

Repeal obsolete Sections 5098 and 5098.5 of the Property Taxes Law.

Source: Property and Special Taxes Department and Legal Department

Section 12 of Article XIII of the California Constitution provides that the tax rate to be applied to the assessed value of property on the unsecured roll is the rate used for property on the secured roll in the prior fiscal year. Proposition 13 added Article XIII A to the California Constitution of which Section 1(a) established a new maximum ad valorem tax rate of 1%, but the language specified that the provisions applied to *real* property. Section 1(a) of Article XIII A was silent as to the tax rate to be applied to *personal* property, which is often collected on the unsecured roll, and Proposition 13 had not modified Section 12 of Article XIII.

In implementing Proposition 13 in its first year, the issue arose as to the proper tax rate for property on the unsecured portion of the assessment roll for the 1978-79 fiscal year. Should it be the prior year's secured tax rate as Article XIII, Section 12 specified, which would be the tax rate for the 1977-78 fiscal year, a pre-Proposition 13 rate of about 2.67% or did the new Proposition 13 tax rate of 1% found in Article XIII A, Section 1 apply? In practical application, for the 1978-79 fiscal year, 22 counties used the secured tax rate for the 1977-78 fiscal year and 36 counties used the new Proposition 13 tax rate of 1%.

The issue of the proper tax rate to apply was litigated in *Board of Supervisors of San Diego County v. Gerald J. Lonergan as Auditor and Controller*, and the California Supreme Court ultimately decided the issue on August 14, 1980 (27 Cal.3d 855). The Court found that Section 1(a) of Article XIII A was not applicable to property taxed on the unsecured portion of the assessment roll for the 1978-79 fiscal year. Taxes on unsecured property, both real and personal, were to be assessed at the prior year's rate for the secured roll as provided by Article XIII, Section 12 of the Constitution.

During the time this matter was still unsettled, legislation was enacted adding Revenue and Taxation Code Sections 5098 and 5098.5 to provide automatic refunds in the event the court ruled that the proper tax rate was the reduced Proposition 13 tax rate of 1%. Taxpayers in counties that paid taxes based on the higher tax rate would not need to file a claim for refund and interest on the extra taxes paid would be included in the refund amount. (AB 1973, Ch. 60, Stats. 1980, in effect April 11, 1980) However, in accordance with the decision refunds were not necessary. Therefore, these sections of law were rendered obsolete by the August 14, 1980 decision and may be repealed.

Sections 5098 of the Revenue and Taxation is repealed:

~~5098. In the event of a determination by a final decision of the Supreme Court of the State of California or Court of Appeal of the State of California that the maximum tax rate applicable to property assessed on the 1978-79 unsecured roll was that prescribed by Article XIII A of the Constitution or Section 2237, then notwithstanding any other provisions of this chapter, the county auditor of a county which levied a tax rate for the 1978-79 fiscal year on property on the unsecured roll in excess of that maximum tax rate may refund the excess tax collected and include interest as provided in Section 5098.5 to the assessee shown on that unsecured roll without a prior hearing by, or the prior approval of, the board of supervisors, whether or not a refund claim has been filed by the person who paid the taxes.~~

Sections 5098.5 of the Revenue and Taxation is repealed

~~5098.5. Notwithstanding any other provisions of this chapter, where taxes were collected on the 1978-79 unsecured roll based on a tax rate which pursuant to a final decision of an appellate court or the Supreme Court was determined to be in excess of the rate required by Article XIII A of the Constitution, or Section 2237, refunds of taxes paid by the auditor pursuant to Section 5098, shall, upon approval of the board of supervisors, include interest, at the rate of 6 percent per annum, on the amount refunded, such interest to be computed from September 1, 1978, or the date the taxes were paid, whichever is later, to the date the refund is made.~~