

State of California

550.0020

Board of Equalization
Legal Division

MEMORANDUM

To: Mr. Richard Johnson
Chief Assessment Standards Division MIC: 64

Date: January 9, 1997

From: Robert W. Lambert
Senior tax Counsel

Subject: The Valuation of Possessory Interest in Section 11 Lands

This is in response to your memorandum of April 2, 1996, and what you request are opinion on the proper methodology to be employed and valuing possessory interests ("PIs") in taxable government-owned, or "Section 11," lands. Specifically, you are seeking clarification in order to address Los Angeles County's claim that the Boards methodology for assessing PI's, in Section 11 lands is inappropriate and results in double assessment.

Lands owned by local government that are outside its boundaries are excepted from the local government property tax exemption--and, thus, are subject to tax--if such lands were taxable when acquired by the local government. (Cal Const. art. XIII and 11 (a).) Nevertheless, limits are placed on the potential increases in the assessed value of such Section 11 lands. In general, assessment increases in Section 11 lands are permitted only in the ratio that the per capita value of state land has increased over 1967 value. (Cal Const. art. XIII and 11 (b); See Volume 1, *Taxing California Property*, Ehrmann and Flavin and 6.11.)

More specifically, for extraterritorial land located outside of Mono and Inyo Counties, section 11 sets forth two alternative limitations and requires the assessed value not exceed the lower of the two limitations. (*City and County of San Francisco v. County of San Mateo et al.* (1995) 10, Cal. 4th 554, 560), In that same decision, the California Supreme Court held that article XIII A ("Proposition 13") and section 11 do not conflict in that each only sets an upper limit on valuation for tax purposes. Based upon this reasoning, the California Supreme Court held that the real property valuation limitations of proposition 13 are applicable to taxable real property owned by local governments.

Turning to assessment of possessory interests in taxable government-owned property, subdivision (f) of section 11 of article XIII provides that:

"Any taxable interests. . . in any land owned by local government that is subject to taxation pursuant to Section 11 (a). . . shall be taxed in the same manner as other taxable interest. The aggregate value of all the interests subject to taxation pursuant to Section 11 (a), however, shall not exceed the value of all interest in the land less the taxable value of the interest of any local government ascertained as provided in section 11 (a) to 11(e)."

I agree with the views expressed in the material from Los Angeles County Assessor's office that, as literally written, the second sentence of section 11 (f) does not make sense. One can only conclude that, where "11 (a) appears in that sentence, "11 (f) must have been intended. This presumption also seems to be present, although unstated, in the Board legal staff's memorandum dated April 27, 1979. (C 4/27/79.) Nevertheless, the Board staff and the Los Angeles County Assessor's office disagree as to the proper interpretation of the second sentence of section 11 (f). This disagreement is best illustrated by the following hypothetical examples given in the above-referenced memorandum from the Board's legal staff.

"Assume that a local government owns property outside its boundaries. The current market value is \$100,000, the full value of the assessment to the local government is 60,000, as determined by article XIII,, Section 11, and a private party operates a marina (possessory interest) on the property."

In that memorandum, the Boards legal staff concludes that section 11 (f) is merely a restatement of formal article XIII, section 1.68. Accordingly, Board precedent under that former section is drawn upon to find that:

"Returning to the situation which you pose then, property having a current market value of \$100,000 and a taxable value to a local government of 60,000 would have 40,000 available for assessment of the possessory interest of the private property operating the marina. Thus, we concur in your conclusion that the possessory interest should be enrolled up to 40,000: a 25,000 possessory interest should be in rolled for 25,000 a 40,000 possessory interest should be enrolled 40,000, and a possessory interest in excess of 40,000 should be enrolled for 40,000."

Based upon the submitted material, however, I believe that the Los Angeles Assessor's office would say that only the 40,000 less the "present value of the local government agency's reversionary interest in the land" would be available with regard to the assessment of the "private property operating the marina." This position appears to be based upon a contention that the Board's valuation methodology in some way imposes and unreasonable double taxation" on the reversionary interest. Nonetheless, this submitted materials from Los Angeles County fail to present either a good explanation for the need for the subtraction of the computed "present value of reversion," nor any legal or appraisal authority upon which such an adjustment can be predicted. Nor do these submitted materials clearly explain how the possessory interest can be said to be subject to double taxation if the assessment of the possessory interest never exceeds its fair market value.

In the absence of any persuasive authority to the contrary, in my opinion the long-standing administrative interpretation expressed in the Board's letter dated April 27, 1979, is preferable to the approaches discussed in the material from Los Angeles County. In other words, as long as the aggregate of "section 11 value" plus "PI value" does not exceed the fair market value of the property as a whole--and the assessment of the PI never exceeds the PI's fair market value--then either section 11 (f) nor the constitutional prohibition against "double taxation" would appear to have been violated.¹ Thus, I recommended that you continue in your present interpretation of section 11 (f).

