



Memorandum

To: Mr. Dick Johnson
Deputy Director, Property Taxes

Date: October 22, 1997

From: Timothy W. Boyer
Chief Counsel

A handwritten signature in cursive script, reading "Timothy W. Boyer", is written over the typed name.

Subject: Assessments Made Erroneously or Illegally

In recent months, staff has been presented with instances of taxpayers seeking relief from taxes on state assessed property on the grounds the assessments were made "erroneously or illegally" as that term is used in Section 5011 of the Revenue and Taxation Code. Because the code does not define these terms, there has been substantial disagreement over what constitutes an assessment made "erroneously or illegally".

As set forth in detail below, it is the position of the Legal Division that incorrect assessments resulting from errors in valuation judgment are not assessments made "erroneously or illegally" for which the remedies of cancellation or permissible refund may be obtained.

Our position is based on the statutory scheme of the correction, cancellation and refund provisions of the code; and the case law which distinguishes between cases involving, on the one hand, factual disputes or errors in valuation judgment requiring appeal to the board of equalization, and cases, on the other hand, involved assessments made "erroneously or illegally" for which relief by cancellation or refund is available. The courts have limited the situations in which relief is available under §5011 to those situations where the facts are not in dispute and the assessment was made on property that is tax-exempt, outside the jurisdiction or nonexistent on the lien date, or where the assessment is void for failure to follow statutory procedure.

DISCUSSION

The Statutory Scheme Distinguishes Between Value Judgments and Other Errors

Statutory Authority Section 5011 provides in relevant part:

All or any portion of any assessment of state-assessed property heretofore and hereafter levied may, on satisfactory proof, be canceled by the board if it was made:

....

(b) Erroneously or illegally.

....

Section 5011 does not define when an assessment is made erroneously or illegally, nor are there any court decisions that directly interpret this code section. However, the statutory context in which section 5011 appears, Part 9 of Division 1 of the Revenue and Taxation Code, clearly indicates that "erroneously or illegally" does not include errors involving judgments as to value.

Part 9 sets forth related remedial provisions for: corrections of assessment rolls (Chapter 2); cancellations of assessments and taxes (Chapter 4); and, refunds of taxes already paid (Chapter 5).

Roll Correction - Chapter 2 Section 4831 authorizes correction of the local roll and provides that corrections of errors resulting in incorrect entries on the local roll, with one limited exception not relevant to this discussion, does not apply to "errors involving the exercise of value judgments." Section 4876, the parallel section authorizing corrections of the Board roll, provides that corrections may be made for "defects in description or form or clerical errors of the board in assessing state-assessed property or other errors of the board not involving the exercise of judgment as to value . . ." Thus, the language of the corrections statutes clearly states that errors in judgment of the value of state-assessed property may not be corrected using those provisions.

Cancellation Provisions Chapter 4 sets forth provisions, for purposes relevant to this discussion, for the cancellation of taxes on locally-assessed property (Section 4986) and cancellation of assessments on state-assessed property (Section 5011), if such taxes or assessments were levied or charged "erroneously or illegally". Neither of those sections defines the term "erroneously or illegally," however, in Rittersbacher v. Board of Supervisors (1934) 220 Cal. 535, the supreme court held that the predecessor statute to section 4986, which also required cancellation of taxes erroneously levied, did not afford relief for overvaluation by the assessor. Although there are no cases interpreting section 5011, in view of the fact that both sections have the same purpose, cases construing section 4986 provide judicial guidance in construing section 5011.

Refund Provisions The refund provisions of Chapter 5 (section 5096), like the cancellation provisions of Chapter 4, enumerate the conditions under which refunds of taxes shall be made, and includes taxes "erroneously or illegally collected" and "illegally assessed or levied." The law is well-settled that these refund provisions do not abrogate the statutory

requirement of filing an assessment appeal when valuation is in dispute. . . ("Neither [the refund provisions] nor any other provision of the California law . . . expressly dispense[s] with the taxpayer's obligation to exhaust his administrative remedies as a condition precedent to suit. Without that dispensation, the administrative remedy must be pursued." *Westinghouse Elec. Corp. v. County of Los Angeles* (1974) 42 Cal.App.3d 32, 38.

In interpreting these provisions, the court in *Montgomery Ward & Co. v. County of Los Angeles* (1936) 17 Cal.App.2d 127, held that, in a case of alleged overvaluation, a taxpayer must seek relief by timely filing an application for assessment appeal with the local board of equalization. Because the refund provisions are not available as a remedy when valuation is in dispute, the clear implication is that "erroneously or illegally" does not include a judgment as to the correct value to be placed on the property.

