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January 31, 2014

Honorable Paul Dictos, CPA
 Fresno County Assessor-Recorder
 2281 Tulare Street, Room 201
 Fresno, California 93715

**Re: *Valuation of Enforceably Restricted Properties under Rev. & Tax. Code, §423.3
 Assignment No. 13-140***

Dear Mr. Dictos:

This is in response to your letter requesting clarification of the valuation of enforceably restricted Williamson Act properties under Revenue and Taxation Code¹ section 423.3 in light of guidance given in Letter to Assessors (LTA) 1987/056 (8/3/1987).

California Constitution, article XIII, section 8 states, in part:

To promote the conservation, preservation and continued existence of open space lands, the Legislature may define open space land and shall provide that when this land is enforceably restricted, in a manner specified by the Legislature, to recreation, enjoyment of scenic beauty, use or conservation of natural resources, or production of food or fiber, it shall be valued for property tax purposes only on a basis that is consistent with its restrictions and uses.

Consistent with this express constitutional grant of authority, in 1965 the Legislature enacted the California Land Conservation Act, Government Code sections 51200-51297.4, commonly known as the Williamson Act, which authorizes cities and counties to enter into contracts with landowners to restrict the use of agricultural lands for a minimum of 10 years in exchange for favorable property tax treatment. (Property Tax Annotation² 210.0005 (OAG June 5, 1984).)

Section 423 of the Revenue and Taxation Code (hereafter Section 423) details how to value enforceably restricted open-space land and generally provides that the county assessor shall value these lands by the capitalization of income method as described in subdivisions (a) – (c) of Section 423³ (Section 423 Value). Additionally, subdivision (d) of Section 423 (hereafter Section 423(d)) provides that the current Section 423 Value cannot exceed the lesser of the

¹ All further statutory references are to the Revenue and Taxation Code unless otherwise specified.

² Property Tax Annotations are summaries of the conclusions reached in selected legal rulings of Board legal counsel published in the Board's Property Tax Law Guide and on the Board's website. See Cal. Code Regs., tit. 18, § 5700 for more information regarding annotations.

³ Valuation under Section 423 is often referred to as the property's "restricted value", but for purposes of this letter we refer to it as the "Section 423 Value" since Section 423.3 allows for the possibility of *further* limiting the Section 423 Value.

valuation of the property under section 110 of the Revenue and Taxation Code (Section 110 Value or the fair market value), or the valuation of the property under section 110.1 (Section 110.1 Value or the factored base year value).

Further, section 423.3 of the Revenue and Taxation Code (hereafter Section 423.3) provides that any city or county may allow land subject to an enforceable restriction under the Williamson Act or a migratory waterfowl habitat contract to be assessed in accordance with one or more of the following:

(a) Land specified in subdivision (a) of Section 16142 of the Government Code [prime agricultural land or land devoted to open-space uses of statewide significance] shall be assessed at the value determined as provided in Section 423, but not to exceed a uniformly applied percentage of its base year value pursuant to Section 110.1, adjusted to reflect the percentage change in the cost of living not to exceed 2 percent per year. *In no event shall that percentage be less than 70 percent.*

(b) Prime commercial rangeland shall be assessed at the value determined as provided in Section 423, but not to exceed a uniformly applied percentage of its base year value pursuant to Section 110.1, adjusted to reflect the percentage change in the cost of living not to exceed 2 percent per year. *In no event shall that percentage be less than 80 percent.* [¶ . . . ¶]

(c) Land specified in subdivision (b) of Section 16142 of the Government Code shall be assessed at the value determined as provided in Section 423, but not to exceed a uniformly applied percentage of its base year value pursuant to Section 110.1, adjusted to reflect the percentage change in the cost of living not to exceed 2 percent per year. *In no event shall that percentage be less than 90 percent.*

(d) Waterfowl habitat shall be assessed at the value determined as provided in Section 423.7 but not to exceed a uniformly applied percentage of its base year value pursuant to Section 110.1, adjusted to reflect the percentage change in the cost of living not to exceed 2 percent per year. *In no event shall that percentage be less than 90 percent.*

(Emphases added.)

In general, the allowed percentages of factored base year value under Section 423.3 are based upon the desirability or quality of the land for agricultural purposes – the higher the quality of the land the lower the permitted percentage of factored base year value. Lands of the highest agricultural quality may be assessed down to (but not lower than) 70 percent of their factored base year value; lands in the next category may be assessed down to (but not lower than) 80 percent of their factored base year value; and land in the final two categories may be assessed down to (but not lower than) 90 percent of their factored base year value. As noted, the county is not required to provide the maximum benefit allowed under Section 423.3. For example, the county may decide to assess lands in the first category at 75 percent of factored base year value rather than at the maximum benefit allowed of 70 percent of factored base year value.

Thus, Section 423.3 allows counties the option of further limiting the values of restricted properties, by allowing but not requiring cities or counties to assess the four land types in Section 423.3 at a percentage of the property's factored base year value under Section 110.1 rather than at its full factored base year value under Section 110.1. Read together, Sections 423(d) and 423.3 provide for a value comparison requiring the assessor to value enforceably restricted open-space land at the lower of the property's Section 423 Value (capitalized income value), its Section 110 Value (fair market value), its Section 110.1 Value (factored base year value), or its value as calculated under Section 423.3. (Assessors' Handbook Section 521, *Assessment of Agricultural and Open-Space Properties* (October 2003) (AH 521), p. II-2.)

Question 4 in LTA 1987/056 provides that "Section 423.3 defines four categories of land restricted by the Williamson Act and allows a city or county to limit assessments of land in each category to a value no higher than a given percentage of the property's factored base-year value as if unrestricted. The categories and their limiting percentages are as follows . . ." (Emphasis added.) You state that while Section 423.3 "sets a floor for the assessed valuation of the various land types at 70%, 80%, 90% and 90%" of the property's factored base year value, LTA 1987/056 "appears to directly contradict Section 423.3", presumably because the LTA states that counties may "limit assessments . . . to a value no higher than a given percentage of the property's factored base year value" and refers to the percentages in Section 423.3 as "limiting percentages."⁴ (Emphasis added.)

However, the statutory language of Section 423.3 and the guidelines provided in LTA 1987/056 are consistent. The LTA's reference to "limiting percentages" is to the specific percentage limitations written in Section 423.3. The LTA's statement that *values* cannot be higher than a given percentage of the factored base year value refers to the maximum value that can be assessed pursuant to Section 423.3. Taken together, these statements mean that the Section 423.3 percentage chosen may not be lower than the percentages statutorily prescribed. Once the percentage is chosen, however, the Section 423.3 assessed value of the property may not exceed the value obtained by multiplying that chosen percentage by the factored base year value.

In summary, if a county has adopted the provisions of Section 423.3, the assessor shall not value restricted properties *below* 70 percent, 80 percent, or 90 percent of the factored base year value. Whatever percentage is chosen, however, when multiplied by the factored base year value, serves as the maximum value that may be assessed on the property.

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

Sincerely,

/s/ Susan Galbraith

Susan Galbraith
Tax Counsel

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⁴ We note that this language is also found at AH 521, pages II-6 and II-55.