Jon V. Ellis
P. O. Box 6205
Arnold, CA 95223

April 17, 2014

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County-Assessed Properties Division
State Board of Equalization

Mr. Dean R. Kinnee, Chief
County-Assessed Properties Division
State Board of Equalization
450 N. Street
Sacramento, CA 94279-0064

Re: final draft of Assessors' Handbook Section 410

Dear Mr. Kinnee:

Thank you for your response to my January 19, 2014 letter relating to the assessment of construction in progress.

I believe it is an undisputed fact that construction in progress on the lien date is real property. I contend that construction in progress on the lien date is a subcategory of Article XIII A "newly constructed."[1]

Your April 9, 2014 response appears to apply the pre Article XIII A value method of taxation rather than the current post Article XIII A acquisition-value system of taxation.[2]

You stated "the statutes governing the assessment of construction in progress on post-1975 lien dates clearly provide for a year-by-year valuation at full cash value until the construction is completed." This appears to be at odds with Lynch v. State Bd. of Equalization, supra, 164 Cal. App. 3d 94, where the court determined:

> "We must also reject the arguments of the appellant assessors that annual reassessment is required for the entire interest."

As you know, new construction assessments are limited by RTC § 70 which provides:

> (a) "Newly constructed" and "new construction" means:
>
> (1) Any addition to real property, whether land or improvements, including fixtures, *since the last lien date*; [Emphasis added]

Reassessments are limited and restricted as prescribed by Article XIII A, Section 2 (b), RTC § 51 and Tax Rule 460 & 461. These laws can arguably be summarized by Rule 460 (b) (6):

> "TAXABLE VALUE. Taxable value means the base year full value adjusted for any given lien date as required by law or the full cash value for the same lien date, *whichever is less*." [Emphasis added]

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[1] RTC § 70

[2] See Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization (1978) 22 Cal. 3d 208, 236 [149 Cal.Rptr. 239, 583 P.2d 1281]

Full value is defined by RTC § 110.5 which provides:

> "Full value" means fair market value, full cash value, or such other value standard as is prescribed by the Constitution or in this code under the authorization of the Constitution.

Your analysis of RTC § 110.1 did not address RTC § 50 mandatory provisions which provides:

> *"For purposes of base year values as determined by Section 110.1,* ... The value of new construction in progress on the lien date shall be entered on the roll as of the lien date." [Emphasis added]

Your response cites RTC § 110.1 but appears to overlook:

> "(2) For property which is purchased, is newly constructed, or changes ownership *after the 1975 lien date,"* [Emphasis added]

It appears your interpretation of RTC § 110.1 is ambiguous and creates an absurdity of the property taxation statutory scheme culminating with construction in progress on the lien date being exempt from Article XIII A.[3] Notwithstanding, there are no laws governing non-base year value to be enrolled or for their appeals which denies a tax payer of due process.[4]

The proposed AHB 410 states:

> "Partially completed new construction does not acquire a base year value. Instead, new construction in progress on any lien date is assessed at its market value on that date and on each successive lien date until it is completed. Upon completion, the entire portion of the property which is newly constructed is reappraised at its market value and acquires a base year value."

The above proposed standard is in conflict with Phillips Petroleum Co. v. County of Lake 15 Cal. App.4th 180 15 Cal. App. 4th 180 [18 Cal. Rptr. 2d 765].[5]

The Phillips court stated the following:

> "Article XIII of the state Constitution provides that "[a]ll property is taxable" and shall be assessed at the same percentage of whatever value standard is officially adopted. "The value to which the percentage is applied, whether it be the fair market value or not, shall be known for property tax purposes as the full value." (Art. XIII, § 1, subd. (a), italics added.)
>
> Article XIII A which, as noted earlier, was added by voters in 1978, provides for a maximum 1 percent tax rate upon the full cash value of real property, except where necessary to pay prior indebtedness approved by the voters. (Art. XIII A, § 1.) Section 2, subdivision (a), the so-called "rollback" provision, states in relevant part: "The full cash value means the county assessor's valuation of real property as shown on the 1975-1976 tax bill under 'full cash value' or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment. All real property not already assessed up to the 1975-1976

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[3] There is no language in California Constitution that construction in progress on the lien date is exempt from Article XIII A.

[4] See County of Orange v. Orange County Assessment Appeals Bd. (1993) 13 Cal.App.4th 524

[5] The court based its decision upon a geothermal steam project real property as ongoing "new construction."

full cash value may be reassessed to reflect that valuation." Subdivision (b), meanwhile, provides: "The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction, or may be reduced to reflect substantial damage, destruction or other factors causing a decline in value." (Italics added.)

