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December 1, 2009

Re: *Statute of Limitations for Correcting Base Year Values, Issuing Escape Assessments, and Making Roll Corrections*
Assignment No.: 09-205

Dear Mr. _____ :

This letter is in response to your December 2, 2008, letter, requesting our opinion regarding various assessment issues. You withdrew that request but resubmitted it on August 14, 2009.

Based on your correspondence and our subsequent telephone conversations, our understanding of the issue raised by your clients is whether an assessor can correct a property's base year value and issue escape assessments when more than four years has passed since the error in establishing the base year value occurred. We further understand that an appeal has been filed with the _____ County Assessment Appeals Board and that a hearing was scheduled for October 26, 2009, but that the hearing has been rescheduled to January 6, 2010, in contemplation of this opinion letter. As you know, we also consulted with the _____ County Assessor's Office (assessor) and spoke with _____ L _____, Deputy County Assessor, to confirm the facts associated with this case and their analysis of the issues.

Based upon the facts provided by you¹ and Mr. L _____, it is our opinion that the assessor appropriately corrected the base year value for your clients' property upon the 2008 discovery of their earlier mistakes. Since the correction resulted in a higher assessed value, the assessor was required to issue escape assessments, subject to the general limitation that escape assessments can only be issued within four years after July 1 of the assessment year in which the property was underassessed. (§ 532, subds. (a) & (b); see also *Montgomery Ward & Co., Inc. v. County of Santa Clara* (1996) 47 Cal.App.4th 1122.) As explained in more detail below, under these circumstances, the assessor was required to issue escape assessments for the years 2005 through 2007. Finally, we believe it was appropriate for the assessor to correct the 2008 assessment roll.

¹ Some of the facts in your letter do not correspond to the facts as confirmed with the assessor and the documents provided by them. We will generally use the confirmed facts as the basis for our opinion, and mention any discrepancies with your letter only as necessary to our analysis.

Factual Background

According to your letter and our conversations with you and Mr. L , we understand that in 2001, a developer built a five-house residential tract at the end of a cul-de-sac. On September 18, 2002, your clients, Mr. Z and M , as husband and wife, purchased the parcel designated on the tract map as "Lot 4" (Assessor's Parcel Number (APN) -29; address Drive) for \$530,000. On September 20, 2002, Mr. B (Mr. B), purchased an adjoining lot, designated on the tract map as "Lot 5" (APN -28; address Drive) for \$540,000.

The developer filed with the county recorder's office grant deeds and preliminary change in ownership reports (PCORs) for both parties. However, the developer switched the APNs on the grant deeds, causing the assessor to assess your clients for a September 18, 2002 purchase of Lot 5 for \$540,000 and assess Mr. B for a September 20, 2002 purchase of Lot 4 for \$530,000, *i.e., to over-assess your clients' property by \$10,000 and underassess Mr. B 's property by \$10,000.* To rectify the problem, both Mr. B and your clients filed quitclaim deeds on May 12, 2003,² indicating on the PCORs that the filed deeds were for the sole purpose of correcting the APNs "so that the legal description[s] and address[es] are consistent with the tract map." The assessor's office received the quitclaim deeds for both parcels on May 30, 2003.³

According to Mr. L , the usual remedy to fix this type of problem is to cancel the incorrect assessments and re-input the transfers into the computer. (See enclosed Letter to Denise Riley, from L , dated October 15, 2009.) In this case, however, upon receipt of the quitclaim deeds, staff for the assessor's office cancelled and deleted from the computer system your clients' September 18, 2002 assessment but failed to input the correct legal description and value in its place. For that reason, the base year value reverted back to the base year value as assessed to the developer *before* your clients purchased the property (developer's base year value).⁴ The developer's factored base year value as of 2002 was \$412,631, which is \$117,369 less than the purchase price paid by your clients, *which resulted in your clients paying approximately \$1,100.00 less per year in taxes than if they had been correctly assessed.* This incorrect base year value was carried forward for the years 2003 through 2008 before the assessor's staff realized their error. On October 27, 2008, the assessor proceeded to initiate base year value corrections for the initial base year value determination, issue escape assessments for years 2005 through 2007, and a roll correction for the 2008 roll.

Both parties agree that the assessor's errors in not establishing the base year value in 2002 and not correcting the base year value in 2003 did not involve the assessor's exercise of judgment as to value.

² In your letter, you state that the quitclaim deeds were filed some time in 2002.

³ Your letter vaguely states that the assessor became aware of the problem when one of the owners (the one with the overassessed property, whom you state was Mr. B , not your clients) objected to overassessment of his property. However, according to Mr. L , the assessor's office first became aware of the problem when your clients objected to being overassessed and upon receipt of the quitclaim deeds.

