

# *ASSESSMENT PRACTICES SURVEY*

*A REPORT ON SECTION 11  
AND PERS PROPERTIES*

**1990**

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CALIFORNIA STATE BOARD OF EQUALIZATION

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## PREFACE

The State Board of Equalization is required by law to periodically audit the assessment programs in each of the 58 California counties. The results and recommendations arising from these field and office audits are published in assessment practices survey reports. In addition, the Board makes periodic surveys of specific subjects or major issues affecting local property taxation. These special topic surveys, authorized by Sections 15640 and 15643 of the Government Code, are conducted as needed. The findings of these selective surveys are published and distributed to the Legislature, all county assessors, the Members of the Board, and Board staff who are involved with the particular survey issue. Copies of these surveys are also available to concerned individuals in the private sector.

This special topic survey was originally intended to cover three subjects: (1) the assessment of taxable government-owned real property; (2) the assessment of property owned by public employees retirement systems; and (3) the taxation of nongovernmental cogeneration and hydroelectric properties. Subjects (1) and (2) share some common areas in law and appraisal methods. However, the taxation of cogeneration and hydroelectric projects has little in common with the other two subjects. Therefore, this survey covers the first two topics only, and a separate report will be issued for hydroelectric and cogeneration assessment practices.

The subject of this special topic survey is the assessment of property owned by government entities and public employee retirement systems. The goals of this report are to identify the laws pertaining to the assessment of these properties, present the Board's position regarding implementation of these legal provisions, and to identify and standardize county assessment practices.

The vehicle for obtaining information regarding current assessment practices used in each of the 58 county assessor's offices was a questionnaire containing 29 questions which was sent to all county assessors in 1987.

This report was written by the staff of the Assessment Standards Division, Department of Property Taxes.

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## I. EXECUTIVE SUMMARY

The vast majority of government-owned properties are exempt from property taxation. However, California law provides for (1) limited taxation of government-owned real property where the property was taxable when acquired and it lies outside the agency's boundaries (hereafter called Section 11 properties), and (2) an in-lieu fee to be paid by certain public retirement systems for investment properties owned by them where the properties are within their boundaries (PERS properties). Various constitutional and statutory provisions spell out which properties are taxable and which are exempt, and, if taxable (or if an in-lieu fee is to be paid), how the assessed values (or fees) are to be calculated.

The reader is warned that the laws and required procedures seem extremely complex. As will be seen in the text of this report, the assessor must deal with 1966 or 1967 assessed values adjusted by a "Phillips" factor, current fair market values, Article XIII A (Proposition 13) values for some properties but not others, and a bewildering variety of other circumstances that require these properties to be assessed differently than other properties.

In practice, the law and procedures are more difficult to learn or explain than to apply. As the report will show, the great majority of assessors are applying the law correctly to the assessment of these properties. They annually assess 4,600 properties with a total assessed value of \$800 million. Only 800 hours of professional and clerical time are used to make the assessments, although this total should be higher because five assessors are not making the required annual revaluations of Section 11 properties.

Based on the results of our survey, most Section 11 properties are assessed correctly. The errors that exist are workload (failure to make the required annual reviews) and two misapplications of law, which are application of Article XIII A to some land assessments and application of Williamson Act provisions to others. Neither Article XIII A nor the Williamson Act may be applied to Section 11 land assessments.

There do not appear to be any significant problems with the assessment of PERS properties. However, ownership of investment properties in California by public retirement systems is a new program. The number of such properties is expected to grow and thereby produce greater chance for errors and other assessment problems in the future.

## II. THE ASSESSMENT OF TAXABLE GOVERNMENT-OWNED PROPERTIES LOCATED OUTSIDE THEIR BOUNDARIES

### A. Valuation

#### 1. Land

The Constitution of the State of California exempts from taxation property owned by a local government except lands and the improvements thereon that are located outside its boundaries and were subject to taxation at the time of acquisition. (California Constitution Article XIII, Sections 3 and 11(a)). This exception permitting the taxation of land and improvements owned by a local government but located outside its boundaries was added in 1914 following the acquisition by neighboring counties of extensive properties in the mountain communities of Mono, Inyo and Tuolumne Counties. The removal of such properties from the county property tax base was having severe economic impact upon those counties (see Los Angeles v. Mono County, 51 Cal.2d 843). As a result of a 1968 constitutional amendment, limits were placed on the amount of any increases of county assessment of these properties. Land value assessment increases are permitted only in the ratio that the per capita value of land, statewide, has increased over the values set in 1966 and 1967. Land located in Inyo County is annually assessed at no more than the 1966 assessed value multiplied by the Phillips factor established by the State Board of Equalization. Land located in Mono County is annually assessed at no more than its 1967 assessed value multiplied by the Phillips factor. All lands located outside of Inyo and Mono Counties shall be annually assessed at the lower of current fair market value as defined in Section 110 of the Revenue and Taxation Code or the value determined by multiplying its 1967 assessed value times the Phillips factor. <sup>1/</sup>

The Phillips factor formula for a current lien date is as follows: the previous year assessed valuation of California land value only is divided by California's previous year civilian population, and the resultant statewide per capita value (1) is divided by \$766 (\$766 represents the 1966 per capita value) to find the factor based upon the 1966 lien date and (2) is divided by \$856, (\$856 represents the 1967 per capita value) to find the factor based upon the 1967 lien date. This formula is derived to operate upon a 1966 and 1967 assessed value of 25 percent of market value to arrive at a current assessed value of 100 percent of market value.

Subdivision (b) of Section 11 sets forth certain standards for valuation. Taxable land belonging to a local government and located in Inyo County shall be assessed in any year subsequent to 1968 at the place where it was assessed as of the 1966 lien date and in an amount derived by multiplying its 1966 assessed value by the ratio of the statewide per capita assessed value of land as of the lien date prior to the current lien date to \$766, using civilian population only. Taxable land belonging to a local government and located in Mono County shall be assessed in any year subsequent to 1968 at the place where it was assessed as of the 1967 lien date and in an amount determined by the preceding formula (except that the 1967 lien date, the

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<sup>1/</sup> Note: Land in Mono and Inyo Counties is valued annually by the use of the Phillips factor only.

1967 assessed value and the figure \$856 shall be used in the formula). Taxable land belonging to a local government and located outside of Inyo and Mono Counties shall be assessed at the place where located and in an amount that does not exceed the lower of (1) its fair market value times the prevailing percentage of fair market value at which other lands are assessed and (2) a figure derived in the manner specified in subsection (b) for land located in Mono County.

Section (b) also describes the method for assessment of parcels of land acquired by government which is severed from a larger parcel. The assessed value of the part in its base year shall be that fraction of the assessed, value of the larger parcel that the area of the part is of the area of the larger parcel. Subsection (b) further provides that if a local government divests itself of ownership of land without water rights and this land was assessed in Inyo County as of the 1966 lien date or in Mono County as of the 1967 lien date, the divestment shall not diminish the quality of the water rights assessable and taxable at the place where assessed as of that lien date.

## 2. Water Rights

Water rights located outside of Inyo or Mono Counties are to be assessed as is land located outside of these counties. <sup>2/</sup> Also, the assessment of water rights is limited by Section 11(e) in that no tax, charge, assessment or levy of any character other than authorized by Section 11(a) to Section 11(d) inclusive shall be imposed upon local government by another local government based or calculated upon the consumption or use of water outside the boundaries of the government imposing it. Further, the assessment situs of water rights is the point of diversion. <sup>3/</sup>

## 3. Improvements

Improvements owned by a local government that are outside its boundaries are taxable if they were taxable when acquired or were constructed by local government to replace improvements which were taxable when acquired. Any other improvements are not taxable. <sup>4/</sup>

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<sup>2/</sup> For purposes of taxation, water rights constitute land as that term is used in Article XIII, Section 1 of the State Constitution (Waterford Irrigation District v. County of Stanislaus, 102 Cal.App.2d 839; Alpaugh Irrigation District v. County of Kern, 113 Cal.App.2d 286; San Francisco v. Alameda County, 5 Cal.2d 243).

<sup>3/</sup> The situs of appropriative rights is at the point of diversion of the water (North Kern Water Storage District v. Kern County, 179 Cal.App.2d 268). The argument that the right had its situs at the place of use was rejected on the ground that the right to control the water in a river is exercised at the point of diversion. In some cases the water is transported some distance from its point of diversion from its natural channel to its point of use. The court has held that the point of diversion is also the situs for taxation, and that the tax situs is not where the water is received and measured by the owner (Jurupa Ditch Company, Inc. v. County of San Bernardino, 256 Cal.App.2d 35).

<sup>4/</sup> Sacramento Municipal Utility District v. County of El Dorado, 5 Cal.App.3d 263.

Although Section 11 includes extensive and detailed provisions prescribing the assessment standard to be applied to taxable land, it is virtually silent on the valuation standard which is to be applied to taxable improvements. The only expressed standard is found in subdivision (d), which relates to a taxable improvement which is replaced after March 1954 while owned by and in possession of a local government. The standard provided is that the replacement improvement shall be assessed "as other improvements" with the limitation that the assessed value may not exceed the highest full value ever used for taxation of the improvement that has been replaced. One reasonable interpretation of subdivision (d) is that the framers of Section 11 intended that all other taxable improvements owned by a local government would also be assessed "as other improvements" but that the assessment would not be subject to the limitations imposed for improvement replacements added after March 1954.

