STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
LEGAL DIVISION (MIC:82)
450 N STREET, SACRAMENTO, CALIFORNIA
(PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082)
)NE (916) 445-5580
) 323-3387

180.0069

June 3, 1998

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Mr.

Re: Escape Assessments and Proposition 8 Reductions

Dear Mr. :

This is in reply to your letter of April 15, 1998 in which you request a legal opinion concerning an appeal of escape assessments for years in which the fair market value of the subject property may have declined below the newly established base year value and subsequent factored base year values. I have reviewed your letter and the accompanying documents and present a summary of the facts as follows: A Memorandum of Lease evidencing a long-term lease commencing in April 1989 was recorded March 25, 1997. Upon discovery, the assessor determined that a change in ownership had occurred upon execution of the lease, established a new base year value for the property, and made an escape assessment for the property. For assessment years 1991-1992 through 1997-1998, the assessor adjusted the base year value for each year and appropriately made escape assessments for the property. The taxpayer received notice of the escape assessments and timely filed applications for reduced assessment because the taxpayer believes that the fair market values for those years were lower than the base year value and adjusted base year values reflected by the escape assessments. The taxpayer's opinions of fair market value for the years from 1990 to 1997 stated on the applications are lower than the previously adjusted base year values on the 1990 through 1997 assessment rolls.
Based on these facts you ask:

1. Can the assessor exceed the four year statute of limitations and escape assess the property back to 1990 as he has done?

2. If the assessor can in fact go back to 1990, then what remedy does the taxpayer have in regards to a Proposition 8 reduction in value as to each lien date value affected and which has now been increased significantly as the result of the escape assessments?

As further explained below, the statute of limitations for making escape assessments resulting from increased values due to a change in ownership depends upon whether the taxpayer properly reported the change in ownership. If the taxpayer has reported the change in ownership by filing all required documents, then an assessor would be limited to four years from the date of the original assessment. However, if the taxpayer failed to report the change in ownership, then the limitations period does not begin running until the change in ownership is properly reported, which event may occur several years after the date of the change in ownership.

As to your second question, it is our view that an application appealing an escape assessment may validly seek a reduction in base year value and a Proposition 8 reduction to fair market value, and that an appeals board has discretion to determine such a Proposition 8 value, even if that value is lower than the previous roll value for the property. Even though the application seeks the same relief as would have been available for a Proposition 8 decline in value appeal, an escape assessment places the entire value of the property in issue and, for that reason, an applicant is not limited to appeal of only the new base year value for the property.

LAW AND ANALYSIS

Escape assessment limitations periods

Section 532 of the Revenue and Taxation Code prescribes the time limitations periods within which an assessor can make escape assessments. Subdivision (a) provides that, except as provided in subdivision (b) and except for assessments subject to the penalty provided by section 504, escape assessments "shall be made within four years after July 1 of the assessment year in which the property escaped taxation or was underassessed." Subdivision (b) sets forth an exception to the time limitations periods and provides

> In the case where property has escaped taxation, in whole or in part, or has been underassessed, following a change in ownership, the applicable limitations period specified in subdivision (a) shall not commence until July 1 of the assessment year in which either a change in ownership statement, as required by Section 480, 480.1, or 480.2, or a preliminary change in ownership report, as required by Section 480.3, is filed with respect to the event giving rise to the escape assessment or underassessment.

Thus, a failure to report a change in ownership has the effect of extending the statute of limitations for making escape assessments to four years from July 1 of year in which the change in ownership is actually reported, in this instance, to four years from July 1 of 1997.

As your letter and the enclosed documents indicate, a change in ownership of the property resulted in 1989 upon creation of a leasehold interest in the property for a term of 35 years or more. When the assessor discovered the unreported change in ownership in 1997, a new base year value as of the 1990-1991 assessment year was established and escape assessments were made for that year and for the succeeding years. The failure to report the change in ownership in a timely manner tolled the limitations period and, therefore, the escape assessments are valid because they were made within four years of the reporting of the change in ownership.

Opinion of value lower than previous roll value for the property

Pursuant to Section 1603, subdivision (a), an appeals board has authority to make a reduction in an assessment on the local roll only upon the filing of a timely and complete application. For assessments made during the regular assessment period - the period from the January 1 lien date to June 30, a timely filed application for reduction must be filed during the regular filing period between July 2 through September 15 of the same year. An application alleging a decline in value is triggered by the January 1 lien date value assessment and, therefore, is made during the regular assessment period. Thus, for such an application to be timely and valid, it must be filed within the regular filing period of the same year the assessment was made.

On the other hand, for assessments made outside the regular assessment period, such as escape assessments, a timely filed application is filed within 60 days of the date of notice of the assessment. If an application appealing an escape assessment is timely filed and otherwise valid, an appeals board has jurisdiction to equalize the assessment of the property without regard to the original assessed value on the roll. In this regard, section 1610.8 provides, in pertinent part, that

> After giving notice as prescribed by its rules, the county board shall equalize the assessment of property on the local roll by determining the full value of an individual property and by reducing or increasing an individual assessment as provided in this section. The full value of an individual property shall be determined without limitation by reason of the applicant's opinion of value stated in the application for reduction in assessment pursuant to subdivision (a) of Section 1603.

Thus, section 1610.8 empowers an appeals board hearing a valid application, including an application appealing an escape assessment, to determine the full value of the property. In our view, this broad grant of power to equalize assessments gives an appeals board discretion to grant a Proposition 8 reduction to fair market value when requested in an application, even if that value is lower than the previous roll value for the property.

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.

Very truly yours,

Louis Ambrose
Tax Counsel

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cc: Honorable Glenn E. Gray, Ventura County Assessor
Mr. Richard Johnson (MIC:63)
Mr. Rudy Bischof (MIC:64)
Mr. David J. Gau (MIC:64)
Ms. Jennifer L. Willis (MIC:70)

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