Discussion on ASSESSMENT BONDS superseded by LTA 99/12.

STATE OF CALIFORNIA

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Discussion on Low Value Ordinance superseded by LTA 2010/055

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August 21, 1996

No. 96/52

TO COUNTY ASSESSORS:

CHAPTER 491 (SENATE BILL 821), CHAPTER 497 (SENATE BILL 722), AND CHAPTER 527 (SENATE BILL 716), STATUTES OF 1995

Chapters 491 (Senate Bill 821, Hurtt), 497 (Senate Bill 722, Committee on Revenue and Taxation), and 527 (Senate Bill 716, Committee on Revenue and Taxation) were signed by the Governor and became effective on January 1, 1996. Chapter 497 was Board-sponsored legislation. These three bills affect various areas of property tax law and will be discussed separately.

SENATE BILL 821 (Hurtt) CHAPTER 491

BASE YEAR VALUE. Chapter 491 clarifies that once the base year value is adjusted downward to reflect the current market value (Proposition 8), the property must be annually reappraised until the current market value exceeds its factored base year value. This bill relettered Revenue and Taxation Code (all statutory references are to the Revenue and Taxation Code unless otherwise indicated) §51 beginning with the first paragraph as subdivision (a). The last paragraph is (e) which reads (changes denoted by italics):

> "(*e*) Nothing in this section shall be construed to require the assessor to make an annual reappraisal of all assessable property. *However, for each lien date after the first lien date for which the taxable value of property is reduced pursuant to paragraph (2) of subdivision (a), the value of that property shall be annually reappraised at its full cash value as defined in Section 110 until that value exceeds the value determined pursuant to paragraph (1) of subdivision (a). In no event shall the assessor condition the implementation of the preceding sentence in any year upon the filing of an assessment appeal.*"

Under current law, the assessor is required each year to assess each parcel of real property at the lower of the factored base year value or current market value. If the fair market value of a property on the lien date is less than the factored base year value for any reason, the assessor must enroll the fair market value for that lien date. (This is sometimes referred to as a "Proposition 8" assessment, after the 1978 proposition that amended Article XIII A to allow these reductions in value.) Although the assessor is not required to undertake an annual review of every property in the county, assessors review Proposition 8 assessments annually to determine the lien date market value of the property. Once a property becomes subject to a Proposition 8 assessment, there is no limit on annual value changes--up or down--except the assessed value can never exceed the factored base year value. In these situations, this measure codifies existing assessment practices.

CHAPTER 497, SENATE BILL 722

LEGAL ENTITIES AND PARTNERSHIP INTERESTS. Chapter 497 amends §64 regarding partnership interests, to reverse the 1994 Court of Appeals decision in *Zapara* v. *County of Orange* (26 Cal.App.4th 464). The *Zapara* decision held that when a partner holding a majority of the interests in capital and profits in a general partnership bought out the remaining partners, there was a change in ownership of the partnership real property, which brought about a 100 percent reappraisal. The court concluded that when Zapara bought out his partners, the partnership was dissolved, and he became the sole owner of the partnership property by operation of law. The decision stated, in effect, that subdivision (a) of §64 only applied to a continuing partnership and "not one that has dissolved." Chapter 497 added the following sentence to end of subdivision (a) to clarify that subdivision (a) is applicable to transfers of all ownership interests in a partnership without regard to whether it is a continuing or dissolved partnership.

> "This subdivision is applicable to the purchase or transfer of ownership interests in a partnership without regard to whether it is a continuing or dissolved partnership."