Replacement improvements built before March 1, 1954, are taxable at the lowest of their current full cash value as defined in Section 110, their full cash value as defined in Section 110.1, or the highest full value ever used for the taxation of the improvements that have been replaced. For purposes of calculating the taxation of improvements built after March 1, 1954, the full value of any year prior to 1967 shall be conclusively presumed to be four times the assessed value for that year. It should also be noted that the Phillips factor calculation does not apply to the assessment of improvements.

a. Proposition 13

Note that Article XIII A (Proposition 13) does not apply to the assessment of Section 11 properties. Revenue and Taxation Code Section 52(d) provides that property subject to valuation pursuant to Section 11 of Article XIII of the California Constitution shall be valued for property tax purposes in accordance with that section. The California Appellate Court, in Los Angeles Country Club v. Pope, 175 Cal.App.3d 278, acknowledged that the legislative purpose of Section 52 was to exclude the property described therein from the valuation rollback provisions of Proposition 13. Except for utilizing valuation standards of Proposition 13 for the assessment of improvements and the 1 percent tax limitation, no provisions of Proposition 13 apply to Section 11 property. By "valuation standards of Proposition 13" we mean the valuation methods to be applied according to accepted appraisal practice, as modified and controlled by the California Constitution, Article XIII A, and implementing statutes and administrative rules.

4. Possessory Interests in Taxable Government-Owned Property

The usual assessable possessory interest is an interest in nontaxable publicly owned real property. However, most possessory interests in taxable publicly owned real property subject to the provisions of Section 11 of Article XIII of the California Constitution are also subject to assessment. <sup>5/</sup> The only possessory interest in such land that is excluded from taxation is a lease for agricultural purposes. Land so leased must be valued by the Phillips factor formula; in other words, just as all other taxable government-owned land is assessed. This factor is derived for each year by dividing the statewide total assessed value of land only for that fiscal year by the statewide total civilian population as of July 1 of that fiscal year. The resulting land

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<sup>5/</sup> See Property Tax Rule 21, Subdivision (b).

value per capita is then divided by \$766 to obtain the factor for land assessed in 1966 and by \$856 for land assessed in 1967. There is, however, a limitation on the taxable value of possessory interests in Section 11 lands in that the aggregate value of the Section 11 assessment and all other assessments of the land cannot exceed the current market value of the land. 6/

The taxable value of an assessable possessory interest in taxable government-owned land should be reviewed annually through a comparison of the land's current market value, as of the lien date, the Section 11 value of the land, and the factored base-year value of the possessory interest. This latter value is the full cash value of the interest as of March 1, 1975 (or, if there has been a subsequent change in ownership of the possessory interest, its full cash value as of that later date), indexed by the annual inflation factor determined pursuant to Section 51(a) (1) or (2) of the Revenue and Taxation Code. The possessory interest, being subject to Article XIII A, will have a definite base year and base-year value, modified only by the inflation index unless there is a change in ownership (which includes a renewal of the interest by the same lessee); the Section 11 value of the land, however, changes annually as the Phillips factor changes. This means that the relationship between the taxable value of the possessory interest and the value of the land calculated according to Section 11 is constantly shifting. In addition, the current market value of the land without regard to either Proposition 13 or Section 11 may change from year to year, which could result in the possessory interest's taxable value to increase or decrease. The maximum amount of the possessory interest assessment cannot exceed the lowest of its current market value, its factored base-year value, or the amount of the difference between the current market value of the land and the current Section 11 value of the land.

The foregoing example illustrates our position that each year the separate values must be reviewed and compared to determine the allowable assessment of a possessory interest in taxable government-owned land.

#### 5. Supplemental Assessments

The general authority contained in Section 401.3 requires the assessor to assess all taxable property as of the lien date. However, Section 75.14 appears to exclude Section 11 property from assessment under the supplemental assessment law. Section 75.14 provides that a supplemental assessment shall not be made for any property not subject to the assessment limitations of Article XIII A of the California Constitution. Since Section 52(d) excludes Section 11 property from assessment under Article XIII A, it would appear that the assessor has no authority to apply supplemental assessments to a Section 11 property and thus, the assessor's only authority to assess Section 11 property is on the lien date. This means that if a governmental entity acquires property outside its boundaries in June, and a valuation of that property on that date would result in either an increase in assessed value or a decrease in assessed value, the assessor is not authorized to issue a supplemental assessment reflecting that value change.

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6/ California Constitution, Article XIII, Section 11(f).

6. Special Valuation Problems

While the general principles of taxable government property assessment are clear, there are many instances where special problems occur. The following examples demonstrate solutions of actual case problems submitted to the Board for resolution.

EXAMPLE #1 - Taxable Property That Had Hospital Exemption When Acquired

A city purchased property consisting of land, a hospital, and other improvements located outside the city limits. The property had been receiving a 100 percent welfare exemption. The city leased the property for a 55-year term to a private corporation. How should the property be valued?

Based on the data submitted, the Board concluded that the land and improvements should be valued in accordance with Section 11 of Article XIII of the California Constitution. The enrolled land value was to be based upon the lesser of (1) the 1967 assessed value times the current Phillips Factor or (2) the current full cash value. The enrolled improvement value would be the current full cash value. The taxable value would be assessed to the fee owner, i.e., the city. It was assumed that the corporation would continue to receive a 100 percent welfare exemption, thereby negating the assessment of the possessory interest. However, should the hospital fail to qualify for the exemption, then the possessory interest in the property should be enrolled. If the sum of the possessory interest value and the restricted (Section 11) value of the land and improvements is in excess of total current market value, then the possessory interest assessment must be reduced in an amount equal to this excess. 7/

EXAMPLE #2 - Taxable Property That Was Subject to a Williamson Act Contract When Acquired

The City of Woodland by threat of eminent domain acquired land outside the city limits. The land was subject to an existing Williamson Act contract. The city attorney asked if there was a constitutional means by which the city could retain the restrictive assessment of the Williamson Act. The Board determined that the purchase by the city caused the existing Williamson Act contract to be null and void under the provisions of the Revenue and Taxation Code, Section 51295. Therefore, there was no legal means by which the city could retain the restrictive assessment of the Williamson Act on Section 11 properties. The land must be assessed in accordance with Article XIII, Section 11 of the California Constitution, at the lessor of the current market value or the formula value (1967 assessed value multiplied by current Phillips factor). 8/

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7/ Letter to Placer County Assessor dated December 5, 1986, from Chief, Assessment Standards Division.

8/ Letter to Woodland City Attorney dated June 22, 1982, from State Board of Equalization Legal Counsel.

EXAMPLE #3 - Joint Purchase of Taxable Property By Six Local Governments

The Cities of Cloverdale, Cotati, Healdsburg, Rohnert Park, Sebastopol, Sonoma, and Ukiah formed the Redwood Empire Municipal Insurance Fund (hereinafter referred to as the Fund). The Fund bought property in the City of Sonoma for their headquarters. To what extent is the property assessable by Sonoma County and should Proposition 13 acquisition value be used?

The Board's finding was that the California Constitution, Article XIII, Section 11, provides that land owned by a local government that is outside its boundaries is taxable if the land was taxable when acquired. The property in question is located outside the boundaries of its owning government entities except for the City of Sonoma. Therefore, since the property was taxable when acquired, the property is assessable to all government entities except Sonoma. It was suggested that the assessment be apportioned according to respective ownership proportions, exempting only the portion owned by the City of Sonoma. The property assessment would be made in accordance with the provisions of California Constitution, Article XIII, Section 11, which therein provides for an assessment at the lesser of the Phillips factored land value or market value. <sup>9/</sup>

EXAMPLE #4 - Irrigation District Properties Excluded From Original Description

While reviewing the boundaries of tax-exempt municipal properties, the Sierra County Assessor's Office discovered that the Nevada Irrigation District (NID) had failed to include the legal descriptions of two Sierra County Parcels, owned by the district, in any documentation recorded from 1943 through 1963. The two parcels had been shown on NID maps to be included within the district's boundaries and had been exempt from taxation until 1983. The Board was requested by NID and Sierra County Assessor's Office to determine if, in fact, these two parcels were taxable and could be assessed and enrolled. The Board's findings were as follows.

Lands may be brought into an irrigation district after its formation by a procedure involving a petition to, and a hearing by, its board of directors. (For all land herein at issue, the Water Code of the State of California, enacted in 1943, is applicable; see Ch. 368, Stats. 1943; see 1943 Water Code Sections 2685, et al.) The final act of the district's board of directors to complete the inclusion of additional lands within the district is to record such annexation in the respective county recorder's office. (See the 1943 Water Code Section 2693; Ch. 368 Stats. 1943, page 1884.) Any property duly included within the district boundaries is exempt from property taxation. (California Constitution, Article XIII, Sections 3 and 11; Turlock Irrigation District v. White 186 Cal. 183; Rock Creek Water District v. Calaveras County, 29 Cal.2d 7.)

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<sup>9/</sup> Letter to Sonoma County Assessor, dated June 22, 1981, from State Board of Equalization Tax Counsel.

