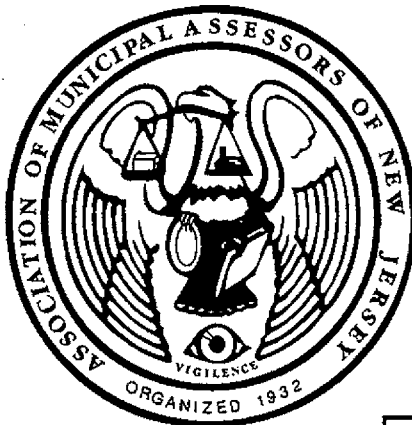


New Jersey



Assessors

Bulletin



MEMBER
International Association
of Assessing Officers

VOL. 30, No. 3

August 1991

PRESIDENT'S MESSAGE

Well, the summer of 1991 is no different than the summer of 1990. I have been hard at work on the issues of A-5046 and S-3595 as well as proposed amendments or alternatives for S-2734 and Chapter 75.



First of all you should know and have some concern, that Chapter 117 (the "Tank" law) is in danger of being repealed or amended to the detriment of industrialized areas and the benefit of big business and industry. A-5046 and S-3595 would change Chapter 117 to exempt machinery and equipment, used in business and industry, from taxation. This would not create a problem inasmuch as assessors have not made it a practice to assess items not considered real property. However, the verbiage of the two bills is quite broad to the point that it allows that all equipment, machinery or property used in business shall be exempt from taxation. What specific items should be assessed or exempt is not explicated by this proposed legislation.

On Thursday, August 1, 1991, I attended a hearing on A-5046 before the Assembly Appropriation Committee. On behalf of AMANJ Bill Birchall, Ed Rosenblum and I presented papers in opposition to the bill. Saul Wolfe and Mayor John Gregorio represented the City of Linden with statements of opposition as did the League of Municipalities and other assessors in attendance. As we expected, the cards were stacked against us by Assemblyman William Pascrell, Jr., (D. Paterson). He expounded in the

need to make changes in Chapter 117 in an effort to retain business and industry and to encourage growth and relocation of business interests outside the State to New Jersey. He was praised by members of the committee as well as business and industry representatives who were in attendance to support his efforts. Assemblyman John Watson (D. Trenton) seemed to find delight in the fact that those in support outnumbered those opposed 12 to 5.

Ed Rosenblum was quite articulate and factual in his presentation on our behalf, however he was unprepared to answer the question of Assemblyman Pascrell pertaining to the total number of rateables that could potentially be lost due to the passage of A-5046. Ed's unreadiness was the consequence of a lack of cooperation from assessors who were asked to supply him with information pertaining to the potential decimation of their tax base, the aftermath of revised or reduced assessments on business personal property assessed as real property. Those who are affected by this action of the legislature should take immediate steps to get the required information to Ed and also advise your governing bodies of the need for resolutions to stop this action. Contact your legislators and advise them of your opposition to A-5046 and S-3595.

On July 31, 1991 I met with the Legislative Committee to discuss alternatives to S-2734 and possible amendments to Chapter 75.

For the life of me, I still don't understand why the change of the tax appeal filing date and notices of assessment to taxpayers ever got thrown into a bill for the change to fiscal year budgeting. What do

(continued on next page)

(PRESIDENT con't.)

tax appeals and notices from the assessor have to do with fiscal year budgeting? The legislative committee reviewed those sections of Chapter 75 that pertain to assessors and amendments will be submitted to the Board of Directors at the August meeting for review, advise, modification or acceptance. Take the time to discuss this with your county presidents and let us know your thoughts and opinions.

Now on the issue of S-2734, as if I want to talk about this, the legislative committee came up with suggested alternatives to the bill as written. We would like to suggest that recertification is long overdue, and we are prepared to recommend legislation that will enhance our professional growth through a strong, viable recertification program. With the advent of state licensing and certification for appraisers it seems inevitable that we are going to need a conscientious certification and recertification program so we will not be left behind by appraisal experts who may very well replace us as the future assessors or property tax experts at the state or local level.

