at 50.2 percent of its market value whereas intangible personal property was assessed at 100 percent of market value. By examining the tax rates applicable to such property, the court found that the tax rate on intangible personal property was two-tenths of one percent whereas the tax rate

on real property was $1.21 for each $100 of assessed valuation. Thus, the tax on intangible property imposed no greater burden than the tax on real property in proportion to value (15 Cal.2d at 81). The court indicated that when the product of the rate times the assessment of personal property exceeds that imposed on real property there would be an undue tax burden. Presumably, the present language of section 2, article XIII, of the Constitution is based on the prior language in former section 14, article XIII, and would be subject to the same construction.

The problem here presented is due to the fact that article XIIIA is applicable to "real property" whether it is on the secured roll or the unsecured roll. Possessory interests and taxable improvements on land exempt from taxation are, as noted above, assessed on the unsecured roll. Because possessory interests and taxable improvements on government-owned land exempt from taxation are classified as real property (Forster Shipbldg. Co. v. Los Angeles County (1960) 54 Cal.2d 450, 455-456), these interests will be subject to the one percent rate limit at the same time as it applies to other real property on the secured roll. Moreover, such interests will also become subject to the roll-back of full cash value prescribed in section 2(a) at the same time as other real property on the secured roll. Since article XIIIA speaks in terms of "real property" in both sections 1(a) and 2(a) without regard to whether it is assessed on the secured roll or the unsecured roll, it must be assumed that the intent is to treat all real property in the same fashion.

It seems evident that there is no intent to roll back valuations of personal property, whether it is on the secured roll or the unsecured roll. Section 2(a) is quite clear in stating that only real property is to be valued according to the 1975-76 "full cash value." However, because the rate applied to the secured roll in each tax code area is applied equally to land, improvements and personal property, the one percent rate limitation imposed by section 1(a) is applicable to all property on the secured roll. This being the case, could it be concluded that personal property on the unsecured roll is not subject to the one percent rate limitation in view of the requirement of section 2, article XIII, of the Constitution that the tax per dollar of full value shall not be higher on personal property than on real property in the same taxing jurisdiction? As noted above, real property on the unsecured roll is subject both to the one percent rate limitation and the roll-back of full cash value. It seems apparent that if the one percent limit is applied to real

property on the unsecured roll but not to personal property, a taxpayer who owns personal property assessed on the unsecured roll could successfully argue that section 2, article XIII, has not been complied with because personal property on the unsecured roll would be the only property taxed at a rate exceeding one percent of full value in 1978-79, or in the first year section 1(a) is operative.

While sections 1(a) and 2(a) of article XIIIA speak in terms of the "full cash value" of real property, it seems clear from the reference in section 2(b) to "the fair market value" that the initiative uses these terms interchangeably, as defined in section 110, Revenue and Taxation Code. Thus, while sections 1 and 2 of article XIII, of the Constitution utilize the term "full value," section 1 of article XIII makes it clear that "full value" means "fair market value" unless another value standard is prescribed in the Constitution. Thus taxable personal property, possessory interests, and taxable improvements on land exempt from taxation are valued at their fair market value and assessed at 25 percent of their "full value" under section 401, Revenue and Taxation Code. However "full value" may be determined for the purposes of applying section 2, article XIII, of the Constitution, the provisions of sections 1(a) and 2(a) of article XIIIA are applicable to real property on the unsecured roll, and the requirement of section 2, article XI quoted above, mandates that the tax rate for personal property on the unsecured roll be no higher than the tax rate for real property on the unsecured roll. Both are, accordingly, subject to the one percent rate limitation prescribed in section 1(a) of article XIIIA.

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