No legal description of the subject parcels was found in any document to depict the board of director's intent to include the land within the district territory. The closest inference was a reference to the inclusion of connecting land lying only in Nevada County. The Nevada County land was described in the district's board of director's order signed February 23, 1947, but only land in Nevada County was legally described. (Nevada County Records, Cert. of Sales, 1946-52, filed March 1, 1949.) Since such description in the director's order specifically describes that land in Nevada County, it is concluded there is no legal basis to presume an intent to include any land in Sierra County. The curative statutes (Ch. 11, Stats. 1964, page 114; Ch. 12, Stats. 1964, page 119) would not be effective to correct the oversight since the only document available is very specific in its instruction to include only that land in Nevada County and not the bordering land in Sierra County. It was concluded that the subject parcels in Sierra County were taxable. 10/

## B. SURVEY FINDINGS AND CONCLUSIONS

Appendix 1 contains a summary of the assessor's responses to the Board questionnaire.

The Board now realizes that much of the information required to complete the questionnaire was difficult for the assessor to provide. Several assessors stated that staff time was not available to obtain some of the data, and therefore it was not provided. We have utilized the limited data provided in the preparation of this survey and have assembled a composite of the data received in the following paragraphs.

### 1. Workload

Data from county assessors indicated that there are approximately 4,567 Section 11 assessments in California with a total 1986-87 assessed value of \$764,574,568. Approximately 507 man hours of professional time and 279 hours of clerical time are needed for annual maintenance of these assessments.

Twenty-five assessors indicated that specific personnel were assigned the responsibility for the valuation of these properties, although there was no standardization in the classifications assigned. In some instances the assessor did the work, while appraisers and clerical personnel were responsible in other instances.

### 2. Property Uses

The great majority of the Section 11 properties are either sewage treatment sites or are associated with water rights, and/or water systems. On the other hand, over 85 percent of Section 11 possessory interests are associated with airport uses.

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10/ Letter to Sierra County Assessor, dated March 29, 1983, from State Board of Equalization Tax Counsel.

### 3. Land Valuation

Forty assessors indicated that they were valuing taxable government-owned properties in accordance with Section 11. However, one of the 40 referenced a superseded procedure. In addition, two assessors indicated they were applying factored base-year values (Article XIII A), rather than Section 11 values.

Comment: Both of the stated alternate valuation methods are not in compliance with the constitutional provisions.

Thirty-seven assessors indicated that they revalued Section 11 properties annually while five indicated they did not. The two reasons cited for not revaluing annually were lack of manpower and values too small to justify the effort.

Comment: Neither reason is valid in light of the Constitutional requirements.

For Section 11 properties on the 1986-87 tax roll, county assessors indicated that 190 land parcels were assessed according to their fair market value, 3,038 properties were valued utilizing the Mono County Phillips Factor, 54 were valued utilizing the Inyo County Phillips Factor, and 189 were valued by other methods.

Comment: We can only conclude that the 189 properties were assessed at their factored base year (Proposition 13) values, an incorrect procedure.

Thirty-two assessors indicated that they correctly enrolled the lesser of the Phillips Factor value and current market value of land parcels and the lower of the current market and factored base year (Proposition 13) values of improvements. Two assessors indicated that this comparison was not made because factored base-year values were being enrolled for land.

### 4. Possessory Interests

Eight assessors reported that they were assessing possessory interests associated with Section 11 properties. Approximately 161 possessory interests are on the tax rolls with a total 1986-87 assessed value of \$623,916,116. One hundred thirty-nine of these possessory interests and over 99 percent of the assessed value are related to taxable interests at the San Francisco International Airport in San Mateo County.

### 5. Boundary Changes

Nine assessors indicated that boundary changes involving Section 11 properties occurred in the 1986-87 assessment year. In some instances the governmental entity apparently extended their boundary to include the acquired property, thus making the property exempt from taxation.

6. Williamson Act (Open-Space) Properties

Five assessors indicated that there were Section 11 properties in their counties that were subject to Williamson Act contracts when acquired. Two assessors indicated that they were still using the Williamson Act value in the assessment process, either directly or by enrolling the lower of the Section 11 and Williamson Act values.

Comment: The only provision for taxation of land owned by a government outside its boundaries is the provision provided under Section 11. There is no constitutional means by which such property can be assessed under the restrictive assessment of the Williamson Act (or any other assessment authority).

7. Exemptions

Two assessors reported that Section 11 properties leased to private entities were receiving welfare exemptions. These properties are leased by exempt organizations such as the Boy Scouts or hospitals.

8. Discovery

Recorded documents seemed to be the most consulted source for discovering possessory interests, followed by public notices and the canvassing of geographic areas. Most counties sent annual inquiries to owners of Section 11 property requesting lists of possessory interests. Some counties indicated that they had no formal discovery program.

C. SUMMARY

While there are some inconsistencies in the data provided by county assessors, several conclusions can be drawn regarding the assessment procedures being applied to taxable government owned (Section 11) properties.

1. The great majority of county assessors are correctly identifying and valuing Section 11 properties.
2. Some confusion still exists regarding the relationship between Article XIII A (Proposition 13) base-year value and values derived according to Article XIII, Section 11, although the proper procedures have been disseminated in a Board letter to county assessors (82/136). 11/
3. The required annual revaluation is not done in all cases, primarily because of low values for some of these properties and because of workload considerations.

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11/ See Letter to Assessors 82/136 in Appendix 5.

4. Taxable possessory interests associated with Section 11 properties are being identified and properly valued in accordance with constitutional provisions.
5. Some assessors are still using open-space (Williamson Act) values in the assessment process when the properties were covered by an open-space contract when acquired. This is not a valid procedure.

We hope the publication of this report will lead to increased understanding and the standardization of local assessment procedures.

### III. THE ASSESSMENT OF PROPERTY OWNED BY PUBLIC EMPLOYEE RETIREMENT SYSTEMS LOCATED WITHIN THEIR BOUNDARIES

#### A. PROPERTY ASSESSMENT

Section 7510 was added to the Government Code by Chapter 24 of the Statutes of 1982. The addition was part of an enactment which added a provision to the Education code to permit the State Teachers' Retirement System to invest funds in income-producing property used for business or residential purposes. The Legislature apparently saw the need to prevent such investments from reducing local taxes while at the same time including a provision to exempt any local retirement system which had heretofore been authorized to make such investments. It does not apply to system property located outside the system's boundaries because such property has not been removed from the local roll as required in Section 7510. Such properties are assessed in accordance with Article XIII, Section 11.

Government Code Section 7510 provides, in pertinent part, that when a public retirement system invests assets in real property for the production of income, then it shall pay annually to the city or county, in whose jurisdiction the real property is located and has been removed from the secured roll, "a fee for general government services equal to the difference between the amount that would have accrued as real property secured taxes and the amount of possessory interest unsecured taxes paid for that property." Government Code Section 7510 by its terms does not apply to investment property of any retirement system which was established by a local government entity and was authorized to invest in real property as of the time Government Code Section 7510 was enacted.

Property purchased by government instrumentalities is exempt from taxation under California Constitution Article XIII, Section 3, except as provided under California Constitution Article XIII, Section 11. Taxation of government-owned property is permitted under Section 11 only when the property is taxable when purchased and located outside the boundaries of the entity owning the property. Those boundaries with respect to retirement system properties would be the boundaries of the government creating the retirement system. If the government purchasing the property were a county, then the boundary would be the boundary of the county. Likewise, if the government were a city, the boundaries would be that of the city; and if a district, the boundaries would be that of the district; and if the State of California, the boundaries would be that of the state.

Assessment methods will differ depending upon whether the property is inside or outside the boundaries and whether the property is used by the retirement system or whether it is an investment owned by the system.

The first situation is when the property is owned and used by the retirement system for the operational business of the retirement system. If that property is within the boundaries of the government creating the retirement system, then the property is exempt from taxation under the California Constitution Article XIII, Section 3, and therefore Article XIII, Section 11 is inapplicable. If, on the other hand, such property is outside the boundaries of the

government creating the retirement system and was taxable when acquired, then the property, whether owned by the system for its own use or owned by the system for investment purposes, is subject to assessment under the California Constitution, Article XIII, Section 11.

If retirement system property is located within the boundaries of the system and is used by the system for the production of income, then the property will be subject to an in-lieu fee as provided for under Government Code Section 7510; i.e., a fee equal to the difference between the amount that would have accrued as real property secured taxes and the amount of possessory interest taxes paid for that property. The proper implementation of Section 7510 as limited by the California Constitution Article XIII A (Proposition 13) is as follows:

1. The in-lieu fee of Section 7510 applies only to property located within its owners' boundaries.
2. The value level to be used to measure the in-lieu fee for property located within the system boundaries is its market value as determined under the California Constitution, Article XIII A (Proposition 13) and appropriate subsequent legislation just as it would be determined had the property been purchased by a nongovernmental entity.
3. The retirement system's in-lieu fee varies depending on the taxable value of the possessory interests. The in-lieu fee on vacant property would be equivalent to the taxes due based on its market value at the time of purchase.
4. The value of the possessory interest is based on the rental agreements in effect when the income property is purchased by the retirement system. When the existing leases are renewed, subleased or assigned, a new possessory interest value will be established since a change in ownership of the possessory interest has occurred.

