



(916) 445-4588

March 11, 1988

Honorable Richard E. Gordon  
Madera County Assessor  
209 West Yosemite Avenue  
Madera, CA 93637

Attention: Mr. Tony Tucker  
Supervising Appraiser

Dear Mr. Gordon:

This is in response to your request, dated January 29, 1988, for advice regarding the relief, which might be granted in the form of roll changes, or refunds where it appears that the taxpayer's real property has been overassessed.

In the situation you describe, Partnership A purchased 800 unimproved acres in May 1978. The property straddled the county line and only 100 of the 800 acres are located in County C. The reported total purchase price of the 800 acres reflected the May 1978 market value of the property. In establishing the March 1, 1979 market value for the 100 acres located in County C, the assessor used the reported purchase price for the entire 800-acre parcel. That is, assuming Partnership A paid \$80,000 for the 800 acres, the assessor put this value on the 100 acres in County C. Although not stated, we assume that you mean that the assessor determined that the base year value of the 100 acres was \$80,000 and that this is the value the assessor put on the roll in 1979. Since that time, we assume that the base year value has been adjusted for inflation annually and that the 100 acres has been assessed up to the amount of the adjusted base year value in each year since that time. It was not until January of 1988 that Partnership A contacted the assessor suggesting that the total purchase price had been mistakenly enrolled.

Set forth below are our comments on the various questions presented in your letter.

Question 1

Can this be considered an erroneous assessment?

Comment

Yes, if as implied by the above-factual description the 100 acres has been annually assessed at a value, which exceeded its fair market value.

Section 110.1 (all section references are to the Revenue and Taxation Code) defines "full cash value" for purposes of section 2(a) of article XIII A of the California Constitution as the fair market value as determined pursuant to section 110 on the date of change in ownership if the property changed ownership after the 1975 lien date. Subdivision (b) of section 110.1 designates this value as the base year value for the property. (See also section 75.1, relating to supplemental assessments, which is not applicable here.) If the March 1, 1979 base year value determined by the assessor exceeded its current full cash value as determined under section 110, and the property was assessed at the higher value, then it was assessed at a level higher than that permitted by law.

Section 51 provides that for each lien date after the lien date in which the base year value is determined pursuant to section 110.1, the taxable value shall be the lesser of its adjusted base year value or its current section 110 full cash value, taking into account any declines in value. Again, although the assessed value of the property in subsequent years may not have exceeded the adjusted base year value for that property, it appears that it would have exceeded the current market value of the property and thus violated the standard imposed by section 51.

### Question 2

Is this a value judgment error?

### Comment

We presume that this question relates to the language of section 51.5, as added by Chapter 537 of the Statutes of 1987 (SB 587), effective January 1, 1988, which provides in subdivision (1) that any error or omission in the determination of a base year value not involving "the exercise of an assessor's judgment as to value" shall be corrected in any assessment year in which it is discovered. Subdivision (b) further provides that an error which involves the exercise of an assessor's judgment as to value may only be corrected within four years after July 1 of the assessment year for which the base year value was first established. As we understand it then, your question is whether, for purposes of section 51.5, the assessor's use of the full 800-acre purchase price as the value for the 100 acres constitutes an error involving the exercise of an assessor's judgment as to value.

Based on the facts presented, it appears that this would be considered an error involving an exercise of the assessor's judgment as to value. Since we don't necessarily have all of the facts, however, the final determination of that question must rest with the assessor. For example, the records in the assessor's office might disclose that there was a calculation of the value of the 100 acres which was approximately 1/8<sup>th</sup> of the total purchase price but, in enrolling the values, there was a clerical error and the wrong number was enrolled. In that case, the error would appear to satisfy the definition of "clerical errors" found in subdivision (f) (2) of section 51.5.

### Question 3

- a) Can the base year value enrolled in error be changed at this late date from an 800-acre value to a 100-acre value?

- b) is this on the basis of an erroneous assessment value judgment error, or clerical error? Please cite R&T section, SBE letter, or other reference.

Comment

Assuming the assessor determines that this was an error involving the exercise of the assessor's judgment as to value, then subdivision (b) of section 51.5 limits the time within which the base year value may be corrected to the four-year period after the assessment year for which the base year value was first established. (If the assessor determines that the error did not involve the exercise of the assessor's judgment as to value, then the base year value may be corrected in any year in which the error is discovered as provided in subdivision (a) of section 51.5.) Although this result may be harsh under the facts of this case, it seems clear that this result was intended by the Legislature when it imposed the four-year limit on correcting errors involving assessor's judgment as to value.

It should be recognized, however, that the error in the base year value does not permit the assessment of the property at an amount in excess of its current fair market value. As explained above, section 51 limits the taxable value of real property to the lesser of the adjusted base year value or its current fair market value. Thus, to the extent the property has been assessed in excess of the standards specified in section 51, the taxpayer is entitled to an adjustment of the current assessed value and cancellation of uncollected taxes or refund of collected taxes under sections 4986 and 5096 on the theory that the taxes have been erroneously or illegally assessed or collected.

Question 4

- a) Can the assessor change the current 800-acre roll value to the proper 100-acre factored base year value and cause refunds to be issued for the last three years, or
- b) Should refunds be issued for all fiscal years since the original error. Would action taken under a) or b) be on the basis of erroneous assessment, value judgment error or clerical error? Please cite applicable references.

Comment

As noted above, although the base year value of the 100-acre parcel cannot now be changed or corrected under the provisions of section 51.5, the current roll value can be adjusted to reflect the March 1, 1987 current market value of the property even though the taxpayer did not file an application for reduction in assessment by September 15, 1987. Subdivision (c) of section 1603, as amended by Chapter 498 of the Statutes of 1987 (SB 544), in effect January 1, 1988, authorizes the filing of an application for reduction in assessment during the twelve months following the month in which the assessee is notified of the assessment if the taxpayer and the assessor stipulate that there is an error in the assessment as the result of the exercise of the assessor's judgment in determining the full cash value of the property and a written stipulation as to the full cash value and assessed value is filed in accordance with section 1607. Thus, a late application for reduction of the current roll assessment can be filed if the assessor and the taxpayer can reach a stipulation as to value.

As noted above, to the extent taxes relating to the overassessment have been levied or charged but are uncollected, section 4986 provides a cancellation remedy. To the extent taxes relating to the overassessment have been paid, then section 5096 provides a refund remedy. The refunds would, of course, be subject to all of the conditions set forth under the provisions of article 1, commencing with section 5096. See in particular section 5097 which, in part, requires the filing of a claim by the taxpayer within four years after making the payment sought to be refunded.

We hope the foregoing information is helpful. Please feel free to contact us if you have further questions.

Very truly yours,

Richard H. Ochsner  
Assistant Chief Counsel

PHO:cb  
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cc: Mr. Gordon P. Adelman  
Mr. Robert H. Gustafson  
Mr. Verne Walton  
Mr. Darold Facchini