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November 22, 1996

Honorable Dick Frank, Assessor
County Government Center, Rm 100
San Luis Obispo, CA 93408

ATTN: Ms. Barbara L. Edginton, Analyst

RE: Application of Cal. Con. Art. XIII, Section 11

Dear Mr. Frank:

In your letter of August 9, 1996 you posed several questions concerning the assessment of lands owned by local governments that are outside their boundaries. Prior to specific response, I would like to point out that this subject presents a dearth of information, primarily because there are few and mostly standard properties of this kind (see Assessment Practices Survey: A Report on Section 11 and PERS Properties 1990, SBE). Secondly, in the absence of statutory and judicial guidance we will revert to the underlying purpose of this constitutional provision which as stated in the original 1914 amendment, is to protect the assessing county from loss of revenue, *Pasenda v. County of Los Angeles*, 182 Cal. 171 (1920).

Your first question asked whether a recent purchase of this kind of property would be subject to a supplemental assessment? In the past you had excluded such purchases on the authority of Revenue and Taxation Code, Section 75.14 but based on the Supreme Court decision in *San Francisco v. San Mateo County*, 10 Cal. 4th 554 (1995), you ask whether a supplemental is now proper? Unfortunately, we think not. The Supreme Court held that the two constitutional provisions, Section A and Section 11, were not in conflict and in so doing looked only at the wording of those provisions and the intent of the voters. It did not look at or construe any of the legislative enactments that apply the respective provisions. Supplemental assessments are based on

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legislative enactments under Section A; to make them applicable to Section 11 properties would necessitated a specific statute and in addition, the revision of not only code section 75.14 as you noted, but also code section 52(d) which directs specific valuation under Section 11 of the Constitution.

Next, you related the situation wherein a parcel was part of the highway system in 1967 and thus exempt with no enrolled value. It was abandoned by the State in 1977 and added to the roll with a taxable owner. In 1982 the parcel was acquired by a local government as a land owned outside its boundaries. If you follow the specified Section 11 methodology and multiply the Phillip's factor to a zero (exempt) value, you arrive at no current value. In the alternative you suggest that the appraiser should first establish the fair market value for 1967 by the best available means and then apply the Phillip's factor to that value. [For historical purposes it should be noted that the Phillip's factor is named for Phillip Watson, the Assessor of Los Angeles County, whose office developed and proposed its use.] Your alternative would be correct because the language of Section 11, subdivision (a) requires that the lands must be taxable when acquired, which this example clearly was, and as noted earlier, the purpose of the provision is to protect the county from revenue loss so that the reconstruction of the 1967 value allows you to accomplish that purpose in a reasonable manner.

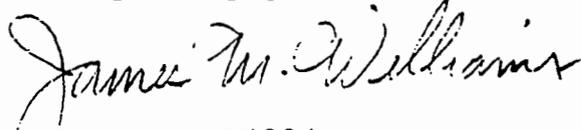
Your final example presents the situation wherein the lands were acquired as early as the 1920's but for some reason (probably confusion) were never enrolled and only recently discovered by self-audit. The *Pasadena* case indicates that the original constitutional amendment of 1914 provided that the lands outside the boundaries of the local government should be assessed and taxed in the **same** manner as all other property within the county. So the odds are that these lands were also taxable when acquired and have escaped higher taxes prior to 1967. Once more we would agree that your reconstructed 1967 assessment will reasonably conform to the constitutional requirement.

Finally, we also agree with your intent to reconstruct the Proposition 13, 1975 base year and factor it forward to compare with the Phillip's value and the current fair market value and to enroll the lowest of the three in accord with the *San Francisco* case. Of course, we are confident that you will then timely

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inform these local governments that if they dispute your reconstructed values, they have the right of appeal to the State Board of Equalization.

Very truly yours,



James M. Williams
Tax Counsel

JMW:jd

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cc: Mr. Jim Speed, MIC:63
Mr. Dick Johnson, MIC:64