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Executive Director

February 8, 2001

**Subject: Request for Opinion Letter on Reinstatement of Original Base Year Value upon  
Installment Contract Rescission**

Dear Ms. \_\_\_\_\_,

This is in reply to your letter of January 5, 2001 regarding the reinstatement of a base year value to a residential property resulting from a rescission of a real property installment contract of sale for that property. As you explain in your letter, the assessor’s office recognized the rescission recorded on February 4, 2000 and will reinstate the lower base year value of the property prior to the change in ownership. However, even though the rescission took effect prior to July 1, 2000, the assessor’s office assessed the property for the 2000-2001 assessment year at the higher base year value, because that was the full cash value as of the lien date, January 1, 2000. In your view, the assessor should have corrected the assessed value to reflect the lower base year value prior to submitting the assessment roll to the county tax auditor, because the assessor does not close and transmit the assessment roll to the auditor until June 30 and taxes are not levied until September 1.

For the reasons set forth below, we disagree with your position that the assessor should have assessed the property at the lower base year value and enrolled that value for assessment year 2000-2001. The higher base year value was the full cash value as of lien date 2000 and the assessor was required by law to enroll that value for the 2000-2001 assessment year.

**Facts Presented**

You and \_\_\_\_\_ (“Buyers”) entered into an installment real property sale contract on January 1, 1999 with \_\_\_\_\_ (“Sellers”) to purchase the subject real property located in \_\_\_\_\_. The contract provided that the purchase price was \$125,000 which the Buyers would pay in installments over a period of 10 years and that specified rates of interest would accrue to the principal balance. In the event of a default by Buyers, the payments made would be credited by Sellers as “rent” during the time Buyers had possession of the property. You state that the parties did not intend to transfer ownership of the property at this time, but to secure the sale at a future date (January 2009) based on the terms in the agreement, (i.e., a security transaction). The assessor determined that the sale resulted in a change in ownership of the property and, thereupon, reappraised the property at its fair market value and established a new base year value as of the date of the transfer. The assessor made a supplemental assessment for the change in ownership and enrolled the new base year value on the following lien date.

In response to the assessor’s change in ownership determination and increased base year value, the parties mutually agreed to rescind the contract and executed a notice of rescission that was recorded on February 4, 2000. The Sellers then requested that the assessor reinstate the

former base year value on the property. The assessor agreed to recognize the rescission and to reinstate the former base year value as of the lien date following the rescission but would not adjust or cancel any assessments based on the higher base year value for the period that the contract was in effect.

### **Law and Analysis**

Although we believe the installment contract transferred the present beneficial interest in the property to Buyers resulting in a change in ownership,<sup>1</sup> the Board staff has taken the position that parties to a real property purchase contract may rescind the contract. The effect of such a rescission, which voids the transaction *ab initio*, is to restore the parties to the positions they held before entering into the transaction, including restoration of the original base year value of the property prior to the transfer. *See Long v. Newlin* (1956) 144 Cal.App.2d 509.

However, under California law a rescission will not extinguish liabilities incurred during the period that the contract was in effect. *See Scollan v. Government Emp. Ins. Co.* (1963) 222 Cal.App.2d 181. Therefore, although the parties will be restored to their former positions with respect to the subject matter of the contract, they are not entitled to a refund of the increased taxes resulting from the change in ownership.

Under the facts presented, the contract was in effect and the property had been subject to a change in ownership on January 1, 2000, the lien date for assessment year 2000-2001. Revenue and Taxation Code section 401.3 provides that "[t]he assessor shall assess all property subject to general property taxation on the lien date as provided in Articles XIII and XIII A of the Constitution and any legislative authorization thereunder." Under California law, the taxing agency's right to the taxes becomes fixed as of the lien date of the fiscal year to which they relate. *Seegmiller v. County of Nevada* (1997) 53 Cal.App.4th 1397, 1400. Thus, the subsequent rescission will not provide relief from the property tax increase that vested and became a lien on the property on the January 1, 2000 lien date while the contract was in existence. See Annotation No. 220.0595 (1/16/85), attached.

