STATE OF CALIFORNIA

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Executive Secretary

August 8, 1986

No. 86/57

TO COUNTY ASSESSORS:

OFFICE OF ADMINISTRATIVE LAW REVIEW
OF LETTERS TO ASSESSORS

We have received county inquiries regarding the effect of recent Office of Administrative Law (OAL) determinations concluding that two Assessors Letters (No. 85/128 -- Sale and Leaseback Transactions and No. 82/89 Easements of Intercounty Pipelines) constitute regulations but are invalid and unenforceable as such because they have not been adopted pursuant to the procedures specified in the Administrative Procedures Act. It would not be productive to list here the many deficiencies in the reasoning employed in the OAL determinations. It is sufficient to point out that neither Assessors Letter was ever intended to be a regulation. For that reason, while the Board agrees that neither letter is a valid or enforceable regulation or is a legally binding document, that conclusion does not impair the correctness of the advice or information included therein.

As you know, instructions in the form of letters to assessors, handbooks, special topic surveys and other similar writings are not legally enforceable by the Board. They are simply advisory notice to the assessors of the Board's analysis, conclusions and recommendations concerning problems of mutual concern or are strictly informational reports of court decisions, legislative enactments or other factual information. When problems common to all assessors or boards of equalization are of such a nature that equity or law requires that uniform treatment be insured, the Board has adopted property tax rules which were incorporated in the California Administrative Code. Unlike instructions to assessors, these property tax rules (as well as forms and their instructions) are specifically made enforceable in a court of law by the express provisions of section 15606 of the California Government Code.

Speaking to the particular letters that gave rise to the OAL determinations, we remain of the opinion that sale and leaseback transactions which transfer a present ownership interest in the property on condition that the transferee lease all or part of the property to the transferor is a change in ownership unless it can be shown that the transfer was for financing purposes and created only a security interest in the transferee. This is, of course, very general advice. In any given case, the facts of that situation must control the assessor's ultimate determination.

As regards the question concerning the Board's assessment of land and rights of way owned by pipeline companies, the Board will continue assessing such lands unless and until the California Supreme Court, which now has the problem before it, decides that such assessments are in excess of the authority granted by Section 19 of article XIII of the California Constitution. The Board will also continue to keep assessors advised of important information regarding the assessment of pipeline properties as it develops.

Sincerely,

Verne Walton

Verne Walton, Chief
Assessment Standards Division

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