STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)

(916) 445-4982



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TO COUNTY ASSESSORS:

## CABLE TELEVISION: ASSEMBLY BILL 3234

Assembly Bill 3234 (Hill) which is Chapter 1630 of the statutes of 1988 was signed by Governor Deukmejian on September 30, 1988. This bill sets forth special procedures for assessing cable television possessory interests. The provisions of this bill went into effect on January 1, 1989.

Section 1 of the bill is an uncodified section in which the Legislature makes certain findings and declarations regarding the cable television industry. Subdivision (c) of that section states that intangible rights and assets are exempt from property taxation. Subdivision (d) states that possessory interests in cable television systems do not sell by themselves. Subdivision (e) then states that a significant portion of the fair market value of a cable television system may be attributable to intangible assets and rights in addition to the ownership of real and personal property. Subdivision (e) also contains a listing of some of these intangible assets and rights. Subdivision (f) is a statement of legislative intent specifying that the purpose of the act is to provide uniformity and certainty in the assessment of the possessory interests of cable television systems by providing a method of assessment that does not include the value of any intangible assets of cable television systems, but values only real property subject to taxation in accordance with Article XIII and Section 1 of Article XIII A of the California Constitution. Subdivision (g) would preclude this legislation from being viewed as an attempt to legislate the results of any existing court proceeding.

Section 2 of the bill adds Section 107.7 to the Revenue and Taxation Code. Subdivision (a) of that section requires a cable television possessory interest to be valued consistent with the requirements of Section 401. As you are aware, Section 401 requires every assessor to assess all property subject to general property taxation at its full value. Subdivision (a) specifies that the valuation methods shall include, but not be limited to, the comparable sales method, the income method (including, but not limited to, capitalizing rent), or the cost method.

Subdivision (b) of Section 2 specifies that the "preferred" method of valuation of a cable television possessory interest is capitalizing the annual rent using an appropriate capitalization rate. The rent that is to be capitalized is that portion of the franchise fee that is determined to be payment for the cable television possessory interest or the economic rent. However, the subdivision provides that if the assessor does not use a portion of the franchise fee as the income to capitalize, the resulting assessment shall not benefit from any presumption of correctness.

Subdivision (c) of Section 107.7 provides that the comparable sales method is not the preferred method of valuing a cable television possessory interest. If the assessor uses that method where the comparable sales are possessory interests sold in combination with other property including, but not limited to, intangible assets or rights, the resulting assessment shall not benefit from any presumption of correctness.

Both subdivisions (b) and (c) are significant deviations from the pre-existing law. Prior to AB 3234, with the exception of owner occupied single family dwellings, the law presumes that the assessor has properly performed his duties and has assessed all properties fairly and upon an equal basis. The appellant has the burden of proving that the assessment is not correct. This must be done through the presentation of relevant independent evidence. (See Revenue and Taxation Code Section 167, Section 1610.8, and Property Tax Rule 321.) AB 3234 removes this presumption whenever the assessor values a cable television possessory interest using an economic rent that is other than a portion of the franchise fee or using a comparable sales approach where the sales are not of possessory interests sold separately.

Subdivision (d) specifies that intangible assets or rights of a cable television system are not subject to ad valorem property taxation. The subdivision sets forth a list of some of these intangibles. Excepted from this list of intangibles is that portion of the franchise or license which grants the possessory interest. The subdivision concludes by permitting the assessment of a cable television possessory interest by assuming the presence of intangible assets or rights necessary to put the cable television possessory interest to beneficial or productive use in an operating cable television system.

When any cable television possessory interest changes ownership, subdivision (e) requires the owner to report the sales price; the allocation of sales price among counties; and gross revenue and franchise fee expenses of the cable television system by county if applicable. The subdivision also provides that failure to report as requested by the assessor under Section 480, 480.1, or 480.2 shall result in a penalty as provided in Section 482, except that the maximum penalty shall be five thousand dollars ($5,000).

Section 3 of AB 3234 makes a statement of legislative intent. It says the purpose of the act is to provide uniformity and certainty in the assessment of cable television possessory interests. It also states that its purpose is to prohibit an assessment policy that equates any cable television possessory interest with the franchise or license itself or with other intangible assets or rights of a cable television system. At the same time, the subdivision states that it shall not be construed as requiring the assessment of cable television possessory interests at a value less than as required by Section 401 of the Revenue and Taxation Code. And, it states that it shall not be construed as prohibiting the assessment of a cable television possessory interest as an asset put to beneficial or productive use in an operating cable television system.

Section 4 of the bill provides that if any part of it is held unenforceable by a court, the balance shall remain effective and enforceable to the fullest extent allowed by law. It provides that all sections, subdivisions, sentences, clauses, or phrases are severable. And finally, the Legislature declares that it would have passed the entire act regardless of the fact that any part or parts of it may be held to be unenforceable.

Assessors must reconcile the provisions of this bill with traditional appraisal practices and with Section 1 of Article XIII of the State Constitution which requires a market value appraisal/assessment of cable television systems.

If you have any questions in regard to the foregoing, please contact our Technical Services Section at 445-4982.

Sincerely,

Verne Walton

Verne Walton, Chief
Assessment Standards Division

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