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November 26, 2012

**Re: *Property Appraisal: California Constitution and Property Tax Rule 2
Assignment No.: 12-261***

Dear Mr. _____ :

This is in response to your letter inquiring as to whether a county assessor properly determined the value, for property tax purposes, of real property you purchased (the Property). As explained below, the assessor's value determination was proper if, pursuant to Rule¹ 2, subdivision (b), he is able to demonstrate by a preponderance of the evidence that the fair market value of the Property was more than the price you paid for the Property.

Facts

According to your letter, you purchased a new home from a private party pursuant to an arms-length negotiation in July 2011. The purchase price was based on, and the same as, the appraisal of an independent appraiser that you hired. Seven months after your purchase, the County Assessor (Assessor) assessed the property for \$75,000 more than the sales price.

You state that you asked the Assessor why he did not comply with California Constitution article XIII A, section 2, subdivision (a), which states that fair market value is the appraised value at the time of purchase, and the Assessor responded that he assessed the property under the value concept as stated in Property Tax Rule 2.

Law and Analysis

Section 1 of article XIII of the California Constitution states that:

Unless otherwise provided by this Constitution or the laws of the United States,

¹ "Property Tax Rule" or "Rule" references are to sections of title 18 of the California Code of Regulations.

(a) All property is taxable and shall be assessed at the same percentage of *fair market value*.² When a value standard other than fair market value is prescribed by this Constitution or by statute authorized by this Constitution, the same percentage shall be applied to determine the assessed value. 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*. (Emphasis added.)

Section 2, subdivision (a) of article XIII A of the California Constitution states, in relevant part, that:

The "full cash value" means the county assessor's valuation of real property as shown on the 1975-76 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.

The Legislature has expressed the concept of market value in sections 110 and 110.1 of the Revenue and Taxation Code,³ which were enacted to implement article XIII A of the Constitution. Section 110, subdivision (a) states:

Except as is otherwise provided in Section 110.1, "full cash value" or "fair market value" means the amount of cash or its equivalent that 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 the buyer and seller have knowledge of all 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.

Subdivision (a) of section 110.1 defines "full cash value" as follows:

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.

² Market value for property tax purposes is referred to in the code and rules as "fair market value," "full cash value," "cash value," "full value," or "actual value." These terms are used synonymously. (AH 501, Basic Appraisal (January 2002), p. 8, fn. 10.)

³ All further statutory references are to the California Revenue and Taxation Code, unless otherwise specified.

Subdivision (b) of section 110 sets forth what is commonly referred to as the "purchase price presumption." It states the following:

For purposes of determining the "full cash value" or "fair market value" of real property, other than possessory interests, being appraised upon a purchase, "full cash value" or "fair market value" is the purchase price paid in the transaction *unless it is established by a preponderance of the evidence that the real property would not have transferred for that purchase price in an open market transaction.* The purchase price shall, however, be rebuttably presumed to be the "full cash value" or "fair market value" if the terms of the transaction were negotiated at arms length between a knowledgeable transferor and transferee neither of which could take advantage of the exigencies of the other. "Purchase price," as used in this section, means the total consideration provided by the purchaser or on the purchaser's behalf, valued in money, whether paid in money or otherwise. (Emphasis added.)

A fact is established by a "preponderance of the evidence" when the factfinder is satisfied that a fact is more likely true than not true, and believes that the existence of a fact is more probable than its nonexistence. (1 Witkin, Cal. Evidence (4th ed. 2012) Burden of Proof and Presumptions, § 36.)

Property Tax Rule 2 interprets the above statutory definitions of market value. Subdivision (a) of that Rule states as follows:

In addition to the meaning ascribed to them in the Revenue and Taxation Code, the words "full value," "full cash value," "cash value," "actual value," and "fair market value" mean the price at which a property, if exposed for sale in the open market with a reasonable time for the seller to find a purchaser, would transfer for cash or its equivalent under prevailing market conditions between parties who have knowledge of the uses to which the property may be put, both seeking to maximize their gains and neither being in a position to take advantage of the exigencies of the other.

Subdivision (b) of Rule 2 states the following:

When valuing real property (as described in paragraph (a)) as the result of a change in ownership (as defined in Revenue and Taxation Code, Section 60, et seq.) for consideration, it shall be rebuttably presumed that the consideration valued in money, whether paid in money or otherwise, is the full cash value of the property. The presumption shall shift the burden of proving value by a preponderance of the evidence to the party seeking to overcome the presumption. The presumption may be rebutted by evidence that the full cash value of the property is significantly more or less than the total cash equivalent of the consideration paid for the property. A significant deviation means a deviation of more than 5% of the total consideration.

