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December 13, 2000

Honorable Dick Frank, Assessor
County of San Luis Obispo
Ms. Barbara L. Edginton
Assessment Analyst II
County Government Center, Room 100
San Luis Obispo, CA 93408

RE: *Assessment of Taxable Government-Owned Properties*

Dear Ms. Edginton:

This is in reply to your August 9, 2000 letter requesting clarification to issues addressed in Letter to Assessors No. 2000-037, *Guidelines for the Assessment of Taxable Government-Owned Properties*. I apologize for the delay in responding to your correspondence.

As discussed further below, it is our opinion that (1) the property annexed by the City of San Luis Obispo would become nontaxable for purposes of Article XIII, section 11(a) once the City has filed a certificate of completion with the Board of Equalization, the county assessor, and the county auditor; (2) the property acquired by the City of San Luis Obispo outside of its boundaries from Union Pacific Railroad Company would be subject to property taxation under Article XIII, section 11 and the 1967 assessed value of the property would be 49/126s of \$2,360; and (3) that when a public agency acquires or condemns only a portion of a parcel subject to the Williamson Act, the public agency acquires fee title to the portion of the property acquired or condemned free from the CLCA restriction.

Law and Analysis

ANNEXATION/CONVERSION OF
SECTION 11 PROPERTY TO NON-TAXABLE STATUS

As detailed in your letter, the City of San Luis Obispo (hereinafter "City") acquired a parcel of land outside of its city limits. The property was taxable when acquired by the City and was subject to property taxation under the provisions of Article XIII, section 11 of the California Constitution. In June 2000, a document was recorded, pursuant to which this property was annexed into the City.

As you are aware, Section 3, subdivision (b) of Article XIII of the State Constitution defines exempt property as including "Property owned by local government, except as otherwise provided in Section 11(a)." Section 11, subdivision (a) of Article XIII, however, states in part

Lands owned by a local government that are outside its boundaries, including rights to use or divert water from surface or underground sources and any other interests in lands, are taxable if (1) they are located in Inyo or Mono County and . . . or (2) they are located outside Inyo or Mono County and were taxable when acquired by the local government.

Improvements owned by a local government that are outside its boundaries are taxable if they were taxable when acquired or were constructed by the local government to replace improvements which were taxable when acquired.

This authorization to tax local government property located outside of its boundaries is an exception to the general exemption for property owned by a local government, founded upon two principal conditions: (1) that the situs of the property acquired is outside of the boundaries of the local government, and (2) that the property purchased was taxable when acquired. An assessor's determination of the taxability of publicly-owned property depends in large part upon knowing the boundaries of local governments and then locating the properties acquired by the local government outside of these boundaries.

It is well-known that one way for a local government to avoid a Section 11(a) assessment is to annex property that it intends to acquire, so that the property is no longer outside of its boundaries. The Court of Appeal recognized this principle in City of Long Beach v. Bd. of Supervisors, (1958) 50 Cal.2d 674, 678, by stating that when municipally-owned properties located outside of the city limits are annexed to a city, the city in legal effect is discharged from existing tax liens. Thus, local government property, once subject to taxation because it is outside of the government's boundaries, becomes exempt under Article XIII, Section 3(b) when annexed by the local government. This conclusion assumes of course that: (1) the annexation is properly completed, and (2) the effective date of the annexation is fixed and enforceable for purposes of property taxation.

In 1985, the Legislature adopted the Cortese-Knox Local Government Reorganization Act of 1985 (Government Code sections 56000 *et. seq.*) which provides the procedures for the completion of changes of organization and reorganization for cities and districts. A county's local agency formation commission (LAFCO) is charged with the authority to establish or change the boundaries of a city or district.

Government Code section 57200 provides that immediately after the adoption of a resolution by a local commission ordering a change of organization or reorganization without an election, the clerk of the commission must transmit a certified copy of the resolution to the executive officer of the local agency formation commission.¹ If the resolution is deemed to be in compliance, the executive officer must prepare and execute a certificate of completion for recording with the county recorder. The certificate of completion includes information describing the organization or reorganization.²

¹ Government Code section 57200 also provides that the clerk of the commission must transmit a certified copy of the resolution to the executive officer after the adoption of a resolution confirming an order for a change of organization or reorganization after confirmation by the voters.

