STATE OF CALIFORNIA

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September 26, 1996

Honorable Gus S. Kramer
Contra Costa County Assessor
834 Court Street
Martinez, CA 94553

Attn: Mr. (redacted)

Dear Mr. (redacted):

This is in response to your letter of August 28, 1996, regarding the differences between correcting the base year value, making roll corrections, and issuing refunds or escape assessments. In your letter,. you described several scenarios involving roll corrections. We will discuss each of these separately. In addition, you enclosed a handout for your appraisal staff regarding roll corrections. You asked us to review this handout. We will enclose our comments on this document.

In your first scenario, you referenced a letter written by Eric Eisenlauer of the Board's Legal Division (dated January 12, 1996). The situation in this letter is that during the 1991-92 fiscal year, the assessor discovered a change in ownership that had occurred in 1984. The assessor corrected the base year value for 1984 and corrected the 1991-92 roll. The taxpayer protested but paid the increased taxes for 1991-92, 1992-93, 1993-94, 1994-95 and 1995-96. The taxpayer filed a claim for refund within four years after making the payment sought to be refunded. In July 1995, the assessor determined that, in fact, no change in ownership had occurred in 1984. The assessor corrected the 1984 base year value and corrected the 1992-93 through 1995-96 rolls. Refunds were issued for these four years. Our opinion in this letter was that the taxpayer was also eligible for a refund for the 1991-92 fiscal year because of a timely filed claim for refund even though the assessor could not correct the roll for that year because of the four-year limit on making roll corrections under Section 4831 of the Revenue and Taxation Code (all statutory references are to the Revenue and Taxation Code unless otherwise indicated).

In your letter regarding this situation, you asked the following question:

> "Section 4831 is permissive by the use of the word may and 51.5 is not permissive by the use of the word shall therefore 4831 is not the code section to cite for refunds, i.e. corrections, because of the permissiveness of the language.
>
> "My question is if 4831 does not allow us to make roll corrections, then what section of the R & T Code does? In order for the Auditor to process a refund, they need to get a roll correction from the Assessor. Section 5096 does not come into play until the Auditor knows there is a refund to be made. What code section gives the Assessor the authority to communicate that reduction in value to the Auditor?" [sic]

Corrections to the base year value and corrections to the roll are two completely separate procedures and must not be confused. Section 51.5 must be differentiated from Section 4831 in that Section 51.5 mandates corrections to the base year value (which is the control figure). Section 51.5 states that if an error or omission is in the determination of a base year value and involves the exercise of "an assessor's judgment as to value," the error can be corrected only if it is placed on the current roll or the roil being prepared or within four years after July 1 of the assessment year for which the base year value was first established. Expressly excluded from the four-year limitation are errors or omissions resulting from taxpayer fraud, misrepresentation, or failure to furnish information. Also excluded are clerical errors.

Section 51.5 also mandates the correction of an error or omission in the base year value, by requiring a correction of this control figure as of the time the error or omission occurred. Please note that subdivision (d) of Section 51.5 provides for appropriate cancellation or refund of taxes or escapes but does not authorize roll corrections after the base year value is corrected.

Roll corrections, on the other hand, are authorized but not mandated under Section 4831. Under Section 4831 the assessor has a statutory right to correct "errors" in a particular entry on the assessment roll at any point after the roll is delivered to the auditor (enrollment) up to and within four years of that date. However, Section 4831 does not require the assessor to make roil corrections. It only requires that if a correction is made, it "shall be made within four years after the making of the assessment which is being corrected."

In your letter you stated that "[i]n order for the Auditor to process a refund, they need to get a roll correction from the Assessor." This is not statutorily true. Conditions placed upon refunds are found in Section 5097 which provides that "[n]o order for a refund under this article shall be made, except on a claim...verified by the person who paid the tax...." If your auditor requires a roll correction, it is a procedural requirement, not a statutory requirement. Pursuant to Section 5097, roll corrections are not necessary for refunds. Sections 51.5(d) and Section 5096 are very clear that refunds are mandatory. However, neither section makes reference to Section 4831. If it were necessary that a roll correction be made under Section 4831 in order to make a refund, not only would Sections 51.5 and 5096 make reference to Section 4831, but Section 4831 would also have to be mandatory on the assessor.

