850.0060 **Purchase Price Presumption.** The presumption that a purchase price is "full cash value" or "fair market value" as provided for in Revenue and Taxation Code Section 110(b) applies to all equalization hearings in progress or held subsequent to January 1, 1989, even if the fiscal years and protested assessments relate to periods prior thereto. C 5/10/89.

STATE OF CALIFORNIA

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May 10, 1989

Dear

This letter is in response to your letter of April 26, 1989, to Mr. Richard Ochsner in which you request our opinion concerning the applicability of Revenue and Taxation Code section 110(b) as recently enacted to the following facts set forth in your letter.

Your client (the "taxpayer") holds a possessory interest that it acquired in October of 1984. Through regular and supplemental assessments, real property taxes were assessed and reassessed for the periods of July 1, 1984 through June 30, 1985 ("Fiscal Year 1984-1985"), July 1, 1985 through June 30, 1986 ("Fiscal Year 1985-1986"), July 1, 1986 through June 30, 1987 ("Fiscal Year 1986-1987"), July 1, 1987 through June 30, 1988 ("Fiscal Year 1987-1988"), and July 1, 1988 through June 30, 1989 ("Fiscal Year 1987-1989"). All real property taxes for the aforementioned Fiscal Years have been paid and timely applications for changed assessment have been filed for all of such Fiscal Years.

A hearing with respect to the applications was originally scheduled before a local assessment appeals board for December 1987. This hearing has been postponed, and a rescheduled hearing date has not yet been set.

As indicated in your letter, the Legislature effective January 1, 1989 added provisions similar to Property Tax Rule 2 as amended October 9, 1984 by adding subdivision (b) to Revenue and Taxation Code section 110.

Subdivision (b) provides in relevant part:

> (b) For purposes of determining the "full cash value" or "fair market value" of real property, other than possessory interests, being appraised upon a purchase, "full cash value" or "fair market value" shall be the purchase price paid in the transaction unless it is established by a preponderance

> of the evidence that the real property would not have transferred for that purchase price in an open market transaction. The purchase price shall, however, be rebuttably presumed to be the "full cash value" or "fair market value" if the terms of the transaction were negotiated at arms length between a knowledgeable transferor and transferee neither of which could take advantage of the exigencies of the other. "Purchase price," as used in this section, means the total consideration provided by the purchaser or on the purchaser's behalf, valued in money, whether paid in money or otherwise.

You have asked for our confirmation that, consistent with our position with respect to the effective date of Rule 2, section 110(b) will apply to all hearings that occur after January 1,1989, even if the fiscal years at issue relate to prior time periods. As indicated, it has been our position that Rule 2 was applicable to all hearings in progress or held subsequent to its effective date (September 20, 1985) even though the protested assessment was made prior to that date. Enclosed is a copy of James J. Delaney's letter of April 30, 1987 to that effect for your information. We see no reason to depart from that position with respect to section 110(b). We are therefore of the opinion that section 110(b) would be applicable in any future hearing in this matter.

In this regard, we note that you have characterized section 110(b) as codifying the "purchase price" method of valuation espoused in Rule 2 except "that the 'purchase price' method of valuation shall not apply to possessory interests." In our opinion, that characterization is not accurate. Although the rebuttable presumption created by section 110(b) that the purchase price paid is "full cash value" or "fair market value" does not apply to possessory interests, nothing in section 110(b) precludes consideration of the purchase price paid in ascertaining the market value of a possessory interest.

The views expressed in this letter are, of course, advisory only and are not binding upon the assessor or assessment appeals board of any county. You may wish to consult the appropriate assessor in order to confirm that the described property will be assessed in a manner consistent with the conclusion stated above.

Very truly yours,

Eric F. Eisenlauer

Eric F. Eisenlauer
Tax Counsel

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