

**Memorandum**

To : Mr. Gene Mayer, MIC:61  
Chief Valuation Division

Date: August 12, 1993

From : James M. Williams

Subject: Historical Properties Subject to State Assessment

In your memo of June 14, 1993 you requested our opinion on an inquiry from the San Diego Gas & Electric tax representative wherein he asked several questions on the application of the law to properties of historical significance. Initially he asked whether properties owned by a centrally assessed public utility would be eligible for a reduction in property taxes pursuant to the historical significance provisions.

As you know tax modification in regard to real property must originate with the state constitution. In this instance Article XIII, Section 8 permits the Legislature to define property of historical significance, specify the manner of its enforceable restriction and provides, in part, ...

it shall be valued for property tax purposes only on a basis that is consistent with its restrictions and uses.

For present purpose it is clear that the constitution is silent as to any classification based on the assessor; therefore, we must presume that historical significance is applicable to both state and local assessment, unless the Legislature has enacted to the contrary.

Government Code, section 50280.1, provides the definition of "Qualified historical property" which essentially requires that the property is listed in an official government register of historical or architecturally significant sites, places, or landmarks. Sections 50280 and 50281 specify the conditions upon which a local government, legislative body and the owner of a qualified property may contract to a restrictive use of the property. The Legislature makes no distinction in this series of statutes between state or locally assessed property.

Revenue and Taxation Code, section 439.2. mandates the appraisal methodology to be applied when valuing enforceably restricted historical property. It does contain the phrase

"the county assessor shall not consider" which would indicate a view toward local assessment; however, again the statutes in this series express no clear prohibition against state assessed properties being eligible for consideration.

In his memo of January 19, 1971 to Mr. L.J. Eastman, ACC Jim Delaney responded to a parallel question concerning the application of the restricted appraisal of open space lands to properties that are subject to state assessment. He stated:

It is our opinion that the omission of any reference to state assessees in Section 423 and the other sections which relate to the appraisal of "open space" property was inadvertent. Undoubtedly the fact that public utilities own property which could be devoted to agricultural uses was overlooked. If, however, a state assessee owns property which is not used in its utility activity but is instead what you classify as non-operative property and if that property otherwise qualifies for "open space" assessment, there is no legal prohibition against so assessing it.

At this point it would be appropriate to address the question whether properties which are classified as non-operating would be eligible? In regard to "open space" the Delaney memo limited its conclusion to non-operating "since it is not part of the system which the board is required to value on a unit or state wide basis". (He did not consider operative property in that memo because no such property had, as of that time, been included in an agricultural preserve.) Subsequently, properties of historical significance have been included with open space lands in Section 8 of Article XIII of the state constitution and both are subject to similar enforceable restrictions provided by the Legislature in a very parallel manner. Likewise, if we apply the Delaney rationale of open space, we reach the same conclusion regarding non-operating historical property and we find no express statutory prohibition against such assessment by the Board in any of the Government Code provisions mentioned above. As a practical matter it also seems clear that the valuation division is fully capable of appraising non-operating properties consistent with the requirements of Revenue and Taxation Code, Section 439.2. It is our conclusion that if the appropriate local government is willing to enter into a contract for the restrictive use of such non-operating property per Government Code, Sections 50280 and 50281, then it would be proper for your staff to assess the property in the corresponding restrictive manner.

San Diego Gas & Electric's more difficult question is "the mechanics of the calculation would seem to be complicated by the fact that all but one of our historic properties are part of the operating unit, therefore valuation is on a unitary basis". Obviously if these properties are validly unitary, then separate valuation pursuant to Section 439.2 is impossible. Recall Louis Bertane's hypothetical question on the value of the left hind leg of a horse prior to when it becomes horse meat. 20 UCLA LAW REVIEW 419, February 1973. On the other hand Section 8, the constitutional provision, states: it shall be valued for property tax purposes only on a basis that is consistent with its restrictions and uses. If those properties are validly unitary, their contribution to the unit is directly proportional to their present use, so that they are already receiving an assessment based on their valuation in use pursuant to the constitutional limitations.

At this time we would go no further than the original Delaney advice. The non-operating property is eligible for restrictive valuation provided that all statutory requirements can be met. The operating properties, however, present a physical self-contradiction, i.e., a fully employed unitary use of a property cannot be simultaneously viewed as a restricted use. Moreover, since San Diego Gas & Electric is a party to the 1992 settlement agreement, the formula spelled out in the agreement will control the assessment of the unitary property through 1999.

If this issue affects more than a few properties, we recommend that the Valuation Division consider proposing legislation which will clarify the application of the open-space and historical property valuation provisions to state-assessed property.

 JMW:ba  
precednt/restrict/93002

cc: Mr. John Hagerty, MIC:63  
Mr. Harold Hale, MIC:61  
Mr. Octavio Lee, MIC:61  
Mr. Ed Howard, MIC:61  
Ms. Jennifer Willis - MIC:70  
Ms. Margaret Shedd - MIC:66