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STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082
TELEPHONE (916) 445-5580
FAX (916) 323-3387

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April 12, 1999

E. L. SORENSEN, JR
Executive Director

Honorable Dan Goodwin
Ventura County Assessor
800 South Victoria Avenue
Ventura, CA 93009-1270

Attn: Jim Dodd
Assessor's Tax Specialist
April 12, 1999

Re: Correction of Base Year Values Previously Determined by an
Assessment Appeals Board

Dear Mr. Goodwin:

This is in reply to your fax correspondence directed to Senior Tax Counsel Kristine Cazadd dated February 23, 1999 and subsequent revised correspondence to me dated March 17, 1999, and in furtherance of our telephone conversations on March 1 and March 2, 1999 in which you have requested a legal opinion concerning corrections of base year values that were the subject of an appeal and stipulation to value before the assessment appeals board for the 1992-1993 assessment appeal. The stipulation was based on erroneous information provided by the taxpayer during the course of the original assessment, which erroneous information was discovered during a Revenue and Taxation Code section 469 mandatory audit conducted in 1998. Your office acknowledges that the stipulated base year values are incorrect, and you have posed specific questions concerning statutory authority to correct those base year values.

As set forth in the following analysis, regardless of whether a property has been previously equalized, pursuant to Revenue and Taxation Code section 51.5 an assessor may correct a base year value error, including those disclosed by a section 469 mandatory audit, in any assessment year in which the error is discovered. However, corrections of base year value errors resulting from an assessor's exercise of judgment as to value must be made within four years of establishment of the base year value. Because the errors at issue were based on the assessor's value judgments, such corrections are now time barred.

Furthermore, section 5096 does not provide authority for making roll corrections, base year value or otherwise, nor does that section provide a remedy to correct an erroneous base year value that was previously established by an appeals board as the result of a section 80 base year value appeal. Subdivision (g) of section 5096 establishes as a ground for refund payments of tax in excess of the value of the property as determined by the assessor pursuant to section 469. However, authorization for such a refund is dependent upon compliance with the provisions of section 469.

Law and Analysis

Corrections of Base Year Values

1. Can the assessor change an incorrect base year value within the context of a section 469 mandatory audit? Would the answer be different if the base year value in question was based upon a stipulation under Revenue and Taxation Code section 80?

In the event of base year value errors or omissions, Revenue and Taxation Code¹ section 51.5 requires corrections of those errors or omissions under specified circumstances. Subdivision (a) provides in relevant part that

Notwithstanding any other provision of the law, any error or omission in the determination of a base year value pursuant to paragraph (2) of subdivision (a) of Section 110.1, ... 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.

Subdivision (b) sets a time limitations period for correction of an error or omission that involves the exercise of an assessor's value judgment, requiring correction within four years after July 1 of the assessment year in which the base year value was established. Subdivision (c) creates an exception to the four-year limitations period of subdivision (b), however, when the error or omission results from, among other reasons, the taxpayer's misrepresentation or failure to comply with any provision of law for furnishing information required by Revenue and Taxation Code sections 441, 470, 480, 480.1, and 480.2.

In this case, the base year values determined by the appeals board for the 1992-93 assessment appeal were conclusively presumed to be base year values pursuant to section 80, subdivision (a)(3). However, in our view, the language of section 51.5, subdivision (a) "Notwithstanding any other provision of the law", evidences an intent by the Legislature in section 51.5 to preempt the conclusive presumption of section 80 by requiring corrections of base year values determined as a result of errors or omissions even if those values were previously determined by an appeals board.

¹ All code section references are to the Revenue and Taxation Code.

Under the facts presented, however, these errors in the base year values involved the assessor's exercise of judgment as to value. Therefore, corrections are now barred by the four-year limitations period of subdivision (b). Even though the information provided by the taxpayer was later discovered to be inaccurate, the assessor made a value determination for the 1992-93 assessment appeal based on the best information available at the time. The assessor was required to rely on that information to exercise appraisal judgment in the valuation process. In our view, the exception to the four year limitation period provided by subdivision (c) would not apply because there is nothing to indicate that the erroneous information provided constituted fraud, concealment, or misrepresentation, and there was no failure to comply with the disclosure statutes described in that subdivision.

2. If section 469 does permit the Assessor to change a Base Year Value that was established under section 80, are all years within the Statute of Limitations correctable?

As set forth above, section 51.5, and not section 469, grants authority to the assessor to correct errors or omissions in base year values within the prescribed time limitations periods of that section.

3. If all years within the Statute of Limitations are not correctable, does section 5096 provide a remedy outside the audit or assessment appeal process? Should the assessor accept a prior year claim for refund, filed under section 5096, if the claim is based upon proof that a section 80 base year value is incorrect? As we discussed, would section 5096, subdivision (g) have the Assessor complete a mandatory audit without first correcting a prior year error in a section 80 base year value? Then, after finalizing the audit, and in this case a current appeal, notify the applicant that a prior year claim for refund should be submitted?

It is unclear what you mean by errors that are correctable for "all years within the statute of limitations" since, as stated above, section 51.5 provides the authority for base year value corrections and prescribes the statutes of limitations periods for making such corrections. Section 5096 itself does not provide authority for making roll corrections, base year value or otherwise,² nor does that section provide a remedy to correct an erroneous base year value that was previously established by an appeals board as the result of a section 80 base year value appeal.

² See sections 4831 et. seq.

Section 5096 and following sections authorize claims for refund, which claims are one procedural step in the administrative process of an assessment appeal. Section 5096 states the grounds upon which a claim for refund may be filed. Specifically, subdivision (g) provides that a claim for refund may be filed if payment of tax was in excess of the value of the property as determined by the assessor pursuant to section 469. Thus, subdivision (g) contemplates that the assessor has conducted and completed an audit and that the audit has disclosed that property has been overassessed. However, even if the audit disclosed that property was overassessed, the right to claim a refund would still be subject to the statute of limitations period set forth in section 5097.

As you and I discussed, one provision of section 469 requires that the assessor notify a taxpayer of audit results that disclose excess valuation or misclassification of property and of the taxpayer's right to file a claim for cancellation or a claim for refund of taxes paid. The legislative history reveals that this provision was specifically added to ensure equal treatment for audited taxpayers if an audit disclosed that portions of their appraisal unit had previously been underassessed and overassessed. The Assembly Revenue and Taxation Committee analysis of SB 1752 (Stats. 1978, Ch. 732), dated June 26, 1978, states the intent as follows:

to provide a mechanism whereby overassessments of property would be taken into consideration if an audit disclosed property subject to escape assessments for a particular year. Such overassessments would be offset against escape assessments for any tax year covered by the audit.

Thus, if an audit of one year discloses property underassessed for that year but a greater amount of property overassessed in that year, then the assessor shall so notify the taxpayer and inform the taxpayer that a claim for cancellation or refund may be filed. As stated above, any claim for cancellation or refund must be filed in accordance with the requirements of those code sections.

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,

Louis Ambrose
Tax Counsel

LAA:jd

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