Proposition 13 Reporter

Article XIII A of the California Constitution:

Amendments, Statutes, Decisions

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Proposition 13 Reporter

Proposition 13 Reporter

Statutes, Court Decisions, Pending Cases, Attorney General Opinions, Legislative Counsel Opinions, and Subsequent Constitutional Amendments Related to Article XIII A of the California Constitution (Proposition 13 of 1978)

July 1985

California Tax Foundation
Sacramento, California

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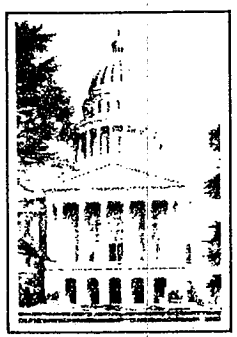

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Table of Contents

	Page
Introduction	i
Cases	iii
Statutes	vi
Attorney General Opinions	viii
Legislative Counsel Opinions	viii
Text of Article XIII A	1
Constitutionality of Article XIII A	3
Impairment of Contract	4
Implementation of Article XIII A Property Tax Administration	5
Constitutionality of Implementing Legislation	7
Base-year Value, Full Cash Value	8
New Construction	9
Change in Ownership	12
Application of 2% Inflation Factor	15
1978-79 Unsecured Property Tax Rate	15
Recognition of Declines in Value in 1978-79	17
The 1% Tax Rate Limitation	17
The Voter Approved Debt Exception	18
Application to State Assessees	24
Assessment of Mineral Rights	25
Fee, Special Taxes	26
Benefit Assessments	35
State Taxes	40

Introduction

Cal-Tax's annual summary of Proposition 13 litigation and legislation has outgrown the Research Bulletin format containing it since 1979. Because interest in the legal aspects of the 1978 landmark constitutional amendment continues at a high level, we are updating the publication in a larger, easier-to-read format.

Although our goal is to include every case, opinion, and statute on the subject, some certainly have been missed. Users of this publication who note any such omission are urged to contact Cal-Tax so that we can do better in the next edition.

Sincerest thanks goes to the many attorneys in private practice and with government agencies, court personnel, and others who have assisted in identifying cases and tracking down their disposition.

John H. Sullivan
Vice President and General Counsel
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Cases

Page

Altadena Library District v. Bloodgood, Los Angeles Superior Court No. C520919 (1984) 32

Amador Valley Joint Union High School District v. State Board of Equalization, 22 Cal. 3d 208, 149 Cal. Rptr. 238, 583 P.2d 1281 3

Amberg v. Rolling Hills Community Association, 150 Cal. App. 3d 1125 (1984), mod. 151 Cal. App. 3d 776b (1984) . . 29

American River Flood Control District v. Sayre, 136 Cal. App. 3d 347 (1982), 186 Cal. Rptr. 202 36

Armstrong v. County of San Mateo, et al., 146 Cal. App. 3d 597 (1983), 194 Cal. Rptr. 294 15

Barrett et al. v. County of Santa Clara, et al., Santa Clara Superior Court No. 428754 15

Beaumont Investors v. Beaumont-Cherry Valley Water District, 165 Cal. App. 3d 227 (1985), __ Cal. Rptr. __ 30

Board of Supervisors of San Diego County v. Lonergan, 27 Cal. App. 3d 855 (1980), 167 Cal. Rptr. 820 15

Building Industry Assocation v. City of Oxnard, 150 Cal. App. 3d 535 (1984), 198 Cal. Rptr. 63 31

Burke, et al. v. City of Imperial Beach, San Diego Superior Court No. 495608 (1982) 30

Carman v. Alvord, 31 Cal. 3d 318 (1982), 182 Cal. Rptr., 506, 644 P.2d 192 18

City Council of the City of San Jose v. Kent South, 146 Cal. App. 3d. 320 (1983), 194 Cal. Rptr. 110 36

City and County of San Francisco v. Farrell, 32 Cal. 3d 47 (1982), 184 Cal. Rptr. 713, 648 P. 2d 935 26

City of Atascadero v. Daly, 135 Cal. App. 3d 466 (1982), 185 Cal. Rptr. 228 28

City of Cathedral City v. County of Riverside, 163 Cal. App. 3d 960 (1985), 210 Cal. Rptr. 60 29

City of Fresno v. Peterson, Fresno County Superior Court No. 300261-5 (1983) 21

City of Fresno v. Superior Court of Fresno County, 156 Cal. App. 3d 1137 (1984), 202 Cal. Rptr. 313 20

City of Larkspur v. Marin County Flood Control and Water Conservation District (Town of Corte Madera, Intervener) __ Cal. App. 3d __ (1985), __ Cal. Rptr. __ 37

City of Napa v. Board of Supervisors, Napa County, Napa Superior Court No. 45509 (1984) 21

City of San Diego v. Holodnak, 157 Cal. App. 3d 759 (1984), 203 Cal. Rptr. 797 36
City of San Marcos v. San Diego County Board of Supervisors, 159 Cal. App. 3d 355 (1984), 205 Cal. Rptr. 566 17
City of Watsonville v. Merrill, 137 Cal. App. 3d 185 (1982), 186 Cal. Rptr. 857 19
Community Health Association v. Humboldt County Board of Supervisors, 146 Cal. App. 3d 990 (1983), 194 Cal. Rptr. 557 28
County of Fresno v. Malmstrom, 94 Cal. App. 3d 974 (1979), 156 Cal. Rptr. 777 35
County of Shasta v. County of Trinity, 106 Cal. App. 3d 30 (1980), 165 Cal. Rptr. 18 19
Crocker National Bank v. City & County of San Francisco, San Francisco Superior Court No. 790661 (1984) 31
Darr v. Alvord, 101 Cal. App. 3d 480 (1980), 161 Cal. Rptr. 658 16
Dautremont v. County of Ventura, 2 Civ. No. 65479 (1983) . . 3
Downtown Merchants Parking Association v. City of Oakland, Alameda Superior Court (1981) 30
Drogin v. Board of Supervisors, San Diego County, San Diego Superior Court No. 488448 16
Eastern Municipal Water District v. Koetters, 4 Civ. 21988 (Unpublished, February 15, 1983) 20
Fenton v. City of Delano, 162 Cal. App. 3d 400 (1984), 208 Cal. Rptr. 486 29
Glen Ivy Recreational Vehicle Park Owners Association v. County of Riverside, Riverside Superior Court No. 133211 (1981) 13
Goodman v. County of Riverside, 140 Cal. App. 3d 900 (1983), 190 Cal. Rptr. 7 20
Heckendorn v. City of San Marino, 163 Cal. App. 3d 35 (1984), 209 Cal. Rptr. 750 31
Holmdahl v. Alameda County Assessor, Alameda Superior Court No. H-55317-9 (1979) 9
Huntington Park Redevelopment Agency v. Martin, 38 Cal. 3d 100 (1985), 211 Cal. Rptr. 133, 695 P. 2d 220 27
ITT World Communication, Inc. v. City/County of San Francisco & State Board of Equalization, 37 Cal. 3d 859, 210 Cal. Rptr. 266, 693 P. 2d 811 25
J.W. Jones Companies v. City of San Diego, 157 Cal. App. 3d 745 (1984), 203 Cal. Rptr. 580 (mod. 1984) 36
Kehrlein v. City of Oakland, 116 Cal.App. 3d 332 (1981), 172 Cal.Rptr. 111, mod. 117 Cal. App (1981) 27
Kern County Water Agency v. Board of Supervisors of the County of Kern, 96 Cal. App. 3d 874 (1979), 158 Cal. Rptr. 430 18
Knapp v. Trinity County, 3 Civ. 23025 (unpublished) (1984) . . 30
Las Virgenes Municipal Water District v. Dorgelo, 154 Cal. App. 3d 481 (1984) 201 Cal. Rptr. 266 20

Los Angeles County Transportation Commission v. Richmond, 31 Cal. 3d 197 (1982), 182 Cal. Rptr. 324, 643 P. 2d 941 26
Lynch v. Board of Equalization, 164 Cal. App. 3d 94 (1985), 210 Cal. Rptr. 335 25
Marin Hospital District v. Rothman, 139 Cal. App. 3d 495 (1983) 188 Cal. Rptr. 828 7
Marvin Benson et al. v. Board of Equalization, et al., San Francisco Superior Court No. 809837 13
Marvin D. Poer & Company v. Counties of Alameda, et al., 725 F. 2d 1234 (1984) 16
Metropolitan Water District v. Dorff, 138 Cal. App. 3d 388 (1982), 188 Cal. Rptr. 169 19
Metropolitan Water District of Southern California, et al. v. Dorff, 98 Cal. App. 3d 109 (1979), 159 Cal. Rptr. 211 19
Miller, et al. v. City of Napa, et al., Napa County Superior Court No. 40075 17
Mills v. County of Trinity, 108 Cal. App. 3d 656 (1980), 166 Cal. Rptr. 674 27
National Independent Business Alliance v. City of Beverly Hills, 128 Cal. App. 3d 18 (1982), 180 Cal. Rptr. 59 28
Pacific Gas & Electric Co., et al., v. State Board of Equalization, 27 Cal. 3d 277 (1980), 165 Cal. Rptr 122, 611 P. 2d 463 25
Pacific Gateway Associates v. City & County of San Francisco, San Francisco Superior Court No. 789365 (1984) 31
Paoli et al. v. City & County of San Francisco Assessment Appeals Board, San Francisco Superior Court No. 793037 (1985) 12
Parkmerced Company v. City & County of San Francisco, 149 Cal. App. 3d 1091 (1983), 197 Cal. Rptr. 401 12
Patton v. City of Alameda, 161 Cal. App. 3d 1186 (1984) 21
People's Advocate, Inc. et al., v. State of California et al., Sierra County Superior Court No. 3499 (1980) 9
Pope v. Board of Equalization, 146 Cal. App. 3d, 1132 (1983), 194 Cal. Rptr. 883 9
Pugh v. City of Sacramento, 119 Cal. App. 3d 485 (1981), 174 Cal. Rptr. 119 28
Roy E. Hanson, Jr. Mfg. v. County of Los Angeles, 27 Cal. 3d 870 (1980), 167 Cal. Rptr. 820, 616 P. 2d 802 15
Russ Building Partnership v. City & County of San Francisco, San Francisco Superior Court No. 780795 (1984) 31
Schneider v. Sloughhouse Fire Protection District, Sacramento Court No. 327926 (1985) 38
Schoderbeck, et al., v. Carlson, et al. (Schoderbeck I), 113 Cal. App. 3d 1029 (1980), 170 Cal. Rptr. 400 8
Schoderbeck, et al., v. Carlson, et al. (Schoderbeck II), 152 Cal. App. 3d 1027 (1984), 199 Cal. Rptr. 874 8
Shafer et al. v. Board of Equalization, San Francisco

Superior Court No. 812459 (1984) 10
Shellenberger v. Board of Equalization of San Joaquin County, 147 Cal. App. 3d 510 (1983), 195 Cal. Rptr. 168 .. 8
Solvang Municipal Improvement District v. Board of Supervisors of Santa Barbara County, 112 Cal. App. 3d 545 (1980), 169 Cal. Rptr. 391 35
Sonoma County Organization of Public Employees v. County of Sonoma, 23 Cal. 3d 296 (1979), 152 Cal. Rptr. 903, 591 P.2d 1 4
State Board of Equalization v. San Diego Board of Supervisors, 105 Cal. App. 3d 813 (1980), 164 Cal. Rptr. 739 17
Stugelmayer et al. v. Calaveras County Board of Supervisors, 3 Civ. 24145 (unpublished, May 9, 1985) 37
Talarides v. County of Alameda, No. A015525 3
Taxpayers Association, Inc. v. San Joaquin Local Health District, San Joaquin Superior Court No. 145597 30
Title Insurance & Trust Company v. County of Merced & State Board of Equalization, Riverside County Superior Court Coordination Action No. 1566 (1982) 13
Title Insurance & Trust Company v. Marin County & State Board of Equalization, Marin County Superior Court No. 104338 (1981) 12
Title Insurance and Trust Company v. County of Riverside, et al., Riverside County Superior Court Coordination Action No. 1566 (1982) 13
Trent Meredith, Inc. v. City of Oxnard, 114 Cal. App. 3d 317 1981), 170 Cal. Rptr. 685 27
Valentine v. City of Oakland, 148 Cal. App. 3d 139 (1983), 196 Cal. Rptr. 59 20
Winberry Development Co., Inc. v. County of Shasta, 3 Civ. 18854 (1982) 28
Wolfe, et al. v. County of Madera, et al., Madera Superior Court No. 27639 (1981) 9

