State of California

285.0015

Memorandum

To : Mr. Verne Walton

Date : May 13, 1988

From : Richard H. Ochsner RHO

Subject : Proposed Letter to Napa County Assessor - SB 587

Set forth below are my comments on your proposed response to the Napa County Assessor on his questions relating to the interpretation of Chapter 537 of the Statutes of 1987 (SB 587). Please convey my apologies to the Assessor for delaying this matter for so long. Other priority matters, primarily current legislation, have been the cause of this delay.

It appears that the Assessor's questions arise, in part, from a confusion as to the relationship between the base year value correction provisions added by Chapter 537 and the existing statutory provisions for roll corrections, escape assessments or refunds, and assessment appeals. It may be helpful, therefore, to add a general discussion of these concepts in order to clear up some of the confusion.

First, we need to understand what we are talking about when we refer to "base year 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. Moreover, section 75.10 provides that commencing with 1983-84 the assessor shall appraise property changing ownership at its full cash value on the date the change in ownership occurs and the value so determined shall be the new base year value of the property. 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. What these provisions say is that the taxable value of property, that is the amount for which it is assessed, shall be the lesser of current fair market value or adjusted base year value. Thus, the base year value is a control figure which sets a maximum limit

or cap on the total amount of the assessed value. When section 51.5, as added by Chapter 537, mandates the correction of an error or omission in the base year value, it requires a correction of the control figure as of the time the error or omission occurred. This implies, of course, that subsequent adjusted base year values will be changed to reflect this correction.

When changing the base year value, it should be recognized that this does not necessarily result in a change in the taxable or assessed value of the property. For example, even though a change in ownership comes to light several years after the fact and results in a slight increase in the base year value of the property in the year of the transfer, overall declines in value of the property in subsequent years may mean that while the property now has a higher base year value, no changes in the assessed value in later years are necessary since the property was assessed at its appropriate lower market value. This illustrates that the correction of a base year value is not the same thing as a change in taxable or assessed value or a change in the value reflected on the roll.

The Assessor's reference to sections 4831 and 4831.5, which authorize correction of entries on the assessment roll in certain circumstances, indicates that part of his confusion may result from his perception that section 51.5 is another roll correction provision. As explained above, this is not the case. In fact, nothing in Chapter 537 references roll corrections or sections 4831 or 4831.5. First of all, as discussed above, the base year value referred to in section 51.5 is a control figure, not the amount entered on a particular assessment roll. Of course, the amount of the base year value and the amount entered on the roll for a particular year may be the same amount but the two concepts should not be confused. Section 51.5 authorizes corrections of base year values not roll entries. Further, the roll correction provisions have time limits. Insofar as base year value errors not involving the assessor's judgment as to value is concerned, however, there is no time limit. An assessor discovering unassessed new construction or a change in ownership may be required to go back 15 or 20 years to correct the base year value of the property. Obviously, correction of that base year value cannot result in a change in the assessment entry on the roll for the year in which the error occurred. Rather, after the adjusted base year values for the intervening years have been corrected, and comparisons made with the amounts assessed for those years still open under the Statute of Limitations, appropriate escape assessments are required to complete the process.

We also need to recognize that there is a distinction between correction of the base year value and escape assessment. The correction of the base year value allows us to determine whether

an overassessment or underassessment has occurred. An escape assessment is merely a mechanism which permits the correction of the effects of an underassessment once that underassessment has been identified. There are, of course, time limits which apply to escape assessments. These are found in sections 531.2 and 532. The limits found in section 51.5, however, and not the limits found in sections 531.2 and 532, are applicable to corrections of base year values.

The base year value correction process mandated by section 51.5 is independent of the assessment appeal provisions. The assessor is required to act independently where he discovers an unrecorded change in ownership which resulted in the underassessment of property. Obviously, a taxpayer will not file an assessment appeal to complain about the fact that his property has been underassessed. Thus, the assessor is required to act to correct the underassessment independently of the assessment appeals process. The Legislature expects taxpayers to be given equal treatment, however, and thus section 51.5 also mandates that the assessor also correct overassessments when he determines that there has been a base year value error. Not only is the error required to be corrected whether it results in an overassessment or underassessment, the source of the error or omission is also immaterial, at least in the first four years. In this regard, the only distinction recognized by section 51.5 is the difference between errors which do and those which don't involve the assessor's judgment as to value. Within these limitations, then, the assessor is required to correct any error or omission in the determination of a base year value when he discovers it. This requirement is placed upon the assessor without any restriction insofar as the provisions of law relating to assessment appeals are concerned. The assessment appeals provisions and, in particular, section 80, apply only when there is a dispute between the taxpayer and the assessor as to the proper level of the base year value and, as required in subdivision (a) of section 80, an application for reduction in base year value is filed.

