

Memorandum

To : Mr. Dick Johnson, MIC:64

Date: February 15, 1995

From : James M. Williams

Subject: Application of Revenue & Taxation Code 1603, Subdivision (c)

In his memo of June 8, 1994 Verne Walton questioned a survey problem in Sonoma County which we discussed by phone and later dropped because the county agreed with our view and stopped its practice. On Friday, January 20, I sat through the Legislative and Property Taxpayers' Advocate's presentations to the newly elected assessors and based on questions raised at that time I think it is appropriate to give you a formal response to Verne's original question.

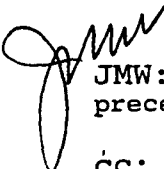
The county interpreted the subject provision to mean that late filed applications for "Proposition 8" reductions in value on the current roll can be accepted within 12 months following receipt of the tax bill, provided the assessor agrees that the roll value is too high and a written stipulation is presented to the assessment appeals board. Verne disagreed by concluding that this amounts to a refund of a portion of the previous year's taxes on a Prop 8/retroactive basis. He interpreted the phrase "notice of assessment" in section 1603, subdivision (b) to apply only to changes in the base year value because notice is not required when the roll value merely results from application of the inflation index.

In regard to intent Verne was probably correct, but proper interpretation of the statute as written leads us to conclude that the assessor may agree to Prop 8 stipulations after the annual appeal deadline and receipt of the tax bill. The legislative history of section 1603, subdivision (c) indicates that it was added as the result of Fresno County situations wherein mistakes had been made in the derivation of new base year values but not discovered by the taxpayers until receipt of the tax bills. Upon review by the assessor, he agreed with the taxpayers but had no means to correct the values because the appeal deadline had passed. SB 581 (1985) by Senator Vuich added Section 1603.1 and gave the assessor the means to correct by stipulation. (See LTA 86/07) Later, that section was repealed, but the provision was moved to its present section and the 12 month time limit was added. (See LTA 88/43) In that letter we took the position that the tax bill would suffice as notice because it will suffice for interconnected,

preceding section 1603, subdivision (b). As a result thereof, we are of the opinion that Verne's interpretation would require a negative statement in the statute. The current language of the section permits Prop 8 stipulations within the 12 month time frame. Since there is no limitation placed on the term "assessment" as it is used in subdivision (c).

Our interpretation appears to be correct when it is contrasted with section 51.5, subdivision (b) which specifically applies to corrections of the base year value. In Verne's view notice is only required when the base year is newly established so that is the time to apply section 1603, subdivision (c), but if that is true then section 51.5, subdivision (b), although more specific, would be redundant and unnecessary. However, we conclude that Section 51.5, subdivision (b) controls base year value corrections and section 1603, subdivision (c) controls Prop 8 variations and thusly harmonize the statutory scheme. The unsaid truth of the matter is that Verne's view was probably historically correct based on intent and a very careful look at the times upon which each section became effective. Richard Ochsner also advises that section 51.5, subdivision (b) was a reaction to the **Dreyers** case and designed to remedy the situation where the assessor was low and wanted to increase the existing base year value, whereas section 1603, subdivision (c) permitted a reduction when the assessor agreed that the roll value was too high.

Finally we would advise that the assessor thoughtfully consider all of the consequences of Prop 8 reduction via section 1603, subdivision (c). It is an admission, albeit after the fact, that an incorrect roll was turned over to the auditor. Well, mistakes do happen. However when mistakes become massive they can be construed as misfeasance in office. As we had later discussed, mass appraisal techniques prior to roll turnover and public notification of the appeal deadline would be much better alternatives than the application of section 1603, subdivision (c).


JMW:jd
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