



## STATE BOARD OF EQUALIZATION

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December 10, 2015

Ms.  
Office of Chairman Jerome Horton  
450 N Street, MIC:72  
Sacramento, CA 95814

**Re: *Rescission***  
***Assignment No.: 15-428***

Dear Ms. :

This is in response to your request for our opinion explaining the circumstances under which an assessor may exercise his discretion to accept or reject a rescission of a transfer of property between parties. As explained below, an assessor must accept a rescission if the transfer meets the Civil Code requirements for a valid rescission. An assessor has discretion, however, to determine whether a transfer is, in fact, a valid rescission.

Property Tax Annotation<sup>1</sup> (Annotation) 220.0597 (August 14, 1987; January 23, 1987; June 5, 1986) describes the Legal Department's position on the property tax consequences of a mutual rescission of a contract for the transfer of property. That annotation states that a transfer of property may be rescinded if all parties to the transfer agree to rescind it and restore to each other all consideration received. (See January 23, 1987 back-up letter to Annotation 220.0597 (June 5, 1986), at p. 2.) Once a transfer of real property is rescinded and the parties are placed in the same position they were in before the contract was executed, the value of the real property reverts to its previous adjusted base year value prior to the transfer. (Annotation 220.0595 (January 16, 1985).) However, the liabilities established while the contract was in existence are not extinguished. Therefore, placing the parties in the position they held before the transfer will not result in a refund of taxes paid while the contract was in effect. (January 23, 1987 back-up letter to Annotation 220.0597 (June 5, 1986), at p.2.)

Annotation 220.0597 states that "[a] court judgment rescinding a transfer of real property accomplishes conveyance of the property back to the original owner. No additional instrument or conveyance is needed, and the property should be assessed to the original owner." Further, Annotation 220.0599 makes clear that:

Parties to a contract of sale may, on their own accord, mutually consent to the rescission. The provisions of the Civil Code do not require a court order or approval for a contract rescission to be valid when the parties to the contract mutually agree to rescind.

<sup>1</sup> 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.)

In the January 23, 1987 back-up letter to Annotation 220.0597, we advised that the property owner consult with the county assessor prior to effecting a rescission in order to confirm that such action would be treated by the assessor as effective. This, of course, is because an assessor has the discretion to accept or deny a rescission for property tax purposes. You ask us to clarify the extent of this discretion.

Civil Code section 1688 provides that a contract is extinguished by its rescission. A contract may be rescinded mutually if all the parties consent, or unilaterally based on a variety of grounds, for example, fraud, mistake or duress. (Civ. Code, § 1689.) A mistake occurs when, among other things, there is a misapprehension of the law by all parties, all supposing that they knew and understood it, and all making substantially the same mistake as to the law. (Civ. Code, § 1578, subd. (1).) Upon rescission, "the contract becomes a nullity; it and each of its terms and provisions cease to be subsisting or enforceable against the other party." (*Scollan v. Government Employees Ins. Co.* (1963) 222 Cal.App.2d 181, 183.) Civil Code section 1691 explicitly requires the restoration of the parties to the status quo for unilateral rescission. Although the Civil Code contains no similar explicit requirement for mutual rescission, we believe that case law is supportive of a requirement to return the parties to the status quo for mutual rescission.<sup>2</sup> Also, since a mutual rescission has the effect of nullifying the contract (i.e., the contract is *void ab initio*), it follows that the parties in an executed contract should return each other to the position they were in prior to the execution of that contract.

Because the elements of a valid rescission are clearly specified in the Civil Code, if the parties to a contract to transfer real property satisfy the statutory requirements, we believe the assessor must accept such rescission for property tax purposes. If, for example, all parties to a transfer of property wish to undo the transfer and have restored to each other all consideration received, the assessor must accept the rescission of the property transfer. As noted above, the Civil Code does not require a court order to validate a rescission.<sup>3</sup>

However, if the parties to a contract to transfer real property have failed in fact to meet a requirement for rescission provided in the Civil Code, the assessor has the discretion to deny the rescission for property tax purposes. For example, although the Civil Code provisions governing rescission were not specifically at issue, in *Fashion Valley Mall v. County of San Diego* (2009) 176 Cal.App.4th 871 (*Fashion Valley Mall*), the parties to a contract involving a transfer of real property attempted to effect a "reformation" of the agreement that was operative ". . . solely for property taxes." (*Id.* at p. 879.) The parties specified that the contract, while "reformed" for property tax purposes, would remain in full force and effect for all other purposes, including income tax and securities purposes and commercial and real estate activities. The court considered the transaction to be a "sham" and "a mere fiction" that "cannot be given effect for the purposes of determining . . . property tax liability." (*Id.* at pp. 879-880.) Viewed in the context of the rescission requirements, we believe the parties in *Fashion Valley Mall* did not satisfy the requirements for a rescission; because the contract purported to be in effect for all purposes other than property tax purposes, the parties were not restored to their original positions.

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<sup>2</sup> See, for example, *Green v. Darling* (1925) 73 Cal.App. 700, 704 ("If the minds of the parties met on the proposition that they would rescind, it was not necessary that the defendant stipulate to return to the plaintiff the money which he had received, for the law requires him to do this as a consequence of having agreed that the contract be abrogated."); *Dugan v. Phillips* (1926) 77 Cal.App. 268, 278 ("upon a mutual rescission of a contract the law requires each party to restore whatever he has received under it"); *Larsen v. Johannes* (1970) 7 Cal.App.3d 491, 503 ("without rescission, and restoration of benefits received, a party may not avoid such a contract.")

<sup>3</sup> See January 23, 1987 back-up letter to Annotation 220.0597.

We note, however, the difference between a "sham" rescission (i.e., one that is operative solely for property tax purposes), versus a valid rescission effected solely to achieve certain property tax consequences. The former, similar to *Fashion Valley Mall, supra*, does not meet the requirement of restoring the contracting parties to their original positions and may be denied by the assessor for property tax purposes. The latter, however, if it satisfies the statutory requirements of a valid rescission, must be accepted by the assessor. Civil Code section 1689, *supra*, which lists the reasons for which a contract may be rescinded, does not limit rescissions to those not motivated by property tax benefits. In other words, if requirements for a valid rescission are met, the motive for rescinding a contract is inconsequential to its validity. Thus, for instance, if parties contract to transfer real property and subsequently discover that the transfer results in an unintended change in ownership, the parties may rescind the contract in order to avoid the change in ownership reassessment. If all statutory requirements are met, the assessor must accept the rescission. Of course, an assessor may request documentation to verify whether a rescission was valid and the parties were restored to the status quo. For example, she might request copies of deeds, a declaration or other evidence from the parties that consideration was in fact restored, an explanation and description of the steps taken to effect the rescission, or tax returns that demonstrate income from the property in question was reported by the proper party.

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/ Leslie Ang

Leslie Ang  
Tax Counsel

LA: yg

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cc: Honorable Marc C. Tonnesen  
President, California Assessors' Association  
Solano County Assessor/Recorder

Mr. Dean Kinnee      MIC:63  
Mr. David Yeung      MIC:61  
Mr. Todd Gilman      MIC:70