Nothing in Government Code Section 7510 specifically prescribes the valuation standard to be applied to the appraisal of the taxable property when acquired by a state public employee retirement agency. In the absence of any value standard, we must revert to the valuation standard applicable to all other real property the assessed value of which is not specifically restricted by Constitutional provisions; namely, to the valuation standard defined in Article XIII A. Therefore, we conclude that Article XIII A is to be considered in assessing the property to determine the value of the in-lieu fee. The calculation of the in-lieu fee must be made annually to reflect changes in the inflation factored base-year value and possessory interest values. Any new construction added to these properties could also be subject to a taxable possessory interest and an in-lieu fee payment.

Revenue and Taxation Code Section 61(b) requires the reappraisal of a possessory interest upon its creation or renewal for any term. These reappraised possessory interest values will directly affect the amount of the in-lieu fee when the adjusted possessory interest values are subtracted annually from the property's factored base-year value.

Property Tax Rule 252 states in part that the local roll shall contain: 12/

"...The separately stated assessed values of all land, improvements, and personal property subject to taxation at general property tax rates (or payments in lieu of property tax computed by applying general property tax rates to fixed or variable 'assessed values'), and of any privately owned land, improvements, and personal property of a type that is exempt from taxation, but is subject to ad valorem special assessments when within a district levying such assessments."

The county assessor must, therefore, annually make the following determination for property located inside the system boundaries:

- (1) determine the Section 110.1 assessed value of the property as if the property purchase by the system was a private section purchase;
- (2) determine the taxable value of all possessory interest in the property in accordance with Section 107 of the Revenue and Taxation Code.
- (3) determine the value upon which the in-lieu fee is calculated by subtracting the taxable possessory interest value determined in (2) from the Section 110.1 assessed value, determined in (1); and place this difference in a special section of the roll.

Government Code Section 7510 states "...shall pay annually to the city or county, in whose jurisdiction the real property is located and has been removed from the secured roll, a fee for general governmental services...." This wording has caused some confusion as to how the monies generated by Section 7510 shall be distributed. It could be assumed that distribution would be controlled by the tax rate area code but it could also be assumed that the legislative intent was to distribute the monies solely to a city or county in which the property is located. Distribution of revenue is beyond the scope of the Board's jurisdiction and as such no comment will be made as to legislative intent.

## B. SUMMARY OF FINDINGS AND CONCLUSIONS

Data pertaining to PERS-owned properties derived from the Board special topic questionnaire is summarized below. A summary of all questionnaire responses is given in Appendix 1.

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12/ See Revenue and Taxation Code Sections 601 and 618 regarding the Board's authority to mandate to the assessor what information shall be included on the roll.

1. Workload

Data from the county assessors indicated that there are approximately 40 assessments of PERS properties located in six counties within California with a total assessed value in 1986-87 of \$52,702,406. Approximately 89 hours of professional (appraiser) time and 13 hours of clerical time were needed annually to process these PERS properties. Since the properties are generally large, investment grade entities such as apartment complexes, commercial and office buildings, experienced appraisers are needed in the valuation process.

2. Property Types

As indicated above, PERS-owned investment properties are generally large commercial, multi-residential or office buildings.

3. Valuation

All assessors that have PERS investment properties in their counties indicated they are valuing these properties using Article XIII.

4. Possessory Interests

Survey data indicated there were 28 possessory interest assessments associated with PERS properties statewide with a total 1986-87 assessed value of \$21,043,162. These rights are generally being correctly assessed.

5. Personal Property Assessments

Four assessors indicated that they are assessing privately owned personal property located on PERS properties, while 11 assessors indicated they did not. The only reason given for not assessing personal property was that the existence of such property was not known.

C. SUMMARY

As previously stated, this report contains a revised and expanded Board position on the assessment of properties owned by public employee retirement systems. County assessors are generally levying appropriate assessments on PERS-owned properties per se; however, because of the complications associated with the assessment of PERS property possessory interests, a review of these possessory interest appraisals should be conducted to insure compliance with the Board's position.

While it is true that there are relatively few PERS owned properties in California at this time, the number will probably increase as retirement systems look for high quality investments that tend to benefit from inflationary pressures. It is therefore important that county assessors use a standardized approach in the assessment of these properties and this survey report is intended to help in this regard.

## APPENDICES

TABULATION OF QUESTIONNAIRE RESPONSES

Are there any of the following property types located in your county?

	<u>Yes</u>	<u>No</u>	<u>N/A</u>
Public Employees' Retirement System real property; utility cogeneration and hydroelectric facility real property; credit union real property; <u>1/</u> and all other miscellaneous taxable <u>government-owned</u> real property located outside its boundaries subject to Article III, Section 11 of the California Constitution (hereafter referred to as "Section 11 Properties").	<u>45</u>	<u>7</u>	<u>1</u>
Real property owned by any <u>nongovernmental</u> public employees retirement systems.	<u>0</u>	<u>53</u>	<u>-</u>
<u>Nongovernmental</u> utility cogeneration and hydroelectric facilities and real properties.	<u>31</u>	<u>21</u>	<u>1</u>

SECTION 11 PROPERTIES

1. Of the Section 11 Properties (do not include privately-owned property referred to in the last three questions on page 1) in your county, what is the total assessment of each for 1986-87 (should include applicable possessory interest properties)?

a. Public Employee's Retirement System real property	<u>\$ 52,702,406</u>
b. Utility cogeneration and hydroelectric facility real property (Includes \$8,520,063 SMUD)	<u>\$168,084,160</u>
c. Credit union property	<u>\$ 1,121,872</u>
d. All other miscellaneous Section 11 property	<u>\$764,574,568</u>

2. How many properties (roll items) are there of each category listed in a through d above?

a.	<u>40</u>
b.	<u>184</u>
c.	<u>5</u>
d.	<u>4,567</u>

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1/ Credit unions are not government entities. All data pertaining to these properties have been excluded from this report.

3. a. How many appraiser, clerical, assessor, and consultant hours are spent each year in the annual revaluation of each of the property types in question 1, subheadings a, b, c, and d?

	Appraiser Hours	Clerical Hours	Assessor Hours	Consultant Hours
a.	<u>86</u>	<u>13</u>	<u>2</u>	<u>1</u>
b.	<u>106</u>	<u>18</u>	<u>5</u>	<u>6</u>
c.	<u>40</u>	<u>2</u>	<u>-</u>	<u>-</u>
d.	<u>462</u>	<u>279</u>	<u>15</u>	<u>30</u>

3. b. Are each of the property types revalued annually?

Yes 28 No 9 N/A 14

3. c. If not, at what frequency? (Detail by property type)

- (1) Seldom, because of low value of properties.  
 (2) Section 11 annually, all others when assessable event occurs.  
 (3) Time permitting.

4. Are there specific assigned persons responsible for the annual revaluation of all these properties?

Yes 25 No 15 N/A 7

If yes, how many and at what position/classification?

Position/Classification

Assessor	Appraiser III	Supervising Clerk
Assistant Assessor	Auditor-Appraiser	Clerk
Division Chief	Senior Appraiser	
Chief Appraiser	Appraiser	
Appraiser IV	Associate Appraiser	
Supervising Appraiser	Standard Evaluator	

5. a. What are the specific uses in your county of Section 11 properties?

Answers: (water rights, golf courses, sewage ponds, airports, etc.)

6. Does your office value Section 11 properties in accordance with Article XIII, Section 11 of the California constitution?

Yes 40 No 2 No Answer 8

If not, then: what alternate valuation method is employed; what is the property type/use; how many assessment parcels are involved?

Valuation Methods (Exceptions)

State Board of Equalization letter 79/40 (Madera)  
 Government Code Section 7510 (San Francisco)  
 Base-Year Factored (Santa Cruz)  
 Trended Cost (Ventura)

7. Are all of these properties revalued annually?

Yes 37 No 5 No Answer 8

If not, then how often are they revalued?

Not revalued, but annually increased by the C.P.I. factor.

8. Article XIII, Section 11 requires that taxable government-owned land (outside of Inyo and Mono Counties) be valued at the lesser of its fair market value or a figure derived in a manner specified in Section 11(b) for lands located in Mono County. Please answer the following questions relative to these required valuation procedures in the spaces provided following the questions.

- a. What is the total number of roll units and the total enrolled value for those properties valued at fair market value?
- b. What is the total number of roll units and the total enrolled value for those properties valued by the Mono County computed method?
- c. What is the total number of roll units and the total enrolled value for those properties valued by the Inyo County computed method?
- d. None of the above.

	<u>How Many</u>	<u>1986-87 Total Enrolled Value</u>
a. Fair Market	<u>190</u>	<u>\$ 53,430,846</u>
b. Mono County Computed Method	<u>3,038</u>	<u>\$332,367,969</u>
c. Inyo County Computed Method	<u>54</u>	<u>\$ 25,372,755</u>
d. None of the above	<u>189</u>	<u>\$ 2,846,710</u>

9. It is the Board's position that the Phillips Factor does not apply when valuing taxable improvements owned by government but located outside their boundaries. These taxable improvements should be valued according to their particular nature:

- a. Original improvements, taxable when acquired, are taxable at the lesser of their current full cash value as defined in Section 110 of their full cash value as defined in Section 110.1 of the Revenue and Taxation Code.