Exception for Section 469 Audits

The single exception to the general rule that the cancellation and refund sections do not provide relief for errors in value judgment lends further support to staff's view. That exception is enumerated in both section 4986 and section 5096 wherein cancellation or refund is available "on an assessment in excess of the value of the property as determined by the assessor pursuant to Section 469." Section 469 directs assessors to audit locally-assessed property of a certain value and, if the audit discloses to the assessor that the property was overassessed, the assessor is required to notify the assessee that it may seek relief under section 4986 or 5096. The fact that the legislature made a specific exception for overvaluation in these limited circumstances compels the conclusion that any other valuation dispute is not a basis for seeking relief by resort to the cancellation or refund statutes.

Case law construction of assessments made "erroneously or illegally".

As construed by the California courts, an assessment made "erroneously or illegally" for which taxes should be canceled or refunded does not include disputes concerning errors made by the assessor involving valuation judgments and questions of fact. The court of appeal in *Montgomery Ward & Co. v. County of Los Angeles* (1936) 17 Cal.App.2d 127, 131, made this point quite clearly when it stated that "there is an obvious distinction between a mere overvaluation of property in an assessment and a double, erroneous or illegal assessment." In terms of available remedies, the court held that "in the case of an erroneous or illegal assessment the board of supervisors may refund the amount paid under protest or cancel the entire assessment . . . in the absence of any previous application to or showing before the board of equalization, [citation omitted] but they are available only where the assessment is absolutely void. [citation omitted] On the other hand, in cases of mere overvaluation of property, relief is to be obtained by making timely objection before the board of supervisors sitting as a board of equalization." [citations omitted]

Courts have further defined assessments made "erroneously or illegally" for which cancellation or refund may be obtained and have clearly distinguished those assessments involving value judgments. In *Westinghouse Elec. Corp. v. County of Los Angeles* (1974) 42 Cal.App.3d 32, 36-37, the court acknowledged that a taxpayer challenging an assessment ordinarily must exhaust the available administrative remedies. However, relying on numerous prior cases, the court held that "[p]rior application to the local board of equalization has not been required . . . where the facts were undisputed and the property assessed was tax-exempt, outside the jurisdiction or non-existent, or where the assessment is void for failure to follow statutory procedure." [citations omitted]

The issue before the court in *Pacific Grove-Asilomar Operating Corp. v. County of Monterey* (1974) 43 Cal.App.3d 675, provides an example of a claim of erroneous or illegal assessment which does not require the exhaustion of administrative remedies. The assessee was a nonprofit corporation organized under state law solely for the purpose of managing real property and improvements owned by the State. The assessee objected to the assessment to it of a possessory interest in the property and contended that no taxable possessory interest existed because it was an agent of the state and as an agent of the state was exempt from taxes. The facts were not in dispute. The court held that the basic issue presented, whether the assessment was void, was a question of law subject to *de novo* review by the trial court.

Distinction between property that is non-existent or outside the jurisdiction and classification or counting errors.

In determining whether an assessment dispute raises valuation judgment issues, at least one court has made a distinction between property assessed as a separate identifiable unit and property composed of a number of generic items included in a single assessment. When assessing a group of generic items, errors in classification or counting may result in the inclusion of some items which are nonexistent or outside the jurisdiction on the lien date. In *El Tejon Cattle Co. v. County of San Diego* (1967) 252 Cal.App.2d 449, 457-8, the court of appeal held that such an error is an error in the value or amount of the group of items assessed and, therefore, constitutes a valuation dispute that must be appealed to the board of equalization.

El Tejon Cattle Co. involved a dispute over the proper classification and number of the taxpayer's inventory of bovine livestock which was assessed in a single assessment. The substance of the taxpayer's claim was that the assessor had assessed more livestock than the taxpayer owned. The court held that the matter was within the jurisdiction of the board of equalization because it involved "an error as to the value or amount of property subject to taxation [and was] not therefore erroneously made within the meaning of the legislation presently embodied in section 5096." In effect, the court viewed the livestock inventory as a

single assessable unit, the value of which was determined by counting and classifying each animal which was an exercise of the assessor's value judgment.

Conclusion

The correction, cancellation and refund sections of the Revenue and Taxation Code when read together lead to the conclusion that "erroneously or illegally" does not include errors in valuation judgment. The appropriate and necessary administrative remedy for disputes involving valuation judgments is an assessment appeal before a board of equalization or assessment appeals board. The appellate court cases fully support this interpretation of the term and set forth the definitive circumstances under which an assessment is considered to have been made "erroneously or illegally".

If you have any questions regarding this memo, please contact Tax Counsel Louis Ambrose at 445-5580.

TWB:sao

cc: Mr. E. L. Sorensen, Jr.
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