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January 6, 1983

DOUGLAS D. BELL
Executive Secretary

No. 83/03

TO COUNTY ASSESSORS:

REAL PROPERTY ACQUIRED BY PUBLIC RETIREMENT SYSTEMS

We have recently had several inquiries into the status of public retirement systems. Of the 58 counties in California, 23 of them either have no retirement systems or have established their own local employees' retirement systems, while the remainder of the counties are members of Public Employees Retirement System (State of California); in addition, various cities and special districts throughout California have established retirement systems for their employees. Several of these systems have purchased real property with their retirement assets for investment purposes. The purpose of this letter is to recommend how such real property should be treated for property tax purposes.

A public retirement system is usually an agency of the government whose employees contribute earnings to the system's fund. Accordingly, real property acquired by such a system should be treated the same as real property acquired by any other government entity. If the property acquired is located within the boundaries of the retirement system (i.e. city or county limits), it will become exempt from taxation pursuant to Article XIII, Section 3(b) of the California Constitution. If the property is located outside the local government boundaries, there shall be an assessment pursuant to Article XIII, Section 11.

Section 11 Requirements

Article XIII, Section 11 requires that land located outside Inyo or Mono counties and taxable when acquired by a local government must be assessed at the lower of its fair market value or a figure equal to the 1967 assessed value multiplied by the Phillips factor. This factor, published annually by this Board, is obtained by first dividing the current year's total assessed value of land only by the July 1 civilian population count, then dividing this result by \$856 for the 1967 factor.

Improvements that were taxable when acquired, and replacement improvements built before March 1, 1954 remain taxable at the lower of their current fair market value as defined in Section 110 of the Revenue and Taxation Code or their full cash value as defined in Section 110.1.

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Replacement improvements built after March 1, 1954 must be assessed at the lowest of the Section 110 value, the Section 110.1 value, or the highest assessed value ever used for the replaced improvements. All improvements built after acquisition which are not replacements of pre-existing taxable improvements are exempt from taxation.

It is unlikely that any local retirement system would acquire land located outside its boundaries and subsequently construct improvements thereon. The instances we have seen of purchases of real property by local public retirement systems involved only improved commercial properties that were already generating income. Such acquisitions fulfill the investment objectives of the local retirement system.

The Creation of Taxable Possessory Interests

The acquisition of real property by a tax exempt public agency opens the possibility that there will be taxable possessory interests in the property. The private possession of the exclusive right to the beneficial use of publicly owned real property constitutes a taxable possessory interest. Examples of such interests include the occupancy of office space in a commercial building purchased for investment purposes by a public retirement system.

We feel that the date of valuation of pre-existing rights of possession should be the date the real property was acquired by the public retirement system, for it was at this time that such possessory interests became taxable. Section 61(b) of the Revenue and Taxation Code clearly states in part that a change in ownership occurs upon the creation of a taxable possessory interest in tax exempt real property for any term. In this case, the fee simple rights in the real property had previously been assessed to the owner of record; however, when the fee became exempt because a tax exempt public agency acquired the property, the right of exclusive occupancy held by the tenant/lessee became a taxable possessory interest. Therefore, such pre-existing possessory interests should be appraised as of the date they became taxable, i.e. the date of the transfer of the real property to the public retirement system; notwithstanding that such interests may have been created prior to this transfer.

Of course, taxable possessory interests in real property can be created after the acquisition of the property by the public retirement system. For instance, if a retirement system, as lessor of a recently purchased office building, executes new leases or renews existing leases of space in the building to private parties, such actions constitute changes in ownership. The taxable possessory interests so created must therefore be valued as of the date of the lease or date of renewal.

Effects of AB 662

AB 662, which was chaptered as Chapter 24 of the Statutes of 1982 in February of 1982 (see Legislative Summary No. 3, dated March 12, 1982), added Section 7510 to the Government Code. This section requires public retirement systems to reimburse cities or counties for revenue loss resulting from their acquisition of real property in an amount equal to the difference between the taxes that would have accrued and the taxes due for possessory interests in the acquired property. If the public retirement system acquired property within its boundaries--for example, if P.E.R.S. or the State Teachers Retirement System purchased real property anywhere in California--this property would become exempt from taxation, except for private possessory interests resulting from the acquisition by a public agency (e.g., lessees in an office building).

We are of the opinion that the taxes that would have accrued should be based on the current market value of the property at the time of its acquisition by the public retirement system. The in-lieu fee is the difference between the taxes based on this current market value and the possessory interest taxes. In essence, the county is thereby guaranteed that the acquisition of real property within the county by a public retirement system will not cause a decline in tax revenue below the level that would have prevailed had the acquiring person or entity been taxable.

If the public retirement system acquires real property outside its boundaries, the property will not be removed from the local secured assessment roll, but will instead become subject to the restricted valuation prescribed by Section 11. In this case, the retirement system pays no in-lieu fee to the city or county, since the real property acquired continues to be assessed. The intent of Article 13, Section 11 was to reduce the erosion of the local tax base due to the acquisition of real property by tax-exempt public agencies, where the real property so acquired was located outside its boundaries. AB 662 acts similarly by guaranteeing that when a public retirement system acquires real property located within its boundaries, there will be no loss of tax revenues to the local government.