Secondly, the legislative committee talked about the need for the Local Property Bureau of the Division of Taxation to become a separate division within the Department of the Treasury. We are aware that Senator Lynch is quite adamant about moving such a Division to the Department of Community Affairs, but we are of the opinion that we are better off in the Treasury and a change to DCA would prove to have detrimental political ramifications in the field of property taxation. In order to assure a strong, stable Division of Property Assessments we are prepared to recommend legislation that will expedite the cure of the ills in our system of property taxation beginning at the state level. Again all these thoughts and recommendations will be presented to the Board of Directors at the August meeting, so it behooves us all to review, revise and recommend to the Board our desires.

As I conclude this message, I am at the end of my second week of vacation all of which I have donated to AMANJ. I strongly advise Joe Gallagher to take his summer vacations far away from New Jersey.

**Victor A. Hartsfield, Sr.
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BILL No. ACR-112

A JOINT RESOLUTION creating a Real Property Tax and Valuation Study Commission to evaluate and study the methods of valuation of real property and to determine the feasibility of a classified property tax system, and to report to the Legislature concerning its findings and recommendations thereon.

STATEMENT

The purpose of this joint resolution is to create the Real Property Tax Valuation Study Commission to study methods of real property valuation that do not depend exclusively on the concept of market value and to determine the feasibility of a classified property tax system such as exists in several other states. The current method and practice of real property taxation and valuation is inefficient, costly to the municipality, and especially unfair to residential homeowners who subsist on fixed incomes. Recommendations are needed on the most effective ways to bring fairness to real property valuation and revaluation. The commission is given 18 months to report its findings to the Legislature.

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LEGISLATIVE REPORT

Sometimes I wonder if people aren't right when they compare Assessors to a certain Charles Dickens character known to have an involvement with ghosts.



Just when we thought things were going to settle down, out comes the "ghosts" of "tank bills" past to bring us out of our summer doldrums.



This year's ghosts, Assembly 5046 and companion bill Senate 3595 perpetuate the claim that New Jersey's personal property tax policy does not encourage manufacturing to either stay in or move to New Jersey. These bills also suggest that this policy is a major cause of the loss of manufacturing plants and jobs in New Jersey.

The issues raised are not new. We have all heard of the Quaker Bridge Mall case, Stem Brothers and Texas Eastern, to name a few. The realty versus personality question has been like a pendulum over the past few years. One major difference in this attempt to change Chapter 117 is massive co-sponsorship, with 19 senators listed on S-3595 at introduction.

Along with the League of Municipalities, we are carefully watching these bills and reviewing their potential impact on New Jersey municipalities.

One more familiar topic from the past, that of studying what we do and how we do it, is back again. On July 16, 1991, AJR-112 and Assembly bills 5089 and 5090 were introduced to create a Real Property Tax and Revaluation Commission. While no action has been scheduled on these bills, we are monitoring them on behalf of all New Jersey Assessors.

**Bill Birchall & Walt Kosul,
Co-Chairmen**

ASSEMBLY, No. 4829

AN ACT concerning municipal tax maps and supplementing chapter 1 of Title 54 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Whenever a municipality updates its municipal maps for tax assessment purposes, there shall be delineated on those maps those properties, if any, in which the State or a local governing body has acquired a fee simple or lesser interest as part of the State "Green Acres Program." For the purposes of this act, "Green Acres Program" means the program for the acquisition of fee simple or lesser interest in land for recreation and conservation purposes pursuant to P.L.1971, c. 419 (C.13:8A-19 et seq.), and pursuant to P.L. 1975, c. 155 (C.13:8A-35 et seq.), P.L. 1974, c. 102, P.L. 1983, c.354, P.L. 1987, c.265, P.L. 1989, c.183, and any other law providing for the issuance of bonds by the State for the acquisition of land for recreation and conservation purposes.

2. A municipality that does not for another reason update its municipal maps for tax assessment purposes within the four tax years beginning January 1 next following the enactment of this act, shall effectuate the delineation required pursuant to section 1 of the act no later than October 1 of the fifth tax year following that January 1.

3. This act shall take effect immediately

STATEMENT

This bill requires that, when municipalities update their tax maps, "Green Acres" lands must be delineated on those maps.