Pursuant to the authorities laid about above, the issue here, then, is not whether the Assessor is, as you framed in your letter, required to comply with the Constitution rather than Rule 2. Nor is the issue whether your private "appraisal" of the property should prevail over the Assessor's "assessment" of the property, because for purposes here, those terms are synonymous.⁴ Rather, the issue is whether the Assessor properly applied Rule 2, which interprets the above authorities, to his assessment of the full cash value of the subject Property.

To that end, subdivision (b) of section 110 establishes a rebuttable *presumption* that "full cash value" or "fair market value," as defined in subdivision (a) of section 110, is the actual purchase price of the property, if the terms were negotiated under specified conditions reflecting an "open market transaction." (See also Letters to Assessors (LTA) 89/06, January 20, 1989.)⁵ Accordingly, an assessor may value property at other than the purchase price if he has a preponderance of evidence that the fair market value is otherwise.

The case of *Dennis v. County of Santa Clara* (1989) 215 Cal.App.3d 1019 presented a similar situation to the one at hand. In that case, the plaintiff had purchased real property in San Jose in an undisputedly "arms length transaction." Approximately one year after the purchase, the assessor revalued the property for property tax purposes at \$334,600, which was an amount substantially higher than the purchase price of \$215,418. While the assessment appeals board found in favor of the assessor, the trial court set aside the assessment appeals board decision, finding instead that the full value of the property was the amount of the purchase price. On appeal, the court of appeal reversed the trial court and directed that judgment be entered in favor of the assessor. In doing so, the appellate court assumed that the sale of property was indeed an arm's length, open market transaction, and then concluded that "the purchase price may play a significant role in the reassessment of property upon its sale but that the purchase price is only the beginning and not necessarily the end of the inquiry." (*Id.* at p. 1027.)

In analyzing the case law on determining the fair market value of property, the court noted that even open market transactions may involve factors that skew the purchase price and make it an unreliable indicator of fair market value. "For example, the property may be of a kind seldom exchanged. Or the transaction may be complex, comprising several components in one package. Or the purchase price may be influenced by tax consequences and other business considerations that affect the value ascribed to the property by the particular buyer and seller." (*Id.* at p. 1028.) Thus, the court concluded that "an arm's length, open market sale for a price that is not influenced by an exigency of either buyer or seller permits the assessor to presume fair market value from the purchase price, but the presumption may nevertheless be rebutted by

⁴ "Appraisal" is the process of estimating the value of specific property at a stated time and place (AH 501 at p. 1), and "assessment" is to place a value on property for the purpose of property taxation (*Id.* at p. 126), but the terms are often used interchangeably. For purposes of this case, both terms refer to the fact that both your private appraiser and the County Assessor rendered a value judgment of the subject property in monetary terms. Further, regardless of whether the property had already been appraised by a private appraiser at the time of purchase, the Assessor must fulfill his assessment duty under Revenue and Taxation Code, section 405. (See also Property Tax Annotation 290.0021 (August 18, 1983).)

⁵ We also note that pursuant to subdivision (c) of section 110, this rebuttable presumption shall not apply if a taxpayer fails to provide certain information about the conditions of the transaction. (See also LTA 89/06, January 20, 1989.)

evidence that the fair market value of the property is otherwise." (*Id.* at p. 1028; see also Property Tax Annotation⁶ (Annotation) 460.0031 (January 11, 1999, revised March 26, 1999.))

In this case, the price you paid, supported by an appraisal, is presumed to be the fair market value of the property.⁷ However, the assessor is not required to value the property at the purchase price if he has a preponderance of evidence that the fair market value is not the purchase price. The final determination of the fair market value of your property, of course, should you choose to contest the Assessor's value,⁸ is to be made by an assessment appeals board. (Property Tax Rule 324.) In making such determination, the board is bound by the definition of "full cash value" in section 2, subdivision (a) of article XIII A of the California Constitution. (Annotation 460.0001 (October 14, 1981).) Furthermore, "[t]he board is not required to choose between the opinions of value promoted by the parties to the appeal, but shall make its own determination of value based upon the evidence properly admitted at the hearing." (Property Tax Rule 324, subd. (b).) Thus, your purchase price will be presumed to be the fair market value of the property, but that presumption may be rebutted if the Assessor proves by a preponderance of the evidence that the fair market value of the property is otherwise.

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

Sincerely,

/s/ Sonya S. Yim

Sonya S. Yim
Tax Counsel III (Specialist)

SSY/mcb

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cc:

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⁶ Property tax annotations are summaries of the conclusions reached in selected legal rulings of State Board of Equalization counsel published in the State Board of Equalization's Property Tax Law Guide. (See Cal. Code Regs., tit. 18, § 5700 for more information regarding annotations.)

⁷ For purposes of this opinion, we assume, as you have stated, that the purchase price was negotiated in an arms-length, open market transaction.

⁸ If you disagree with the determination of the county assessor, you may file an appeal with the county assessment appeals board. (See Rev. & Tax. Code, §§ 80 and 1603 and Rule 305.)