² Government Code section 57201.

Government Code section 57202 provides for the following regarding the effective date of an annexation:

- (a) If an effective date is fixed in the terms and conditions of the commission resolution, that date shall be the effective date
- (b) The change of organization or reorganization shall be complete from the date of execution of the certificate of completion and effective from the dates specified in the terms and conditions of the commission resolution, unless no effective date has been fixed in those terms and conditions.
- (c) If no effective date has been fixed in any of the terms and conditions, the effective date of a change of organization or a reorganization shall be the date of the recordation made with the county recorder and, if filed with the recorder of more than one county, the date of the last such recordation.
- (d)

Subdivision (a) of Government Code section 57204 provides that

The executive officer shall file the statement of boundary change or creation with the Board of Equalization, the county assessor, and the county auditor as may be provided for by Chapter 8 (commencing with Section 54900) of Part 1 of Division 2 of Title 5.

Finally, Government Code section 54903 provides

The creation of any city, district or zone thereof or the change in its boundaries is not effective for assessment or taxation purposes nor shall the tax or the special assessment levy of a district previously levying and collecting taxes or special assessments based on its own assessment be carried on a city or county assessment roll unless the statement and map or plat is filed pursuant to this chapter.

Government Code section 54900 provides that any filing required by the executive officer of a local agency formation commission pursuant to Government Code section 57204 (i.e., the filing of a statement of boundary change) will satisfy the requirements of that chapter (i.e., Government Code sections 54900 through 54916.5) of the Government Code.

Based upon the foregoing provisions, it appears that an annexation is considered *complete* (i.e., valid and binding with respect to its boundaries and its taxing authority as to public agencies and persons affected), from the date of execution of a certificate of completion.³ However, an annexation is considered *effective* (i.e., providing formal notification to all persons in the county

³ Government Code section 57205, repealed in 1992, also provided for the filing of a certificate of completion with the Secretary of State, within 30 days after the recordation of the certificate of completion with the county recorder. However, this statute had provided that "The failure to file the notice within the time required by this section shall not affect any determination as to the completion of proceedings or the effective date of those proceedings."

about the annexation) from either (1) the date fixed in the terms and conditions of the local agency commission resolution, or (2) the date of recording the certificate of completion with the county recorder, if no effective date has been fixed in the terms and conditions of the resolution.

In order to administer the foregoing, Government Code sections 54903 and 57204 above provide that an annexation is actually implemented for purposes of property taxation, only when a statement of boundary change has been filed with the Board of Equalization, the county assessor, and the county auditor. Upon such filing, the effective date has retroactive effect to the date of recording the certificate of completion with the county recorder. If the City has met these requirements, then the annexation was effective and the property annexed was nontaxable at the time that the certificate of completion was recorded with the county recorder (assuming the City has filed the statement of boundary change with the Board of Equalization, the county assessor, and the county auditor).

Regarding the cancellation of taxes assessed on the annexed property, it should first be noted that the county auditor is responsible for the correction⁴ and the cancellation⁵ of taxes on the assessment roll. Revenue and Taxation Code section 4986 provides in part that

- (a) All or any portion of any tax, penalty, or costs, heretofore or hereafter levied, shall, on satisfactory proof, be canceled by the auditor if it was levied or charged:

* * *

- (5) On property annexed after the lien date by the public entity owning it.

* * *

As a result, once the annexation becomes *effective* as discussed above, all or any portion of the tax levied on the property from the date of the annexation (whatever that date is), would be subject to cancellation by the county auditor.

The 1999 *County Tax Collectors' Reference Manual*⁶ advises auditors and tax collectors, regarding the annexation of property by a public entity, that "Uncollected taxes, penalties, and costs must be canceled on property acquired after the lien date by a public entity (§5085)." Revenue and Taxation Code section 5085 states

If exempt property is acquired by negotiated purchase, gift, devise, or eminent domain after the lien date but prior to the commencement of the fiscal year for which taxes are a lien on the property, the amount of the taxes for that fiscal year shall be canceled and are not collectible from either the person from whom the property was acquired or the public entity that acquired the property.