Statutes

Statutes of 1978
Resolution Chapter 76 4,10

Statutes of 1979
Chapter 49 5
Chapter 133 34
Chapter 139 34
Chapter 242 5
Chapter 261 39
Chapter 312 39
Chapter 397 39
Chapter 416 39
Chapter 883 34
Chapter 888 39

Chapter 903 35
Chapter 941 24
Chapter 1075 5
Chapter 1161 5
Chapter 1188 5
Chapter 1196 5

Statutes of 1980
Chapter 88 35
Chapter 126 35
Chapter 672 35
Chapter 802 6
Chapter 941 39
Chapter 1053 39
Chapter 1081 6
Chapter 1245 11
Chapter 1273 6
Chapter 1349 6
Chapter 1354 16
Resolution Chapter 43 24
Resolution Chapter 45 10,13
Resolution Chapter 48 4,11

Statutes of 1981
Chapter 239 11
Chapter 242 16
Chapter 377 11
Chapter 615 14
Chapter 951 35
Chapter 971 39
Chapter 1141 6

Statutes of 1982
Chapter 45 6
Chapter 487 40
Chapter 911 14
Chapter 1465 14
Resolution Chapter 5 4,14
Resolution Chapter 49 11

Statutes of 1983
Chapter 14 15
Chapter 491 24
Chapter 662 6,14
Chapter 1324 24

Statutes of 1984
Chapter 1010 14
Chapter 1164 15
Chapter 1237 6
Resolution Chapter 2 4,11
Resolution Chapter 56 4,11
Resolution Chapter 66 12

Resolution Chapter 142 24
Resolution Chapter 271 24

Attorney General Opinions

No. 78-76	Indexed Letter 78-98	16
No. 78-90	61 Ops. Cal. Atty. Gen. 373	22
No. 78-96	61 Ops. Cal. Atty. Gen. 512	32
No. 78-119	62 Ops. Cal. Atty. Gen. 209	22
No. 78-123	62 Ops. Cal. Atty. Gen. 254	32
No. 78-136	62 Ops. Cal. Atty. Gen. 339	22
No. 79-424	62 Ops. Cal. Atty. Gen. 589	22
No. 79-623	62 Ops. Cal. Atty. Gen. 553	22
No. 79-712	62 Ops. Cal. Atty. Gen. 663	38
No. 79-724	62 Ops. Cal. Atty. Gen. 673	32
No. 79-809	62 Ops. Cal. Atty. Gen. 655	18
No. 79-909	62 Ops. Cal. Atty. Gen. 747	38
No. 79-1003	62 Ops. Cal. Atty. Gen. 831	33
No. 79-1005	63 Ops. Cal. Atty. Gen. 304	7
No. 80-322	63 Ops. Cal. Atty. Gen. 491	26
No. 80-1003	64 Ops. Cal. Atty. Gen. 105	38
No. 80-1107	64 Ops. Cal. Atty. Gen. 156	33
No. 81-314	64 Ops. Cal. Atty. Gen. 570	33
No. 81-901	64 Ops. Cal. Atty. Gen. 790	38
No. 82-803	65 Ops. Cal. Atty. Gen. 603	23
No. 83-1001	67 Ops. Cal. Atty. Gen. 17	38

Legislative Counsel Opinions

No. 1193	Schools: Property Taxation	34
No. 3100	Property Taxation	9
No. 6692	Local Agency Fees and Charges	33
No. 7634	School Facilities	39
No. 7781	Property Taxation	10
No. 10715	Property Tax Revenues	23
No. 10846	Tax Legislation: Vote Requirement	40
No. 13201	Property Tax Limits	23
No. 16240	Article XIII A, Special Taxes, Assessment Fees	33,38
No. 16903	School Districts: Taxation	34
No. 17679	Property Tax Assessments	26
No. 20504	Property Taxation	34
No. 21062	Special Taxes: Business License Taxes	34

Text of Article XIII A

[as adopted June 6, 1978, and amended November 7, 1978 (Proposition 8) November 4, 1980 (Proposition 7) and June 9, 1982 (Proposition 3), and November 6, 1984 (Proposition 31)]

Section 1

(a) The maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties.

(b) The limitation provided for in subdivision (a) shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on any indebtedness approved by the voters prior to the time this section becomes effective.

Section 2

(a) The full cash value means the county assessor's valuation of real property as shown on the 1975-76 tax bill under "full cash value" or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment. All real property not already assessed up to the 1975-76 full cash value may be reassessed to reflect that valuation. For purposes of this section, the term "newly constructed" shall not include real property which is reconstructed after a disaster, as declared by the Governor, where the fair market value of such real property, as reconstructed, is comparable to its fair market value prior to the disaster.

(b) The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction, or may be reduced to reflect substantial damage, destruction or other factors causing a decline in value.

(c) For purposes of subdivision (a), the Legislature may provide that the term "newly constructed" shall not include both of the following:

(1) The construction or addition of any active solar energy system.

(2) The construction or installation of any fire sprinkler system, other fire extinguishing system, fire detection system, or fire-related egress improvement, as defined by the Legislature, which is constructed or installed after the effective date of this paragraph.

(d) For purposes of this section, the term "change in ownership" shall not include the acquisition of real property as a replacement for comparable property if the person acquiring the real property has been

displaced from the property replaced by eminent domain proceedings, by acquisition by a public entity, or governmental action which has resulted in a judgment of inverse condemnation. The real property acquired shall be deemed comparable to the property replaced if it is similar in size, utility, and function, or if it conforms to state regulations defined by the Legislature governing the relocation of persons displaced by governmental actions. The provisions of this subdivision shall be applied to any property acquired after March 1, 1975, but shall effect only those assessments of that property which occur after the provisions of this subdivision take effect.

Section 3

From and after the effective date of this article, any changes in State taxes enacted for the purpose of increasing revenues collected pursuant thereto whether by increased rates or changes in methods of computation must be imposed by an Act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property may be imposed.

Section 4

Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district.

Section 5

This article shall take effect for the tax year beginning on July 1 following the passage of this amendment, except Section 3 which shall become effective upon the passage of this article.

Section 6

If any section, part, clause, or phrase hereof is for any reason held to be invalid or unconstitutional, the remaining sections shall not be affected but will remain in full force and effect.

(Proposition 8 of 1978 added disaster provision to Section 2(a); Proposition 7 of 1980 added paragraph (c) to Section 2; Proposition 3 of 1982 added paragraph (d) to Section 2; Proposition 31 of 1984 expanded paragraph (c) of Section 2.)

Constitutionality of Article XIII A

• Cases decided

Supreme Court:

Amador Valley Joint Union High School District v. State Board of Equalization, 22 Cal. 3d 208, 149 Cal. Rptr. 239, 583 P. 2d 1281, September 22, 1978.

Upholding the constitutionality of Proposition 13, the Supreme Court ruled that the initiative did not violate the single subject requirement of the California Constitution because of its elements are functionally related to the purpose of real property tax relief; that there is no legal requirement that property of equal current value be taxed equally and that there is in the initiative's assessment provisions a rational underlying basis in the theory that taxes should bear some rational relationship to the original cost of property; that there is no violation of the equal protection clause in the two-third vote requirement for special taxes; that it is premature to claim impairment of local government contracts; and that the initiative is not so vague as to be inoperative and void. Opinion by Richardson; Tobriner, Mosk, Clark, Manuel, and Newman, concurring; Bird, concurring and dissenting.

Court of Appeal:

Talarides v. County of Alameda, et. al. No. A015526, July 7, 1983.

First District Court of Appeal in unpublished opinion upheld Superior Court dismissal of plaintiff's action challenging Article XIII A on equal protection grounds in seeking to have real property they acquired in December 1977 valued for property tax purposes at the value appearing on the 1975-76 assessment roll.

Dautremont v. County of Ventura, 2 Civ. No. 65479, June 23, 1983.

In an unpublished decision the Second District Court of Appeal upheld a lower court ruling that Article XIII A, Section 2(a), does not violate equal protection requirements by causing disparate tax treatment of owners of similar properties. Following the state Supreme Court's refusal (August 17, 1983) to take the case on appeal, the plaintiffs filed an appeal with the United States Supreme Court. On February 21, 1984, the U.S. Supreme Court granted the county's petition for dismissal on grounds of no substantial federal question. (U.S. Supreme Court No. 83-818)

• Amendments to Article XIII A

Approved in the November 7, 1978, election: Resolution Chapter 76, Statutes of 1978 (SCA 67, Rains)

Redefines full cash value to exclude from the definition of "newly constructed" real property reconstructed after a disaster, as declared by the governor, where fair market values are comparable; permits assessors to decrease assessed value if market value decreases due to damage or other factors, such as economic conditions.

Approved in the November 4, 1980, election: Resolution Chapter 48, Statutes of 1980 (SCA 28, Alquist)

Authorizes the Legislature to provide that the term "newly constructed" shall not include the construction or addition of any active solar energy system. (Proposition 7) Adopted: 65.5% (for) and 34.5% (against).

Approved in the June 8, 1982, election: Resolution Chapter 5, Statutes of 1982 (ACA 4, Campbell)

Provides that "change in ownership" does not include acquisition of real property as a replacement for comparable property if the person acquiring the real property has been displaced from the property replaced by eminent domain proceedings, by acquisition by a public entity, or governmental action resulting in a judgment of inverse condemnation. Applies to property acquired after March 1, 1975, for assessments made on the 1983-84 assessment roll and thereafter. (Proposition 3). Adopted: 56.4% (for) and 43.6% (against).

Approved in the June 5, 1984, election: Resolution Chapter 2 (SCA 14, Rosenthal)

Exempts from "change of ownership" reassessment remodeling or reconstruction of buildings with unreinforced masonary walls if done to comply with local earthquake safety ordinance. (Proposition 23) Adopted 53.3% (for) and 46.7% (against).

Approved in the November 6, 1984, election: Resolution Chapter 56, Statutes of 1984 (SCA 58, Boatwright)

Authorizes the Legislature to provide that the term "newly constructed" shall not apply to construction or addition of fire extinguishing, detection, or escape systems. (Proposition 31) Adopted: 50.8% (for) and 49.2% (against).

Impairment of Contract

• Cases decided

Supreme Court:

Sonoma County Organization of Public Employees v. County of Sonoma, 23 Cal. 3d 296, 152 Cal. Rptr. 903, 591 P. 2d 1, February 15, 1979.

The state Supreme Court held that while the state may not have been under obligation to distribute state funds to local agencies to assist them in resolving fiscal problems following Proposition 13, it could not require as a condition of granting those funds that local agencies impair valid contracts to pay wage increases. Opinion by Mosk; Tobriner, Clark, Richardson, Manuel, Newman, and Taylor (assigned), concurring.

Implementation of Article XIII A: Property Tax Administration

• Statutory Enactments, 1979

Chapter 49 (SB 17, Holmdahl)

Establishes a rebuttable presumption that property was appraised for 1975-76 base year if assessor's value differed from 1974-75 value. Authorizes new base-year value for property not appraised in 1975-76. Indicates factors and indicia of fair market value that may be used for 1975-76 reappraisals. Prohibits certain escapes because of reappraisal for 1975-76 base year.

Chapter 242 (AB 1488, W. Brown)

Beginning with the 1979-80 assessment year, the measure implements and interprets Proposition 13 with respect to base-year values, change in ownership, new construction, assessment appeals, taxpayer reporting, special properties, and declines in value.

Chapter 1075 (AB 581, Imbrecht)

Provides that unless a party to the creation of an open-space restriction expressly prohibits such a valuation, the valuation of restricted land by the capitalization of income method shall not exceed the valuation that would have resulted by using Revenue and Taxation Code Section 110.1 as though the property were not subject to restriction in the base year.

Chapter 1161 (AB 1019, Hannigan)

Requires state Board of Equalization to prescribe the information for change in ownership statements. Makes other technical and substantive changes to Chapter 242.

Chapter 1188 (AB 1489, Hannigan)

Specifies that reduced taxes resulting from the provisions of Chapter 49 shall be reflected in either a refund or a corresponding reduction in succeeding installments where there is no change of assessees.

Chapter 1196 (SB 98, M. Garcia)

Exempts assessees from penalties, fees, and costs on delinquent property taxes for the 1978-79 fiscal year if the total of such taxes is paid within 30 days after notification by the tax collector of any reduc-

tion in such taxes resulting from Chapter 49.

- **Statutory Enactments, 1980**

Chapter 802 (SB 164, Maddy)
Extends the provisions of Chapter 1075, Statutes of 1979, to wildlife habitat contracts.

Chapter 1081 (SB 1260, Sieroty)
Further implements Proposition 13 with regard to change in ownership of co-owners and joint tenants. Makes substantive and technical changes to prior legislation.

