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Orange County Case Threatens Property Tax Revenue

by

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An Orange County judge has determined that the method of assessing property used by all 58 county assessors violates Prop. 13. The court certified the case as a class action affecting a large number of property owners in the County. If the ruling is affirmed on appeal, hundreds of millions of dollars might be lost to California's cities, counties, and schools. Given the financial interdependence of state and local government in the post-Prop. 13 era, this is hardly good news for Sacramento, which is already struggling with an extraordinary budget deficit.

The case is *County of Orange v. Orange County Assessment Appeals Board* and will soon be appealed to the 4th District Court of Appeal. The Legal Advocacy Committee of the League of California Cities is likely to coordinate an *amicus* brief in the case and participation by other local government organizations is also likely.

As most California homeowners are aware, Prop. 13 limits the property tax to 1% of assessed valuation. (Taxes beyond 1%, such as those for school bonds, require voter approval.) Assessed valuation is initially the price a taxpayer paid for his or her property and can be increased up to 2% per year for increases in market value. Prop. 8, which followed Prop. 13, allows taxpayers to petition for reduced assessments if the market value of their properties falls below inflation-adjusted acquisition cost. Thousands of Californians were granted such "Prop. 8 appeals" during the real estate slump of the early 1990s.

Since the late 1990s, the housing market boomed with annual increases in market values in Southern California in the vicinity of 20%. The Orange County Assessor, like all other county assessors in the state, increases the assessed valuation of properties which benefited from Prop. 8 appeals as much as necessary until the assessed valuation reaches the lesser of the current market value or the owner's purchase price, adjusted for inflation

by 2%-per-year from purchase. Some property owners saw very substantial assessment increases as the assessor “recaptured” the reduced valuations granted under Prop. 8.

An Orange County attorney, alleging that the grant of his Prop. 8 appeal was essentially permanent and that no assessed valuation could increase more than 2% per year. The provision of Prop. 13 at the heart of the case is terse. However, arguments in favor of the County’s position include the fact that its practice is uniformly followed in the state and dates from the adoption of Prop. 13. Moreover, Prop. 13 has been amended many times since its adoption – typically to allow a favored social group to transfer below-market assessed valuations from one property to another rather than to “step up” to their new purchase price. It can be argued that the framers of these amendments would have provided language to overturn the Prop. 8 “recapture” practices of the 58 counties if they believed them to be wrong.

This is a critical case to watch in 2003. Other pending cases of interest are *Howard Jarvis Taxpayers Ass’n v. Roseville*, which will be argued January 22, 2003 in the Sacramento Court of Appeal. That case involves the initiative repeal of the City’s utility tax and a competing measure that reduced the tax and devoted its proceeds to particular purposes. It may shed light on the definition of “special taxes” which require 2/3 voter approval. Also likely to be argued in 2003 is the California Supreme Court’s consideration of *Richmond v. Shasta CSD*, a Prop. 218 challenge to a water connection charge.

2003 should be a busy year in the law of local government revenues, not least because of the down economy and the state’s fiscal crisis. As always, we’ll keep you posted!