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ASSEMBLY No. 5046

AN ACT concerning the taxation of certain business personal property, amending R.S.54:4-1 and P.L. 1986, c. 117 and supplementing chapter 4 of Title 54 of the Revised Statutes.

STATEMENT

This bill amends the definition of locally taxable real property to create a broad exclusion for machinery, apparatus and equipment used of held for use in research and development or the manufacture, assembly or processing of property or in the sales of services or goods.

In addition, the bill rejects and reverses the classification of property and narrowing of business personal property exclusions accomplished by a series of recent New Jersey Tax Court decisions, including Texas Eastern v. Div. of Taxation, 11 N.J. Tax 198 (1990); Am. Hydro Power Partners v. Clifton, 11 N.J. Tax 12 (1990); and Badische Corporation v. Town of Kearney, 11 N.J. Tax 385 (1990).

The sponsor believes that these decisions reversed New Jersey's long-standing policy of excluding business personal property from local property taxes and misinterpreted the Legislature's intent in the enactment of P.L. 1986, c.117. As a result of these decisions, the application of the exclusion of business machinery, apparatus and equipment intended by the Legislature in the 1986 amendments to subsection b. of R.S.54:4-1, was made dependent on the type of structure in which such property was located or to which such property was affixed. These Tax Court decisions have made much of the production machinery of chemical, pharmaceutical, automotive, brewing, cogeneration and other industries subject to local assessment and taxation, reversing the exemption of this property from local property tax accomplished by P.L. 1986, c. 136, and thereby eliminating an important element of New Jersey's economic development policy in place since 1986.

Further, the sponsor understands that the vul-

nerability of New Jersey's economy to further losses of manufacturing jobs and plants makes it essential that the Legislature eliminate the discriminatory classifications established by the Tax Court decisions. This bill replaces those classifications with a clear and broad exclusion for personal property used in the production of goods or services, regardless of the type of structure or real property to which such property is affixed.

Petroleum refineries are specifically deemed to be real property under this bill and are intended to continue to be taxed as real property because, for many decades, they have been recognized as real property subject to local taxation; however, it is not intended that items of machinery, apparatus or equipment used for such purposes as cogeneration or for chemical or petro chemical manufacturing be taxable as real property even if they are located on the grounds of a petroleum refinery. Also, the bill defines items of personal property affixed to a structure other than a petroleum refinery as real property only when they are affixed with the primary purpose of enabling the structure to support, shelter, contain, enclose or house persons or property.

The Young Assessor was talking to the Old Assessor. He asked, "You've been an assessor for twenty-five years. What did you do before you became an assessor?"

The Old Assessor answered, "I used to be a big game hunter. One day in Africa I stood, eye to eye, in front of a wild tiger. I fired my gun. It didn't go off and the tiger jumped on me and killed me."

The Young Assessor was bewildered. "What do you mean the tiger killed you? You're here! You're an assessor! You're living!"

The Old Assessor replied, "You call this living?"

Things are more like they are now than they ever were before.—*Dwight Eisenhower*

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ASSEMBLY CONCURRENT RESOLUTION No. 167

A *CONCURRENT RESOLUTION* proposing to amend Article VIII, Section I of the Constitution of the State of New Jersey by adding paragraph 8 to permit the granting of homestead improvement exemptions.

STATEMENT

This proposed amendment to the Constitution permits the adoption by the Legislature of a homestead improvement property tax exemption statute entitling homeowners residing in an owner occupied residential dwelling to an exemption from property taxation for home improvements on a dwelling representing that person's principal residence. The exemption is to be limited to homeowners who have resided in a homestead for two tax years prior to claiming the exemption, and the exemption will cease on the date of sale of that homestead or on the date of principal residence of the homeowner, whichever occurs first. Any homeowner who does not reside in the homestead for three full tax years after receiving the exemption is subject to certain rollback taxes to be provided by law. This exemption is designed to encourage home improvements and thereby upgrade the housing stock in the State.

BILL No. SCR141

A *CONCURRENT RESOLUTION* supplementing the Legislative Code of Ethics.