Chapter 1273 (AB 2298, Imbrecht)
Permits a city or county to elect to permit assessment of enforceably restricted lands at the lower of its restricted value or a specified percentage of its base year value adjusted by the inflationary rate. Specifies different percentages of value for different classes of land.

Chapter 1349 (AB 2777, Imbrecht)
Further implements Proposition 13 with regard to changes in ownership of legal entities and makes other substantive and technical changes to prior legislation.

- **Statutory Enactments, 1981**

Chapter 1141 (AB 152, Deddeh)
Annual "cleanup" bill for Proposition 13 implementing statutes. Makes numerous clarifying changes in existing law with respect to transfers of real property between residential co-owners, joint tenants, and religious organizations, and transfers into trusts for purposes of defining "change in ownership." Reorganizes procedures for filing change in ownership statements.

- **Statutory Enactments, 1982**

Chapter 45 (AB 151, Deddeh)
Requires local jurisdictions to report to the Controller property taxes levied in excess of the rate limitation prescribed in Article XIII A, Section 1(a) for fiscal years 1978-79 through 1982-83.

- **Statutory Enactments, 1983**

Chapter 662 (AB 1098, Connelly)
Provides that the adjusted base year value of replacement property acquired under Article XIII A, Section 2(d), shall be the lower of its fair market value or the sum of the adjusted base year value of the property from which the person was displaced and the amount, if any, by which the full cash value of the property acquired exceeds 120% of the amount received for the property from which the taxpayer was displaced.

- **Statutory Enactments, 1984**

Chapter 1237 (AB 3132, Molina)
Requires assessors and recorders to make available preliminary

change in ownership reports which transferees of real property may complete and file concurrently with the recordation of documents evidencing a change in ownership. Permits the State Board of Equalization to revise the reports, as necessary, to maintain statewide uniformity. Permits recorders to charge an additional specified recording fee if a document evidencing a change of ownership is presented for recordation without the concurrent filing of a preliminary change of ownership report. Applies to changes of ownership occurring on or after July 1, 1985.

Constitutionality of Implementing Legislation

- **Cases decided**

Court of Appeal:

Marin Hospital District v. Rothman, 139 Cal. App. 3d 495, 188 Cal. Rptr. 828, January 27, 1983.

The First District Court of Appeal ruled that a hospital district's failure to receive a share of property taxes under Article XIII A implementing legislation does not constitute a denial of equal protection. The district, because it had not chosen to levy a property tax in 1977-78, was outside the legislative definition of a "local agency" eligible to share in county-wide property tax revenue. The court called attention to the Legislature's conclusion that special districts not in need of property tax revenue during 1977-78 were probably self-supporting and among the least affected by Proposition 13's revenue reduction. (Hospital district's petition for hearing by Supreme Court denied March 23, 1983.)

- **Attorney General Opinion**

No. 79-1005, April 18, 1980, 63 Ops. Cal. Atty. Gen. 304
The opinion concludes:

(1) The exclusions under Revenue and Taxation Code, Sections 60-66, of transfers of certain property interests from the meaning of "change in ownership" is valid construction of Article XIII A.

(2) The limitations under Revenue and Taxation Code, Sections 70-72, of the term "newly constructed," interpreted in the light of constitutional constraints to exclude only such reconstruction after a disaster "as declared by the Governor," is a valid construction of Article XIII A.

(3) The limitation under Section 43 of Chapter 242 of the Statutes of 1979 of the authority of a county assessor to enroll escape assessments for years prior to 1979-80 to reflect the "full cash value" of any property is constitutional.

Base-year Value, Full Cash Value

• Cases decided

Court of Appeal:

Schoderbek, et al., v. Carlson, et al., (Schoderbek I), 113 Cal. App. 3d 1029, 170 Cal. Rptr. 400, December 26, 1980.

Plaintiffs brought a class action against county officials challenging base year value determinations of property acquired after the passage of Proposition 13. The First District Court of Appeal did not consider the merits of the case, but rather remanded the action to the Superior Court with directions to dismiss it if plaintiffs cannot plead that they have exhausted their administrative remedies or have a property excuse therefor. The court held that such failure to exhaust administrative remedies could not be excused on the grounds of undue expense in requiring a class consisting of some 138,000 homeowners to pursue such remedies, since the plaintiffs could have filed a claim for refund with the county on behalf of themselves and on behalf of members of the class represented.

Schoderbek, et al., v. Carlson, et al. (Schoderbek II), 152 Cal. App. 3d 1027, 199 Cal. Rptr. 874, March 9, 1984.

Hearing the merits of the case for the first time, the First District Court of Appeal ruled that in determining the value of property acquired between March 1, 1975, and the first tax year under Proposition 13, it was proper for county assessors to "go back and calculate the value of those properties, as of the actual date of purchase." Plaintiffs had argued for using lien date values. (Supreme Court denied petition for hearing June 21, 1984.)

Shellenberger v. Board of Equalization of San Joaquin County, 147 Cal. App. 3d 510, 195 Cal. Rptr. 168, September 28, 1983.

Real property under Williamson Act contracts terminated in 1977 could be reassessed for property tax purposes in 1978 using the "rollback" provisions of Article XIII A and disregarding its restricted tax status on the 1975-76 tax rolls. The land involved was annexed by the City of Stockton and rezoned residential, ending its Williamson Act status.

In overturning the trial court decision, the Third District Court of Appeal found that use of the 1975-76 full cash value for the property results in "a situation where the county remains indefinitely bound by a use-value assessment for tax purposes while it is simultaneously deprived of the benefits of open-space land, the bargained for consideration of the contracts....Although the initiative was anticipated to bring about some disparity in tax treatment..., there is nothing in the background of Proposition 13 either pro or con which suggests that such disparity was intended to result from artificially-depressed assessments pursuant to Williamson Act contracts no longer in existence."

Superior Court:

Holmdahl v. Alameda County Assessor, Alameda Superior Court No. H-55317-9, January 15, 1979.

Court ruled that Board of Equalization Rule 460 is not inconsistent with Article XIII A but that county assessor had no authority to increase value of property appraised for the 1975 lien date.

People's Advocate, Inc. et al., v. State of California et al., Sierra County Superior Court No. 3499, November 5, 1980.

Plaintiffs contended that Article XIII A does not authorize reappraisal of any property above the 1975 tax bill value even if that value was not fair market value and property had not been reappraised for the 1975-76 tax year. Court ruled for defendants on the basis of failure to exhaust administrative remedies and that Revenue and Taxation Code, Section 4807, prohibits injunctions to prevent property tax collections.

Wolfe, et al. v. County of Madera, et al., Madera Superior Court No. 27639, filed September 4, 1981.

Action addressed issue of whether a 1975 "trended" valuation constituted a reappraisal for purposes of Revenue and Taxation Code, Section 110.1, or the county could make a 1975 base year value appraisal in 1980. Trial court sustained county's demurrer on procedural grounds. Appeal to the Fifth District Court of Appeal was voluntarily dismised by plaintiffs June 1, 1983.

• Legislative Counsel Opinion

No. 3100, *Property Taxation,* June 19, 1981.

The opinion concludes that the state Board of Equalization and the courts still have the duty to force local tax officials to determine 1975 base year values, pursuant to Revenue and Taxation Code, Section 110.1(c), which should have been completed by June 30, 1980; however, such duty does not extend to individual assessments, but rather only to a "fixed rule or general system" of noncompliance by such officials with the law.

New Construction

• Cases decided

Court of Appeal:

Pope v. Board of Equalization, 146 Cal. App. 3d 1132, 194 Cal. Rptr. 883, September 14, 1983.

The Second District Court of Appeal upheld Board of Equalization Rule 463 as consistent with Article XIII A and Revenue and Taxation Code Section 71. Plaintiff Los Angeles County tax assessor had contended that in multi-year construction projects reappraisal of an entire project is required upon completion of the project's final

increment.

• Cases pending

Court of Appeal:

Shafer et al. v. Board of Equalization, San Francisco Superior Court No. 812459, April 23, 1984 (Order), June 27, 1984 (judgment).

The superior court ruled that Chapter 1983, Statutes of 1983, *(SB 813,* Hart) requiring reassessment immediately after property is sold instead of on March 1 of each year is not an ad valorem property tax increase and therefore is not in violation of Article XIII A.

The court stated that the reassessment provision is "at most, a change in the method of computing existing ad valorem real property taxes, rather than the imposition of a new such tax." However, the court struck down the provision (Revenue and Taxation Code Section 75.12) exempting newly constructed property from addition to the roll until its subsequent sale, lease, or rental.

The court also ruled invalid the exclusion from the definition of real property fixtures, which are normally valued as a separate appraisal unit from a structure (Revenue and Taxation Code Section 75.5) Both sections were found in violation of Article XIII, Section 1, of the state constitution which requires that unless specified elsewhere in the constitution or in federal law, all property is taxable and shall be assessed at the same market value. The judgment prohibits collection of added taxes under the invalidated provisions until the matter is decided at the appellate level. The First District Court of Appeal has not scheduled oral arguments (A028122).

• Legislative Counsel Opinions

No. 7781, *Property Taxation,* June 7, 1982

The opinion concludes that provisions of subdivision (c) of Section 70 of the Revenue and Taxation Code and subdivision (f) of Section 43 of Title 18 of the California Administrative Code have to be construed to apply only to real property which has been damaged or destroyed by a disaster *which has been declared by the Governor,* in order to be constitutional pursuant to subdivision (a) of Section 2 of Article XIII A.

• Statutory Enactments, 1978

Resolution Chapter 76, (SCA 67, Rains)

Redefines full cash value to exclude from the definition of "newly constructed" real property reconstructed after a disaster, as declared by the governor, where fair market values are comparable.

• Statutory Enactments, 1980

Resolution Chapter 45 (ACA 3, Knox)

Would have exempted from new construction definition the replacement reconstruction of property destroyed by legislatively-defined disaster and construction necessary to comply with earthquake safety laws. (Failed passage in November 1980 election: 42.3% (for) and 57.7% (against).

Resolution Chapter 48 (SCA 28, Alquist)

Authorizes the Legislature to provide that the term "newly constructed" shall not include the construction or addition of any active solar energy system. (Proposition 7 of the November 4, 1980 election) Adopted: 65.5% (for) and 34.5% (against).

Chapter 1245 (SB 1306, Alquist)

Provides that for purposes of Article XIII A, "newly constructed" shall not include construction or addition of any solar energy system. In the case of solar swimming pool heaters, "new construction" shall not include the increment of cost in excess of the cost of a comparable conventional fossil fuel heating system. Applies only to lien dates for fiscal years commencing 1981 through 1985.

• Statutory Enactments, 1981

Chapter 239 (AB 375, Wyman)

Article XII A, Section 2 provides that the term "newly constructed" shall not include the construction or addition of any active solar energy system. This measure further implements the exclusion and specifically defines "active solar energy system" for that purpose. Urgency measure, effective July 20, 1981, and repealed on January 1, 1986.

Chapter 377 (SB 139, Speraw)

Provides that reduced property tax assessment for property damaged or destroyed by a disaster, misfortune, or calamity would continue until the property is repaired, restored, or reconstructed. When such property is partially or fully repaired it will be assessed accordingly.

• Statutory Enactments, 1982

Resolution Chapter 49 (ACA 53, Frizzelle)

Authorizes the Legislature to provide that the term "newly constructed" shall not include construction or addition of any fire sprinkler system or fire alarm system, as defined by the Legislature, provided that the construction or addition is not required by state law or local ordinance. Failed passage as Proposition 7 in November 1982 election: 41.3% (for) and 58.7% (against).

• Statutory Enactments, 1984

Resolution Chapter 2 (SCA 14, Rosenthal)

Exempts from "change of ownership" reassessment remodeling or reconstruction of buildings with unreinforced masonary walls if done to comply with local earthquake safety ordinance. (Proposition 23) Adopted: 53.3% (for) and 46.7% (against).

Resolution Chapter 56, Statutes of 1984 (SCA 57, Boatwright)

Authorizes the Legislature to provide that the term "newly constructed" shall not apply to construction or addition of fire extinguishing, detection, or escape systems. (Proposition 31) Adopted: 50.8% (for) and 49.2% (against).

Resolution Chapter 66, Statutes of 1984 (ACA 69, Farr)

Provided that "newly constructed" not apply to addition to or alteration or rehabilitation of an owner-occupied, certified historic structure which is an historically accurate reconstruction of once extant features or necessary for safety or handicapped access or required by safety code requirements. Defeated in the November 6, 1984, election: 47% (for) and 53% (against).

Change in Ownership

• Cases decided

Court of Appeal:

Parkmerced Company v. City and County of San Francisco, 149 Cal. App. 3d 1091, 197 Cal. Rptr. 401, December 20, 1983.