Subdivision (b) of Revenue and Taxation Code section 5086, regarding the acquisition of exempt property after the commencement of the fiscal year for which the current taxes are a lien on the property, provides that

⁴ Per Revenue and Taxation Code section 4834.

⁵ Per Revenue and Taxation Code section 4986.

⁶ Published by the State Controller's Office.

The portion of the current taxes and any penalties and costs that are allocable to the part of the fiscal year that begins on the date of apportionment shall be canceled and are not collectible either from the person from whom the property was acquired or from the public entity that acquired the property.

Applying these statutes to the instant case leads to the conclusion that since the effective date of the annexation was June 2000 (when the certificate of completion was recorded), taxes should be cancelled from that date forward. In other words, taxes should be cancelled for the balance of June 2000, the remainder of the 1999-2000 tax year, and for the upcoming 2000-2001 tax year.

Regarding your procedural questions, if the annexation documents were processed after the close of the assessment roll, a revision to the roll would be necessary to cancel taxes on this property for the 2000-2001 tax year. However, the effective date of tax rate area changes (upon the filing of a statement of boundary change) would not impact the effective date of the annexation for purposes of property taxation. As mentioned above, the effective date of the annexation for purposes of taxation will be the date in which the certificate of completion was recorded with the county recorder. Revenue and Taxation Code sections 4986, 5085, and 5086 provide for the cancellation of taxes on the property annexed from that point forward.

PURCHASE/ASSESSMENT OF FORMER STATE-ASSESSED PROPERTY

Regarding the property purchased by the City from the Union Pacific Railroad Company, Board records indicate that this parcel, Board Parcel No. 872-40-20-3, totaled 126 acres and was subject to Board assessment in its entirety. The portion of this property purchased by the City was outside of the City's boundaries and would be subject to property taxation under the provisions of Article XIII, section 11 of the California Constitution, as it was taxable at the time it was acquired. You had made an inquiry regarding how to determine the properties 1967 base year value. The county would not have any 1967 base year value records for this property, as the property has been subject to state assessment for several years. However, based upon the historical data available to us, the 1967 assessed value of this parcel was \$2,360. Accordingly, the 1967 assessed value of the 49 acres acquired by the City, based upon the parcel map attached to your letter, would be 49/126s of \$2,360.

WILLIAMSON ACT PROPERTY

Regarding your question on the California Land Conservation Act section of the Guidelines in LTA No. 2000/037, this section states in part that

Taxable government-owned lands may be subject to California Land Conservation Act (commonly referred to as the Williamson Act) contracts when they are acquired. In such

an instance, pursuant to Government Code section 51295, the Williamson Act contract becomes null and void when the fee title to an entire parcel of land is condemned or acquired by a public agency for a public improvement. When an interest less than the fee title to an entire parcel is condemned or acquired, the contract becomes null and void as to the interest acquired or condemned. The interest not acquired by the public agency remains subject to the Williamson Act contract. [Underlines added.]

Your initial observations regarding the statements above were correct: (1) that a public agency would be acquiring or condemning only a portion of a parcel, and (2) that the public agency would be acquiring fee title in such properties. As noted by the underlines above, those phrases were meant to be read as part of an entire clause, as the word “less” modifies the term “entire parcel.” In other words, the Guidelines on this subject are meant to illustrate the following: if a public agency acquires an entire 160-acre parcel, the Williamson Act contract for the entirety of the 160-acre parcel becomes null and void; however, if a public agency acquires 80 acres of a 160-acre parcel, the Williamson Act contract only for the acquired or condemned 80 acres of the 160-acre parcel becomes null and void.

The views expressed in this letter are only advisory in nature. They represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Very truly yours,

/s/ Anthony Epolite

Anthony Epolite
Tax Counsel

ASE:eb

Prop/prec/govnprop/00/05ase

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