⁴ Your letter indicates a sale price of \$400,000 for Mr. B 's property, which you contend remained the base year value for your clients' property. However, according to the assessor's records, the sales price for Mr. B 's property was \$540,000 as indicated by the PCOR filed by Mr. B .

Legal Analysis

Base Year Value Corrections and Issuance of Escape Assessments

Section 51.5, subdivision (a) applies to base year value corrections involving errors that do not involve an assessor's exercise of judgment as to value. Section 51.5, subdivision (a) provides, in relevant part, that:

[A]ny error or omission in the determination of a base year value ... including the failure to establish that base year value, which does not involve the exercise of an assessor's judgment as to value, *shall be corrected in any assessment year in which the error or omission is discovered.* (Emphasis added.)

The Board of Equalization's (Board's) staff has consistently interpreted section 51.5, subdivision (a), since its inception, to allow corrections of base year values *any time* an error is discovered that does not involve an assessor's exercise of judgment as to value. (See e.g., Letters to Assessors (LTA) No. 88/50 (July 1, 1988) and Property Tax Annotation⁵ (Annot.) Nos. 170.0017 (C 5/13/88) and 390.0086 (Am. M99-1).)

Section 51.5, subdivision (d) authorizes the issuance of escape assessments any time a correction of a base year value results in an increase of the base year value. In addition, section 531 requires the assessor to assess escaped property upon discovery. Section 532 limits the period of time in which an assessor can levy escape assessments to four years after July 1 of the assessment year in which the property escaped taxation or was underassessed. "Assessment year" is defined in section 118 as "the period beginning with a lien date and ending immediately prior to the succeeding lien date for taxes levied by the same agency." This definition presupposes a new assessment year each and every year. This means that for *each year* a property escapes assessment, an assessor has four years after July 1 of the assessment year in which the property escaped taxation to levy escape assessments.

This reading of section 532 is confirmed by *Montgomery Ward & Co. Inc., v. County of Santa Clara* (1996) 47 Cal. App. 4th 1122. In this case, a timely-reported change in ownership occurred in 1988, but the assessor failed to enroll the new base year value at that time. The assessor did not discover the error until 1993, five years after the change in ownership occurred. Similar to your client's position, the taxpayer claimed that the assessor could not correct the base year value or issue escape assessments since more than four years had passed since the change in ownership and the error in establishing the base year value occurred. The court disagreed explaining that:

Escape assessments can be issued in situations where the base year value was corrected more than four years after the triggering event. *This is because there is a new assessment year each and every year while there is only one year when the base year value of a particular property is established....[Thus,] the assessor may revise base year values and levy escape assessments for the preceding four years, but no others, no matter when the underassessment is discovered.* (Emphasis added.)

⁵ Property tax annotations are summaries of the conclusions reached in selected legal rulings of State Board of Equalization counsel published in the State Board of Equalization's Property Tax Law Guide. (See Cal. Code Regs., tit. 18, § 5700 for more information regarding annotations.)

As applied to this case, the property escaped taxation first in 2002, and every year thereafter until the error was discovered in 2008. Thus, the assessor has four years after July 1, 2002, to levy an escape assessment on the 2002 escape, four years after July 1, 2003 to levy an escape assessment on the 2003 escape, four years after July 1, 2004, to levy an escape assessment on the 2004 escape, and so on until the year in which the error is corrected. Because escape assessments were made on October 27, 2008, the escape assessments for 2005, 2006, and 2007 were proper. (§ 51.5, subd. (a); *Montgomery Ward, supra*; LTA Nos. 2002/14 and 88/50; Annots. 170.0017 and 390.0086.)

Roll Corrections

In addition to section 51.5, which requires the correction of base year values and the issuance of escape assessments, section 4831 provides for a separate authorization for the assessor to correct any roll entries not resulting from an error in value judgment. Section 4831 provides that:

Any error resulting in incorrect entries on the roll *may* be corrected under this article. The correction may be made at any time after the roll is delivered to the auditor but, except as provided in subdivision (b), *shall be made within four years after the making of the assessment that is being corrected.* (Emphasis added.)

Rule 263, which interprets section 4831, also provides that:

Any error or omission not involving the exercise of value judgment which results in an incorrect entry or entries on the roll may be corrected after the roll is delivered to the auditor, provided that the correction is made within four years after the making of the assessment that is being corrected.

The four-year statute of limitations for correcting roll errors is separate and distinct from base year value corrections and issuance of escape assessments and does not in any way affect the limitation periods applicable to corrections of base year values or issuance of escape assessments. Indeed, Rule 263 specifically provides that "roll corrections *are not a prerequisite* for escape assessments or base year value corrections." (Rule 463, subd. (g) (Emphasis added).)

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely,

/s/ Denise L. Riley

Denise L. Riley
Tax Counsel

DLR:yg

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