- b. Replacement improvements built before March 1, 1954 are taxable at the lesser of their current full cash value as defined in Section 110 or at their full cash value as defined in Section 110.1.
- c. Replacement improvements built on or after March 1, 1954 are taxable at the lesser of their current full cash value as defined in Section 110, their full cash value as defined in Section 110.1 or the highest full value ever used for the taxation of the improvements that have been replaced. For purposes of this calculation, the full value for any year prior to 1967 shall be conclusively presumed to be 4 times the assessed value for that year.

Please enter the total number of roll units and the total enrolled values for any above described improvements located in your county.

	<u>How Many</u>	<u>Total Assessed Value 1986/87</u>
a. Original improvements	<u>310</u>	<u>\$69,089,521</u>
b. Replacement improvements built prior to March 1, 1954	<u>266</u>	<u>\$89,928,470</u>
c. Replacement improvements built after March 1, 1954	<u>4</u>	<u>\$ 309,108</u>
d. Combination of (a), (b), or (c) improvements. (Note combination details.)	<u>28</u>	<u>\$ 884,763</u>

10. In reference to questions 8 and 9 above, was:

- a. The lower value for land always enrolled?

Yes 32 No 0 N/A 12

If not, what was the reason?

Base year factor only.

- b. The lower value for improvements always enrolled?

Yes 26 No 1 N/A 12 No Answer 13

If not, what was the reason?

Record not on file to check; base year factor only.

11. Do any of the aforementioned properties in your county have taxable possessory interest assessments (include leasebacks)?

Yes 8 No 28 N/A 8 No Answer 8 Not Available 1

If yes, then answer the following questions below: what property type; how many (roll units); and what is the total 1986-87 possessory interest assessment value of each property type? Refer to question 1 for property type.

<u>Property Type</u>	<u>How Many</u>	<u>Total 1986-87 P.I. Assessment Value</u>
<u>a</u>	<u>28</u>	<u>\$ 21,043,162</u>
<u>b</u>	<u>3</u>	<u>\$ 6,564,128</u>
<u>c</u>	<u>2</u>	<u>\$ 1,517,710</u>
<u>d</u>	<u>161</u>	<u>\$623,916,116</u>

Note: One hundred thirty-nine of the items and almost all of the value in category d are associated with possessory interest assessments at the San Francisco airport located in San Mateo County.

12. If any of those properties mentioned in (11) above are public employee retirement system-owned properties with taxable possessory interests, are they valued in accordance with letter to assessors 83/03?

Yes 6 No 3 Not Available 1 No Answer 11

13. Of those aforementioned Section 11 properties that are cogeneration properties, what are the primary sources of power used (please list actual numbers of percent of total of various power sources such as water, wind, oil fired steam, gas fired steam, etc.).

N/A 30 No Answer 20 Not Available 1

14. Are there any Section 11 properties in your county which have changed status in the 1986-87 assessment year because of a boundary change resulting in the property being, for the first time, located either outside or inside the owning entity's boundaries?

Yes 9 No 32 N/A 4 No Answer 5

If yes, how many (roll units) changed to within the entity's boundaries? 190

How many (roll units) changed to outside the entity's boundaries? 32

15. Are there Section 11 properties in your county that have been acquired by local public entities that were assessed under the restrictions of the Williamson Act at the time of acquisition? (Report for 1986-87 assessment year only.)

Yes 5 No 36 N/A 4 No Answer 5

If yes, how are there properties now being assessed?

a. According to Article XIII, Section 11 of the State Constitution.

Yes 5

b. According to the restrictions of the Williamson Act.

Yes 2 No 2 No Answer 1

c. Other, explain.

We (the county assessor) enroll the lower of Section 11 or Williamson Act; the Williamson Act contract would still be in effect and we would value that way.

16. If there are Section 11 properties in your county that are outside the owning entity's boundaries and are privately leased so as to qualify as assessable possessory interests, please answer the following questions:

a. Are there any above-described properties that are exempt from taxation because they qualify for a welfare exemption?

Yes 2 No 16 None 17 N/A 4 No Answer 14  
Not Available 1

b. If yes, then answer the following questions in the space provided below based on property types (a, b, c, d) as previously described in question number 1: How many total roll units; who are the properties owned by; who is the lessee.

<u>Property Type</u>	<u>How Many</u>
<u>a</u>	<u>0</u>
<u>b</u>	<u>0</u>
<u>c</u>	<u>0</u>
<u>d</u>	<u>44</u>

17. What methods do you use to discover Section 11 properties (including possessory interests) from one year to the next (please prioritize from most used to least used method)?

Assessors responded as follows:

Recorded documents; utility company reporting; canvas of geographic area; public notices; public agencies are sent a request for all lessees for possible possessory interests; rely on notification from entity; board of supervisors meeting minutes; tenant list from PERS; no systemic review for possessory interests on Section 11 property.

18. Do all public entities readily provide you with adequate information to assess their property in your county that is subject to a possessory interest assessment?

Yes 34 No 9 N/A 1 No Answer 7

If no, then which entities fail to cooperate with your request for information?

Air bases; city government; Bureau of Indian Affairs; Tribal Council; county fair; U.S. Navy; harbor districts; irrigation districts, hospitals.

19. Are there any properties in your county that are owned by public retirement systems that are:

Taxable	Yes <u>5</u>	No <u>18</u>
Nontaxable	Yes <u>1</u>	No <u>19</u>
	N/A <u>6</u>	No Answer <u>18</u>
	Not Available <u>3</u>	

If nontaxable, why?

Owned by Cal-PERS.

If yes, how many roll items? What are the property types? What are the names of the owners? What is the total assessment for these properties on the 1986-87 roll?

Taxable

<u>How Many</u>	<u>Property Type</u>	<u>Owner's Name</u>	<u>Total 1986-87 Assessment Value</u>
1	Drug Store	PERS	\$ 2,057,626
2	Shopping Center	Ventura Co. Emp.	\$ 1,722,291
1	Office	Marin Co. Emp.	\$ 3,516,358
1	Shopping Center	PERS	\$14,942,868
1	College Dorm.	Board of Ret.	\$ 6,031,769

20. Do you assess the personal property of any of the properties listed in (19) above?

Yes 4 No 11 N/A 25 No Answer 10

If no, why?

Because there is no personal property that we know of in the realm of public retirement system properties.

If yes, what is the total personal property assessment for 1986-87? \$426,038

21. Not applicable - cogeneration properties.
22. Not applicable - cogeneration properties.
23. Not applicable - cogeneration properties.
24. Not applicable - cogeneration properties.
25. Not applicable - cogeneration properties.
26. Not applicable - cogeneration properties.
27. Not applicable - cogeneration properties.
28. Not applicable - cogeneration properties.
29. Are there any properties in your county that might relate to this survey but have not been accounted for in this questionnaire?

Yes 5      No 29      N/A 1      No Answer 13

If yes, then please describe:

Possessory interest value in non-Section 11 public employment retirement systems; PERS purchase Safeway Store and then leased back to them, valued in accordance with SBE letter 83/03; Parducci Winery Ltd., largely owned by Teachers Management Investors (Orange County Teachers Retirement System).

CALIFORNIA CONSTITUTIONAL PROVISIONS

ARTICLE XIII

Section 3. Exempt property. The following are exempt from property taxation:

- (a) Property owned by the State.
- (b) Property owned by a local government, except as otherwise provided in Section 11(a).
- (c) Bonds issued by the State or a local government in the State.
- (d) Property used for libraries and museums that are free and open to the public and property used exclusively for public schools, community colleges, state colleges, and state universities.
- (e) Buildings, land, equipment, and securities used exclusively for educational purposes by a nonprofit institution of higher education.
- (f) Buildings, land on which they are situated, and equipment used exclusively for religious worship.
- (g) Property used or held exclusively for the permanent deposit of human dead or the care and maintenance of the property or the dead, except when used or held for profit. This property is also exempt from special assessment.
- (h) Growing crops.
- (i) Fruit and nut trees until 4 years after the season in which they were planted in orchard form and grape vines until 3 years after the season in which they were planted in vineyard form.
- (j) Immature forest trees planted on lands not previously bearing merchantable timber or planted or of natural growth on lands from which the merchantable original growth timber stand to the extend of 70 percent of all trees over 16 inches in diameter has been removed. Forest trees or timber shall be considered mature at such time after 40 years from the time of planting or removal of the original timber when so declared by a majority vote of a board consisting of a representative from the State Board of Forestry, a representative from the State Board of Equalization, and the assessor of the county in which the trees are located.

The Legislature may supersede the foregoing provisions with an alternative system or systems of taxing or exempting forest trees or timber, including a taxation system not based on property valuation. Any alternative system or systems shall provide for exemption of unharvested immature trees, shall encourage the continued use of timberlands for the production

of trees for timber products, and shall provide for restricting the use of timberland to the production of timber products and compatible uses with provisions for taxation of timberland based on the restrictions. Nothing in this paragraph shall be construed to exclude timberland from the provisions of Section 8 of this article.

(k) \$7,000 of the full value of a dwelling, as defined by the Legislature, when occupied by an owner as his principal residence, unless the dwelling is receiving another real property exemption. The Legislature may increase this exemption and may deny it if the owner received State or local aid to pay taxes either in whole or in part, and either directly or indirectly, on the dwelling.