BE IT RESOLVED by the Senate of the State of New Jersey (the General Assembly concurring):

1. A section to be appropriately numbered is added to the Legislative Code of Ethics as follows:

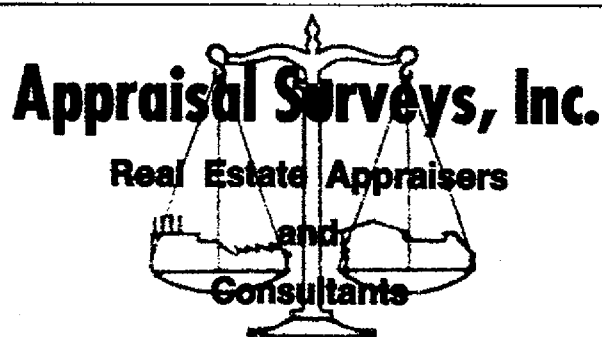
No member of the Legislature, nor any member of his/her immediate family, nor any partnership or firm of which he/she is a member or any corporation in which he/she owns or controls an interest, nor any partner, officer, or employee of any such partner-

ship, firm or corporation, shall represent, appear for, or negotiate on behalf of, any person or party other than himself/herself or itself in connection with any matter before the county board of taxation in any county which comprises part or all of the legislative district of the member.

STATEMENT

This resolution adds a provision to the Legislative Code of Ethics to prohibit legislators, their immediate family, or their businesses from appearing in representational capacities before county boards of taxation in counties which comprise all or part of a legislator's district.

You may delay, but time will not.—Benjamin Franklin



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LEGAL CORNER

CHAPTER 117 UNDER SERIOUS ATTACK



The following is a copy of a letter I sent on behalf of the Association to the State League of Municipalities concerning proposed legislation which would severely undermine Chapter 117 of the Laws of 1986 (Real vs. Personal Property).

June 25, 1991

New Jersey State League of Municipalities
407 West State Street
Trenton, New Jersey, 08618

Attn: William G. Dressel, Jr.

Assistant Executive Director

Re: A5046 (The Business Retention Equitable Taxation Act)

Dear Bill:

You have asked me to comment on A5046, the Business Retention Equitable Taxation Act, in my capacity as counsel to the Association of Municipal Assessors of New Jersey and as a practitioner in the field of real property taxation representing both private and governmental entities. As you know, I worked with representatives of government and industry to forge a legislative compromise designed to solve the vexatious issue of what constitutes real property for local property tax purposes. The result of this effort was Chapter 117 of the Laws of 1986, the so-called "Tank Bill" which embodies a common sense test respecting the taxability of machinery and equipment affixed to real property. Simply put, personal property affixed to real property is taxable if either the personal property or real property to which it is affixed is substantially damaged by its removal and the personal property is ordinarily intended to remain permanently affixed to the real property.

I describe this as a common sense test because it comports with the common understanding that when title to machinery, apparatus or equipment customarily is transferred with the title to the real property that machinery, apparatus or equipment forms a party of the real property and is taxable as such. For example, no one would quarrel that a roof mounted air conditioning unit or a heating furnace in the basement, although "machinery or equipment", is clearly a part of the real property to which it is attached.

The business community complains that the recent Tax Court decision in Texas Eastern v. Division of Taxation, 11 N.J. Tax 198 (1990) unduly

broadens the classification of machinery and equipment subject to taxation locally in New Jersey. I would respond to this in several ways. First, the Texas Eastern suit was brought by Texas Eastern, a private concern, against the Director of the Division of Taxation challenging the Director's determination that certain machinery and equipment was personal property. Second, our Tax Court determined (and quite properly) that two definitions contained in the Director's Regulations adopted pursuant to Chapter 117 were invalid because they were in direct conflict with the language of the statute itself. Chapter 117 by its express language exempted machinery, apparatus and equipment from local property taxation provided it is "neither functionally essential to a structure the personal property is within or to which the personal property is affixed nor constitutes a structure itself." Clearly, the vast bulk of all machinery and equipment used in the manufacturing process in New Jersey is neither functionally essential to the building in which it is housed nor constitutes a structure itself since the majority of such machinery and equipment can be and often is removed and relocated upon a sale of the real estate.

