

Memorandum

To: Mr. Benjamin Tang
Acting Chief
County Assessed Properties Division (MIC:64)

Date: June 11, 2015

From: Richard Moon
Tax Counsel IV
Tax and Fee Programs Division (MIC:82)

Subject: **Property Tax Issues Arising from Dissolution of Redevelopment Agencies
Assignment No. 15-178**

This is in response to your request to clarify how properties leased from redevelopment agencies (RDAs) that are transferred to "successor agencies" as a result of Assembly Bill No. 26 (2011-2012 1st Ex. Sess.) (AB1X 26) should be assessed.¹ As implemented, AB1X 26 added Health & Safety Code² sections 34170 et seq., and provides for the dissolution of RDAs and community development agencies in existence, and designates that "successor agencies" succeed to the ownership of the RDAs' projects. As you know, the California Supreme Court upheld AB1X 26 as a proper exercise of legislative power. (See *California Redevelopment Association v. Matosantos* (2011) 53 Cal.4th 231.)

Section 34172, subdivision (a)(1) provides that all RDAs and RDA components of community development agencies that were in existence on the effective date are dissolved and no longer exist as public bodies, corporate or politic. Section 34172, subdivision (b) provides that the former RDAs no longer have any authority to transact business or exercise their powers previously granted under the Community Redevelopment Law, sections 33000 et seq. (CRL). Thus, all RDAs were dissolved on February 1, 2012.³

Section 34171, subdivision (j) defines a "successor agency" as the successor entity to the former RDA as described in section 34173. Section 34173, subdivision (g) clarifies that a successor agency is a public entity and is separate from the public agency that provides for its governance. Under section 34173, subdivision (b), except as otherwise repealed, restricted, or revised under the CRL, all of the authority, rights, powers, duties, and obligations of the former RDAs were vested in the successor agencies. Under section 34175, subdivision (b), all of the former RDA's

¹ This memorandum supersedes any other guidance that may have been issued by the Legal Department on this issue.

² All statutory references are to the Health and Safety Code unless otherwise specified.

³ Section 34170, subdivision (a) originally provided that, except where otherwise specified, the bill's operative date was October 1, 2011. However, because the California Supreme Court was considering the bill's constitutionality at the time, the bill could not become effective on that date. The Court resolved this issue by changing the effective date to February 1, 2012. (*California Redevelopment Ass'n, supra*, 53 Cal.4th at p. 275.)

"assets, properties, contracts, leases, books and records, buildings, and equipment" were transferred to the control of the successor agency.⁴

However, under section 34176, subdivision (a), the local entity that authorized the RDA's creation could elect to retain the "housing assets and functions previously performed" by the RDA, rather than have those assets and functions remain with the successor agency. If a local entity made this election, all the housing assets were to be transferred to the local entity (along with all rights, powers, liabilities, duties and obligations associated with the housing activities of the RDA). If a local entity did not elect to retain the responsibility for performing the housing functions previously performed by the RDA, all housing assets were to be transferred as provided in subdivision (b), which was either to a local housing authority or if there was none, to the Department of Housing and Community Development (successor housing authority). Section 34177, subdivision (g) required the successor agency to effectuate the transfer of the housing assets to the successor housing authority.

Section 33673, in effect since 1963, provides the valuation method for assessing and taxing a lessee's interest in an RDA property. It provides as follows:

Whenever property in any redevelopment project has been redeveloped and thereafter is leased by the redevelopment agency to any person or persons or whenever the agency leases real property in any redevelopment project to any person or persons for redevelopment, *the property shall be assessed and taxed in the same manner as privately owned property*, and the lease or contract shall provide that *the lessee shall pay taxes upon the assessed value of the entire property and not merely the assessed value of his or its leasehold interest*.

(Emphasis added.)

Section 33673 explicitly states that it applies whenever property in a redevelopment project has been redeveloped "and thereafter *is leased by the redevelopment agency*," or whenever "*the agency leases real property* in any redevelopment project." Once the RDAs were dissolved and the RDA properties and leases were transferred to successor agencies, the properties were no longer leased by RDAs to a private party lessee. Because there are no more (and can be no more) leases between RDAs and any other parties, section 33673 is moot. Therefore, former RDA properties now owned by another public agency must be valued as a taxable possessory interest pursuant to Revenue and Taxation Code section 107. Section 33673 is inapplicable to the taxation of properties leased to private parties that were formerly RDA-owned properties but are now owned by another public entity.

You ask two specific questions:

1. Do the transfers of the RDA properties to the successor entities constitute changes in ownership of the taxable possessory interests?

⁴ For purposes of this memorandum, we have assumed that all real property owned by successor agencies qualify for exemption from property taxation under the California Constitution, article XIII, sections 3, subdivision (b), as property owned by a local government not outside its boundaries.

