

285.0017 **Base Year Values.** An assessor may correct a base year value and adjust assessments retroactively using the corrected base year value when he finds that a former owner committed fraud which resulted in the establishment of an erroneous base year value. The tax collector may then cancel levied, but unpaid taxes based on the assessor's corrections.
C 1/10/97. (M99-1)



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January 10, 1997

Re: Retroactive Reassessment of Vacant Acreage
Revenue and Taxation Code section 51.5¹

Dear Mr.

This is in response to your August 29, 1996 letter to Lawrence Augusta, Assistant Chief Counsel, Legal Division. We apologize for the delay in this response. You inquire as to whether a retroactive reassessment can be made from 1991-92 through and including 1995-96; you present the following factual situation:

Your clients, the Brandeis-Bardin Institute and Stanley Lappen (present owners), are now owners of certain vacant acreage in Malibu which they acquired pursuant to a trustee's foreclosure sale conducted on July 18, 1996. In 1989, the present owners were induced to make a loan in the amount of \$750,000 secured by a first trust deed on the subject property; they were provided with an appraisal of the subject property and other information reflecting a value of \$1,300,000. This appraisal included information to the effect that the subject property had legal access and was suitable for development.

¹ All statutory references are to the Revenue and Taxation Code unless otherwise specified.

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The former owner did not pay property taxes on this property and the property was in default for non-payment of taxes. Since learning of the tax default, the present owners advanced \$30,000 for payment of property taxes. They have obtained an appraisal of the property showing a value of no more than \$270,000 as of September 18, 1995. This valuation is based on the fact that there is no legal access and no reasonable way to purchase legal access. Also, most of the land is unsuitable for development because of its terrain.

By telephone, you added the following information:

The present owners' primary concern is an adjustment or cancellation of delinquent taxes. The \$30,000 paid in back taxes is only a portion of the tax delinquency and the property is subject to a tax sale soon if a substantial additional amount is not paid.

The present owners did not pursue any civil action for fraud against the former owner as the former owner is judgment-proof; he was convicted of criminal fraud and is now in jail.

Your question is: can the base year value be corrected and the property taxes owing from 1991-92 to 1995-96 be adjusted to reflect the corrected property value? Based on the legal analysis and assumptions set forth below, our answer is a qualified "yes"; if the county assessor finds that the property was overassessed due to taxpayer fraud, he may correct the base year value and adjust assessments retroactively using the corrected base year value, and, it appears to us, that based on the assessor's correction and adjustments of assessment, the tax collector could, pursuant to section 4986, cancel taxes levied and unpaid.

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In addressing your question, we use the factual situation described above and make the following assumptions:

1. The base year value of approximately \$1,300,000 was established in 1989;²
2. The former owner provided incorrect documents or erroneous information to the county assessor and the county assessor used that material to establish that value; and
3. The conditions which now exist to indicate a substantially lower market value were in existence in 1989, i.e., the steep terrain and the lack of access existed in 1989 or whenever the base year value was established and were not a result of any change occurring after the time the base year value was established.

Legal Analysis

As background, we note that Article XIII of the California Constitution provides in section 1 that "All property is taxable and shall be assessed at the same percentage of fair market value." "Proposition 13", which became Article XIII A of the California Constitution, provides in section 1 that the maximum amount of any ad valorem tax on real property shall not exceed 1% of the full cash value of such property. Section 2 thereof provides that the full cash value means the county assessor's valuation of real property as shown on the 1975-76 tax bill under "full cash value" or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment.

Revenue and Taxation Code section 110 provides that real property is assessed based on "full cash value" or "fair market value"; value at the time of change in ownership or new construction determines the base year value for the property

²The facts provided to us do not indicate when the base year value was established. For the purposes of this letter, we assume that 1989 was the operative year. If the base year value was established earlier, the same analysis and conclusion apply.

(section 110.1, subdivision (b)); base year values are entered on the [assessment] roll (section 50); and adjustments to base year values are made annually by an inflation factor (section 51, subdivision (a)(1)).³

Correction of the 1989 Base Year Value

The present tax delinquency in this case is for taxes levied based on the 1989 base year value factored for inflation.⁴ In this case, the assessor presumably established the 1989 base year value using incorrect documents or erroneous information provided by the former owner (Assumption 2). For purposes of this letter, we assume that the documents or information provided to the assessor by the former owner regarding the property's value was consistent with the documents or information provided to the present owners, that the documents or information misrepresented and inflated the "full cash value" of the property, and that the documents or information were not indicative of fair market value. For purposes of this letter, we also assume that the assessor used the incorrect documents or erroneous information to establish the base year value for the property and that no corrections or other reductions have been made.