After an assessor has identified and corrected a base year value error or omission pursuant to section 51.5, an assessment appeal proceeding may arise if the taxpayer disagrees with the assessor's value judgment. For example, if the error correction resulted in a base year value reduction, the taxpayer may feel that a larger reduction is required or, if the correction increased the base year value, the taxpayer may feel that the increase is too large. In this situation, section 80 would then permit a direct challenge to the corrected base year value.

Prior to its amendment by Chapter 537, subdivision (a) of section 80 placed certain limitations on the base year value reduction applications. In general, these provisions impose a conclusive

presumption that the base year value determined by the assessor is correct unless an application is filed within the first four years. In addition, the subdivision contained language (now subdivision (a)(5)) stating that any reduction in assessment made as a result of an appeal under section 80 would apply for the assessment year in which the appeal is taken and prospectively thereafter. The purpose of this provision was to prevent retroactive relief to a taxpayer who slept on his rights. That is, if the taxpayer did not challenge his base year value until the second or third year and the assessment appeals board granted relief by reducing the base year value, the benefit of this reduction would be limited to the year in which the appeal was filed and thereafter. Presumably, the Legislature felt that the base year value reduction should not adversely affect the county for prior years when an appeal was available but the taxpayer failed to file it.

Chapter 537 amended section 80 to add new paragraph (a)(4) which follows the pattern of the previous paragraphs and recognizes the right to file an appeal challenging a base year value corrected pursuant to section 51.5. The purpose of this amendment was to make clear that when a base year value is corrected pursuant to section 51.5 the taxpayer is not bound by the conclusive presumption as to the original base year value and is entitled to timely challenge the corrected base year value. It was intended that this provision would operate in much the same way as the other paragraphs in the subdivision. Thus, it was intended that if through the correction process the assessor raised the base year value the taxpayer would have the usual four years in which to challenge it in an assessment appeal.

The problem is that the situation dealt with in (4) resulting from a base year value correction is inherently different from the situations dealt with in paragraphs (1) to (3) in that the base year value correction under paragraph (4) will have retroactive effect. In a typical situation involving a base year value correction resulting in underassessments, the taxpayer will be notified of the increased base year value and will receive escape assessments for up to four years or more. Presumably the taxpayer will want to challenge both the original base year value correction and the resulting escape assessments. A literal reading of paragraph (a)(5) suggests that if the assessment appeals board reduces the base year value the reduction can only apply to the assessment year in which the appeal is taken and prospectively thereafter. This would mean that even though the taxpayer timely filed an appeal of the base year value and the escape assessments at the earliest possible moment and did everything possible to perfect his appeal, he could not be relieved of the escape assessments. This interpretation obviously frustrates the purpose of paragraph (4). It seems clear that such

a result could not have been intended by the Legislature and that paragraph (5) must be interpreted in a manner consistent with paragraph (4). Although it is possible that there may be more than one interpretation, I believe that the limitation imposed by paragraph (5), when applied to paragraph (4) should be limited to appeals taken after the first assessment year. Thus, if the assessment appeal is taken in the first assessment year, then any reduction in the base year value would be effective for all assessment years going back to the first year for which the correction was made. If, however, the taxpayer did not file a timely appeal at the time the correction is made, then the provisions of paragraph (5) would apply and the relief granted would only be prospective dating from the assessment year which the appeal is taken. It would probably be helpful if paragraph (5) were amended to state that the paragraph does not apply to paragraph (4) in the case of appeals filed in the first year.

Except for your advice on section 80(a)(5), I am in agreement with the advice stated in your letter on the other issues relating to whether base year value corrections are to be prospective only if the error was caused by the taxpayer's failure to report and whether section 4831.5 roll corrections are limited to personal property.

With respect to the railroad car and railroad station which were removed in 1985, I agree that section 5096(e) authorizes a refund of taxes to the extent that the assessments for 1986and 1987 reflected improvements which did not exist on the lien date. Moreover, it would appear that the provisions of section 75.10 would also provide some supplemental assessment relief prorated from the date of removal in 1985. Section 75.10 requires the reappraisal of property whenever new construction resulting from actual physical new construction on the site is completed. That term includes the removal of a structure from land. Since there is no limitation period for making supplemental assessments, the assessor may still issue supplemental assessments reflecting the removal of any structure in 1985.

With respect to your advice on Mr. Sattui, if the assessor determines that the lesser amount was the actual price paid for the property and that such lesser amount reflected the market value of the property at the time of the transfer then a section 51.5 correction of the base year value would be required. I'm not sure the reference to Rule 2 in this situation is appropriate. Presumably, Rule 2 would only come into play if the assessor determined that the market value of the property was more than (or less than) the cash equivalent of the actual purchase price of the property. I don't see anything in the stated facts which support that conclusion so I see not reason to refer to Rule 2.

RHO:cb
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