The *Zapara* decision also contained language which suggests that the court interpreted §64(c) as applying only where there is a single transfer of a controlling or majority ownership interest, and that it did not apply where a controlling interest is obtained through a transfer of a 50 percent or less ownership interest. This legislation amends subdivision (c)(1) to expressly clarify that the purchase or transfer of a 50 percent or less ownership interest through which control of a majority interest is obtained constitutes a change in ownership of the real property owned by the legal entity. Secondly, the legislation provides that the purchase or transfer of minority interests to the owner of the majority ownership interest shall not constitute a change in ownership of the real property

owned by the partnership. This is declaratory of existing law. Subdivision (c)(1) now reads (changes denoted by italics):

> "(c) (*1*) When a corporation, partnership, limited liability company, other legal entity, or any other person obtains control *through direct or indirect ownership or control of more than 50 percent of the voting stock of* any corporation, or obtains a majority ownership interest in any partnership, limited liability company, or other legal entity through the purchase or transfer of corporate stock partnership, or limited liability company interest, or ownership interests in other legal entities, *including any purchase or transfer of 50 percent or less of the ownership interest through which control or a majority ownership interest is obtained,* the purchase or transfer of that stock or other interest shall be a change of ownership of *the real* property owned by the corporation, partnership, limited liability company, or other legal entity in which the controlling interest is obtained."

It has been the Board's consistent administrative interpretation that a single transfer of more than 50 percent of the voting stock of a corporation or ownership interests in a partnership is not necessary in order to obtain control or majority ownership. Rather, such control may be obtained through more than one transfer of ownership interests. For example, person A could acquire 40 percent of the stock of Corporation X. Assuming A did not previously own any stock in this corporation, this purchase would fall under the general rule in subdivision (a) and would not constitute a change in ownership of the corporation's real property. If A then acquired another 9 percent of the voting stock, the same rule would apply. If A acquired another 2 percent, however, A would have obtained control (51 percent) and there would be a change in ownership of the real property of the corporation pursuant to the terms of subdivision (c).

Chapter 497 also added paragraph (2) to subdivision (c):

> *"(2) On or after January 1, 1996, when an owner of a majority ownership interest in any partnership obtains all of the remaining ownership interests in that partnership or otherwise becomes the sole partner, the purchase or transfer of the minority interests, subject to the appropriate application of the step-transaction doctrine, shall not be a change in ownership of the real property owned by the partnership."*

It should be noted that the amendment refers to a situation "when an owner of a majority ownership interest in any partnership obtains all of the remaining ownership interests in that partnership <u>or otherwise becomes the sole partner</u>." (Emphasis added.) The latter phrase has been added to address situations where the majority partner, rather than directly acquiring the minority interests, has the partnership acquire the minority interest. In either case, the majority owner then becomes the sole 100 percent partner.

The amendment also provides that the purchase or transfer of the minority interests shall not be a change in ownership "subject to the appropriate application of the step-transaction doctrine." This "step transaction" phrase is included because of the concern that a rule which simply states that acquisition of the minority interests is not a change in ownership could be misinterpreted to apply to situations where there is a true change in ownership under the step-transaction theory. This language attempts, therefore, to prevent distortion of the exclusion from change in ownership provided for in subdivision (c)(2).

STATUTE OF LIMITATIONS FOR SUPPLEMENTAL AND ESCAPE ASSESSMENTS. Chapter 497 amended §75.11 and §532 to allow the Preliminary Change in Ownership Statement to satisfy the filing requirement that commences the statute of limitations period for making supplemental and escape assessments. These amendments apply to all supplemental and escape assessments enrolled on or after January 1, 1995.

Chapter 544 of the Statutes of 1994 (SB 1726) replaced the previous statute of limitation provisions for making supplemental and escape assessments with a statute of limitations that commences with the filing of a change in ownership statement pursuant to §480, §480.1, or §480.2. However, that legislation inadvertently omitted references to the preliminary change in ownership reports that are filed pursuant to §480.3. Thus, although a property owner may have filed a preliminary change in ownership report, the change in ownership event would remain indefinitely open to supplemental and escape assessments since the property owner has not filed a change in ownership statement under the provisions of to §480, §480.1, or §480.2. Chapter 497 corrected this oversight.

LOW VALUE ORDINANCE. Chapter 497 amends §155.20 and increases the maximum value of property that a county board of supervisors has the authority to exempt from property taxation from $2,000 to $5,000. Previously, §155.20 authorized county boards of supervisors to exempt property with a base year value or full value of $2,000 or less and manufactured home accessories with a base year value or full value of $5,000 or less that are installed on or added to manufactured homes that were purchased prior to July 1, 1980, and are subject to the vehicle license fees. Section 155.20 now reads in part:

> "The board shall have no authority to exempt property with a *total* base year value or full value of more than *five thousand dollars ($5,000)*.