No change of ownership occurred when partnership property was transferred to the partnership from one of the partners which had been holding title as a nominee of the partnership.

The plaintiff partnership was formed for the purpose of acquiring and operating the property. Its general partners consisted of Datronics, Inc., and Parkmerced Corporation, the latter taking title of the property as called for by the partnership agreement. Parkmerced Corporation and a third corporation, Sierra Towers, were wholly owned by an individual who merged them into a single entity (Sierra Towers) which then transferred title to the property to the Parkmerced Company partnership. The county determined this transfer to be a change of ownership.

In affirming the trial court's finding that no change occurred, the First District Court of Appeal found that the corporations held no more than "bare legal title" on behalf of the ownership. Citing Revenue and Taxation Code Section 110.6 and Board of Equalization Rule No. 462, the court concluded that "a 'change of ownership' does not occur upon the 'transfer of bare legal title' to property, without a corresponding transfer of 'the beneficial use thereof.' "

Superior Court:

Title Insurance and Trust Company v. Marin County & State Board of Equalization. Marin County Superior Court No. 104338.

Issues are the same as presented in title insurance case below. The State Board of Equalization was served on August 4, 1982. Order granting dismissal of complaint was filed December 2, 1982.

Paoli et al. v. City and County of San Francisco Assessment Appeals Board, et al., San Francisco Superior Court No. 793037, March 20, 1985.

Plaintiffs denied refund of taxes in dispute over whether upon dissolution of a corporation owning real property, the property must be distributed so that all shareholders receive an undivided interest

in *each* parcel of property in proportion to their shareholdings in order to qualify for exclusion under Section 62(a), Revenue and Taxation Code.

Title Insurance and Trust Company v. County of Riverside, et al., and ...

Title Insurance and Trust Company v. County of Merced and State Board of Equalization, Riverside County Superior Court, Coordination Action No. 1566, April 25, 1985.

Judgement in favor of plaintiff seeking refund of 1980-81 taxes paid and declaratory relief on the basis that Section 64(c) of the Revenue and Taxation Code is unconstitutional, unreasonable, and invalid. Section 64(c) requires that upon the stock acquisition of direct or indirect ownership or control of a corporation, all property owned directly or indirectly by the acquired legal entity is deemed to have undergone a change in ownership. Issues raised in the complaint are: (1) whether the transfer of stock effects a change in ownership of a legal entity's real property; (2) whether Section 64(c) unconstitutionally deviates from the fundamental rule which recognizes separate legal identities of corporations and shareholders; (3) whether Section 64(c) violates equal protection regarding corporate stock transfers; (4) whether Section 64(c) is part of an inconsistent change in ownership statutory scheme; and (5) whether Section 64(c) authorizes the reappraisal of property owned by subsidiaries of an acquired parent corporation.

• Cases pending

Superior Court:

Glen Ivy Recreational Vehicle Park Owners Association v. County of Riverside, Riverside Superior Court No. 133211, filed July 10, 1981.

Plaintiff, which represents owners of undivided interests in a time-share project, seeks a refund of taxes paid on the basis that the reappraisal of such interests upon a change in ownership is a denial of equal protection and that Revenue and Taxation Code, Section 65.1 discriminates against fee owners vis-a-vis owners of other types of interests in time-share projects.

Marvin Benson et al. v. Board of Equalization, et al., San Francisco Superior Court, No. 809837.

Action filed June 1, 1983, challenging validity of Revenue and Taxation Code Sections 61(h) and 65.1(b) which were applied to find a change of ownership in the issuance of shares by a California housing cooperative corporation.

• Statutory Enactments, 1980

Resolution Chapter 45 (ACA 3, Knox)

Would have exempted from change of ownership definition like property purchased as replacement for property damaged by legislatively-defined disaster or lost due to eminent domain proceedings, inverse condemnation, or otherwise purchased by a government agency. (Failed passage as Proposition 5 in November 1980 election:

42.3% (for) and 57.7% (against).

- **Statutory Enactments, 1981**

Chapter 615 (SB 1211, Beverly)
Excludes from the definition of change in ownership transfers between certain religious organizations. Urgency statute, effective September 16, 1982.

- **Statutory Enactments, 1982**

Resolution Chapter 5, Statutes of 1982 (ACA 4, Campbell)
Provides that "change in ownership" does not include acquisition of real property as a replacement for comparable property if the person acquiring the real property has been displaced from the property replaced by eminent domain proceedings, by acquisition by a public entity, or governmental action resulting in a judgement of inverse condemantion. Applies to property acquired after March 1, 1975, for assessments made on the 1983-84 assessment roll and thereafter. (Proposition 3) Adopted: 56.4% (for) and 43.6% (against).

Chapter 911 (AB 2718, Kapiloff)
Excludes from change of ownership transfers to correct or reform a deed to express parties' true intent and intrafamily transfers of homes to minors as a result of a court order stemming from the death of a parent or parents.

Chapter 1465 (AB 3382, Cortese)
Implements Proposition 3 of 1982 (related to replacement property acquired following displacement by a government action) by specifying that the adjusted base year value of the replacement property shall be the lower of its fair market value or the adjusted base year value of the replaced property.

- **Statutory Enactments, 1983**

Chapter 662 (AB 1098, Connelly)
Provides that the adjusted base year value of replacement property acquired under Article XIII A, Section 2(d), shall be the lower of its fair market value or the sum of the adjusted base year value of the property from which the person was displaced and the amount, if any, by which the full cash value of the property acquired exceeds 120% of the amount received for the property from which the taxpayer was displaced.

- **Statutory Enactments, 1984**

Chapter 1010 (AB 2890, Young)
Excludes from change of ownership any transfer of dwelling from parent to disabled child when disability has existed for five years and combined parent-child income is less than $20,000 in the year of transfer.

Application of 2% Inflation Factor

- **Cases decided**

Court of Appeal:

Barrett et al. v. County of Santa Clara, et al., and ...

Armstrong v. County of San Mateo, et al., 146 Cal. App. 3d 597, 194 Cal. Rptr. 294, August 26, 1983.
The First District Court of Appeal upheld state legislation and a Board of Equalization rule by overturning a San Mateo Superior Court ruling that Article XIII A's annual 2% inflation adjustment factor for property assessments "applies to the fair market value base commencing July 1, 1978, and not prior to that date." (Supreme Court denied hearing November 10, 1983.)

- **Statutory Enactments, 1983**

Chapter 14, First Extraordinary Session (AB 15X, O'Connell)
Requires that if a final decision in the Barrett and Armstrong cases above concludes that excess taxes were collected due to improper valuation, all assessees affected shall receive refunds plus interest without the necessity of compliance with statutory requirements of filing claims within the statute of limitations.

- **Statutory Enactments, 1984**

Chapter 1164, (AB 3741, Bradley)
Establishes December to December (instead of April to April) as the annual period for determining the percentage change in cost of living for adjusting assessment increases within the 2% cap. Effective for assessment years beginning after January 1, 1985.

1978-79 Unsecured Property Tax Rate

- **Cases decided**

Supreme Court:

Board of Supervisors of San Diego County v. Lonergan, and ...

Roy E. Hanson, Jr. Mfg. v. County of Los Angeles, 27 Cal. 3d 870, 167 Cal. Rptr. 820, 616 P. 2d 802, August 14, 1980.
The Supreme Court reversed the rulings of the Fourth and Second Courts of Appeal and held that Proposition 13 was inapplicable to property on the unsecured roll for the tax year 1978-79, and that such property was to be taxed at the 1977-78 secured rate. Opinion

by Mosk; Tobriner, Clark, Richardson, Manuel, Newman, and Bird, concurring. (Cert. denied, U.S. Supreme Court, February 23, 1981.)

Court of Appeal:

Darr v. Alvord, 101 Cal. App. 3d 480, 161 Cal. Rptr. 658, January 28, 1980.

The Second District Court of Appeal held that plaintiff taxpayers possessed an adequate legal remedy for refund of any taxes paid by them and were not entitled to preliminary injunctive relief. With respect to the underlying issue of constitutional interpretation of Article XIII A regarding the 1978-79 unsecured tax rate, the court deferred to its opinion in the *Hanson* case. (Supreme Court denied petition for hearing April 10, 1980.)

Marvin D. Poer and Company v. Counties of Alameda, et al., 725 F. 2d 1234, February 14, 1984.

The U.S. Court of Appeals, Ninth Circuit, upheld a district court grant of motion to dismiss the plaintiff's action for refund. The ruling was based on the federal Tax Injunction Act (28 U.S.C. Section 1341) which states that "district courts shall not enjoin, suspend, or restrain the assessment, levy, or collection of any tax under State law where a plain, speedy, and efficient remedy may be had in the courts of such State."

The plaintiffs sought a refund of 1978-79 taxes on unsecured property, arguing that failure to apply in that year the same 1% rate applied to real property was a violation of equal protection.

Superior Court:

Drogin v. Board of Supervisors, San Diego County, San Diego Superior Court No. 488448.

In a July 11, 1983, judgment the Superior Court ruled that Revenue and Taxation Code Section 107(b) does not give the Board of Supervisors authority to retroactively transfer possessary interests from the unsecured to the secured roll for the year 1978-79.

- **Attorney General Opinions**

No. 78-76, June 1978 (Opinion by letter)

Opinion concludes that Article XIII A's 1% rate limit applies to both real and personal property on the unsecured role in fiscal 1978-79.

- **Statutory Enactments, 1980**

Chapter 1354 (AB 2196, Greene)

Provides that a local agency which applied the tax rate limitation of Article XIII A to property on the unsecured roll for the 1978-79 tax year, shall not collect the tax at a higher rate for the 1978-79 tax year until July 1, 1981.

- **Statutory Enactments, 1981**

Chapter 242 (AB 20, Lockyer)

Cancels all interest and penalties on supplemental unsecured property tax levies resulting from the *Lonergan* and *Hanson* decisions

if paid by December 31, 1981. Authorizes boards of supervisors in certain situations to exempt from revaluation those properties assessed for the 1978-79 unsecured roll.

Recognition of Declines in Value in 1978-79

- **Cases decided**

Court of Appeal:

State Board of Equalization v. San Diego Board of Supervisors, 105 Cal. App. 3d 813, 164 Cal. Rptr. 739, May 15, 1980.

The Fourth District Court of Appeal invalidated Board Rule 461(b), adopted following passage of Proposition 13 and prior to voter approval of Proposition 8 on the November 1978 ballot. Rule 461(b) provides that, for the 1978-79 tax year, real property shall not reflect changes in depreciaton. The court ruled that Proposition 8 should be given retroactive application to the effective date of Proposition 13. (Petition for rehearing denied June 16, 1980.)

The 1% Tax Rate Limitation

- **Cases decided**

Court of Appeal:

City of San Marcos v. San Diego County Board of Supervisors, 159 Cal. App. 3d 355, 205 Cal. Rptr. 566, August 20, 1984.

Property cannot be taxed above Proposition 13's 1% limit to fund a school district's share of a city-levied, 1911 and 1913 Act benefit assessment. The city contended that the tax passed the school district's benefit assessment on to the real owners of school property and was not therefore a property tax increase. The Fourth District Court of Appeal (reversing the trial court) held the proposed tax to be a "special ad valorem property tax" prohibited by Proposition 13. (Petition for hearing denied by the Supreme Court October 18, 1984.)

- **Cases pending**

Superior Court:

Miller, et al. v. City of Napa, et al., Napa County Superior Court No. 40075.

Class action for declaratory relief and refund of taxes levied and collected on April 1978 secured roll constituting taxes for the second half of the 1978 calendar year. Claimants contend such advance

collection of taxes for the period July 1-December 31, 1978, are in excess of those authorized by Proposition 13 and are, therefore, unconstitutional. In April 16, 1980, minute order the court certified the case as an appropriate class action suit and set forth requirements for plaintiffs to follow in proceeding.

- **Attorney General Opinion**

No. 79-809, October 31, 1979, 62 Ops. Cal. Atty. Gen. 655.

The opinion concludes that Article XIII A, as implemented by Revenue and Taxation Code, Section 2237, generally prohibits a county board of supervisors from levying a tax under the provisions of Military and Veterans Code, Section 1262, to fund acquisition and maintenance of veteran facilities.