The following examples illustrate how Section 7510 applies to purchases of real property by public retirement systems.

Example 1: Public Employees' Retirement System (State of California) purchases an existing office building and land in your county. The factored base year value of the property is \$300,000. P.E.R.S. paid \$450,000 for the property, which agrees with your appraisal of the current market value of the property as of the date of transfer. Your county correctly exempts this property from taxation under Article XIII, Section 3(b). There are private tenants in this building whose

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taxable possessory interests are valued at \$50,000. What would P.E.R.S.'s liability be?

\$450,000 - \$50,000 = \$400,000 x Tax Rate = in-lieu fee to be paid by P.E.R.S.

Example 2: A county employees' retirement system purchases commercial real property in your county, which is outside its (the retirement system's) boundaries. This property, for which the retirement system paid \$500,000, had a base year value of \$300,000 prior to the purchase. Private taxable possessory interests in this property amount to \$40,000. Under Article XIII, Section 11, the land value is determined to be \$117,902 (1967 assessed value of \$10,000 x 1982 Phillips factor 11.79023). The market value of the improvements pursuant to Section 110 is estimated to be \$400,000 and their factored base year value is \$250,000. What would be the liability of the local retirement system?

\$117,902	Land
<u>250,000</u>	Improvements
\$367,902	Total assessed to local retirement system

In addition, there would be possessory interest assessments totalling \$40,000 assessed to the holders of such interests. The aggregate total of the Section 11 value and the possessory interest values may not exceed the current market value of the fee simple interest in real property, pursuant to subdivision (f) of Article XIII, Section 11.

Section 7510 of the Government Code does not apply to local public retirement systems that are already authorized by statute or ordinance to invest in real property. This exclusion directly affects several county employees' retirement systems that already hold real estate investments. We advise you to investigate your own county retirement system, if your county does not belong to P.E.R.S., to determine whether it is authorized to invest retirement assets in real estate.

If you have any questions concerning either the property tax status of public retirement systems or AB 662 (copy enclosed), please direct them to our Technical Services Section.

Sincerely,



Verne Walton, Chief
Assessment Standards Division

VW:bjb
Enclosure
AL-04A-0631A



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Executive Director

August 9, 1991

William Fjellbo, Esq.
Deputy County Counsel
Madera County Government Center
209 West Yosemite Avenue
Madera, CA 93637

Re: Proper Treatment of Leased
Property Upon Change of Ownership

Dear Mr. Fjellbo:

This is in response to your letter to me of May 30, 1991 in which you ask whether the opinion expressed in our letter of September 4, 1985 to the Madera County Counsel has changed in view of the following events which have occurred since that time.

Since 1985 an Assessment District was formed and a substantial amount of funds raised through a bond issue by that District. Those funds were used to purchase the master leases from the two private companies who previously held them. The County of Madera is now the holder of those master leases. The funds were also used to purchase lease extensions for all of the sublessees so that at this time each sublease well expire at the same time the master lease expires. The master lease will expire in the year 2013. As part of this transaction, each sub-lessee acquired a right of first refusal to purchase his or her property.

The question remains whether (and if so, how) a change of sublessee can be treated as a change in ownership of the improvements located on the leased property.

In our letter of September 4, 1985 we concluded that neither the sublessee nor PG&E (the lessor) was the owner of the improvements on the leased land. The improvements, therefore, necessarily must have been owned by the two lessees subject to estates for years held by the sublessees. Thus, when Madera County purchased the master leases from the two private

William Fjellbo, Esq.

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companies that previously held them, Madera County became the owner of the improvements subject to estates for years held by the sublessees.

These improvements, therefore, would be exempt from taxation pursuant to Article XIII, section 3(b) of the California Constitution. The acquisition of the fee interest in these improvements by Madera County, however, results in the creation of taxable possessory interest in the improvements pursuant to Revenue and Taxation Code section 107 and Property Tax Rule 21 subdivisions (a) and (b). See also Board Letter to Assessors No. 83/103 dated January 6, 1983 (copy attached) for a discussion of the creation of taxable possessory interests where leased property is purchased for investment purposes by a public retirement system.

Revenue and Taxation Code section 61(b) provides that subject to exceptions not here present, the creation, renewal, sublease or assignment of a taxable possessory interest in tax exempt real property for any term is a change in ownership. See also Property Tax Rule 462(e).

Accordingly, a change of sublessee (presumably by assignment) would constitute a change in ownership of the sublessee's possessory interest in the improvements under section 61(b) and Property Tax Rule 462(e).

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,



Eric F. Eisenlauer
Tax Counsel

EFE:ta

3461D

Enclosure

cc: Mr. John W. Hagerty

Mr. Verne Walton