STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
LEGAL DIVISION (MIC:82)
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April 7, 1994

Mr. Richard Karlsson
Senior Deputy County Counsel
for Alameda County
1221 Oak Street, Room 463
Oakland, CA 94612

Re: Separate Assessment of Land and Improvements -
Peter C. Holmes, 93-365 RFTX

Dear Mr. Karlsson:

Thank you for mailing me a copy of your memorandum to the Clerk of the Board of Supervisors dated March 29, 1994 regarding the above-referenced matter which is apparently factually similar, if not identical, to a letter opinion we wrote to the Ventura County Assessor in 1989. In that opinion, we concluded that Revenue and Taxation Code section 2188.2 required the assessor to separately assess tenant-owned improvements to the tenant where the landlord, who owned the land and structures, filed a statement attesting to separate ownership.

We are replying to your memorandum out of concern that a failure to respond might be viewed by the Board as acquiescence in your view that it "would be erroneous" to apply our opinion in this matter. After reading your memorandum, we must, with all due respect, state for the record that our 1989 opinion is the correct statement of the law.

Moreover, we believe it is appropriate to address certain statements in your memorandum. For example, on page 3, you characterize the conclusion reached in our opinion as "contrary to the plain wording of the statute...." That statement is simply not accurate. Regardless of whether all of the improvements or only some of the improvements are owned by a person other than the owner of the land on which they are located, they are still, in either case, improvements which "are owned by a person other than the owner of the land on which they are located...." Thus, the plain and unambiguous language of the statute applies to either situation. As you know, where the

language of a statute is clear and unambiguous, there is no need for construction nor is it necessary to look further to ascertain the statute's meaning. (*Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798-800).

Further, although you are correct that the issue involved in this case and in our letter opinion was not before the court in *County of Ventura v. Channel Island Bank* (1967) 251 Cal.App.2d 240, it is apparent that the court believed that Revenue and Taxation Code section 2188.2 was applicable in such a case as indicated by the following language commencing at page 245:

> While section 2188.2 Revenue and Taxation Code, permits the filing of a written statement attesting to separate ownership **whenever** improvements are owned by a person other than the owner of the land on which they are located and requires the assessor to assess separate interests in real property to their separate owners if he receives such a statement, the statute does not prohibit him from separately assessing such interest if, as in the instant case, he receives none....It in no manner prohibits the assessor in the exercise of his discretion from assessing on the unsecured roll the leasehold improvements to their owner, the Bank herein, simply because neither it nor the owner of the land elected to avail themselves of their right to file a written statement attesting to separate ownership under section 2188.2. (Emphasis added.)

The clear implication of the foregoing language is that had the Bank or the landowner filed the written statement required by section 2188.2, as the court said they had the right to do, separate assessment of the tenant-owned improvements to the Bank and the building improvement to the landowner would have been required under that section rather than being within the assessor's discretion. Nothing in the decision suggests any doubt by the court as to the applicability of section 2188.2 under such circumstances.

Your argument that section 2188.2 should not be so construed because the tax collector cannot enforce separate liens against the owner of the building and the owner of tenant improvement is not persuasive. The fact is that the Legislature has not provided any machinery for foreclosing the separate lien on improvements whether all the improvements are assessed separately (18 Op. Cal. Atty. Gen. 26 (1951)) or where only some are assessed separately as in the *County of Ventura* case discussed above. That is undoubtedly why the assessor in the *County of*

Ventura case assessed the tenant-owned improvements to the tenant on the unsecured roll. Thus, the objection you raise to separate assessment in the case addressed by our opinion is equally applicable whether all improvements or only some of the improvements are assessed separate from the land on which they are located. Accordingly, that argument affords no basis for applying section 2188.2 where all the improvements are separately owned and not applying it in the case addressed by our opinion. In either case, if and when the separately assessed taxes on the tenant improvements become delinquent, the tax collector or assessor may record a certificate that creates a lien against other real and personal property of the taxpayer in the county where it is recorded. (Rev. & Tax. Code §§2191.3 and 2191.4.) Also, the tax on the separately assessed improvement may be made a lien on other real property owned by the owner of the improvement if the fact of the lien is shown on the roll where such other real property is listed. (Rev. & Tax. Code §2188.1.) See generally, Ehrman & Flavin, *Taxing California Property*, (3d Ed.) section 28:07, page 7.

We trust that the foregoing discussion makes clear the basis for our opinion and for our view that it is still an accurate statement of the law.

Very truly yours,

Eric F. Eisenlauer

Eric F. Eisenlauer
Staff Counsel III

EFE:ba

cc: Clerk, Board of Supervisors
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