No increase in this exemption above the amount of \$7,000 shall be effective for any fiscal year unless the Legislature increases the rate of State taxes in an amount sufficient to provide the subventions required by Section 25.

If the Legislature increases the homeowners' property tax exemption, it shall provide increases in benefits to qualified renters, as defined by law, comparable to the average increase in benefits to homeowners, as calculated by the Legislature.

(l) Vessels of more than 50 tons burden in this State and engaged in the transportation of freight or passengers.

(m) Household furnishings and personal effects not held or used in connection with a trade, profession, or business.

(n) Any debt secured by land.

(o) Property in the amount of \$1,000 of a claimant who--

(1) is serving in or has served in and has been discharged under honorable conditions from service in the United States Army, Navy, Air Force, Marine Corps, Coast Guard, or Revenue Marine (Revenue Cutter) Service; and --

(2) served either

(i) in time of war, or

(ii) in time of peace in a campaign or expedition for which a medal has been issued by Congress, or

(iii) in time of peace and because of a service-connected disability was released from active duty; and--

(3) resides in the State on the current lien date; and--

(4) resided in the State either

(i) on November 3, 1964, or

(ii) at the time of entry into one of the branches of the armed forces named in paragraph (1) of this subsection.

An unmarried person who owns property valued at \$5,000 or more, or a married person, who, together with the spouse, owns property valued at \$10,000 or more, is ineligible for this exemption.

If the claimant is married and does not own property eligible for the full amount of the exemption, property of the spouse shall be eligible for the unused balance of the exemption.

(p) Property in the amount of \$1,000 of a claimant who--

(1) is the unmarried spouse of a deceased veteran who met the service requirement stated in paragraphs (1) and (2) of subsection 3(o), and

(2) does not own property in excess of \$10,000, and

(3) is a resident of the State on the current lien date, and either

(i) resided in the State on November 3, 1964, or

(ii) is the unmarried spouse of a deceased veteran who met the residency requirement stated in paragraph 4 of subsection 3(o).

(q) Property in the amount of \$1,000 of a claimant who--

(1) is the parent of a deceased veteran who met the service requirement stated in paragraphs (1) and (2) of subsection 3(o), and

(2) receives a pension because of the veteran's service, and

(3) is a resident of the State on the current lien date, and either

(i) resided in the State on November 3, 1964, or

(ii) is the parent of a deceased veteran who met the residency requirement stated in paragraph (4) of subsection 3(o).

Either parent of a deceased veteran may claim this exemption.

An unmarried person who owns property valued at \$5,000 or more, or a married person, who, together with the spouse, owns property valued at \$10,000 or more, is ineligible for this exemption.

(r) No individual residing in the State on the effective date of this amendment who would have been eligible for the exemption provided by the previous section 1 1/4 of this article had it not been repealed shall lose eligibility for the exemption as a result of this amendment.

Section 11. Lands owned by local government that are outside their boundaries.

(a) Lands owned by 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 (a) they were assessed for taxation to the local government in Inyo County as of the 1966 lien date, or in Mono County as of the 1967 lien date, whether or not the assessment was valid when made, or (b) they were acquired by the local government subsequent to the lien date and were assessed to a prior owner as of that lien date and each lien date thereafter, 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 are taxable when acquired.

(b) Taxable land belonging to a local government and located in Inyo County shall be assessed in any year subsequent to 1968 at the place where it was assessed as of the 1966 lien date and in an amount derived by multiplying its 1966 assessed value by the ratio of the statewide per capita assessed value of land as of the last lien date prior to the current lien date to \$766, using civilian population only. Taxable land belonging to a local government and located in Mono County shall be assessed in any year subsequent to 1968 at the place where it was assessed as of the 1967 lien date and in an amount determined by the preceding formula except that the 1967 lien date, the 1967 assessed value, and the figure \$856 shall be used in the formula. Taxable land belonging to a local government and located outside of Inyo and Mono Counties shall be assessed at the place where located and in an amount that does not exceed the lower of (1) its fair market value times the prevailing percentage of fair market value at which other lands are assessed and (2) a figure derived in the manner specified in this section for land located in Mono County.

If land acquired by a local government after the lien date of the base year specified in this Section was assessed in the base year as part of a larger parcel, the assessed value of the part in the base year shall be that fraction of the assessed value of the larger parcel that the area of the part is of the area of the larger parcel.

If a local government divests itself of ownership of land without water rights and this land was assessed in Inyo County as of the 1966 lien date or in Mono County as of the 1967 lien date, the investment shall not diminish the quantity of water rights assessable and taxable at the place where assessed as of that lien date.

(c) In the event the Legislature changes the prevailing percentage of fair market value at which land is assessed for taxation, there shall be used in the computations required by Section 11(b) of this Article, for the first year for which the new percentage is applicable, in lieu of the statewide per capita assessed value of land as of the last lien date prior to the current lien date, the statewide per capita assessed value of land on the prior lien date times the ratio of the new prevailing percentage of fair market value to the previous prevailing percentage.

(d) If, after March 1954, a taxable improvement is replaced while owned by and in possession of a local government, the replacement improvement shall be assessed, as long as it is owned by a local government, as other improvements are except that the assessed value

shall not exceed the product of (1) the percentage at which privately owned improvements are assessed times (2) the highest full value ever used for taxation of the improvement that has been replaced. For purposes of this calculation, the full value for any year prior to 1967 shall be conclusively presumed to be four times the assessed value in that year.

(e) No tax, charge, assessment, or levy of any character, other than those taxes authorized by Section 11(a) to 11(d), inclusive, of this Article, shall be imposed upon one local government by another local government that is based or calculated upon the consumption or use of water outside the boundaries of the government imposing it.

(f) Any taxable interest of any character, other than a lease for agricultural purposes and an interest of a local government, in any land owned by a local government that is subject to taxation pursuant to Section 11(a) of this Article shall be taxed in the same manner as other taxable interests. The aggregate value of all the interests subject to taxation pursuant to Section 11(a), however, shall not exceed the value of all interests in the land less the taxable value of the interest of any local government ascertained as provided in Section 11(a) to 11(e), inclusive, of this Article.

(g) Any assessment made pursuant to Section 11(a) to 11(d), inclusive, of this Article shall be subject to review, equalization, and adjustment by the State Board of Equalization, but an adjustment shall conform to the provisions of these Sections.

REVENUE AND TAXATION CODE PROVISIONS

Section 51. Adjustments to base year values. For purposes of subdivision (b) of Section 2 of Article XIII A of the California Constitution for each lien date after the lien date in which the base year value is determined pursuant to Section 110.1, the taxable value of real property shall be the lesser of:

(a) Its base year value, compounded annually since the base year by an inflation factor, which shall be determined as follows:

(1) For any assessment year commencing prior to January 1, 1985, the inflation factor shall be the percentage change in the cost of living, as defined in Section 2212.

(2) For any assessment year commencing after January 1, 1985, the inflation factor shall be the percentage change from December of the prior fiscal year to December of the current fiscal year in the California Consumer Price Index for all items, as determined by the California Department of Industrial Relations; provided, that the percentage increase for any assessment year determined pursuant to paragraph (1) or (2) shall not exceed 2 percent of the prior year's value.

(b) Its full cash value, as defined in Section 110, as of the lien date, taking into account reductions in value due to damage, destruction, depreciation, obsolescence, removal of property, or other factors causing a decline in value.

(c) If the property was damaged or destroyed by disaster, misfortune, or calamity and the board of supervisors of the county in which the property is located has not adopted an ordinance pursuant to Section 170, or removed by voluntary action by the taxpayer, the sum of (1) the lesser of its base year value of land determined under subdivision (a) or full cash value of land determined pursuant to subdivision (b), plus (2) the lesser of its base year value of improvements determined under subdivision (a) or the full cash value of improvements determined pursuant to subdivision (b), which shall then become the base year value until such property is restored, repaired, or reconstructed or other provisions of law require establishment of a new base year value.

(d) If the property was damaged or destroyed by disaster, misfortune or calamity and the board of supervisors in the county in which the property is located has adopted an ordinance pursuant to Section 170, its assessed value as computed pursuant to Section 170.

(e) For purposes of subdivisions (a) and (b), "real property" means that appraisal unit which persons in the marketplace commonly buy and sell as a unit, or which are normally valued separately.

(f) Nothing in this section shall be construed to require the assessor to make an annual reappraisal of all assessable property.

Section 52. Valuation of restricted property.

(a) Notwithstanding any other provision of this division, property which is enforceably restricted pursuant to Section 8 of Article XIII of the California Constitution shall be valued for property tax purposes pursuant to Article 1.5 (commencing with Section 421) and Article 1.9 (commencing with Section 439) of Chapter 3 of Part 2.

(b) Notwithstanding any other provision of this division, property restricted to timberland use pursuant to subdivision (j) of Section 3 of Article XIII of the California Constitution shall be valued for property tax purposes pursuant to Article 1.7 (commencing with Section 431) of Chapter 3 of Part 2.

(c) Notwithstanding any other provision of this division, property subject to valuation as a golf course pursuant to Section 10 of Article XIII of the California Constitution shall be valued for property tax purposes in accordance with such section.

(d) Notwithstanding the provisions of this division, property subject to valuation pursuant to Section 11 of Article XIII of the California Constitution shall be valued for property tax purposes in accordance with such section.

