



STATE BOARD OF EQUALIZATION

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December 26, 1991

Mr. James E. Dodd
Assessor's Tax Specialist
VENTURA COUNTY ASSESSOR'S OFFICE
800 South Victoria Avenue, L#1270
Ventura, California 93009

Dear Mr.

This is in response to your letter of September 10, 1991, requesting the views of this office on an assessment appeal filed pursuant to Revenue and Taxation Code section 51.5 for assessment periods prior to the date of the application. I regret that our present workload has prevented a more timely response to your request.

Your letter states that a question has arisen as to whether a taxpayer may file an assessment appeal application to reduce the base-year value of a property for an assessment year prior to the assessment year in which the application is filed. Your letter asks whether applications for prior roll years can be accepted if they are filed pursuant to Revenue and Taxation Code section 51.5.

Your letter refers to a situation in which the construction of the subject real property was completed for March 1, 1989, thus establishing a 1989/90 base year for the property. The property owner did not challenge the base-year value of the new construction until August of 1991, however. In August the taxpayer filed applications for both the 1991/92 roll and the 1989/90 roll. (There is no indication as to whether an appeal was also filed for the 1990/91 roll.) You state that while the application for 1991/92 is timely and can be heard, the Assessor is of the opinion that the application for adjustment of the 1989/90 roll is late and should be rejected. You further state that the counsel to the Assessment Board believes, however, that appeals applications for prior roll years can be allowed if they are filed under section 51.5. For the reasons set forth below, we are of the opinion that section 51.5 does not authorize

the filing of assessment appeal applications for either current or prior roll years.

The procedures for equalization of assessments by county boards of equalization or assessment appeals boards are generally found in Chapter 1 (commencing at section 1601) of Part 3, Division 1 of the Revenue and Taxation Code. Section 1603 provides generally that an application for reduction in an assessment must be filed between July 2 and September 15 of the assessment year.

Following the adoption in 1978 of Article XIII A of the California Constitution (Proposition 13), the Legislature added Part 0.5 to Division 1 of the Revenue and Taxation Code to add various provisions implementing Article XIII A. Included in these provisions were Chapter 1 (commencing at section 50), which deals with base-year values, and Chapter 4 (commencing at section 80), dealing with assessment appeals. The difference in treatment between Chapter 1 and Chapter 4 clearly indicates a legislative intent to divide the provisions dealing with base-year value such as instructions to assessors as to how to apply them, to make adjustments annually for inflation, or to correct them and the provisions in Chapter 4 dealing with the procedures for an assessment appeal application for reduction in the base-year value.

Subdivision (a) of section 80 provides, in pertinent part, that an application for reduction in the base-year value of an assessment on the current local roll may be filed during the regular filing period for that year as set forth in section 1603 subject only to the limitations set forth in subparagraphs (1) to (5) of subdivision (a). Subdivision (a)(3) provides that the base-year value determined pursuant to paragraph (2) of subdivision (a) of section 110.1 (upon change in ownership or completion of new construction after March 1, 1975) shall be conclusively presumed to be the base-year value, unless an application for equalization is filed during the regular equalization period for the year in which the assessment is placed upon the assessment roll or in any of the three succeeding years. Once an application is filed, the base-year value determined pursuant to that application shall be conclusively presumed to be the base-year value for that assessment. Subdivision (a)(5) expressly provides that any reduction in an assessment made as the result of an assessment appeal under section 80 shall apply for the assessment year in which the appeal is taken and prospectively thereafter. The prospective effect of subdivision (a)(5) was recently affirmed in Oscro Drug, Inc. v. County of Orange (1990) 221 Cal. App. 3d 189, wherein the court concluded that section 80 prohibits the retroactive application of the adjusted base-year value. Thus, any reduction

in assessment granted as the result of an assessment appeal filed pursuant to section 80 in August of 1991 could only apply to the 1991 assessment year and assessment years thereafter.

Chapter 537 of the Statutes of 1987, which added section 51.5 to the Revenue and Taxation Code, as well as amending sections 80, 531.2 and 532, was sponsored by the State Board of Equalization. This office worked closely with the author during its passage through the legislative process. As indicated by its location in Chapter 1, section 51.5 was not intended by the Legislature to provide an alternative assessment appeal procedure. Rather, it was intended to provide express authority to county assessors to make corrections to property tax base-year values whenever it is discovered that a base-year value does not reflect applicable constitutional or statutory valuation standards or the base-year value is omitted. This intent is clearly expressed in section 1, subdivision (a) of Chapter 537, an uncodified provision which declares the Legislature's intent. Consistent with that intent, nothing in the express provisions of section 51.5 provide any indication that it is intended as an alternative assessment appeal procedure. This fact is further supported by the amendment to Revenue and Taxation Code section 80 made by Chapter 537, which adds paragraph (4) to subdivision (a), providing for assessment appeals of base-year values determined pursuant to section 51.5. Obviously, this amendment to section 80 would have been wholly unnecessary had the Legislature intended that section 51.5 would provide an independent assessment appeal procedure which would permit the adjustment of assessed values for prior years. Such a retroactive procedure would, of course, also be expressly inconsistent with the amendment to section 80 which limits the assessment appeal adjustment of a base-year value determined pursuant to section 51.5 to the current assessment year and prospectively thereafter.

Finally, having attended all of the legislative committee hearings on Chapter 537, I can state that it was never suggested by either the author or any other member of the Legislature that section 51.5 was intended as a procedure to permit a retroactive assessment appeal. The purpose was simply to provide county assessors with the necessary authority to correct a base-year value whenever an error or omission was discovered. As indicated in the express language of section 51.5, it was contemplated that once the correction was made by the assessor (not the assessment appeals board), appropriate cancellations or refunds of tax would be granted or appropriate escape assessments would be imposed. If the taxpayer disagreed with the assessor's correction, a timely assessment appeal could be filed to review the assessor's new base-year value as prescribed in section 80. Thus, there is a clear distinction

Mr. James E. Dodd

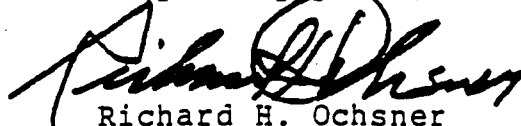
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between the assessor's base-year value correction process under section 51.5 and the assessment appeals process under section 80.

In summary, where an assessor recognizes an error and reduces the base-year value pursuant to section 51.5, the taxpayer is entitled to the cancellation or refund of taxes for prior years to the extent they are open under the applicable statutes of limitations. This effect is entirely independent of the assessment appeals process. Where the taxpayer utilizes the assessment appeals process under section 80, however, a reduction in the base-year value only applies to the current and future assessment years.

The views expressed in this letter are, of course, advisory in nature. Hopefully, the information provided above will assist your county counsel in better understanding the distinctions between section 51.5 and section 80. I will be happy to discuss this matter further with you if you have any questions.

Very truly yours,



Richard H. Ochsner
Assistant Chief Counsel

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cc: Mr. John W. Hagerty
Mr. Verne Walton
Mr. James M. Williams