



STATE BOARD OF EQUALIZATION

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January 4, 2016

Mr.

**Re: Assessment – Valuation Methodology
 Assignment No.: 15-415**

Dear Mr. :

This is in response to your email, forwarded to us by the Taxpayers' Rights Advocate's Office, requesting our opinion regarding the application of the purchase price presumption to property purchased at auction, as well as an Assessor's duties in valuing such property. Specifically, your email set forth three questions, which are quoted and addressed below.¹ As explained below, it is our opinion that the purchase price presumption does not apply to properties that are purchased at auction because they are not "open market" transactions as contemplated by Revenue and Taxation Code² section 110, subdivision (b).

1. *"Are Assessors required to follow [the] Revenue and Taxation Code when valuing property? (If not, please explain.)"*

Yes. Article XIII, section 1, of the Constitution provides in relevant part that "All property... shall be taxed in proportion to its value." This value is determined by assessment, and the duty to assess is placed on the assessor who must perform the duty "in compliance with... [those] statutes prescribing the method by which property is to be assessed," namely, the Revenue and Taxation Code. (See *County of Sacramento v. Irene Hickman* (1967) 66 Cal.2d 841, 845-846; Rev. & Tax. Code, §§ 401 and 405.)

2. *"Would it be correct that the very first preponderance of evidence an Assessor is required to have when determining value is in regard to the purchase price in an open market transaction? (If not, please explain.)"*

We are uncertain what you are asking, however, we believe you may be seeking clarification regarding the application of the purchase price presumption, as described in section 110, subdivision (b) and Property Tax Rule³ (Rule) 2, to property purchased at auction.

¹ We do not opine on matters that are the subject of an appeal before a county board of equalization or assessment appeals board. Furthermore, we do not opine on matters that are the subject of pending litigation unless asked to do so by the court hearing the matter. We have been informed by our Taxpayers' Rights Advocate Office that you are engaged in litigation against the _____ County Assessor on this matter. Therefore, we have answered your questions generally and do not address your specific factual situation.

² All statutory references are to the California Revenue and Taxation Code unless otherwise indicated.

³ All subsequent references to "Rules" are to the Property Tax Rules promulgated under title 18 of the California Code of Regulations.

Assessors have a statutory duty to assess all property subject to general property taxation at its full value. (See Rev. & Tax. Code, § 401.) The words "full value," "full cash value," and "fair market value" are defined in section 110, subdivision (a) and Rule 2, subdivision (a) as the price at which a property, if exposed for sale in the open market with a reasonable time for the seller to find a purchaser, would transfer to a buyer for cash or its equivalent. Thus, fair market value is "the value in exchange *under certain stipulated conditions*." (See Assessors' Handbook Section 501, *Basic Appraisal* (Jan. 2002), p. 10.)

Section 110, subdivision (b) establishes a rebuttable presumption that the property's fair market value is its purchase price if the terms of the transaction were negotiated under specific conditions reflecting an "open market transaction." This is known as the purchase price presumption. If the purchase price presumption is applied at an appeals hearing, it is assumed that a property's purchase price is in fact the fair market value, and whoever wishes to assert a different value (be it taxpayer or assessor) bears the burden of overcoming that presumption by a preponderance of the evidence.

Conversely, the purchase price presumption does not apply if the sale was not an "open market transaction." (See Rule 2, subd. (b).) The court has distinguished an "open market transaction" from "a sale resulting from the submission of bids where the seller sells to the highest bidder or the buyer buys from the lowest bidder." (*Guild Wineries and Distilleries v. County of Fresno* (1975) 51 Cal.App.3d 182, 186.) Purchases at foreclosure auctions are not considered open market transactions because they are, by definition, "forced sales" characterized by nonmarket conditions. (See Property Tax Annotation 460.0031 (Mar. 26, 1999).) Finally, even when a transaction is an open market transaction, the "presumption may nevertheless be rebutted by evidence that the fair market value is otherwise." (*Dennis v. County of Santa Clara* (1989) 215 Cal.App.3d 1019, 1028.)

3. *"Would it be correct to say the response from HCAO dated November 21, 2014 [] clearly shows by their own admission, at the time they determined value, they had NO evidence that this was NOT an open market transaction? (if incorrect, please explain) Two values, other than the purchase price, were determined prior to the date of this statement without such evidence. (\$472,000, \$415,000)"*

While that may or may not be the case, as explained in footnote 1, we do not opine on matters in pending litigation unless asked to do so by the court hearing the matter. However, even if purchases at auction are open market transactions as contemplated in section 110, subdivision (b), the purchase price presumption may be rebutted. (See *Dennis v. County of Santa Clara*, *supra*, 215 Cal.App.3d at p. 1028.)

The views expressed in this letter are only advisory in nature. They represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely,

/s/ Amanda Jacobs

Amanda Jacobs
Tax Counsel

AJ/yg

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cc: Honorable

County Assessor

Mr. Dean Kinnee	(MIC:63)
Mr. David Yeung	(MIC:61)
Mr. Todd Gilman	(MIC:70)
Mr. Mark Sutter	(MIC:70)