All real property in California is taxable unless specifically exempt under California law or made immune by federal law. (Cal. Const., art. XIII, § 1, subd. (a); Rev. & Tax. Code, § 201.) Property owned by the state and property owned by a local government that is not outside its boundary is exempt from property taxation. (Cal. Const., art. XIII, §§ 3, subds. (a) and (b); 11, subd. (a).) Under these provisions, property owned by the RDAs was generally exempt from property taxation.

Section 61, subdivision (b) provides that the creation, renewal, extension, or assignment of a taxable possessory interest in tax exempt real property for any term is a change in ownership. An "assignment" of a possessory interest for these purposes "means the transfer of all rights held by a transferor in a possessory interest." (Rev. & Tax. Code, § 61, subd. (b)(3).) A "creation" of a taxable possessory interest includes:

- (i) an initial grant or other conveyance of a taxable possessory interest; (ii) a subsequent grant or other conveyance of additional land or improvements to a preexisting taxable possessory interest; or (iii) a subsequent grant or other conveyance of additional valuable property rights or uses to a preexisting taxable possessory interest.

(Property Tax Rule 21, subd. (a)(9).⁵)

Thus, when the RDAs first leased the properties to private lessees, each constituted the creation of a taxable possessory interest and thus a change in ownership of the RDA property. Upon a change in ownership, a new base year value is established. (Rev. & Tax. Code § 110.1, subdivision (b).) Because section 33673 required the valuation of the properties not as a taxable possessory interest but in the same manner as privately owned property, a base year value was established using the valuation method required by section 33673. However, since section 33673 is no longer valid, as explained above, the property must be valued as a taxable possessory interest beginning from the time it was transferred to the successor agency.

Because the taxable possessory interest was created when leased by the RDA, in our opinion, the transfers of the fee interests in RDA properties to their respective successor agencies, subject to the existing leases with private lessees, do not result in the creation of new taxable possessory interests under Revenue and Taxation Code § 61, subdivision (b) and Property Tax Rule 21, subd. (a)(9). Furthermore the transfer of the property from the RDA to the successor agency is not the assignment of the possessory interest within the meaning of RTC section 61, subdivision (b)(3) because it is a transfer of the reversionary interest and not a transfer of the possessory interest. Therefore, in our opinion the transfers of the reversionary interests in the RDA properties do not result in changes in ownership of the taxable possessory interests.

2. If the dissolution of an RDA does not result in a change in ownership of the taxable possessory interest, should any difference in value be recognized in the lien date valuation as a decline in value since the possessory interest would no longer be subject to assessment as if owned in fee?

As you know, Revenue and Taxation Code section 110.1, subdivision (b) establishes a "base year value" when property changes ownership or is newly constructed. Once a base year value is

⁵ Cal. Code Regs., tit. 18, § 20, subd. (a)(9).

established, it may only be adjusted consistent with Revenue and Taxation Code section 51 unless a change in ownership or new construction occurs. (See Cal. Const., Art. XIII A, § 2, subd. (a), Rev. & Tax. Code, § 110.1.) Revenue and Taxation Code section 51 requires the adjustment of base year values for increases in the inflation factor (which results in the "factored base year value") or for declines in fair market value (the Proposition 8⁶ value). Therefore, an assessor is required to annually enroll the lesser of a property's factored base year value or its Proposition 8 value. (See Rev. & Tax. Code, § 51.)

In the case of former-RDA properties, a base year value was established when a private party first entered into a lease of the property with the RDA in accordance with section 33673. Because the inapplicability of that section to former-RDA properties is neither a change in ownership nor new construction, a new base year value may not be established. However, if the change in valuation method (from section 33673 to taxable possessory interest) required upon the transfer of the former-RDA properties to successor agencies results in a value lower than the factored base year value, an assessor must enroll the property's Proposition 8 value.

As you noted, the Board or staff have issued the following guidance on the meaning of section 33673:

1. Letter to Assessors No. 77/73 (May 16, 1977);
2. Annotation 660.0240;
3. Assessors' Handbook section 510 (AH 510), *Assessment of Taxable Possessory Interests* (December 2002, Reprinted January 2015), pp. 75-76.

Because section 33673 is moot after the dissolution of the RDAs, we recommend that Annotation 660.0240 be deleted. We also recommend that on the next revision of AH 510, the section titled "Property Leased From Redevelopment Agencies" found at pages 75-76, be deleted.

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cc: Mr. Dean Kinnee (MIC:63)
Mr. Todd Gilman (MIC:70)

⁶ In November 1978, California voters approved Proposition 8 to provide that assessments may be reduced when there is a decline in market value. Now, as amended, the relevant portion of the California Constitution, article XIII A, section 2, subdivision (b) provides: "The full cash value base ... may be reduced to reflect substantial damage, destruction or other factors causing a decline in value."