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> "Nothing in this section shall authorize a county board of supervisors to exempt new construction unless the new *total* base year value of the property, including this new construction, is *five thousand dollars ($5,000)* or less."

Section 155.20 authorizes county boards of supervisors to pass an ordinance exempting certain property from property taxation. In determining the level of exemption, the board of supervisors may consider the total taxes, special assessments, and applicable subventions for the year of assessment only or for the year of assessment and succeeding years where cumulative revenues will not exceed the cost of assessments and collections. Once a level of exemption is determined and an ordinance adopting this level is passed, then all property with a total base year value (not the factored base year value) or full value (taxable value) below this level is exempt from property taxes. Once the base year value of the property is exempted, the property remains exempt until a new base year value is established and a new comparison is made. If the item is personal property, then the full value of the personal property is compared to the exemption limit each year.

TAX BILLS. We incorrectly stated in Letter to Assessors 95/70 (dated November 9, 1995) that Chapter 497 supersedes the §2611.6 amendments contained in Senate Bill 657 (Chapter 498). The opposite is true. Senate Bill 657 (Chapter 498, effective January 1, 1996) contains similar provisions which supersede the amendments made by this bill. We apologize for any inconvenience that this may have caused.

These bills added subdivision (i) to §2611.6 which requires that the annual property tax bill contain information regarding (1) the taxpayer's right to an informal assessment review, (2) the right to file an application for appeal, and (3) the addresses at which these forms are available. The difference between the two is that Chapter 497 provided that the taxpayer has the right to an informal assessment review <u>for the following year</u> by contacting the assessor's office <u>by March 1</u>. Chapter 498 eliminates both the limitation of this informal assessment review to the following year and the requirement that the taxpayer contact the assessor by March 1. As added by Chapter 498, §2611.6 provides that the following information shall be included in each county tax bill or in a separate statement accompanying the bill and reads in subdivision (i):

> *"Information specifying all of the following:*
>
> *"(1) That if the taxpayer disagrees with the assessed value as shown on the tax bill, the taxpayer has the right to an informal assessment review by contacting the assessor's office.*
>
> *"(2) That if the taxpayer and the assessor are unable to agree on a proper assessed value pursuant to an informal assessment review, the taxpayer has the*

right to file an application for reduction in assessment for the following year with the county board of equalization or the assessment appeals board, as applicable, during the period from July 2 to September 15, inclusive.

"(3) The address of the clerk of the county board of equalization or the assessment appeals board, as applicable, at which forms for an application for reduction may be obtained."

CHAPTER 527, SENATE BILL 716

MINING CLAIMS. Chapter 527 amends §3913 of the Public Resources Code to require claimants to file affidavits with the county recorder whenever a maintenance fee is paid to the U. S. Bureau of Land Management on any mining claim. Previously, the recordation of mining interests was used as a method for discovering mining interests subject to possessory interest taxation. However, current law no longer requires recording of certain mining interests; thus these interests may escape taxation. Under recent federal laws, the payment of federal maintenance fees takes the place of a recordation requirement.

ASSESSMENT BONDS. Chapter 527 adds §163 which provides that any entity receiving revenue from assessment liens under the Improvement Bond Act of 1911, the Municipal Improvement Act of 1913, or the Improvement Bond Act of 1915 shall annually notify the county assessor of the following information:

- The lien amount on each parcel at the time the lien was created,
- The date and amount of the payment in satisfaction of the lien and the payee, and
- The principal balance of the lien on each parcel.

Local governments assist private parties in financing the development of land via the formation of local special assessment districts. These special assessment districts issue bonds to the general public which are paid for, usually over a period of years, by assessments on properties benefiting from the improvements. The assessments are a lien against the property and are collected along with property taxes. Typical construction projects which are financed by bonds are large construction projects (industrial parks, residential subdivisions, etc.), but they can be as small as the installation of a single traffic light.

