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PROPERTY AND SPECIAL TAXES DEPARTMENT
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0064
916 445-4982 ● FAX 916 323-8765
www.boe.ca.gov

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November 13, 2003

Dr. Knox Mellon
State Historic Preservation Officer
Office of Historic Preservation
P.O. Box 942896
Sacramento, CA 94296-0001

RE: ***Mills Act Program, County***

Dear Dr. Mellon:

This letter is in response to your inquiry addressed to Assistant Chief Counsel Kristine Cazadd, regarding the proper treatment of property for change in ownership purposes, subject to historic preservation contracts under the Mills Act Program located in County. As discussed in more detail below, it is our opinion that the County Assessor should not enroll supplemental assessments for property in the Mills Act Program when that property experiences a change in ownership.

Factual Background

Our analysis is based upon the following background facts provided in your letter dated August 12, 2003 and the letter from Mr. , dated August 11, 2003:

1. At the time of Mr. R ' letter, he was in the process of purchasing real property subject to a Mills Act Contract, and located in .

2. Mr. R reported his purchase price of that property at $691,500.

3. Responding to an inquiry from Mr. R , the County Assessor's Office indicated that the sale of the property would result in a reappraisable change in ownership.

4. Following that change in ownership, the assessor's office indicated to Mr. R that it would enroll a supplemental assessment reflecting the difference between the property's current assessed value ($119,070) and the market value of the property on the date of the change in ownership ($691,500).

5. Mr. R believes that the assessor plans to appraise the property for supplemental assessment using the "market" approach to value instead of the income value indicator prescribed by Revenue and Taxation Code section 439.2.

6. According to Mr. R , the County Assessor's Office indicated that it would not apply the valuation approach prescribed by section 439.2 until the first lien date after the change in ownership.

Based upon these facts, you have posed the following question on behalf of the Office of Historic Preservation (OHP): Does the County Assessor have the authority to issue supplemental assessments on properties subject to Mills Act Contracts?

Analysis

May the County Assessor issue supplemental assessments for property subject to a Mills Act Contract upon a change in ownership of that property?

No. While section 50 of the Revenue and Taxation Code requires the assessor to establish a new base year value following a change in ownership, properties encumbered by Mills Act Contracts are not subject to supplemental assessments since those properties are subject to valuation pursuant to section 8 of article XIII of the California Constitution.

As you may be aware, article XIIIA generally limits annual increases in the assessed value of unrestricted real property to no more than 2 percent, except when property changes ownership or undergoes new construction. Revenue and Taxation Code section 50, the statute that implements the change in ownership provisions of article XIIIA, requires the assessor to establish a new base year value for a property upon a change in ownership.

However, enforceably restricted historical properties are subject assessment pursuant to article XIII, section 8 of the California Constitution. Section 8 of article XIII provides as follows:

> **Assessment of open space lands and property of historical significance** . . . 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.

To provide for the valuation of property of historical significance for property taxation, the Legislature added sections 52 and 439 et. seq. to the Revenue and Taxation Code. Subdivision (a) of Revenue and Taxation Code Section 52 requires the assessor to use the valuation approaches prescribed in Revenue and Taxation Code section 439 et. seq. when

appraising historical property that is enforceably restricted pursuant to article XIII, section 8 (Mills Act Contracts).

Section 439.2 prescribes the valuation approach for enforceably restricted historical property, and provides for an optional method of placing a ceiling upon the value to be enrolled. Under the value limitations of subdivision (d), the section 439.2 value cannot exceed the lesser of the property's (1) current fair market value calculated pursuant to section 110; or (2) the base year or factored base year value calculated pursuant to section 110.1 as if the property was not subject to an enforceable restriction in the base year, unless a party to the contract expressly prohibits such a valuation.

When enrolling an assessment for enforceably restricted properties, the assessor is required to annually compare the base year or factored base year value of each such property with the property's restricted and current market values, enrolling the lowest of the three as the assessed value. Therefore, in practice, county assessors are required to track the base year value of enforceably restricted historical properties.

Each year the assessor performs the comparison described above in order to determine the correct value to enroll. If a property changes ownership, such as the property purchased by Mr. R , the assessor must determine the fair market value of the property upon that change in ownership. That value will become the new base year value for purposes of the three-way value comparison on each lien date following the change in ownership.

Even though the assessor is required to establish a new base year value for property subject to enforceable restriction, it is our position that supplemental assessment procedures do not apply to enforceably restricted property. Revenue and Taxation Code section 75.14 provides:

> **Supplemental assessment; limitation**. 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.

As mentioned above, the assessment of enforceably restricted historical property is subject to the provisions of article XIII, section 8 of the California Constitution, and not article XIIIA. Thus, section 75.14 precludes the assessor from enrolling supplemental assessments for enforceably restricted historical property.

By comparison, if Mr. R ' property were not enforceably restricted, there would be a supplemental assessment in the amount of $572,430 upon the change in ownership ($691,500 current market value less the $119,070 current roll value on the property).

Conclusion

Since Mr. R ' property experienced a change in ownership, section 50 requires the county assessor to establish new base year values for his property upon that change in ownership. However, since the assessments of enforceably restricted historical properties are governed by article XIII, section 8 of the California Constitution, assessors are precluded from enrolling supplemental assessments upon a change in ownership by section 75.14 of the Revenue and Taxation Code. Establishment of new base year values merely enables the assessor to perform the three-way value comparison prescribed by subdivision (d) of section 439.2 and to calculate the assessed values should the Mills Act contract enter nonrenewal status (section 439.3).

The views expressed in this letter are advisory in nature only; they represent the analysis of the legal staff of the Board of Equalization based on present law and the facts set forth herein.

Sincerely,

/s/ Michael Lebeau

Michael Lebeau
Tax Counsel

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cc: Mr. David Gau, MIC:63
Mr. Dean Kinnee, MIC:64
Ms. Mickie Stuckey, MIC:62
Ms. Jennifer Willis, MIC:70