Revenue and Taxation Code section 50 provides: "For purposes of base year values as determined by Section 110.1, values determined for property [15 Cal. App. 4th 189] which is purchased or changes ownership after the 1975 lien date shall be entered on the roll for the lien date next succeeding the date of the purchase or change in ownership. Values determined after the 1975 lien date for property which is newly constructed shall be entered on the roll for the lien date next succeeding the date of completion of the new construction. The value of new construction in progress on the lien date shall be entered on the roll as of the lien date."

Revenue and Taxation Code section 110.1 states in relevant part: "(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 ... 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." (Rev. & Tax. Code, § 110.1.)

Based on the pertinent law, the owner of real property has a right to have a base year value assigned to his or her property. For property which is purchased, newly constructed or changes ownership after 1975, the base year value is established as of the date of that event." [Emphasis added]

The court then stated the following:

"The County bases its approach on Revenue and Taxation Code sections 70 and 71 and rule 463. These provisions define the terms "newly constructed" and "new construction" for purposes of article XIII A. Specifically, the County points to subdivision (a) of section 70 which defines new construction as "(1) [a]ny addition to real property, whether land or improvements (including fixtures), since the last lien date; and [¶] (2) [a]ny alteration of land or of any improvement (including fixtures) since the last lien date which constitutes a major rehabilitation thereof or which converts the property to a different use." (Rev. & Tax. Code, § 70, subds. (a)(1) & (a)(2).) The County additionally points to subdivision (d) of rule 463 which provides, "New construction in progress on the lien date shall be appraised at its full value on such date and each lien date thereafter until the date of completion, at which time the entire portion of property

which is newly constructed shall be reappraised at its full value[;]" and subdivision (e) of that regulation which states in pertinent part, "For purposes of this section, the date of completion is the date the property or portion thereof is available for use."

Viewing a geothermal steam project as ongoing "new construction" during the exploration and development phase, the County argues that "the Assessor is required to reappraise a geothermal project including the geothermal interests therein, on each lien date while its construction is in progress. [¶] A geothermal steam project is not 'available for use' and, therefore, not completed until all of the elements thereof have been constructed and integrated so that electricity may be generated. Under Rule 463, [subdivision] (d), the geothermal steam project must be reappraised when so completed to establish a base year value. [¶] Once a base year value has been established, the value of the geothermal interests must be adjusted in accordance with the concepts of Rule 468 [citation]." **[15 Cal. App. 4th 194]**

Based on its interpretation of these provisions, the County reappraised Unit 13 (including the steam reserves) annually at full market value during the 1978-1981 tax period. Not until the first lien date following the commencement of commercial operations of the plant (i.e., the lien date for the 1981-1982 tax year), did the assessor establish a base year value for Unit 13.

We find the County's method of valuation inherently inconsistent and violative of article XIII A and the regulations promulgated by the State Board for the implementation of that statute." [Emphasis added]

The court went on to reaffirm Lynch v. State Bd. of Equalization, supra, 164 Cal. App. 3d 94:

"So long as California had a current-value system of property taxation it was unnecessary to define for taxation purposes the nature of the taxable interest, but when the voters enacted an acquisition system of taxation it became necessary to define more clearly the taxable interest..."

"Additions to the proved reserves constitute additions to the property right, but to permit reassessment of the existing proved reserve when it becomes more valuable due to inflation would violate the terms of article XIII A."

"In passing Proposition 13, the voters of California intended to place significant restraints on the assessment and taxing powers of state and local governments. (County of Sonoma v. State Bd. of Equalization (1987) 195 Cal. App. 3d 982, 986 [241 Cal.Rptr. 215]; Lynch v. State Bd. of Equalization, supra, 164 Cal. App. 3d at p. 113.) These restraints were presumably meant to benefit commercial and business properties as well as homeowners. (Lynch v. State Bd. of Equalization, supra, at p. 113.)"

I object to any attempt to deny my public comments as part of the discussions in the approval process of AHB 410.

Under the circumstances, I believe it is appropriate if not an urgency to issue a letter to assessor's declaring construction in progress on the lien date is a base year value.[6]

Sincerely,

Jon V. Ellis

cc: Senator George Runner (Ret.)
Member, State Board of Equalization

[6] GC § 11342.2. Whenever by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.
GC § 11342.600. 11342.600. "Regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.