You state in your letter that you believe the assessor's staff should have changed the roll to reflect the lower base year value, because the rescission was recorded February 1, well in advance of the delivery of the assessment roll to the auditor on July 1. You also suggest that the change should have been made because the property taxes are not levied until September 1 following the lien date. Finally, you believe that if the assessor is entitled to make an assessment of supplemental taxes for the increased base year value for the 1998-1999 and 1999-2000 fiscal tax years, then a reduction would be appropriate for the 2000-2001 assessment roll to reflect the rescission in February 2000.

As discussed above, the property tax became fixed as of the January 1, 2000 lien date for the following fiscal year from July 1, 2000 to June 30, 2001. In this regard, section 2192 provides

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<sup>1</sup> It does not appear that sufficient evidence has been submitted to establish that this transfer was limited to a security interest only and was not a true land sale contract. See attached Annotation Nos. 220.0647 (7/29/87) and 220.0320 (5/9/84).

that: "Except as otherwise specifically provided, all tax liens attach annually as of 12:01 a.m. on the first day of January preceding the fiscal for which the taxes are levied." The July 1 date by which the assessor is to deliver the roll to the auditor is simply a deadline for completion of the local assessment roll.<sup>2</sup> The September 1 date for the levying of the tax is simply the date by which the board of supervisors determines the tax rate. Thus, the dates for delivery of the roll and levying of the tax have no bearing on the tax liability that becomes final on the lien date.

The assessor cannot make a supplemental assessment as of February 2000 to reinstate the original base year value, as you suggest, because supplemental assessments may be made only upon the occurrence of a reappraisable event. Section 75.10 provides generally in subdivision (a)

Commencing with the 1983-84 assessment year and each assessment year thereafter, whenever a change in ownership occurs or new construction resulting from actual physical new construction on the site is completed, the assessor shall appraise the property changing ownership or the new construction at its full cash value (except as provided in Section 68 and subdivision (b) of this section) on the date the change in ownership occurs or the new construction is completed. The value so determined shall be the new base year value of the property or the new construction.

From the plain language of the foregoing provision, it is clear that the assessor may make a supplemental assessment of real property only when a change in ownership occurs or new construction is completed. Additionally, section 75.11 prescribes the procedures for making supplemental assessments depending upon the date of the change in ownership or completion of new construction.

In this case, the installment contract transferred the present beneficial interest in the property from the Sellers to the Buyers and, thereby, resulted in a change in ownership on April 29, 1999 (assuming there is insufficient evidence to rebut the deed presumption). As required by sections 75.10 and 75.11, the assessor reappraised the property, established a new base year value on that date and made supplemental assessments to capture the increase between the old and the new base year values. However, the rescission did not result in a reappraisable event, change in ownership or completion of new construction, because it merely restored the parties to their positions prior to the contract. For that reason, it appears that the assessor may not make a supplemental assessment or assessments to reflect the reduction for fiscal year 2000-2001. If you are dissatisfied with the assessor's decisions regarding the change in ownership determination per the contract or the rescission, you may file an application for assessment appeal. In exercising its quasi-judicial functions, the appeals board has authority to review the facts and law pertaining to such matters and to issue final decisions. See Assessment Appeals Manual, Chapter 3, attached, for a description of the application process.

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<sup>2</sup> Revenue and Taxation Code section 616 provides, in part, that "[o]n or before July 1, annually, the assessor shall complete the local roll." Section 617 provides that "[a]s soon as the assessor completes the local roll, he shall deliver it to the auditor."

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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,

/s/ Louis Ambrose

Louis Ambrose  
Tax Counsel

LA:tr

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#### Attachments

cc: Mr. Dick Johnson, MIC:63  
Mr. David Gau, MIC:64  
Mr. Bob Reinhard, MIC:70  
Ms. Jennifer Willis, MIC:70