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Emerging Issues: Tax Legislation

California State Board of Equalization

- **Cooperative Partnering of Government and Industry to Resolve Issues For Mutual Benefit**

- **Cooperative Partnering**

This year the Board of Equalization sought and received funding through the budget process for a proposed market value study of the personal property used in the biopharmaceutical and semiconductor industries, as well as, a market value study of non-production computers. In addition, the Board sponsored AB 2182 (Mullin, Ch. 417, Stats. 2006), which establishes a rebuttable presumption of correctness with respect to assessed values for specified business personal property that are determined by using the newly developed valuation factors that will be issued after the study is complete.

- **Change in Ownership Discovery**

The new study will allow the Board to develop, in conjunction with assessors and the affected industries, objective and defensible valuation factors. The measure received overwhelming bipartisan support in the Legislature. The final language of the bill was the result of a collaborative effort by industry and assessors. This joint effort will ensure the development of unbiased valuation factors that will result in more accurate assessments, as well as, promote uniformity in the assessment of these property types. This bill is intended to resolve ongoing disputes in California concerning the proper assessment of these types of properties by establishing a presumption of correctness, when the resulting valuation factors are used.

- **Property Tax Revenue Allocation**

Similar issues related to the assessment of other specific property types that have been highly controversial have been resolved in the past through specific legislative direction, such as AB 2182 provides. For instance, last year, AB 964 (J. Horton, Ch. 699, Stats. 2005), related to the taxation of commercial air carriers, provided that if a particular assessment methodology is followed, the resulting value is reflective of fair market value. In prior years, legislation was enacted to establish a rebuttable presumption of correctness when a particular methodology is used for various types of property, specifically: cable TV assessments (AB 3234, Ch. 1630, Stats. 1988); inter-county pipeline land assessments (SB 2106, Ch. 801, Stats. 1996); airport assessments (AB 2318, Ch. 85, Stats. 1998); and commercial air carrier assessments (AB 1807, Ch. 86, Stats. 1998).

The Board is looking for more opportunities in the future to work cooperatively with taxpayers in order to improve the efficiencies of our tax and fee programs.

- **Change in Ownership Discovery**

A movement to require more frequent reassessment of property owned by legal entities to current fair market values, which is often referred to as creating a "split roll" has been active in the last few years.

Legislation has been introduced in each of the last four legislative years to modify change in ownership statutes for legal entities. In 2005-06, SB 17 (Escutia) was introduced, preceded in 2003-04 by SB 17 (Esuctia) and ACA 16 (Hancock). In 2002, statement of intent language was passed by the Senate in SB 1662 (Peace). In 2001, AB 1013 (Leonard) was introduced and in 2000, AB 2288 (Dutra). The issue had not been actively pursued in the Legislature since 1991 in SB 82 (Kopp, et al). Additionally, in 1992, Proposition 167 was placed on the ballot which addressed a number of tax related items, and included a provision to modify the change in ownership definitions related to legal entities. Proposition 167 was not

approved by voters. In 2005, multiple constitutional initiatives on the split roll issue were approved for circulation but none were ultimately placed on the ballot.

This year, given all of the attention to split roll property tax proposals in recent years and the potential for missed reassessments of properties due to the complexities of legal entity change in ownerships, two bills, with the goal of improving discovery of changes in ownership, AB 1029 (J. Horton) and AB 926 (Chu) were approved by the Legislature. However, both were vetoed by the Governor. In his veto messages, the Governor encouraged proponents of these measures and property owners to develop procedures to ensure that change in ownership information requests are delivered and received by the proper parties.

AB 1029, sponsored by the California Assessors' Association, specifically related to legal entity change in ownerships. It sought to improve the annual change in ownership question asked on corporate income tax returns by deleting from statute the specific detail of the question, as requested by industry. In addition, it sought to improve the penalty abatement process for failure to respond to change in ownership inquiries sent by the Board of Equalization and improve the informational notice.

AB 926, sponsored by the San Francisco County Assessor, was intended, in part, to improve the Preliminary Change In Ownership Report by removing the specific detail from statute so that the form can be improved for taxpayer ease and efficiency. In addition, it would have increased from \$2,500 to \$10,000 the penalty cap for failure to respond to a written request to file a change in ownership statement with the local county assessor, except for owner occupied homes. The purpose of this provision was to attempt to improve taxpayer reporting, given the difficulties that the city and county of San Francisco stated it has experienced in obtaining information.

- **Property Tax Revenue Allocation**

Under current law incremental growth in property tax revenues from state assessed property, except railroads, occurring post-1987 is shared on a "countywide" basis. These additional revenues can be the result of increased property values, new construction, or acquisitions of property. Post-1987 incremental growth revenues are distributed to nearly all governmental agencies and school entities in the county in proportion to each entity's share of the county's total ad valorem property tax revenues in the prior year. Under the countywide system, all entities receive a share in the revenues, regardless of whether any of the value growth actually occurred within its jurisdictional boundaries.

An emerging trend is a return to local tax rate area (situs) allocation for certain new major projects undertaken by state assesses.

In 2002 after electrical deregulation, AB 81 (Migden, Ch. 57, Stats. 2002) was enacted to change the revenue allocation of power plants divested by public utilities and sold to private operators, as well as those newly constructed by merchant power plant owners, to provide for situs based revenue allocation. The situs issue was brought forward again in 2004, when San Diego Gas and Electric sought and received special revenue allocations for a proposed new power plant to be constructed in the City of Escondido (AB 2558).

This year two more bills were enacted, SB 1317 (Torlakson, Ch. 872, Stats. 2006) and AB 2670 (Aghazarian, Ch. 791, Stats. 2006) which provide that state assessee revenues shall be allocated in a manner so that a greater share goes to affected local governments, rather than distributing the revenues countywide, so as to garner their support for the proposed new projects.

- Southern California Edison sponsored SB 1317 to provide a financial incentive for cities to support the construction of certain electrical generation facilities and substations within their boundaries by ensuring a greater share of the resulting property tax revenues.
- The California Railroad Industry sponsored AB 2670, which is a mixed bag of revenue allocation procedures. While it seeks to place railroad property in the countywide system for the first time for administrative convenience and simplicity, it also seeks to provide a special revenue allocation procedure for a proposed major new stand alone project. It would provide that 20 percent of the value of a railroad loading facility to be newly constructed at the cost of more than \$100 million would be allocated exclusively to the specific tax rate where the property is located and require the county auditor to make special allocations of the resulting revenues so that a greater share of the resulting revenue would be dedicated to the governmental entities providing services to the property.