

ITEM 13
**PROPOSED ORDER TO SET ASIDE
PARAMETERS AND GUIDELINES**

Property Taxation: Family Transfers
04-PGA-16 (CSM-4320)

Revenue and Taxation Code Section 63.1
Statutes 1987, Chapter 48

Amended by
Statutes 2004, Chapter 227 (Sen. Bill No. 1102, § 96, eff. Aug. 16, 2004)
Statutes 2004, Chapter 889 (Assem. Bill No. 2853, § 5, eff. Sept. 29, 2004)

EXECUTIVE SUMMARY

Background

Statutes 1987, chapter 48 was enacted by the Legislature to implement the provisions of Proposition 58, a measure approved by the voters on November 4, 1986. Proposition 58 excluded certain property transfer or purchases from existing change of ownership assessment requirements. In implementing this change, the Legislature added section 63.1 to the Revenue and Taxation Code. This law redefined change of ownership to exclude specified real property transactions, required that certain certifications be provided to the assessor before the exclusions could be allowed, and directed the assessor to make quarterly reports to the State Board of Equalization on specified purchases or transfers made on or after November 6, 1986.

Chapter 48, section 3 included the following legislative declaration:

The Legislature finds that Section 1 of this act mandates a new program or higher level of service on local government by requiring periodic reports to the State Board of Equalization by county assessors with regard to all purchases or transfers of real property specified in subdivision (d) of Section 63.1 of this act. As required by Section 6 of Article XIII B of the California Constitution, reimbursement to local agencies and school districts for costs mandated by the state, pursuant to this act shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code and, if the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars (\$500,000), shall be made from the State Mandates Claims Fund.

The Commission on State Mandates adopted parameters and guidelines on April 27, 1989, and amended them on December 6, 1990.

Statutes 2004, chapter 227 (Sen. Bill No. 1102, § 96, eff. Aug. 16, 2004) amended Revenue and Taxation Code section 63.1, subdivision (f), making the requirement for the assessor to make quarterly reports to the State Board of Equalization optional. Chapter 227 also added new subdivision (i), as follows:

In recognition of the state and local interests served by the action made optional in subdivision (f), the Legislature encourages local agencies to continue taking the action formerly mandated by this section. However, nothing in this subdivision may be construed to impose any liability on a local agency that does not continue to take the formerly mandated action.

Statutes 2004, chapter 889 (Assem. Bill No. 2853, eff. Sept. 29, 2004) also amended the same statute, deleting subdivision (i) above, and adding the following sentence to subdivision (f):

In recognition of the state and local interests served by the action made optional in this subdivision, the Legislature encourages the assessor to continue taking the action formerly mandated by this subdivision.

On November 8, 2004, the State Controller's Office requested amendment of the parameters and guidelines because 2004 legislation made the mandate optional.¹

Discussion

Article XIII B, section 6 of the California Constitution states that “whenever the Legislature or any state agency *mandates* a new program or higher level of service on any local government, the state shall provide a subvention of funds.” (Emphasis added.) This constitutional provision was specifically intended to prevent the state from forcing programs on local government that *require* expenditure by local governments of their tax revenues.² To implement article XIII B, section 6, the Legislature enacted Government Code section 17500 et seq. Government Code section 17514 defines “costs mandated by the state” as “any increased costs which a local agency or school district is *required* to incur . . . as a result of any statute. . . which *mandates* a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.” (Emphasis added.)

Thus, in order for a statute to be subject to article XIII B, section 6 of the California Constitution, the statutory language must order or command that local governmental agencies perform an activity or task. If the statutory language does not mandate local agencies to perform a task, then compliance with the test claim statute is within the discretion of the local agency and a reimbursable state-mandated program does not exist.

The test claim statutes, as amended by Statutes 2004, chapters 227 and 889 (SB 1102, § 96 and AB 2853, § 5), do not mandate local agencies to perform an activity or task. As amended, there is no express requirement for the county assessor to make quarterly reports to the State Board of Equalization. Rather, the plain language of Revenue and Taxation Code section 63.1,

¹ See Exhibit A.

² *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283-1284.

subdivision (f) now states that “[t]he assessor *may* report quarterly to the State Board of Equalization....”

Under the rules of statutory construction, the Commission may not disregard or enlarge the plain provisions of a statute, nor may it go beyond the meaning of the words used when the words are clear and unambiguous. Thus, the Commission, like the court, is prohibited from writing into a statute, by implication, express requirements that the Legislature itself has not seen fit to place in the statute.³ This prohibition is based on the fact that the California Constitution vests the Legislature with policymaking authority. As a result, the Commission has been instructed by the courts to construe the meaning and effect of statutes analyzed under article XIII B, section 6 strictly.⁴

Thus, county assessors are no longer required to make quarterly reports to the State Board of Equalization and compliance with the test claim statute is within the discretion of the local agency and is not subject to reimbursement under article XIII B, section 6 of the California Constitution and Government Code section 17514.