Section 75.14. Supplemental assessment; limitation. A supplemental assessment pursuant to this chapter shall not be made for any property not subject to the assessment limitations of Article XIII A of the California Constitution. All property subject to the assessment limitations of Article XIII A of the California Constitution shall be subject to the provisions of this chapter, except as otherwise provided in this article.

Section 110. "Full cash value." Except as is otherwise provided in Section 110.1, "full cash value" or "fair market value" means the amount of cash or its equivalent which property would bring if exposed for sale in the open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other and both with knowledge of all of the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions upon those uses and purposes.

Section 110.1. "Full cash value" under Article XIII A. (a) For purposes of subdivision (a) of Section 2 of Article XIII A of the California Constitution, "full cash value" of real property, including possessory interests in real property, means the fair market value as determined pursuant to Section 110 for either of the following:

(1) The 1975 lien date.

(2) For property which is purchased, is newly constructed, or changes ownership after the 1975 lien date, either of the following:

(A) The date on which a purchase or change in ownership occurs.

(B) The date on which new construction is completed, and if uncompleted, on the lien date.

(b) The value determined under subdivision (a) shall be known as the base year value for the property.

(c) Notwithstanding Section 405.5, for property which was not purchased or newly constructed or has not changed ownership after the 1975 lien date, if the value as shown on the 1975-76 roll is not its 1975 lien date base year value and if the value of that property had not been determined pursuant to a periodic reappraisal under Section 405.5 for the 1975-76 assessment roll, a new 1975 lien date base year value shall be determined at any time until June 30, 1980, and placed on the roll being prepared for the current year; provided, however, that for any county over four million in population the board of supervisors may adopt a resolution granting the assessor of that county until June 30, 1981, the authority to determine those values. Regardless of the foregoing restrictions, property that escaped taxation for 1975 and was not merely underassessed for that year, shall be added to the roll in any year in which the escape is discovered at its 1975 base year value indexed to reflect inflation as provided in subdivision (f). In determining the new base year value for that property the assessor shall use only those factors and indicia of fair market value actually utilized in appraisals made pursuant to Section 405.5 for the 1975 lien date. The new base year values shall be consistent with the values established by reappraisal for the 1975 lien date of comparable properties which were reappraised pursuant to Section 405.5 for the fiscal year. In the event that determination is made, no escape assessment may be levied and the newly determined "full cash value" shall be placed on the roll for the current year only; provided, however, the preceding shall not prohibit a determination which is made prior to June 30 of a fiscal year from being reflected on the assessment roll for the current fiscal year.

(d) If the value of any real property as shown on the 1975-76 roll was determined pursuant to a periodic appraisal under Section 405.5, that value shall be the 1975 lien date base year value of the property.

(e) As used in subdivisions (c) and (d), a parcel of property shall be presumed to have been appraised for the 1975-76 fiscal year if the assessor's determination of the value of the property for the 1975-76 fiscal year differed from the value used for purposes of computing the 1974-75 fiscal year tax liability for the property, but the assessor may rebut that presumption by evidence that, notwithstanding the difference in value, that parcel was not appraised pursuant to Section 405.5 for the 1975-76 fiscal year.

(f) For each lien date after the lien date in which the full cash value is determined pursuant to this section, the full cash value of real property, including possessory interests in real property, shall be adjusted by an inflation factor, which shall be determined as provided in subdivision (a) of Section 51.

Section 135. "Assessed value," "tax rate." (a) "Assessed value" shall mean 25 percent of full value to and including the 1980-81 fiscal year, and shall mean 100 percent of full value for the 1981-82 fiscal year and fiscal years thereafter.

(b) "Tax rate" shall mean a rate based on a 25 percent assessment ratio and expressed as dollars, or fractions thereof, for each one hundred dollars (\$100) of assessed valuation to and including the 1980-81 fiscal year, and shall mean a rate expressed as a percentage of full value for the 1981-82 fiscal year and fiscal years thereafter.

(c) Whenever this code requires comparison of assessed values, tax rates or property tax revenues for different years, the assessment ratios and tax rates shall be adjusted as necessary so that the comparisons are made on the same basis and the same amount of tax revenues would be produced or the same relative value of an exemption or subvention will be realized regardless of the method of expressing the tax rates or the assessment ratio utilized.

(d) For purposes of expressing tax rates on the same basis, a tax rate based on a 25 percent assessment ratio and expressed in dollars, or fractions thereof, for each one hundred dollars (\$100) of assessed value may be multiplied by a conversion factor of twenty-five hundredths of 1 percent to determine a rate comparable to a rate expressed as a percentage of full value; and, a rate expressed as a percentage of full value may be multiplied by a factor of 400 to determine a rate comparable to a rate expressed in dollars, or fractions thereof, for each one hundred dollars (\$100) of assessed value and based on a 25 percent assessment ratio.

Section 401.3. Assessment according to value on lien date. The assessor shall assess all property subject to general property taxation on the lien date as provided in Article XIII and XIII A of the Constitution and any legislative authorization thereunder.

Section 601. Preparation of roll. The assessor shall prepare an assessment roll, as directed by the board, in which shall be listed all property within the county which it is the assessor's duty of assess.

Section 608. Improvement. Improvements shall be assessed by the assessor by showing their value opposite the description of the parcel of land on which they are located, if they are assessed to the same assessee.

REFERENCED COURT CASES

- (1) Los Angeles v. Mono County, 51 Cal.2d 843.
- (2) Waterford Irrigation District v. County of Stanislaus, 102 Cal.App.2d 839.
- (3) Alpaugh Irrigation District v. County of Kern, 113 Cal.App.2d 286.
- (4) San Francisco v. Alameda County, 5 Cal.App.2d 243.
- (5) North Kern Water Storage District v. Kern County 179 Cal.App.2d 268.
- (6) Jurupa Ditch Co., Inc. v. County of San Bernardino 256 Cal.2d 35.
- (7) Sacramento Municipal Utility District v. County of El Dorado 5 Cal.App.3d 263.
- (8) Los Angeles Country Club v. Pope, 175 Cal.App.3d 278.
- (9) Turlock Irrigation District v. White, 186 Cal. 183.
- (10) Rock Creek Water District v. Calaveras County, 29 Cal.2d 7.

(916) 445-4982

December 7, 1982

TO COUNTY ASSESSORS:

TAXABLE GOVERNMENT-OWNED PROPERTY

We have re-examined our policy regarding the valuation of property owned by local government but located outside its boundaries. Such properties are subject to valuation under Section 11 of Article XIII of the Constitution. The problem arises when we consider the effect of Article XIII A on this type of property.

In the case of land, we are in agreement with the answer stated in question four, page two, of assessors' letter 79/187, dated October 19, 1979. This is stated as follows:

"Land

- (1) Located in Inyo County – apply the Phillips factor established by the Board to the 1966 assessed value.
- (2) Located in Mono County – apply the Phillips factor to the 1967 assessed value.
- (3) Located outside of Inyo and Mono Counties – use the lower of the current fair market value as defined in Section 110 of the Revenue and Taxation Code or the value determined by applying the Phillips factor to the 1967 assessed value."

In the case of land, Section 11(b) of Article XIII of the Constitution states:

"...Taxable land belonging to local government and located outside of Inyo and Mono Counties shall be assessed at the place where located and in an amount that does not exceed the lower of (1) its fair market value ... (2) a figure derived in a manner specified in this section for land located in Mono County."

This section clearly calls for the lower of current fair market value and the value determined by applying the Phillips factor to the 1967 assessed value.

In the case of improvements, however, nothing in the language of Section 11 specifically prescribes the valuation standard to be applied to improvements that either were taxable when acquired or are replacements for those that were taxable when acquired. Therefore, absent any such value standard, we must revert to the valuation standard applicable to all other real

property whose taxable value is not specifically restricted by Constitutional provisions; namely, to the valuation standard defined in Article XIII/A. Therefore, we conclude that Article XIII/A is to be considered in assessing improvements owned by local governments.

The second part of question four of assessor's letter 79/187 regarding the assessment of improvements that are taxable when acquired should read:

Improvements Taxable When Acquired

- (1) Original improvements, taxable when acquired, are taxable at the lesser of their current full cash value as defined in Section 110 or their full cash value as defined in Section 110.1 of the Revenue and Taxation Code.
- (2) Replacement improvements built before March 1, 1954 are taxable at the lesser of their current full cash value as defined in Section 110 or at their full cash value as defined in Section 110.1.
- (3) Replacement improvements built after March 1, 1954 are taxable at the lesser of their current full cash value as defined in Section 110, their full cash value as defined in Section 110.1 or the highest full value ever used for the taxation of the improvements that have been replaced. For purposes of this calculation, the full value for any year prior to 1967 shall be conclusively presumed to be 4 times the assessed value for that year.

The Phillips factor does not apply to improvements.

I hope that this information is helpful to you. If you have any questions, please call our Technical Services Unit (Real Property) at (916) 445-4982.