The applicable law is set forth in section 51.5 which provides in part:

- (a) Notwithstanding any other provision of the law, any error or omission in the determination of a base year due pursuant to paragraph (2) of subdivision (a) of Section 110.1, including the failure to establish that base year value, which does not involve the exercise of an assessor's judgment as to value, shall be corrected in any assessment year in which the error or omission is discovered.

³ There are other circumstances not directly relevant herein where the base year value is not utilized; those circumstances include a decline in market value (section 51, subdivision (a)(2)) or damage due to disaster (section 51, subdivision (b)).

⁴ All references to "base year value" as a tax base include the base year value factored for inflation.

(b) An error or an omission described in subdivision (a) which involves the exercise of an assessor's judgment as to value may be corrected only if it is placed on the current roll or roll being prepared, or is otherwise corrected, within four years after July 1 of the assessment year for which the base year value was first established.

(c) An error or an omission involving the exercise of an assessor's judgment as to value shall not include errors or omissions resulting from the taxpayer's fraud, concealment, misrepresentation, or failure to comply with any provision of law for furnishing information required by Sections 441, 470, 480, 480.1, and 480.2, or from clerical errors.

(d) If a correction authorized by subdivision (a) or (b) reduces the base year value, appropriate cancellations or refunds of tax shall be granted in accordance with this division. If the correction increases the base year value, appropriate escape assessments shall be imposed in accordance with this division.

Section 51.5 provides for two different time periods in which corrections are allowed: subdivision (a) allows corrections "in any assessment year in which the error or omission is discovered"; subdivision (b) of section 51.5 provides for corrections only if such corrections are made "within four years after July 1 of the assessment year for which the base year value was first established". For a 1989 base year value, the four year time period described in subdivision (b) has passed and there is no indication that a request for correction was made within that time; because subdivision (a) does not limit the time in which a correction may be made, it is critical to determine which subdivision is applicable. Thus, it must be determined if the error involved the exercise of an assessor's judgment as to value.

Pursuant to section 128, the assessor is "the assessing officer of a county". The county assessor has a duty to assess real property at fair market value; he or she utilizes various sources of information, including information provided by the taxpayer. Taxpayer-provided information is not the only source of information utilized by the county assessor; sole reliance on taxpayer-provided information would probably result in the underassessment of many properties. Therefore, the county assessor has various procedures in place to substantiate the information provided by the taxpayer and to arrive at a base year value. In this case, it is the current owners' claim that the assessor in 1989 placed a base year value of \$1,300,000 on a property that should have been valued much lower. If the current owners' claim is correct, it would appear that the assessor made an error in the determination of base year value.

An error or an omission which involves the exercise of the assessor's judgment as to value is generally addressed in subdivision (b) of section 51.5; however, subdivision (c) of section 51.5 specifically addresses taxpayer fraud and provides that errors or omissions which involve the exercise of the assessor's judgment as to value do not include errors or omissions resulting from taxpayer fraud. Thus, in this case where we are assuming taxpayer fraud and an underassessment, subdivision (b) of section 51.5 does not apply; based on subdivision (c) of section 51.5, the error in assessment does not involve the exercise of an assessor's judgment as to value. Rather, subdivision (a) of section 51.5 applies; it provides that the base year value shall be corrected in any assessment year in which the error is discovered.

We note that at this point, it is the county assessor who has authority to determine the factual question of - was there taxpayer fraud as contemplated by subdivision (c) of section 51.5, i.e., was there fraud related to the information provided by the former owner to the assessor and used by the assessor to establish the 1989 base year value? The conditions which now exist to indicate a substantially lower market value would have had to exist in 1989 (Assumption 3). It is not sufficient to merely show a 1995 value that is substantially lower than a 1989 value. Changes in market conditions and natural terrain have, no doubt, resulted in some declining real property values in Malibu

since 1989. Unrealistic expectations also impact fair market value in this area. A court judgment of fraud related to this property is an example of the kind of information or evidence which would clearly indicate to the county assessor that there was such taxpayer fraud in 1989.

Also, the fair market value of the property as of the 1989 base year is another factual question to be determined by the assessor, if it is determined by the assessor that a correction in base-year value is warranted.

Correction of the 1996 Base Year Value

The facts state that the present owners acquired the property pursuant to a trustee's foreclosure sale conducted on July 18, 1996. Because there was a change in ownership in 1996, the new base year is 1996; the present owners had opportunity to provide information to the county assessor regarding the value at the time of acquisition. It is unclear if there is a dispute as to the current base year value; if there is a dispute, we refer you to section 80 regarding prospective reductions in base year value and section 1603 regarding assessment appeals.