Generally, the sale price of a new home located in a subdivision where raw land development was funded by bonds would be less than an identical home located in a subdivision where the developer financed development costs. Since the developer did not

expend the portion of development costs funded by bonds, those costs are not reflected in the selling price. Homeowners in projects financed with bonds repay the costs of development over the life of the bond, while homeowners in projects financed by developers repay those costs at the point of purchase.

Consequently, the nominal sale price of a home which has an outstanding improvement bond is not the "purchase price" of the home as defined in Section 110(b). Purchase price is defined to mean "the total consideration provided by the purchaser or on the purchaser's behalf, valued in money, whether paid in money or otherwise." In these cases, the total consideration provided by the purchaser is in part "paid in money" and in part "paid otherwise." The relief from a debt is a form of consideration. Therefore, the "purchase price" for purposes of §110(b) is the nominal sale price plus the unpaid cash equivalent principal of any bonds outstanding.

In addition, Assessors' Handbook Section 501, *General Appraisal Manual*, reads:

> If there are improvement bonds that are a lien upon a lot or site, their unpaid cash equivalent principal balance must be included in the value of the land. . . . When using the comparable sales approach in determining site value, the appraiser should include the unpaid cash equivalent principal of any bonds outstanding as a legitimate sale price adjustment."

In determining the assessed value of a property upon a change in ownership, assessors must add to the nominal purchase price of the property, the unpaid cash equivalent principal of any improvement bonds outstanding. The assumption of outstanding bond debt, which is a lien upon the property, is a form of consideration paid for the property.

LEASED PROPERTY. Chapter 527 added §623 to the Revenue and Taxation Code. It authorizes an assessor to make a single entry on the assessment roll for all leased personal property in the county that is assessed to the same taxpayer. It reads as follows:

> *"The assessor may place a single assessment on the roll for all leased personal property in the county that is assessed with respect to the same taxpayer. Any property assessed pursuant to this section shall, in the absence of evidence establishing otherwise, be deemed to be located at the taxpayer's primary place of business within the county"*

This will be covered in a separate letter to assessors.

PROPERTY CHARACTERISTICS INFORMATION. This bill amends §408.3 to provide that property characteristics information is a public record and open to public inspection in all counties. Under previous law, this was optional for counties with a population of 715,000 or less.

SALE OF CONTIGUOUS TAX-DEFAULTED PROPERTY. Section 3692 provides that when parcels "rendered unusable by their size, location, or other conditions are subject to sale for nonpayment of taxes, the tax collector may offer the parcel at a minimum bid to owners of contiguous parcels." Chapter 527 amends §3692 authorizing the tax collector to require the successful bidder to request the assessor and the planning director to combine the unusable parcel with the contiguous parcel, as a condition of sale.

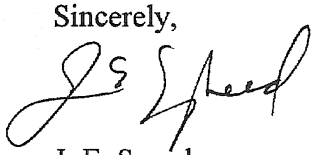
REPEALED OBSOLETE PROVISIONS

Chapter 497 (Senate Bill 722) also deleted several obsolete provisions and references:

- §531.05 was added in 1992 in order to prohibit any escape assessments in the event the courts had invalidated Proposition 13 in the *Nordlinger* case. Since the courts upheld Proposition 13, this section is no longer relevant.
- §532.3 was added in 1978 to authorize escape assessments for 1975-76 if the assessments were made by June 30, 1980.
- §746, which refers to the Board assessment roll, ends with the phrase "on the assessment roll to be transmitted to the several county auditors and city auditors." The reference to "city auditors" is obsolete since the Board only transmits the roll to county auditors.
- §4843, §4844, and §4845 deal solely with corrections for the 1978-79, 1979-80, and 1980-81 assessment rolls.
- §1901, §1902, and §1903 deal with the equalization of state assessed property located in a city which makes its own property tax assessments. These provisions relate to the time when some cities had their own assessors.

If you have any questions, please contact our Real Property or Business Property Technical Services Section at (916) 445-4982.

Sincerely,



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