The Voter-Approved Debt Exception

- **Cases decided**

Supreme Court:

Carman v. Alvord, 31 Cal. 3d 318, 182 Cal. Rptr, 506, 644 P. 2d 192, May 10, 1982

The issue presented was whether Article XIII A permits levy of an ad valorem tax in excess of the 1% limit in order to meet a city's obligation to the Public Employees' Retirement System, where the obligation was approved by voters prior to July 1, 1978. The Supreme Court unanimously held that the term "indebtedness" covered obligations arising under a city's pension plan, and that the phrase "interest and redemption charges" in the context used in Article XIII A, Section 1(b) denotes no more or less than sums from time to time necessary to avoid default on obligations to pay money, including obligations for pensions. The court also held that such construction of the exception to the 1% limitation avoided any issue of impairment of pension rights in violation of the federal contract clause that might arise if Article XIII A were construed to repeal the city's pension tax. Opinion by Newman; Bird, Mosk, Richardson, Kaus, Broussard, and Reynoso, concurring. (Petition for rehearing denied June 17, 1982.)

Court of Appeal:

Kern County Water Agency v. Board of Supervisors of the County of Kern, 96 Cal. App. 3d 874, 158 Cal. Rptr. 430, September 13, 1979.

The Second District Court of Appeal held that most taxes levied for the benefit of Kern County Water Agency were expressly authorized by Article XIII A, Section 1(b). In 1960 California voters approved the "California Water Resources Development Bond Act" (Water Code, Section 12930). In 1961 the water agency entered into a voter-approved

contract with the Department of Water Resources for purchase of water. One provision of the contract required the agency to levy a tax sufficient to provide for all payments under the contract if the agency failed to raise sufficient funds. The court found that the taxes levied were necessary to meet the bond indebtedness approved by voters in 1960 and re-approved by voters of Kern County in 1961.

Metropolitan Water District of Southern California, et al. v. Dorff, 98 Cal. App. 3d 109, 159 Cal. Rptr. 211, October 9, 1979.

The Second District Court of Appeal held that, under an exception to the constitutional provisions excluding from the tax limitation to pay interest and redemption charges on any indebtedness approved by the voters prior to the time Proposition 13 became effective, the real property annexed to the Metropolitan Water District after passage of the proposition was subject to an ad valorem tax in excess of 1% to pay the interest and redemption charges on indebtedness of the Metropolitan Water District approved by voters prior to that date. The court made its finding even though the property to be annexed was not included within territory served by the Metropolitan Water District at the time the indebtedness was approved. (Supreme Court denied petition for hearing December 6, 1979.)

County of Shasta v. County of Trinity, 106 Cal. App. 3d 30, 165 Cal. Rptr. 18, May 22, 1980.

The Third District Court of Appeal held that the annual payment for use of the property of the Shasta Joint Junior College District by Trinity County is an indebtedness approved by voters prior to the effective date of Article XIII A, and that the tax levied for that purpose is not within the limitation of Section 1(a) of that article. According to the facts of the case, the then existing legislative scheme permitted Trinity County to join a new school district and to acquire the corresponding right to use the property of the old district by voting either to assume the indebtedness of the old district or by voting to pay an annual charge for use of such property in an amount equal to that amount required for interest and redemption of bonded indebtedness incurred in acquiring the property. In an April 1967 election, Trinity County voted to join the new district and to incur the annual charge to be raised and paid through a tax levy.

City of Watsonville v. Merrill, 137 Cal. App. 3d 185, 186 Cal. Rptr, 857, November 4, 1982.

After granting consolidation of separate actions, the First District Court of Appeal ruled that the *Carman* decision above is not limited to public employee retirement contribution levels existing prior to Proposition 13's passage. The opinion stated that "the change in the amount of the employer's contribution was both envisaged and approved by the voters when the city joined the retirement system" and that the additional tax challenged "qualifies as a voter approved prior indebtedness in its entirety." (Petition for rehearing denied December 2, 1982.)

Metropolitan Water District v. Dorff, 138 Cal. App. 3d 388, 188

Cal. Rptr. 169, December 21, 1982.

The Fourth District Court of Appeal ruled that Article XIII A does not prohibit issuing general obligation bonds at a higher interest rate than existed when the bonds received their pre-Proposition 13 voter approval. It was held that the Article's phrase "approved by the voters" applies only to the indebtedness proposed and not to "the more remote phrase 'interest and redemption charges.' "

Eastern Municipal Water District v. Louise C. Koetters, Secretary of Eastern Municipal Water District, Fourth Appellate District, Division 2, 4 Civ. No. 27988 (Unpublished, February 15, 1983).

Writ of mandate granted to water district. Issue on interest rates identical to that in *Metropolitan Water District v. Dorff* (above).

Goodman v. County of Riverside, 140 Cal. App. 3d 900, 190 Cal. Rptr. 7, March 16, 1983.

The Fourth District Court of Appeal upheld a Superior Court ruling that property taxes levied by a local agency to raise money due under State Water Project contracts are to pay an "indebtedness" approved by voters prior to Proposition 13's passage and are therefore exempt from the 1% tax rate limit. The court ruled that the indebtedness covered by the exemption includes not only the $1.75 billion in bonds authorized by the Burns-Porter Act approved at a 1960 statewide election but to "the cost of maintaining, operating, and replacing the system and of repaying the California Water Fund." (Supreme Court denied hearing July 14, 1983.)

Valentine v. City of Oakland, 148 Cal. App. 3d 139, 196 Cal. Rptr. 59, October 20, 1983.

Voter approval of participation in a retirement system fulfills the voter-approved indebtedness requirement. "Once the indebtedness is found to have had the voters' prior approval," the First District Court of Appeal rule, "ad valorem taxes etc. to pay the obligations arising thereunder are exempt, and there is no express requirement that such taxes need also be voter approved."

Las Virgenes Municipal Water District v. Dorgelo, 154 Cal. App. 3d 481, 201 Cal. Rptr. 266, April 13, 1984.

Failure to exercise a protest as provided by the State Water Code constitutes the necessary "voter approval" of indebtedness to permit levying a tax rate above 1%. The Second District Court of Appeal found that landowners in the water district consented to authorizing issuance of bonds by not registering their disapproval after the district published of a notice of intention in 1964. The court found that "approval," not an "election," is mandated by Section 1 (b) of Article XIII A.

City of Fresno v. Superior Court of Fresno County (Taxpayers Association of Fresno, 156 Cal. App. 3d 1137, 202 Cal. Rptr. 313, May 10, 1984 (modified June 7, 1984).

Imposition of the tax authorized in *Carman* to fund retirement benefits beyond the level existing when pre-Proposition 13 voter approval was secured would be beyond the scope of the indebtedness approved by the voters and therefore in violation of Article XIII.

The Fifth District Court of Appeal upheld the tax at issue because its proceeds were less than that required to maintain benefits at the 1957 level when Fresno voters approved a city charter which provided that the council "shall by ordinance provide for and establish a fund or funds for the relief and pensioning of all employees..." The court stated that voter approval extended the 1957 benefit level funding to then current and future employees. (Petition for hearing by the Supreme Court denied July 11, 1984.)

Superior Court:

City of Napa v. Board of Supervisors, Napa County;, Napa Superior Court No. 45509, June 28, 1983, March 30, 1984 (statement of decision), and June 18, 1985 (judgment).

In the 1983 decision the court ruled that the voter-approved debt requirement was met by a 1976 voter approval of a tax increase to finance emergency care by city-employed paramedics. In the 1984 opinion concurred that the 1983 "Carman moratorium" legislation terminated any requirement that there should be retroactive reallocation of property taxes distributed to jurisdictions such as the City of Napa. (Petition for hearing with the Court of Appeal was not filed.)

City of Fresno v. Gary W. Peterson, Auditor-Controller of the County of Fresno, Fresno County Superior Court No. 300261-5, December 14, 1983.

The superior court granted a writ of mandate ordering the county auditor-controller to cease impounding money collected by the City of Fresno from its newly-established tax rate above 1% for the purpose of funding pension costs. Fresno levied the add-on rate for the first time in 1983-84 under a limited exception to the "Carman moratorium" (See "Statutes Enacted, 1983" below). That exception permitted a jurisdiction to impose a 1983-84 pension rate higher than in the previous year if before July 1, 1983, a budget resolution had been adopted contemplating the additional rate.

The county contended that while the city could levy the higher rate, the moratorium language required that an amount equal to the proceeds be reduced from the city's share of the county-wide 1% rate and reallocated to the county and other local entities. The court found that the provision did not apply to the City of Fresno because the reallocation formula required that a local government had levied a separate rate for pensions in 1982-83. (The order was not appealed.)

• Cases pending

Supreme Court:

Patton v. City of Alameda, 161 Cal. App. 3d 1186, November 21, 1984.

A city charter provision mandating the funding of the operating expense of a city department by the imposition of a specified minimum tax rate does not create an indebtedness which can be funded by a tax above the 1% rate. The First District Court of Appeal, reversing the

trial court, ruled that the voter approved charter provision, is "an internal obligation owed to a department of the city and not an indebtedness owed to third persons." As such, the "mandatory appropriation amounts to no more than a charter imposed guarantee of a minimum portion of ad valorem property tax for this specific city service." (Petition for hearing granted by the Supreme Court February 21, 1985, heard May 6, 1985; San Francisco 24852.)

• Attorney General Opinions

No. 78-90, August 18, 1978, 61 Ops. Cal. Atty. Gen. 373.

The opinion concludes that property taxes levied by local water districts necessary to provide for payments to the state under the state water supply contracts fall within Section 1(b) of Article XIII A as indebtedness approved by voters insofar as the voters approved the $1.75 billion bond indebtedness under the Burns-Porter Act in 1960 and the contractual scheme to support the system and pay the indebtedness.

No. 78-119, April 18, 1979, 62 Ops. Cal. Atty. Gen. 209.

The opinion concludes that under provisions of Article XIII A school districts may continue to fund new school construction through voter-approved bonds and lease-purchase agreements if the indebtedness was approved by the voters prior to July 1, 1978.

No. 78-136, June 29, 1979, 62 Ops. Cal. Atty. Gen. 339.

The opinion concludes that property taxes levied pursuant to Section 16090 of the Education Code to repay apportionments made under Sections 16310-16344 of the Education Code are exempt from the 1% property tax limitation contained in Section 1, Article XIII A, because the Building Aid Bond Laws were approved at statewide elections. Approval encompased a system of indebtedness which included levy of local property taxes to repay principal and interest on bonds.

No. 79-623, October 4, 1979, 62 Ops. Cal. Atty. Gen. 553.

The opinion concludes that the exception to the property tax limitation provided by Section 1(b) of Article XIII A applies to a portion of the territory of a reorganized or annexed school district when the voters did not initially vote to authorize the indebtedness attributable to either: (a) state school building and apportionment loans from state school bonds, provided such bonds were approved by the voters of the state prior to July 1, 1978; or (b) local school bonds authorized for issuance prior to July 1, 1978, provided such bonded indebtedness was assumed by voters of such territory in bonded-indebtedness assumption election prior to July 1, 1978.

No. 79-424, October 16, 1979, 62 Ops. Cal. Atty. Gen. 589.

The opinion concludes that a fire protection district may not exceed the 1% limitation contained in Section 1 of Article XIIIA for the purpose of obtaining revenues to pay an indebtedness incurred pursuant to Section 13917.5 of the Health and Safety Code prior to July 1, 1978, whether or not such action is necessary to avoid default of the obligation of the district's contract. Section 13917.5 provides that

members of a fire protection district board may vote to incur indebtedness to acquire all necessary lands, facilities, and equipment; such indebtedness is clearly not approved by voters within the meaning of Section 1(b) of Article XIII A. The opinion further concludes that Article XIII A does not constitute a substantial impairment of contracts in question.

No. 82-803, December 2, 1982, 65 Ops. Cal. Atty. Gen. 603.

Neither Article XIII A nor Revenue and Taxation Code, Section 93, affects a California water district's authority to levy assessments to pay principal and interest on water and sewer system construction bonds approved by two-thirds of the voters at a post-July 1, 1978, election.

• Legislative Counsel Opinions

Property Tax Limits - No. 13201

The opinion concludes as follows:

1. A charter city may levy property taxes in excess of the limits contained in Article XIII A to make payments on indebtedness incurred under contractual obligations entered into prior to July 1, 1978, pursuant to the authority of retirement and pension system provisions of the city charter, if the indebtedness was specifically approved by the voters prior to July 1, 1978, or if the payment was necessary to avoid impairment of the obligation of such contracts; but taxes to pay any indebtedness resulting from contractual obligations entered into after that date would be subject to the limitations of Article XIII A, regardless of the date the city charter provisions were approved.

2. Section 2237 of the Revenue and Taxation Code authorizes a charter city to levy an ad valorem property tax to make annual payments for the interest and principal on indebtedness approved by the voters prior to July 1, 1978. A charter city may levy an ad valorem property tax on any indebtedness incurred pursuant to contractual obligations entered into prior to July 1, 1978, pursuant to the authority of the voter-approved city charter provisions authorizing the city to enter into contracts relating to the retirement of the employees.