Cancellation and/or Refund of Taxes Related to the 1989 Base Year Value

To briefly review the facts, we note that property taxes were not paid by the former owner, that the present owners paid a portion of the delinquent taxes and that a substantial tax delinquency is now a lien on the property; the property may be subject to a tax sale soon if all or part of those unpaid taxes are not paid or canceled. If the county assessor makes the factual determination that subdivision (c) of section 51.5 applies, then pursuant to subdivision (a) of section 51.5, the error in the determination of the 1989 base year value shall be corrected in the assessment year in which the error was discovered.

Subdivision (d) of section 51.5, cited above, provides that "If a correction authorized by subdivision (a) or (b) reduces the base year value, appropriate cancellations or refunds of tax shall be granted in accordance with this division." Thus, as taxes are unpaid, cancellation would be appropriate to adjust the

taxes levied to conform with taxes that would be owing as the result of the corrected base year value and the assessments made as the result thereof.

Assuming that the assessor has discovered the 1989 base year error in 1995 (when the present owners obtained a current appraisal) or in 1996 (when the present owners acquired the property), and the above analysis regarding section 51.5 applies, the question is: what happens next? It is the county assessor who would correct the base year value and make the adjustments to subsequent assessments; it is the tax collector who would refund and/or cancel taxes, as appropriate, and there must be a statutory link between the two functions.

In *Sea World, Inc. v. County of San Diego* (1994) 27 Cal.App.4th 1390, 1400 [33 Cal.Rptr.2d 194], the court held that "A reduction of base year value, whether it be the result of an assessment appeal or equalization process, or from an assessor's correction, is distinct from the right to a refund of taxes due to that reduction."

In *Sea World*, the court found that plaintiff, having obtained a section 51.5 base year value correction, was not automatically entitled to a refund and was obliged to follow the procedures for claiming a refund as set out in section 5096 et seq. Thus, if the present owners are seeking a refund of any of the taxes already paid, section 5096 et seq. applies.

According to the facts presented, the issue of the cancellation of delinquent taxes is of greater concern than the issue of refund. Refund statutes apply to taxes already paid; cancellation nullifies levied taxes which have not been paid.

Section 4986, subdivision (a)(2) authorizes the cancellation of taxes which were levied erroneously and is applicable herein. Subdivision (b) of section 4986 relates to taxes subject to city taxes and may be applicable, depending on the location of the property. Section 4986 provides in pertinent part:

(a) All or any portion of any tax, penalty, or costs, heretofore or hereafter levied, shall, on satisfactory proof, be canceled by the auditor if it was levied or charged:

* * *

(2) Erroneously or illegally.

* * *

(b) No cancellation under paragraph (2) of subdivision (a) shall be made in respect of all or any portion of any tax, or penalties or costs attached thereto, collectible by county officers on behalf of a city without the written consent of the city attorney or other officer designated by the city council unless the city council has authorized the cancellation by county officers. The resolution shall remain effective until rescinded by the city council.

Based on section 4986, it appears to us that the tax collector could cancel that portion of the unpaid taxes which were erroneously levied upon the determination of the county assessor that the 1989 base year value of the property was erroneous; the amount canceled would reflect the adjustments made by the county assessor.

Summary

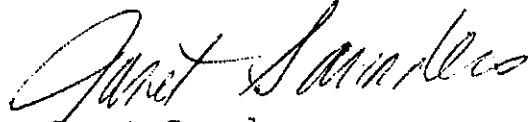
Based on the facts and assumptions set forth above, cancellation of taxes levied and unpaid is appropriate if the assessor finds there was taxpayer fraud which resulted in establishing an erroneous 1989 base year value for the property (section 51.5, subdivisions (a) and (c) and sections 110 and 110.1). The assessor may correct the base year value by determining the section 110.1 value as of the base year when acquired by the former owner; that value should thereafter be factored for inflation and other factors (section 51). Pursuant to section 4986, the tax collector may then cancel taxes levied and unpaid based on the assessor's correction and adjustments of assessments.

Please note that these matters are within the authority of the county assessor and county tax collector. This office issues advisory opinions only and these opinions are not binding on

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county assessors, county tax collectors, or other individuals or entities. This letter is based on the factual representations made by the present owners and a number of assumptions set forth. If there are different facts or different assumptions, it is highly possible that our analysis and conclusions would be different.

Very truly yours,


Janet Saunders
Tax Counsel

JS:jd

precednt/bayrcors/1997/frim.001

cc: Honorable Kenneth P. Hahn
Los Angeles County Assessor

Mr. Jim Speed, MIC:63
Mr. Richard Johnson, MIC:64
Ms. Jennifer Willis, MIC:70