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## Tax change could hurt businesses, government



**THEODORE BAYER**

**“Local governments have long viewed Proposition 13 as an unconstitutional assault on their fiscal lifeline, but most have adapted quite well since its passage. Then along comes Pool’s suit, which is akin to Proposition 13 on steroids.”**

**M**ost commercial property owners and tenants are aware of recent efforts in California to create a “split roll” property-tax system, which would permit local governments to tax commercial properties differently than residential properties.

Some recognize that the massive budget deficit has accelerated the pace and the scope of suggested modifications to the current property-tax system. Few, however, realize the potentially dramatic statewide effect — on both commercial owners and local governments — of a class-action lawsuit working its way through the Orange County court system.

The case is County of Orange v. Orange County Assessment Appeals Board No. 3. The plaintiff, Robert Pool, is the owner of a single-family home in Seal Beach and a property-tax attorney. Pool convinced a trial-court judge to render an interpretation of Proposition 13 that I believe misconstrues the language of numerous applicable property-tax statutes and regulations. It flies in the face of reason and fairness and could cost Orange County more than \$1 billion in refunds, according to the plaintiff’s law firm, Gangloff, Gangloff & Pool. Copycat litigation has been filed in numerous other counties, including several in the Bay Area.

Pool purchased a home in late 1995 for \$330,000. Proposition 13 permits annual assessed value increases of up to 2 percent of the purchase price. The assessor, evidently acknowledging a flat real estate market, made no increase in the assessed value the following tax year — although he could have increased it by 2 percent to \$336,600. The market improved the next year and the assessor determined the property's market value was higher than \$344,000. However, following a procedure that has been used by assessors throughout California for almost 25 years, the assessor limited Pool's assessed value to \$343,332 — a 2 percent increase over the prior year's \$336,600 limit. Pool cried foul.

Because the assessor voluntarily kept the prior year's assessed value at \$330,000 — not the \$336,600 limit — the \$343,332 assessed value represented a one-year increase of more than 4 percent. Pool asserted the increase violated Proposition 13's annual 2 percent limitation.

In agreeing with Pool, the court superimposed Proposition 13's limitation on annual increases to a property's original acquisition cost onto any annual increase in assessed value. At first blush, the decision seems like a windfall for property owners. But when you view it in the context of the Bay Area market, you begin to understand the fiscal impact.

A property's assessed value cannot increase more than 2 percent over the acquisition cost annually, even in the hottest of real estate markets. But under Proposition 13 when the market takes a dive, the property owner can seek a reduction in assessed value. Because Proposition 13 has a ceiling but no floor, the owner can get a reduction of 10, 20 or even 50 percent. Under Pool's rationale, the reduced value thereafter could never be increased by more than 2 percent annually.

Local governments have long viewed Proposition 13 as an unconstitutional assault on their fiscal lifeline, but most have adapted quite well since its passage. Then along comes Pool's suit, which is akin to Proposition 13 on steroids.

The Pool decision, if not overturned on appeal, may be a win for residential owners, but it will be a Pyrrhic victory for owners of commercial properties. Faced with the largest deficits in history, the state and local governments are slashing personnel and programs. If those deficits balloon, due in part to tax revenue lost to a new court-created limitation, somebody will have to feel the government's pain — and it is not likely to be residential owners, whose votes were responsible for the passage of Proposition 13.

The split in "split roll" could get a whole lot wider and commercial property owners and tenants will learn first-hand what life in California was like in the 1960s and 1970s — before passage of the proposition.

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