3. The Legislature could not prohibit a charter city from imposing a property tax on real property for the purpose of paying the interest and redemption charges on any indebtedness incurred as a result of contractual obligations incurred prior to that date if the tax levy is for the purpose of avoiding the impairment of such contracts.

Property Tax Revenues - No. 10715

Government Code Section 26912 and Revenue and Taxation Code Section 95 (enacted as part of Article XIII A implementation legislation) in conjunction with the expanded definition of "debt" resulting from the *Carman* decision require the County of Los Angeles to reduce the allocation of property tax funds to the City of Los Angeles to the extent that the City included its pension system costs in its pre-Proposition 13 three year average for purposes of determining allocation factors. Such reduction would be required regardless of whether the city elects to impose an "add-on" rate for pension funding.

- **Statutory Enactments, 1979**

Chapter 941 (AB 1798, Mello)

Allows certain charter cities to levy a property tax rate in excess of the Proposition 13 $4.00 rate in 1978-79 and 1979-80 to fund employee retirement plans.

- **Statutory Enactments, 1980**

Resolution Chapter 43 (SCA 26, Craven)

Would have permitted ad valorem tax increase upon two-thirds local vote for the purpose of funding interest and redemption charges on "indebtedness for acquiring or improving real property and acquiring tangible personal property necessary to the use of such real property." (Failed passage in November 1980 election: 24.9% (for) and 75.1% (against).

- **Statutory Enactments, 1983**

Chapter 491 (AB 377, Roos)

Prohibits local agencies from imposing in 1983-84 and 1984-85 a higher property tax rate to fund other than bonded debt. Eliminates the requirement of property tax reallocations among local agencies retroactively to 1978-79 and in fiscal 1983-84 and 1984-85.

Chapter 1324 (AB 322, Costa)

Provided that moratorium enacted by Chapter 491, Statute of 1983, does not apply to taxes levied to pay specified obligations relating to water contracts with the State of California or the United States.

- **Statutory Enactments, 1984**

Resolution Chapter 142, (ACA 55, Cortese)

Would permit ad valorem tax increase upon two-thirds local vote to pay interest and redemption charges on "any bonded indebtedness for the acquisition or improvement of real property." (To appear on statewide ballot in June 1986)

Resolution Chapter 271, (SB 1445, Presley)

Deletes requirement that 80% of members of the board of directors of metropolitan water district, as defined, must find a fiscal emergency before increasing property tax rates (see Chapter 1324, Statutes of 1983, above). Limits, beginning in 1990-91 district property tax to that required to pay principal and interest on general obligation bond debt and a specified portion of the district obligation to the state under water contracts.

Application to State Assessees

- **Cases decided**

Supreme Court:

Pacific Gas and Electric Co., et al., v. State Board of Equalization, 27 Cal. 3d 277, 165 Cal. Rptr. 122, 611 P. 2d 463, June 5, 1980.

Pacific Gas and Electric Co., San Diego Gas and Electric Co., and Southern California Edison sought to have their real property assessments reduced to 1975-76 values as provided by Proposition 13. The utilities filed their suit against the state Board of Equalization before paying their property taxes. On October 16, 1979, the Court of Appeal held that state assessees are covered by Article XIII A and must be treated as any other real property holder in California. On appeal, the state Supreme Court ruled that the public utilities must use the tax refund method to determine if they are entitled to share in Proposition 13's tax rollback. The court did not determine whether the utilities would be entitled to the rollback. Opinion by Mosk; Bird, Clark, Richardson, Manuel, Newman, and White (assigned) concurring. (Petition for rehearing denied July 10, 1980.)

ITT World Communications Inc. v. City and County of San Francisco and State Board of Equalization, 37 Cal. 3d 859, 210 Cal. Rptr. 266, 693 P. 2d 811, January 31, 1985.

Upholding a Board of Equalization rule, the Supreme Court found that the plaintiff, a public utility, is not entitled to the Article XIII A rollback of its property's assessed value.

The court ruled that public utilities are subject to unit taxation which is not taxation of real or personal property but is taxation of property as a going concern.

The court agreed with San Francisco and the Board of Equalization which had argued that the phrase "county assessor's valuation" (Article XIII A, Section 2 (a)) requires that the rollback provision of Proposition 13 does not apply to state-assessed public utilities.

The decision overturned an appellate court ruling (151 Cal. App. 3d 1, January 23, 1984) that the phrase "was intended only to designate a specific numerical figure to which property owners may look in order to easily determine the new basis upon which the value of their property is to be calculated for future tax purposes." Opinion by Mosk; Bird, Kaus, Broussard, Reynoso, Grodin, and Lucas, concurring.

Assessment of Mineral Rights

- **Cases decided**

Court of Appeal:

Petroleum Property Appraisal Cases: Lynch v. Board of Equalization and *California Independent Producers Association, et al. v. Roberts,* 164 Cal. App. 3d 94, 210 Cal. Rptr. 335, January 25, 1985.

The Third District Court of Appeal upheld the trial court's ruling that Article XIII A applies to oil and gas properties and that State Board of Equalization Rule No. 468 "is an appropriate interpretation of Article XIII A as it relates to oil and gas interests."

Under the rule the value of an oil and gas interest is reduced annually by depletions from the prior year's production, adjusted for Article XIII A's 2% inflation factor, and increased by the current value of new proven reserves.

- **Attorney General Opinion**

No. 80-322, June 18, 1980, 63 Ops. Cal. Atty. Gen 491.

The opinion concludes that a reassessment of oil and gas rights based solely on an increase in recoverable amounts of oil and gas caused by a change in economic conditions violates Article XIII A of the California Constitution.

- **Legislative Counsel Opinion**

No. 17679, Property Tax: Assessments, February 19, 1980.

"A reappraisal of mineral rights based on increases in recoverable amounts of minerals caused by changes in economic conditions, in excess of 2% a year, would violate Section 2 of Article XIII A" and that therefore Board Rule No. 468 is erroneous.

Fees, Special Taxes

- **Cases decided**

Supreme Court:

Los Angeles County Transportation Commission v. Richmond, 31 Cal. 3d 197, 182 Cal. Rptr. 324, 643 P. 2d 941, April 30, 1982.

Section 4's two-thirds vote requirement was held not to apply to the vote on a sales tax increase proposed by the Los Angeles County Transportation Commission.

The Supreme Court found that as a special district which did not have, nor ever had, authority to levy a property tax, the transportation district did not come within the definition of special district as used in Article XIII A, Section 4. The case came directly to the Supreme Court on the commission's petition for a writ of mandate. Opinion by Mosk; Bird and Broussard, concurring; separate concurring opinion by Kaus, Newman concurring; Richardson dissenting.

City and County of San Francisco v. Farrell, 32 Cal. 3d 47, 184 Cal. Rptr. 713, 648 P. 2d 935, August 5, 1982.

The Supreme Court ruled that "special taxes" means "taxes which are levied for a specific purpose rather than. . . a levy placed in the general fund to be utilized for general governmental purposes."

The ruling overturned the appellate court decision which had found that San Francisco's payroll and business tax increases, receiving only 55% voter approval on June 3, 1980 were "special taxes" within the meaning of Article XIII A, Section 4, of the California Constitution and therefore required two-thirds voter approval.

The Supreme Court did not address the plaintiff's argument

that Section 4 of Article XIII A does not apply to charter cities. Opinion by Mosk; Bird, Newman, Broussard, and Reynoso, concurring; Richardson, dissenting; separate dissenting opinion by Kaus. (Petition for rehearing denied September 30, 1982.)

Huntington Park Redevelopment Agency v. Martin, 38 Cal 3d 100, 211 Cal. Rptr. 133, 695 P. 2d 220, February 28, 1985.

Reversing the Court of Appeal, the Supreme Court ruled that enactment of a sales tax by a redevelopment agency, involving the willing "transfer" of part of a host city's sales tax to the agency, is not invalid even though it was not approved by a two-thirds vote of the electorate. The court did not rule on whether the enactment involved a special tax, determining that this question did not have to be dealt with because redevelopment agencies are empowered to levy property taxes and therefore are not special districts for the purpose of Article XIII A, Section 4. Opinion by Mosk; Bird, Kaus, Broussard, Reynoso, and Grodin, concurring; separate concurring and dissenting opinion by Lucas.

Court of Appeal:

Mills v. County of Trinity, 108 Cal. App. 3d 656, 166 Cal. Rptr. 674, July 29, 1980.

The Third District Court of Appeal concluded that "special taxes" under Article XIII A, Section 4, do not embrace fees for land-use regulatory activities (e.g., increased and new fees for county services in processing subdivision, zoning, and other land-use applications) where the fees charged to particular applicants do not exceed the reasonable cost of the regulatory activities and are not levied for unrelated revenue purposes.

Trent Meredith, Inc. v. City of Oxnard, 114 Cal. App. 3d 317, 170 Cal. Rptr. 685, January 6, 1981.

The Second District Court of Appeal affirmed the trial court's ruling that the city's post-Proposition 13 school impact fee ordinance was not invalid as imposing "special taxes" (within the meaning of Article XIII A, Section 4 of the California Constitution), but was a properly adopted police-powers measure. The court found it unnecessary to define the term "special taxes" and further found that the exaction in question was not an ad valorem property tax. (Petition for hearing by the Supreme Court denied March 11, 1981.)

Kehrlein v. City of Oakland, 116 Cal. App. 3d 332, 172 Cal. Rptr. 111, February 27, 1981; modified 117 Cal. App. 3d 520b, March 27, 1981.

The First District Court of Appeal held that the effective date of Section 4 of Article XIII A was July 1, 1978. Therefore, enactment by the city council on June 19, 1978, of two ordinances increasing business license tax rates was not affected by the two-thirds vote requirement of Article XIII A. Consequently, the ordinances were validly passed pursuant to the city's general taxing authority. (Petition for hearing by the Supreme Court denied April 22, 1981.)

Pugh v. City of Sacramento, 119 Cal. App. 3d 485, 174 Cal. Rptr. 119, May 27, 1981.

The Third District Court of Appeal held that the effective date of Article XIII A, Section 4, prescribing a city transfer tax on the transfer of real property was July 1, 1978, and that since the ordinance imposing the transfer tax became operative on June 29, 1978, the ordinance was not affected by the constitutional provision. (Petition for hearing by the Supreme Court denied July 22, 1981.)

National Independent Business Alliance et al. v. City of Beverly Hills et al., 128 Cal. App. 3d 13, 180 Cal. Rptr. 59, January 19, 1982.

The Second District Court of Appeal upheld the validity of both an urgency ordinance adopted by the city council on June 29, 1978, (two days prior to the effective date of Article XIII A, Section 4), which increased business license taxes in several different categories, and a later enacted ordinance which recodified provisions of the earlier ordinance. The court further ruled there was no evidence before the trial court on lack of equal protection, thus the lower court was correct in giving the first ordinance the benefit of presumption of constitutionality. (Petition for hearing by the Supreme Court denied April 7, 1982.)

Winberry Development Co., Inc. v. County of Shasta, 3 Civ. 18854, February 9, 1982.

By unpublished opinion, the Third District Court of Appeal reversed the trial court's ruling that school impact fees authorized by Government Code, Section 65970, *et seq.* are "special taxes." Because the same issues were considered and decided in a virtually identical factual context in the *Trent Meredith* case, the court deferred to that opinion. (See above.) (Petition for rehearing denied March 9, 1982.)

City of Atascadero v. Daly, 135 Cal. App. 3d 466, 185 Cal. Rptr. 228, August 26, 1982.

The Fifth District Court of Appeal upheld the trial court's declaration of invalidity of a proposed initiative ordinance presented to the city to define as a "special tax" any device which has as its purpose in whole or in part the imposition or increased source of revenue." The court found that "special tax" has already been authoritatively defined by the Supreme Court and the Legislature and that the proposed ordinance is also invalid as an unlawful attempt to impair essential governmental functions through interference with the administration of the city's fiscal powers.

Community Health Association v. Humboldt County Board of Supervisors, 146 Cal. App. 3d 990, 194 Cal. Rptr. 557, September 8, 1983.

The "Howell Initiative" passed by Humboldt County voters in 1979 to freeze all fees and assessments is invalid as a violation of the California Constitution's ban (Article II, Section 9) against the use of the referendum against statutes "providing for tax levies or appropriations for usual current expenses of the state." The First District Court of Appeal decision (upholding the trial court) cited case law extending the constitutional language to county governments and applying it to fees as well as to taxes. The trial court had also found the initiative invalid as an attempt to regulate in an area of local government appropriations preempted by Article XIII B (the Gann Initiative).

Amberg v. Rolling Hills Community Association, 150 Cal. App. 3d 1125, January 20, 1984; modified 151 Cal. App. 3d 776b, February 9, 1984; ordered not published, September 20, 1984.