Nevertheless, the Director of the Division of Taxation overzealously sought to protect business interests (and his own tax base) in drafting regulations defining the terms "functionally essential" and "structure". In fact, he defined them in such a way as to make all machinery and equipment used in business exempt from local property taxation regardless of its size, manner of installation or permanency. The term "functionally essential" was defined as "necessary for habitability" and the word "structure" as an assemblage of building or construction materials, the primary purpose of which is to shelter persons or property. I defy anyone to describe an item of business machinery or equipment which either (1) is necessary for the habitability of the building in which it is located, or (2) is a structure intended to house persons or property.

In the face of this, the Tax Court in Texas Eastern had no choice but to declare these definitions invalid as contrary to the legislative intent. In its place, the court substituted its own definitions which held that machinery, apparatus or equipment are taxable as real property when located in special purpose buildings, if such equipment is essential to to such special purpose. This decision represents a judicial solution to a regulatory blunder committed by the Director, one which would have been unnecessary had the director faithfully hewed to the spirit and intent of Chapter 117. The Texas Eastern decision has been appealed to the Appellate Division, where it remains unheard. The judicial process

(Continued on next page)

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Legal Corner - continued

should be permitted to run its course.

In American Hydro Power, the Tax Court found that a hydro electric generating turbine is real property because such turbines ordinarily are intended to remain affixed to the real property. This case is likewise on appeal before the Appellate Division and a decision is expected within the next 30 to 60 days. One of the issues presented is whether the Tax Court judge incorrectly applied the part "a" test of Chapter 117 to property which should have been governed by the part "b" test. Again, the judicial process ought to be permitted to run its course.

Because of the unprecedented hyperbolic campaign on the part of business interests, many legislators have mistakenly assumed that Chapter 117 has been utilized by tax assessors as a device for expanding the existing ratable base. Not so. To my knowledge, Chapter 117 has exclusively been utilized by governmental authorities as a shield rather than as a sword - to defend appeals brought by major industrial taxpayers which could potentially undermine the tax base. In no instance has an assessor dramatically increased an assessment on an industrial ratable under the theory that taxable machinery and equipment had escaped taxation. Thus, pared to essentials, the issue is what might happen and not what has happened.

Rather than rushing headlong into a legal abyss which could seriously erode the real property tax bases of numerous taxing districts, shifting an unwanted additional burden on beleaguered homeowners, a more sensible approach would be to allow the judicial process to run its course and, at the same time, to encourage the new Director to draft regulations which comport with the original legislative design and clarify some of the misunderstanding generated by Texas Eastern.

Please let me know if I can be of any further assistance.

Sincerely
Edward G. Rosenblum

Health food is getting really expensive. Sometimes I hardly have enough left for cigarettes.

Whoever invented the term "dirt cheap" apparently never bought any real estate.

The real estate market is getting worse, and the slump is spreading everywhere. Last night I played Monopoly and none of the houses sold.



RUTGERS



RUTGERS

Association of Municipal Assessors of New Jersey **NEW JERSEY ASSESSORS BULLETIN**

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Quarterly Publication

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ASSEMBLY, No. 4372

AN ACT concerning education requirements for municipal tax collectors, and amending and supplementing P.L. 1979, c.384.

STATEMENT

This bill imposes continuing education requirements on municipal tax collectors and makes other changes in the laws governing the professional qualification and practice of tax collection.

Specifically, the bill would require that tax collector certificates be renewed every three years. These certificates would only be renewed, however, upon the submission of proof by the tax collector as to the fulfillment of 1.5 continuing education credits. These credits would amount to about 15 contact hours. Upon demonstration of completing the education requirement and the payment of a \$10

renewal fee, the Director of the Division of Local Government Services would be required to renew that tax collector certificate.

Additionally, the bill raises the application fee for a tax collector certificate from \$10 to \$25 and limits the existing restriction against serving as a tax collector which applies to governing bodies. The bill limits the restriction by prohibiting the member of any governing body from serving as the tax collector only in that municipality on whose governing body the member serves.

This bill is patterned on the law imposing continuing education requirements on municipal finance officers which was enacted as P.L.1988, c.110.