Robert Lambert

RWL:ba

Cc. Jim Speed MIC: 63

Mr. Dean Kinnee MIC: 64

Mr. Larry Augusta

Mr. Ken McManigal

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¹ I reviewed the California authorities as to "double taxation" in the property tax context and could find on case authority that involves similar facts.

Mr. Charles G. Knudsen

April 27, 1979

Ken McManigal

Possessory Interest in Taxable Government-Owned Property
California Constitution Article XIII, Section 11

This is in response to your April 4, 1979, memorandum wherein you ask how Article XIII, Section 11 should be interpreted with respect to the assessment of possessory interest in taxable government--owned property:

Assume that a local government owns property outside its boundaries. The current market value is 100,000, the full value of the assessment to the local government is 60,000, as determined by Article XIII, Section 11, and a private property operates a marina (possessory interest) on the property.

Article XIII, Section 11 was added by amendment adopted November 5, 1974, to replace former Article XIII, Section 1.60 - 1.69. Per the analysis by the Legislative Analyst, Proposition 8 on the Ballot revised by Article XIII to delete obsolete provisions, to clarify wording, to eliminate excess verbiage, and to establish a logical order for the Article's provision. Thus, Article XIII, Section 1.68, which provided that:

Any interest of any character or kind whatsoever, other than a lease for agricultural purposes, owned, claimed, possessed or controlled by any person other than a county, city and county or municipal corporation in any land owned by any county, city and county or municipal corporation, which lands are subject to taxation pursuant to section 1 of this article, shall be taxable to such person except to the extent that such person or such interest is expressly exempt from taxation by the provisions of this Constitution. Such interest shall be taxed to such person in proportion to the value thereof to be ascertained as provided in Section 1 of this article, provided, however, that such value shall not exceed the aggregate values ascertained of all interest in said lands reduced by the value of this interest in said lands owned by any county, city and county or municipal corporation ascertained as provided in Section 1.60 to 1.67, inclusive, of this article."

was superseded by Article XIII, Section 11 (f), which provided that:

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

In our opinion, Section 11 (f) is merely a restatement of former Article XIII, Section 1.68, not any substantive change thereof. To the same effect is the report of the Constitutional Revision Task Force, appendix to Assembly Daily Journal of May 16, 1974 page 13264.

The board had occasion to consider the application of former Article XIII, Section 1.68 in 1971 in the Application of Monterey County Flood Control and Water Conservation District for review, equalization and adjustments of a certain assessments on land imposed by the County of San Luis Obispo, copy attached, at pages 7 through 12. Upon analyzing the section in light of Article XIII, Section 1 and 1.60 -1.69 and with the law relating to the taxation of possessory interests, the Board concluded at pages 11 and 12:

“Against this background it is clear that the object of Section 1.68 is to insure that a privately-owned leasehold in taxable public lands does not escape taxation by means of the arbitrary ceiling on the assessment of the fee to a public entity under Sections 1.60 to 1.67. Since the fee interest includes both the revisionary and possessory interest and is assessable to the public owner, no such escape can occur when the value of the fee does not exceed this ceiling. As noted in De Luz homes Inc. v. San Diego County, supra, as between the reversioner and the possessor, actual payment of the tax is a matter of contract. When the full assessed value of the fee exceeds the maximum assessment permissible under Section 1.60 to 1.68, however, the excess value constitutes an exemption accruing to the owning public agency. In this event, if the leasehold interest in such land is owed by a privately lessee, an additional and

separate assessment of the possessory interest should be made pursuant to Section 1.68 at the lower of (1) the full assessable value (25% of market value) of the possessory interest or (2) an amount representing the difference between the full assessable value (25% of market value) of the fee and the amount of the actual assessment against the public owner as computed under Sections 1.60 through 1.67, inclusive. Without departing from the formula assessment of the public owner, the separate assessment of the leasehold interest in this manner assures that the full value of the possessory interest will be subjected to taxation. Since the aggregate amount of the two assessments can never exceed the full assessed value of the fee interest in the land, the possibility of either the reversionary or the possessory interest being taxed twice, or at a higher proportion of value than other property in the county, is eliminated."

We would similarly conclude as to the application of Article XIII section 11 (f).

Returning to the situation which you pose then, property having a current market value of \$100,000 and a taxable value to the local government of 60,000 would have 40,000 available for assessment of the possessory interest of the private party operating the marina. Thus, we concur in your conclusion that the possessory interest should be enrolled up to 40,000: a 25,000 possessory interest should be enrolled for 25,000, a 40,000 possessory interest should be enrolled for 40,000 and a possessory interest in excess of 40,000 should be enrolled for 40,000.

JKM:fr
Attachment

cc: Mr. Dick Frank w/att.
San Luis Obispo County Assessor
Attn: Mr. Don Roland
Assistant Assessor

bc: Mr. Walter R. Senini
Mr. Verne Walton
Mr. Jean Mayor
Mr. Ray Mrotek
Legal section