A private homeowner association's method of levying its annual assessment based on valuation of property and improvements as established by the county assessor is not inequitable and unenforceable by reason of the adoption of Article XIII A. The Second District Court of Appeal upheld the trial court's refusal to order the association to revise its assessment method. Plaintiffs were purchasers of property after Proposition 13's passage.

Fenton v. City of Delano, 162 Cal. App. 3d 400, 208 Cal. Rptr. 486, December 3, 1984.

A utility users tax was validly enacted by the defendant city council and is not subject to Article XIII A's two-thirds vote requirement. The Fifth District Court of Appeal decision upheld a superior court ruling following a hearing at which the city manager said, in the appeals court's words, that the money from the tax "would be placed in the city's general fund for municipal functions such as police and fire protection."

The court based its decision on *City and County of San Francisco v. Farrell,* which the plaintiffs argued would "totally destroy Proposition 13" if read broadly. The court said that, "This possibility appears to have been recognized and addressed in *Farrell,*" and that the Supreme Court "nonetheless found that strict adherence to the terms of Article XIII A should be the paramount goal."

The plaintiffs also contended that a two-thirds vote is required by Government Code Section 53978 (enacted by Chapter 397, Statutes of 1979) which authorizes local agencies to levy a special tax for fire and police services if approved by two-thirds of the electorate. The city attempted to evade this voting requirement, the plaintiffs said, by lumping police and fire services into the city's general fund.

Responding to this argument, the appeals court said the language of the code section "speaks of 'special taxes' and provides for the establishment of particular zones or areas within which the tax can be imposed. In addition the funds received are to be limited for special uses. Such language contemplates a tax above and beyond the money needed for the general operating expenses of the police and fire department . . . Further, it is not this court's prerogative to second-guess (the) city's motives for the inclusion of police and fire protection within its general fund services. While such inclusion may avoid the requirement of voter approval for a 'special tax,' the trade-off is that the police and fire departments must share the available funds with each other and with other city agencies drawing upon that funds."

City of Cathedral City v. County of Riverside, 163 Cal. App. 3d 960, 210 Cal. Rptr. 60, January 22, 1985.

Overruling the trial court, the Second District Court of Appeal

held that the council of a new city may enact a document tax on real property transfers without violating Article XIII A's voter approval requirement. Plaintiff is a city which incorporated after passage of Proposition 13 and enacted the tax in order to gain its 50% share of the $0.55 per $500 of value already imposed by the county pursuant to Revenue and Taxation Code Section 11931. The court noted that the procedure was one of allocation and did not increase the tax liability of any person.

Knapp v. Trinity County, 3 Civ. 23025 (unpublished), October 24, 1984.

A user fee approved by the board of supervisors for dumping at a private waste disposal facility under contract with the county is not a special tax." In overturning the court's decision, the Third District Court of Appeal stated that the plaintiff failed to carry the burden of proving that the fees exceeded the reasonable cost of providing the disposal service.

Beaumont Investors v. Beaumont-Cherry Valley Water District, 165 Cal. App. 3d 227, __ Cal. Rptr. __, March 5, 1985.

A local agency has the burden of establishing that a fee does not exceed the reasonable cost of the service, the Fourth District Court of Appeal ruled. The defendant water district adopted a $750 per unit facilities fee to finance the construction of new facilities which new development would require, but, the court held, failed to show a study of estimated costs of system improvements or that the allocation of the fee bore a fair or reasonable relation to benefits from the system. This failure resulted in the fee being viewed as a special tax, which was invalid because it was not approved by two-thirds of the district's voters. (Petition for hearing by the Supreme Court denied June 10, 1985.)

Superior Court:

Taxpayers Association, Inc., etc. v. San Joaquin Local Health District, et al., San Joaquin Superior Court No. 145597.

Trial court ruled that district fees imposed to cover the cost of health inspection services performed by the district for the county and all cities within the county were not "special taxes" but were validly imposed as regulatory charges pursuant to police powers. Appellant dismissed own appeal on November 5, 1980.

Burke, et al. v. City of Imperial Beach, San Diego Superior Court No. 495608, filed November 29, 1982.

Action for declaratory judgment to determine validity of fire and police taxes imposed following approval by less than a two-thirds (police 57%, fire 61%) vote. City asserted that the validity of the taxes under the *Farrell* decision on the basis that new revenue was to go into the city general fund. On March 10, 1983, prior to trial, the city signed a stipulation that ordinances in question required two-thirds voter approval and therefore were invalid.

Downtown Merchants Parking Association v. City of Oakland,

Alameda Superior Court, filed September 24, 1981.

Plaintiff sought a writ of mandate and declaratory relief in challenging an increase in the business license gross receipts tax on commercial rental space and the establishment of a monthly $5 per stall tax on parking space. Action, based on a violation of "special tax" restriction in Article XIII A, was voluntarily dismissed by plaintiffs following the *Farrell* decision.

• Cases pending

Supreme Court:

Building Industry Association v. City of Oxnard, 150 Cal. App. 3d 535, 198 Cal. Rptr. 63, January 6, 1984.

A development fee levied by the city to fund capital facilities is not a valid regulatory fee and is therefore a tax; as a tax it is void because it does not have Legislative authorization and was not approved by a two-third vote of the electorate.

The fee in question ("growth requirement capital fee") was imposed as a 2.8% charge on the value of new development. The city intended the fee to "provide an predictable and equitable funding method of requiring new developments to pay for the costs of future capital improvements which will benefit such development."

Reversing the trial court, the Second District Court of Appeal ruled that "The absense of any relationship between the amount of the exaction on individual construction projects and the need for or potential use of the public improvements to be financed by the growth requirement capital fee requires a conclusion that the ordinance is an invalid regulatory fee." Petition for hearing granted by state Supreme Court on March 24, 1984; oral arguments heard June 10, 1985.

Heckendorn v. City of San Marino, 163 Cal. App. 3d 35, 209 Cal. Rptr. 750, December 21, 1984.

The Second District Court of Appeal ruled that the plaintiff be allowed to amend his complaint seeking to invalidate a per parcel tax enacted by two-thirds of the city's voters in June 1983 to fund fire and police services. The plaintiff contends that because the tax is based on a system of zone and parcel size, it is an ad valorem property tax and invalid under Article XIII A. Supreme Court granted hearing March 4, 1985.

Court of Appeal:

Russ Building Partnership v. City and County of San Francisco, San Francisco Superior Court No. 780795,...

Pacific Gateway Associates v. City and County of San Francisco, San Francisco Superior Court No. 789365, and...

Crocker National Bank v. City and County of San Francisco, San Francisco Superior Court No. 790661, September 27, 1984.

San Francisco's Transit Impact Development Fee is a valid fee and therefore is not a "special tax" requiring a two-thirds vote. The $5 per square foot fee is imposed within a district on developers of new

office buildings to offset the building's added burden on public transportation. The superior court found that cost and ridership studies formed a rational basis for the fee. Decision stayed pending hearing on proposed statement of decision.

Altadena Library District v. Bloodgood, Los Angeles Superior Court No. C520919, November 30, 1984.

The superior court refused to accept the plaintiff's constitutional challenge to Article XIII A's local two-thirds vote requirement.

The suit brought to require the county auditor/controller to collect a $29-per-parcel library funding levy which had been approved by a 61.8% vote across 24 precincts. The money was intended to restore service cutbacks, among them closure of the district's one branch library which was located in a minority population area.

The plaintiffs attempted to equate the provision of library services with education, which the California Supreme Court has held to be a fundamental interest not subject to infringement unless a public interest compells it. On this point the court said that, "While public libraries are part of the state education program in a broad sense, it does not follow that a curtailment of library services is an unconstitutional violation of a constitutionally protected fundamental right, so long as invidious discrimination is not involved. But a constitutional violation would not be shown in this case even if petitioner's claimed correspondence of public schools and public libraries was valid."

Plaintiffs contended that Article XIII A's two-thirds vote requirement "unconstitutionally discriminates against the minority community," stating that if the four unintegrated precincts had been excluded from the election, the vote would have been 66.5% in favor of the tax. The court noted that this percentage still fell short of the 66.6% required and that furthermore the measure failed to receive a two-thirds vote in five of the eight predominatedly non-white precincts and passed by two-thirds in seven of the 15 precincts in which whites were the majority. Notice of appeal filed with Second District Court of Appeal (B010487).

• Attorney General Opinions

No. 78-96, November 1, 1978, 61 Ops. Cal. Atty. Gen. 512.

Libraries organized under specified Education or Government code sections may not charge local residents fees for "library services." A charter city's authority to require library fees depends upon charter provisions and ordinances, although fee authority need not be explicit in a charter. Counties are not authorized to charge fees for library services.

No. 78-123, May 18, 1979, 62 Ops. Cal. Atty. Gen. 254.

School impact fees (Government Code, Section 65974) newly imposed or changed to produce added revenue are "special taxes" within Article XIII A and must be approved by a two-thirds vote of the electorate.

No. 79-724, November 1, 1979, 62 Ops. Cal. Atty. Gen. 673.

An in lieu fee imposed by a county as a condition for issuing a

building permit but intended to finance low and moderate income housing subsidies is a "special tax" under Article XIII A and therefore requires two-thirds vote approval.

No. 79-1003, December 28, 1979, 62 Ops. Cal. Atty. Gen. 831.

County service area charges imposed for miscellaneous extended services pursuant to Government Code Section 25210.77 are not ad valorem taxes and therefore are not subject to Article XIII A's 1% rate limit. Such charges would constitute special taxes under Article XIII A if imposed to raise revenue.

No. 80-1107, February 10, 1981. 64 Ops. Cal. Atty. Gen. 156.

A sales tax imposed by the Los Angeles County Transportation Commission is an Article XIII special tax requiring two-thirds vote approval by the electorate.

No. 81-314, July 8, 1981, 64 Ops. Cal. Atty. Gen. 570.

The opinion concludes that a local agency may impose a standby charge for fire suppression services on lands that have been classified pursuant to Public Resources Code Section 4125 as "state responsibility areas," if the charge imposed does not exceed the value of available services.

• Legislative Counsel Opinions

No. 16240, *Article XIII A; "Special Taxes", Assessments, Fees,* November 13, 1978.

The opinion concludes:

(1) Counties, general law cities, special districts, including school districts, and chartered cities governed by general laws on tax matters are not able to impose *any* tax without specific authorization from the Legislature.

(2) None of the above entities, including *all* chartered cities, are able to impose a tax preempted by the state, either by the constitution or by statute, unless the Legislature enacts appropriate legislation. An insurance tax, a real property transfer tax and an ad valorem property tax could only become an authorized tax if the constitution were subsequently amended to provide therefore.

(3) Any general tax (or assessment) imposed by a county, city, or special district to raise revenues for its general fund requires a two-thirds vote.

(4) A special assessment made solely on the basis of benefits received is not considered a tax and can be validly imposed without a vote of the people. Such an assessment can be levied on an ad valorem basis, it if can be shown that this basis reflects the estimated benefit to the parcel.

(5) Service or regulatory fees limited to the cost of the service or regulatory program are not considered a tax and can be validly imposed without a vote of the people. However, "excess" fees or charges are taxes subject to voter control.

No. 6692, *Local Agency Fees and Charges,* April 30, 1979.

The costs of debt service, emergency, capital improvement,

replacement, contingency reserve and other funding requirements associated with the provision of a service would be included within the definition of "reasonable cost of providing the service," to the extent that such costs are related to the provision of the service for which the fee is charged and are not related to other services provided by a local agency.

No. 21062, *Special Taxes: Business License Taxes,* April 8, 1982.
Restructuring of a city's business license tax to include additional computation factors but not to produce additional revenue must nevertheless be approved by a two-thirds vote of the city's electors pursuant to Article XIII A.

No. 16903, *School Districts: Taxation,* October 13, 1982.
In light of the *Farrell* decision, Article XIII A does not require approval by two-thirds of a school district's voters "in order for the district to levy and collect a tax, the proceeds of which will be placed in the general fund of the district and utilized for general purposes of the district." However, legislative authorization would be required before any school district may levy and collect such a general tax.

No. 20504, *Property Taxation,* December 1, 1984.
The Legislature by statute cannot authorize local agencies to levy a property tax on other than an ad valorem basis for general revenue purposes.

No. 1193, *Schools: Property Taxation,* March 12, 1985.
A tax levied by a school district at a fixed flat amount per parcel of developed and undeveloped land, approved by two thirds of the local voters, and earmarked for a special purpose would not violate either Article XIII, Section 1, (prohibition of double taxtion of property) or Article XIII A of the California Constitution.
A tax levied by a school district at the rate of $50 per household and business unit approved by two-thirds of the local voters and earmarked for a special purpose would not violate either Article XIII, Section 1, or Article XIII A.