VW:wpc  
AL-06-1193A

GOVERNMENT CODE PROVISIONS

Section 7510. Investment of assets in real property; payment of fee for general governmental services. A public retirement system which has invested assets in real property and improvements thereon for business or residential purposes for the production of income, shall pay annually to the city or county, in whose jurisdiction the real property is located and has been removed from the secured roll, a fee for general governmental services equal to the difference between the amount that would have accrued as real property secured taxes and the amount of possessory interest unsecured taxes paid for that property. The governing bodies of local entities may adopt ordinances and regulations authorizing retirement systems to invest assets in real property subject to the foregoing requirements.

This section shall not apply to any retirement system which is established by a local governmental entity if that entity is presently authorized by statute or ordinance to invest retirement assets in real property.

History.--Added by Stats. 1982, Ch. 24, in effect January 1, 1983.

PROPERTY TAX RULES PROVISIONS

Rule 21. Possessory interest definitions.

Reference: Sections 107, 107.1, 107.4, Revenue and Taxation Code.

The following definitions govern the construction of the words in the rules pertaining to possessory interests.

(a) "Possessory interest" means an interest in real property which exists as a result of possession, exclusive use, or a right to possession or exclusive use of land and/or improvements unaccompanied by the ownership of a fee simple or life estate in the property. Such an interest may exist as the result of:

(1) A grant of a leasehold estate, an easement, a profit, a prendre, or any other legal or equitable interest of less than freehold, regardless of how the interest is identified in the document by which it was created, provided the grant confers a right of possession or exclusive use which is independent durables, and exclusive of rights held by others in the property;

(2) Actual possession by one intending to use the property to the exclusion of any other interfering use, irrespective of any semblance of actual title or right.

(b) "Taxable possessory interest" means a possessory interest in nontaxable publicly owned real property, as such property is defined in section 104 of the Revenue and Taxation Code, and in taxable publicly owned real property subject to the provisions of section 3(a), (b) and 11, Article XIII of the Constitution.

Excluded from the meaning of "taxable possessory interest" is any possessory interest in real property located within an area to which the United States has exclusive jurisdiction concerning taxation. Such areas are commonly referred to as federal enclaves.

(c) "Possession" means:

(1) Actual possession, constituting the occupation of land or improvements with the intent of excluding any occupation by others that interferes with the possessor's rights, or

(2) Constructive possession, which occurs when a person, although he is not in actual possession of land or improvements, has a right to possession and no person occupies the property in opposition to such right.

(d) "Possessor" means the party in possession or having exclusive use.

(e) "Exclusive use" means the enjoyment of a beneficial use of land or improvements, together with the ability to exclude from occupancy by means of legal process others who interfere with that enjoyment. Co-tenants may each make such use of land or improvements without impairing the other's right to use the property, as this constitutes but a single use jointly enjoyed. Exclusive use is not destroyed by one or more of the following:

(1) Multiple use by persons making different uses of the same property in such a manner that they do not prevent the enjoyment of co-existing rights held by others, as, for example, the development of mineral resources by one person and the enjoyment of recreational uses by others;

(2) Concurrent use when the extent of each party's use is limited by the other party's right to use the property at the same time, as, for example, when two or more parties each have the independent right to graze cattle on the same land;

(3) Alternating use when the duration of each party's use is limited, as, for example, the use of premises by a professional basketball team on certain days of each week and by a professional hockey team on certain other days;

(4) Persons lawfully passing over or taking things from the land;

(5) The existence of noninterfering easements, covenant rights, or servitudes in other persons or attached to other lands;

(6) Occasional trespassers.

(f) "Contract rent" means payments in money or in kind for the right to use real property as required by the terms of the possessory interest agreement. It includes royalty payments and other rights to share in production, the value that the public owner is expected to realize from improvements erected at the expense of the possessor which will remain when the possessory interest terminates, and any other form of compensation paid or payable for the right to occupy the property. It does not, however, include payments for services such as utilities and janitorial labor or for the use of property not subject to the possessory interest.

(g) "Economic rent" means the amount that would be paid in money or kind for the right to use real property if (1) the contract rent were currently negotiated under the conditions which exist in a free and competitive market and (2) the fee owner paid property taxes on the value of the fee.

(h) "Extended or renewed" means the lengthening of the term of possession of an agreement by mutual consent or by the exercise of an option by either party to the agreement.

(i) "Created" includes (1) the addition of land or improvements not previously subject to the agreement and (2) the addition of valuable permitted uses not previously permitted.

History: Adopted January 6, 1971, effective February 18, 1971.

Amended December 17, 1975, effective January 25, 1976.

PROPERTY TAX RULES PROVISIONS

Rule 252. Content of assessment roll.

Reference: Sections 75.31, 109, 109.5, 109.6, 601, 602, 618, 619, 1612, 1614, 1646, 2152, 2188.2, 2190.2, 2601, Revenue and Taxation Code.

(a) Minimum contents of "machine-prepared" local rolls. If "machine-prepared" within the meaning of Revenue and Taxation Code Section 109.5, the local roll prepared by the assessor of each county shall contain at least the following:

- (1) The name of the county.
- (2) Either the calendar year in which the roll is prepared or the fiscal year for which the taxes are levied.
- (3) An explanation of abbreviations and legends appearing on the roll.
- (4) The parcel number or other legal description of each parcel of taxable land and each parcel for which an exemption is enrolled.
- (5) On the unsecured portion of the roll, a description or designation of the location of each taxable possessory interest, improvement, or personal property sufficient to identify the property, such as the number of the parcel on which located.
- (6) The name of the assessee, if known.
- (7) The latest mailing address of the assessee contained in the assessor's records. If the county auditor prepares a separate roll on which to extend taxes, however, the address need not be shown on the roll prepared by the assessor.
- (8) The separately stated assessed values of all land, improvements, and personal property subject to taxation at general property tax rates (or payments in lieu of property tax computed by applying general property tax rates to fixed or variable "assessed values"), and of any privately owned land, improvements, and personal property of a type that is exempt from taxation, but is subject to ad valorem special assessments when within a district levying such assessments. If real property is situated within a resource conservation district that is levying a special assessment, the assessed value of standing trees, timbers, and mineral rights must be separated from the land value.
- (9) The penalties imposed upon such assessments, in the form required by Section 261, Title 18 (Rule 261) of this code.

(10) The assessed value of any property that escaped assessment in a prior year, together with the notation required by Section 533 of the Revenue and Taxation Code.

(11) The exempt amount of any assessed values required by paragraph (a) (9) to be enrolled, with identifying legends or distinctive positions for amounts allowed pursuant to the inventory exemption, the homeowner's exemption, and any other reimbursable exemptions.

(12) The total net taxable value.

(13) In a separate section of the roll, the assessed value of any personal property for which tax revenues are subject to allocation in a manner different from that provided for general property tax revenues (e.g., general aircraft).

(14) On the secured roll, a cross-reference notation made pursuant to Section 2190.2 that is adjacent to the assessment of any taxable land when a possessory interest in such land or an improvement thereon is separately assessed to another owner pursuant to Section 2188.2 of the Revenue and Taxation Code.

(b) Exempt values not required to be enrolled. Parcel numbers or other legal descriptions of other exempt real property may be entered on the roll without values. Alternatively, such exempt real property may be listed with values shown in a separate column (e.g., the remarks column) or in the exemption column on lines that are coded in such manner as to preclude the addition of the values when the exemption column is totaled; the exempt values shall not be shown in land or improvement columns.

(c) Content of extended roll. The extended assessment roll prepared by the county auditor shall contain, in addition to all of the contents required by paragraph (a) preceding, at least the following:

(1) The address, if known, of the assessee.

(2) The tax-rate area number for each group if assessments are grouped by tax-rate area, and for each assessment if assessments are not so grouped.

(3) All tax and ad valorem special assessment extensions required by law.

(4) At the beginning of the roll, or at the beginning of each tax-rate area grouping on the roll, a list of all revenue districts levying taxes within each tax-rate area in the county.

(5) An identification of each tax-sold property as such, with the date of sale.

(d) Machine contents of local rolls not "machine-prepared."

(1) The local roll of each county utilizing a roll that is not "machine-prepared" within the meaning of Revenue and Taxation Code Section 109.5 shall have the contents specified in subdivisions (a) and (c) of this section.

(2) The secured assessments shall be arranged in ascending parcel number order within tax-rate area groupings, with unparcelled properties at the end of each tax-rate area group if there are both parcelled and unparcelled properties in the tax-rate area.

(e) Approval of roll forms.

(1) Whenever the local assessment roll is to be prepared in a form other than that previously approved by the board, the assessor shall submit to the board for approval in duplicate by March 1 the forms to be used for the succeeding fiscal year.

(2) Forms to be submitted include but are not necessarily limited to the following:

- A. Secured roll prepared by the assessor.
- B. Secured roll alphabetical index.
- C. Unsecured roll prepared by the assessor.
- D. Unsecured roll alphabetical index.
- E. Notice of assessment.
- F. Notice of supplemental assessment.

(3) When submitted for approval, each roll form listed in (2) shall be filled out with examples sufficient to illustrate its completed appearance, except that totals and summaries need not be shown.

History:      Adopted September 1, 1967, effective October 7, 1967.  
                 Amended November 20, 1968, effective November 21, 1968.  
                 Amended July 8, 1971, effective August 19, 1971.  
                 Amended July 31, 1973, effective September 6, 1973.  
                 Amended February 5, 1975, effective March 20, 1975.  
                 Amended September 11, 1985, effective December 15, 1985.