The ongoing string of bank failures continues to affect the rest of the economy. Just in the last month, three toaster companies went bankrupt.



SENATE, No. 2420

AN ACT increasing the membership of the boards of taxation of certain counties and amending R.S.54:3 - 2.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. R.S.54:3 - 2 is amended to read as follows:

54:3 - 2. Each board shall, as heretofore, be known as the county board of taxation, and be composed of three members, except as hereinafter provided, to be appointed by the Governor by and with the advice and consent of the Senate. Each member shall be a resident and citizen of the county in and for which he is appointed. Members shall be chosen because of their special qualifications, knowledge and experience in matters concerning the valuation and taxation of property, particularly of real property. At no time shall more than two of the members belong to the same political party. In counties [of the first class] ¹of the first class and in counties of the fifth class¹ having a population of more than 500,000 there shall be five members of whom no more than three shall belong to the same political party. For the purposes of this section, "population" means the most recent official population count of each county in the State as reported by the New Jersey Department of Labor, ¹[Office] Division¹ of ¹Labor Market and¹ Demographic ¹[and Economic Analysis] Research¹. Each member shall, within 24 months of appointment, unless the member shall have served as a member of the county board of taxation continuously for at least 10 years prior to the effective date of P.L.1981, C.516, was re-appointed to a five-year term prior to that date, and is currently serving that term, furnish proof that he has

received certificates indicating satisfactory completion of training courses designated in section 4 of P.L. 1967, c. 44 (C.54:1 - 35.28) or that he possesses an assessor's certificate issued pursuant to P.L.1967, c.44, as supplemented. Each member serving on the effective date of P.L. 1979, c. 499, unless the member shall have served as a member of the county board of taxation continuously for at least 10 years prior to the effective date of P.L.1981, C.516, was re-appointed to a five-year term prior to that date, and is currently serving that term, shall furnish such proof within 30 months of such effective date, if 30 months or more of his term are remaining thereafter.

If any member so required does not furnish such proof within said 24-month period, or 30-month period for any member serving on the effective date of P.L.1979, c.499, the county tax administrator shall immediately notify the president of the county board of taxation and the Director of the Division of Taxation. The director shall upon the receipt of such notification declare the position to be vacant, and shall notify the Governor of the existence of such vacancy. The Governor shall thereupon appoint, with the advice and consent of the Senate, a different citizen and resident of the relative county to fill such position for the unexpired term.

(cf: P.L. 1984, c. 188, s.1)

2. This act shall take effect immediately.

At least you can say this about nuclear war; if you've seen one, you've seen them all.

* * * * *

Everyone complains about the weather—and with the greenhouse effect, I guess we really *are* doing something about it.



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BILL No. A-5090

AN ACT creating a Real Property Tax and Revaluation Study Commission and making an appropriation.

STATEMENT

The purpose of this bill is to create a commission to study the effects of property tax revaluations and to make recommendations for ameliorating the fiscal shock impact of revaluations on communities that have not been revalued in many years. Several cities in this State have obtained a postponement on the implementation of a revaluation. These postponements merely delay the fiscal shock that will be experienced by many residents when the revaluation is implemented. The commission is expected to produce recommendations on the most effective ways to remedy the underlying ministerial problems causing fiscal shock and to ensure that municipalities adopt a system in which revaluation data can be kept current and uniform. The sum of \$375,000 would be appropriated to fund the work of the commission.

BILL No. A-5089

AN ACT creating a Real Property Tax and Revaluation Study Commission.

STATEMENT

The purpose of this joint resolution is to create a commission to study the effects of property tax revaluations and to make recommendations for ameliorating the fiscal shock impact of revaluations on communities that have not been revalued in many years. Several cities in this State have obtained postponement on the implementation of a revaluation. These postponements merely delay the fiscal shock that will be experienced by many residents when the revaluation is implemented. The commission is expected to produce recommendations on the most effective ways to remedy the underlying ministerial problems causing fiscal shock and to ensure that municipalities adopt a system in which revaluation data can be kept current and uniform.

Mudslides are a real problem in California. Every time it rains three communities get a new Zip Code.

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