• Statutory Enactments, 1979

Chapter 133 (AB 108, Egeland)
Repeals the cap on the amount of revenue which a water conservation district may raise from ground water charges, and prohibits the levy of such charges in excess of the amount deemed necessary by the district board for replenishment, augmentation, and the protection of water supplies in the district.

Chapter 139 (AB 226, Chappie)
Increases fees which may be charged by the county clerk for various services.

Chapter 883 (AB 858, W. Brown)
Authorizes cities and counties to charge fees for issuing special permits to operate specified vehicles, the operation of which would otherwise be prohibited by law. It also limits the amount of revenue

derived from such fees to cost of issuing permits, and requires related special services to be billed separately for each permit.

Chapter 903 (SB 785, Foran)
Authorizes cities and counties to impose special taxes upon approval of two-thirds of the local electorate.

• Statutory Enactments, 1980

Chapter 88 (AB 2066, Filante)
Extends provisions of Chapter 397, Statutes of 1979, to any local agency which provides police protection services.

Chapter 126 (AB 2077, Naylor)
Authorizes the board of supervisors to adopt an ordinance authorizing a special tax for maintenance districts within the town of Portola Valley for the purpose of maintaining improvements if it is approved by two-thirds of the districts voters.

Chapter 672 (AB 2345, Chappie)
Extends provisions of Chapter 903, Statutes of 1979, to special districts.

• Statutory Enactments, 1981

Chapter 951 (SB 152, Watson)
Authorizes certain redevelopment agencies to impose a sales and use tax in a redevelopment project area of a city. Requires the redevelopment agency to contract with the Board of Equalization to administer the tax, provided an appellate court makes a final determination that such a tax is not a "special tax" within the meaning of Section 4 of Article XIII A.

Benefit Assessments

• Cases decided

Court of Appeal:

County of Fresno v. Malmstrom, 94 Cal. App. 3d 974, 156 Cal. Rptr. 777, July 12, 1979.
The Court of Appeal held the 1% maximum tax limitation on ad valorem taxes does not apply to special assessments levied pursuant to Streets and Highways Code, Sections 5000, et seq., and 10000, et seq., the Improvement Act of 1911 and the Municipal Improvement Act of 1913. The court further held that because special assessments pursuant to such acts are not within the definition of "special taxes" in Article XIII A, Section 4, the constitution does not require the issuance of bonds to be approved by two-thirds of the electors. (Petition for hearing by the Supreme Court denied September 12, 1979.)

Solvang Municipal Improvement District v. Board of Supervisors

of Santa Barbara County, 112 Cal. App. 3d 545, 169 Cal. Rptr. 391, November 25, 1980.

The Second District Court of Appeal held that in the constitutional sense a special assessment is not a tax at all but is a compulsory charge placed by the state on real property within a predetermined district, made under express legislative authority for defraying in whole or in part the expense of a permanent public improvement therein. Accordingly, it held that non-voted special assessments for local improvements that directly benefit the property assessed do not come within the 1% limitation on ad valorem real property taxes imposed under Article XIII A of the California Constitution. Specifically, the court issued a writ of mandate directing the Board of Supervisors to levy and collect the special assessment sought by the District to service the bonded indebtedness of its parking district and directed the Board to levy future special assessments necessary to assure continued servicing of this indebtedness.

American River Flood Control District v. Sayre and *The People ex rel. Department of Water Resources v. Board of Supervisors of Sacramento County,* 136 Cal. App. 3d 347, 186 Cal. Rptr. 202, October 6, 1982.

The Third District Court of Appeal held that the flood control district, Department of Waters Resources, and Reclamation Board were authorized by statutes to levy special assessments, and that statutes required the county to collect those assessments. The court also held that the statutes required collection on an equalized ad valorem roll, rather than an "acquisition value" roll, and adoption of California Constitution Article XIII A, did not change the county's obligation.

City Council of the City of San Jose v. Kent South, 146 Cal. App. 3d. 320, 194 Cal. Rptr. 110, August 22, 1983.

Following a rehearing the First District Court of Appeal reversed its 1982 decision and upheld a landscape maintenance district assessment as outside the restrictions of Article XIII A.

Thirteen parcels were assessed median island maintenance costs according to the ratio of their acreage to the total acreage of parcels in the district. The district involved was established after Proposition 13's passage and was patterned after 1911 Act improvement districts. The court stated that the assessment district's formation was not an avoidance of the purpose of Proposition 13 because provisions were made for a protest vote by property owners.

The decision summarized the Legislature's post-Proposition 13 expansion of assessment financing and concluded that "Article XIII A does not limit the imposition of special benefit assessments."

J. W. Jones Companies v. City of San Diego, 157 Cal. App. 3d 745, 203 Cal. Rptr. 580, June 14, 1984 (modified July 2, 1984), and...

City of San Diego v. Holodnak, 157 Cal. App. 3d 759, 203 Cal. Rptr. 797, June 14, 1984.

Facilities benefit assessments imposed by the City of San Diego on undeveloped land are not taxes and do not violate Proposition 13.

In one case (Jones), the assessments were levied to finance streets and parks (Jones Company) and a water line, parks, branch library, fire station, and freeway overpass (Holodnak).

The Fourth District Court of Appeal unanimously found that each planned facility conferred a special benefit within the assessment area, even though general benefits also resulted to the community at large.

The decisions reversed the trial court, which had ruled the assessments to be a special tax because the improvements financed did not specially benefit the property assessed. The lower court also said the assessments were flawed because 1) they were apportioned based on the properties' need for the improvements rather than the benefit conferred to the property and 2) the apportionment formula did not account for each parcel's proximity to the improvement financed.

The court of appeal said that notwithstanding the 1980 *Solvang v. Board of Supervisors* decision "intimating fire stations cannot properly be financed by special assessments to avoid the requirements of (Proposition 13), fire stations do specially benefit the properties within their area of service and such special benefit exceeds the benefits the city at large gains by having additional fire stations within its limits."

The court said that the "incidental fallout of benefit" to developed parcels within the benefit area "does not result in such inequality as to offend equal protection."

Stugelmayer et al. v. Calaveras County Board of Supervisors, 3 Civ. 24145 (unpublished), May 9, 1985.

Article XIII A does not require greater judicial scrutiny of a local legislative body's finding that a benefit results to property on which a special assessment is levied. Plaintiff property owners assessed for county road improvements argued that Proposition 13's vote requirement on local taxes requires that a non-voted benefit assessment be permitted only if there is substantial evidence in the record establishing an adequate relationship between benefit and assessment. The Third District Court of Appeal, upholding the trial court, stated there were no cases suggesting a change in the current judicial practice of unpholding a legislative body's determination of benefit unless the absence of benefit clearly appears from the record or judicially notice facts.

City of Larkspur v. Marin County Flood Control and Water Conservation District (Town of Corte Madera, Intervener) __ Cal. App. 3d __, __ Cal. Rptr. __, May 31, 1985.

Upholding the trial court, the Second District Court of Appeal ruled that the Town of Corte Madera could not block a non-voted flood control benefit assessment by claiming that real property within its boundaries would not be especially benefited by the project. Corte Madera contended that without the special benefit the levy was in fact a special tax and could not be imposed without a two-thirds vote of the electorate. The court said that while the 1962 act of the Legislature establishing the district did not of itself establish a conclusive presumption of benefit, the fact that Corte Madera failed to take advantage

of a provision permitting a hearing on the issue of benefit precluded it from now challenging the presence of a benefit in the lawsuit.

• Cases Pending

Superior Court:

Schneider v. Sloughhouse Fire Protection District, Sacramento Court No. 327926, filed March 15, 1985.

Plaintiff argues that a $48 per parcel benefit assessment is in fact a special tax and invalid without two-thirds vote approval by the electorate. Suit challenges the constitutionality of Chapter 971, Statutes of 1981, (AB 934, Kapiloff) which authorizes fire protection assessments and a protest vote procedure.

• Attorney General Opinions

No. 79-712, November 1, 1979, 62 Ops. Cal. Atty. Gen. 663.

Subdivision Map Act fees (Government Code Section 66484) are special assessments rather than Article XIII A "special taxes" and therefore do not require a two-thirds vote approval.

No. 79-909, December 5, 1979, 62 Ops. Cal. Atty. Gen. 747.

The tax authorized by Public Resources Code Section 5788, et seq., constitutes an ad valorem tax rather than a special assessment and therefore is prohibited by Article XIII A from being imposed by a park and recreation district.

No. 80-1003, February 6, 1981, 64 Ops. Cal. Atty. Gen. 105.

A resource conservation district's regular and special assessments under Division 9 of the Public Resources Code constitute an ad valorem tax on real property under Article XIII A.

No. 81-901, October 26, 1981, 64 Ops. Cal. Atty. Gen. 790.

The opinion concludes that levies against land authorized by California Water District Law are true special assessments and thus do not constitute ad valorem taxes or special taxes within the meaning of Article XIII A or Revenue and Taxation Code, Section 93.

No. 83-1001, January 10, 1984, 67 Ops. Cal. Atty. Gen. 17.

The opinion concludes that the Ventura County Flood Control District may levy and collect an ad valorem assessment upon the district. The enabling act authorized an assessment on all taxable property, but the opinion contends that unless personal property is assumed to be excluded the assessment may be levied out of proportion to benefit and thereby acquire the characteristics of a prohibited increase in the ad valorem tax.

• Legislative Counsel Opinions

No. 16240, *Article XIII A; "Special Taxes," Assessments, Fees,* November 13, 1978.

A special assessment made solely on the basis of benefits received is not considered a tax and can be validly imposed without a vote of the people. Such an assessment can be levied on an ad valorem basis, if it can be shown that this basis reflects the estimated benefit to the parcel.

No. 7634, *School Facilities,* April 25, 1985.

Under existing law there is no statutory authorization for the levying of assessments for the purpose of financing education or educational facilities. Education is not a type of activity generally thought of as designed to benefit property in an area, as distinguished from the particular person receiving the education, and the general public. Nevertheless, it cannot be said that a carefully drawn statute which authorizes school districts to establish benefit assessments districts to partially or completely fund school construction and which provides common procedural protections would not be upheld.

• Statutory Enactments, 1979

Chapter 261 (AB 549, Frazee)

Authorizes specified flood control districts and specified lighting districts to impose benefit assesments for flood control or lighting services. It also authorizes county service areas to impose benefit assessments for services and requires a majority vote of the local electorate.

Chapter 312 (AB 99, Zenovich)

Increases the minimum annual assessment from $2 to $10 for any parcel within an irrigation district or a reclamation.

Chapter 397 (AB 618, Chappie)

Authorizes local governments which provide fire protection services and a community services district which provides police protection services to impose benefit assessments and special taxes for fire protection or police protection services. It also requires approval of two-thirds of the local electorate before any such benefit assessment or special tax may be imposed.

Chapter 416 (AB 1757, Duffy)

Authorizes districts organized under the Drainage District Act of 1903 to levy benefit assessments.

Chapter 888 (AB 447, Perino)

Authorizes certain water agencies to levy benefit assessments and impose charges and fees, and precludes such districts from receiving any property tax revenues.

• Statutory Enactments, 1980

Chapter 941 (AB 927, Thurman)

Authorizes special districts having flood control powers to levy benefit assessments.

Chapter 1053 (SB 1703, Johnson)

Authorizes districts organized under the Drainage District Act of 1885 to levy benefit assessments.

• Statutory Enactments, 1981

Chapter 971 (AB 934, Kapiloff)

Would, until January 1, 1988, authorize any district providing fire protection and prevention services to levy an assessment for such

services, and provides a procedure for determining that assessment, including notice, hearing and protest. Permits the levy without a vote of the people unless holders of property interests representing greater than 5% of the expected revenues protest, in which case an approval by a majority of voters of the district voting in the proposition is required.

- **Statutory Enactments, 1982**

Chapter 487 (AB 630, Frazee)

Enacts the Benefit Assessment Act of 1982 which provides for procedures for imposition of benefit assessments for local agencies providing drainage, flood control, and street lighting services.

State Taxes

- **Legislative Counsel Opinions**

No. 10846, *Tax Legislation: Vote Requirement,* May 21, 1981.

Article XIII A does not require the vote of two-thirds of the members of each house of the Legislature for passage of legislation changing state taxes by repealing certain sales tax exemptions, providing exemptions from the sales tax for other items, and making changes in the state income tax law, the revenue effect of those changes being a net increase in the sales tax revenues to the state, a net increase in sales tax revenues to local governments, a net decrease in state income tax revenues, and a total net revenue decrease to the state.

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