Therefore, staff concludes that the Commission should set aside the parameters and guidelines, effective August 16, 2004, when the mandate was made optional.

Staff Recommendation

Staff recommends that the Commission adopt the proposed Order to Set Aside the parameters and guidelines for the *Property Taxation: Family Transfers* program, effective August 16, 2004.

³ *Whitcomb v. California Employment Commission* (1944) 24 Cal.2d 753, 757; *In re Rudy L.* (1994) 29 Cal.App.4th 1007, 1011.

⁴ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816-1817.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE:

Revenue and Taxation Code Section 63.1, as added by Statutes 1987, Chapter 48

Amended by Statutes 2004, Chapter 227 (Sen. Bill. No. 1102, § 96, eff. Aug. 16, 2004), and Statutes 2004, Chapter 889 (Assem. Bill No. 2853, § 5, eff. Sept. 29, 2004.)

No. 04-PGA-16 (CSM-4320)

Property Taxation: Family Transfers

SET ASIDE OF PARAMETERS AND GUIDELINES

(Proposed on September 27, 2005)

ORDER TO SET ASIDE PARAMETERS AND GUIDELINES

Statutes 1987, chapter 48 was enacted by the Legislature to implement the provisions of Proposition 58, a measure approved by the voters on November 4, 1986. Proposition 58 excluded certain property transfer or purchases from existing change of ownership assessment requirements. In implementing this change, the Legislature added section 63.1 to the Revenue and Taxation Code. This law redefined change of ownership to exclude specified real property transactions, required that certain certifications be provided to the assessor before the exclusions could be allowed, and directed the assessor to make quarterly reports to the State Board of Equalization on specified purchases or transfers made on or after November 6, 1986.

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Statutes 2004, chapter 889 (Assem. Bill No. 2853, eff. Sept. 29, 2004) also amended the same statute, deleting subdivision (i) above, and adding the following sentence to subdivision (f):

In recognition of the state and local interests served by the action made optional in this subdivision, the Legislature encourages the assessor to continue taking the action formerly mandated by this subdivision.

On November 8, 2004, the State Controller's Office requested amendment of the parameters and guidelines because 2004 legislation made the mandate optional.⁵

Article XIII B, section 6 of the California Constitution states that "whenever the Legislature or any state agency *mandates* a new program or higher level of service on any local government, the state shall provide a subvention of funds." (Emphasis added.) This constitutional provision was specifically intended to prevent the state from forcing programs on local government that *require* expenditure by local governments of their tax revenues.⁶ To implement article XIII B, section 6, the Legislature enacted Government Code section 17500 et seq. Government Code section 17514 defines "costs mandated by the state" as "any increased costs which a local agency or school district is *required* to incur . . . as a result of any statute. . . which *mandates* a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution." (Emphasis added.)

Thus, in order for a statute to be subject to article XIII B, section 6 of the California Constitution, the statutory language must order or command that local governmental agencies perform an activity or task. If the statutory language does not mandate local agencies to perform a task, then compliance with the test claim statute is within the discretion of the local agency and a reimbursable state-mandated program does not exist.

The test claim statutes, as amended by Statutes 2004, chapters 227 and 889 (SB 1102, § 96 and AB 2853, § 5), do not mandate local agencies to perform an activity or task. As amended, there is no express requirement for the county assessor to make quarterly reports to the State Board of Equalization. Rather, the plain language of Revenue and Taxation Code section 63.1, subdivision (f) now states that "[t]he assessor *may* report quarterly to the State Board of Equalization...."

Under the rules of statutory construction, the Commission may not disregard or enlarge the plain provisions of a statute, nor may it go beyond the meaning of the words used when the words are clear and unambiguous. Thus, the Commission, like the court, is prohibited from writing into a statute, by implication, express requirements that the Legislature itself has not seen fit to place in

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the statute.⁷ This prohibition is based on the fact that the California Constitution vests the Legislature with policymaking authority. As a result, the Commission has been instructed by the courts to construe the meaning and effect of statutes analyzed under article XIII B, section 6 strictly.⁸

Thus, county assessors are no longer required to make quarterly reports to the State Board of Equalization and compliance with the test claim statute is within the discretion of the local agency and is not subject to reimbursement under article XIII B, section 6 of the California Constitution and Government Code section 17514.

Therefore, the Commission sets aside the parameters and guidelines for the *Property Taxation: Family Transfers* program, effective August 16, 2004.

Paula Higashi, Executive Director

Date

⁷ *Whitcomb v. California Employment Commission* (1944) 24 Cal.2d 753, 757; *In re Rudy L.* (1994) 29 Cal.App.4th 1007, 1011.

⁸ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816-1817.