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February 3, 1982

Special Franchises as
Taxable Possessory Interests

In your letter of October 26, 1981, to Mr. Glenn Rigby, Assistant Chief Counsel, you inquire as to the "exclusive use" element of a taxable possessory interest in relation to franchised cable television systems and utility franchises granted under the Act of 1937.

Initially, I would invite your attention to Property Tax Rule 21, subsection (e) (1) which states in pertinent part that exclusive use is not destroyed by a multiple use making different uses of the same property in such a manner that they do not prevent the enjoyment of co-existing rights held by others. An applied example in your situation would consist of a conduit, running under a publicly-dedicated street right-of-way, wherein was located a gas main, a water main, a telephone cable, a television cable and an electric power cable. Each individual line has exclusive use of its own space even though they all occupy the same conduit. This principle was most recently illustrated in Freeman v. County of Fresno, 126 Cal. App. 3d 459 (Dec. 4, 1981) where the court held that the owner of amusement machines placed for private profit in public facilities, including an airport terminal, had the right of exclusive use of the space occupied by the machine and thus held a taxable possessory interest.

In reference to cable television franchises you have correctly pointed out the appropriate section of AH-568 that directs the assessment of those systems as taxable possessory interests. In support thereof, I am attaching a copy of the appeals board brief that was submitted by the Marin County on behalf of his Assessor on the assessment of Redacted. These materials represent the current legal view of the Board's staff on the assessment of cable TV.

In regard to other special franchise, I am including our staff opinion of January 7, 1982, that points out that our Board assesses the possessory interests of utilities under Revenue and Taxation Code, section 23154, but this does not include cable TV systems. California Constitution, Article XIII, section 19, lists pipelines, canals, and water companies lying within two or more counties and railroads, telegraph, telephone, gas and electric companies as being subject to assessment by the State Board of Equalization. Our assessments included all the taxable possessory interests that are created by the special franchises held by these companies. Only water companies that are completely within Kern County would be subject to your possessory interest-franchise assessment.

In conclusion, let me repeat that special franchises do create taxable possessory interests. Cable television is assessed at the county level and utilities are assessed by this Board and allocated to the various counties for taxation. If you have any further technical questions on our assessment, please feel free to directly contact our Valuation Division.

Very Truly Yours,

James M. Williams
Tax Counsel