Refunds and escape assessments are the direct results of a change in the base year value and/or roil corrections. In this particular situation, the auditor's authority to issue a refund would be based upon the verified claim which was timely filed. Once the assessor discovers an error and corrects the base year value under Section 51.5 and makes the appropriate roll corrections still open under Section 483 1, this is all the assessor has to communicate to the auditor. It is the auditor's responsibility to determine if a claim for refund has been filed and if the refunds mandated under Section 51.5 can be made pursuant to Section 5097. If additional refunds are required under Sections 51.5 and 5096, it is because a claim for refund has been filed by the taxpayer and not anything the assessor has to communicate to the auditor.

In your second scenario, you asked about correcting the roll for a decline in market value (Proposition 8 reduction in value). You stated that if your county received two Proposition 8 requests on November 1,1995, and completed one by July 1,1996, and not the other, then the assessor would be precluded from reducing the 1995-96 roll for the second letter. This is correct because Section 483l (b) reads:

> "Any error or omission involving the exercise of a value judgment that arises solely from a failure to reflect a decline in the taxable value of real property as required by subdivision [(a)] of Section 51, may be corrected within one year after the making of the assessment that is being corrected." (Emphasis added.)

This subdivision is very narrow in its application. It applies only to processing declines in value for Proposition 8 purposes. This is the only value judgment error that can be corrected under Section 4831. Subdivision (a) applies to any errors that do not involve the exercise of value judgments. Please note that subdivision (b) is an exception to Section 483l (a) and does <u>not</u> apply to clerical errors. Using your example, if you discover a clerical error resulted in an incorrect base year value more than four years after that particular roll closed, you are required to correct the base year value under Section 51.5 and authorized to process roll corrections for any years still open under Section 483l (a).

In your third scenario, a taxpayer purchased property in 1986 and filed a Preliminary Change of Ownership Report when the deed was recorded. In 1994 the taxpayer obtained a building permit, and the assessor noticed that the change in ownership was missed. You stated that the assessor processed four years of roil corrections under Section 531. The taxpayer believes that the changes to Sections 531.2 and 532 by Senate Bill I726 (Chapter 544, Statutes of 1994) preclude the assessor from making corrections.

Section 531 provides that "[i]f any property belonging on the local roll has escaped assessment, the assessor shall assess the property on discovery at its value on the lien date for the year for which it escaped assessment." Section 531 authorizes escape assessments, not roll corrections.

The escape assessments under Section 531 are a result of a change in base year value and/or roll corrections.

In your situation, the assessor is required to establish a new base year value for the missed change in ownership in 1986 under Section 51.5. In addition to the change in the base year value, the assessor is authorized to correct the roll for any years still open under Section 483 1. As a result of the change in the base year value and ensuing roll corrections, four years of escape assessments must be issued pursuant to Section 532(a). You are required to make four years of escape assessments because once an omission or error occurs resulting in an underassessment, the property escapes assessment each veal: thereafter until the underassessment is discovered and corrected (See Letter to Assessors No. 95/35, Statute of Limitations for Supplemental and Escape Assessments, dated June 7,1995).

The changes to Sections 531.2 and 532 by Chapter 544 of the Statutes of 1994 do not affect your situation because the change in ownership was discovered in 1994, before the legislation went in to effect on January 1, 1995. However, the changes to Sections 531.2 and 532 do place a limit on how long the assessor has to enroll a change in ownership once a Preliminary Change of Ownership Report or a Change in Ownership Statement is filed. You are correct in that the intent of these changes was to help assessors in situations where owners try to conceal transfers (that is, by not filing a Preliminary Change of Ownership Report or a Change in Ownership Statement). If no Preliminary Change of Ownership Report or a Change in Ownership Statement is fried, the statute of limitations has not yet begun to run and the assessor can issue escape assessments back to the date of change in ownership or 1982-83 fiscal year, whichever is later (see note of legislative intent of Chapter 1141, Statutes of 1981, under Section 480).

To recap this letter, corrections to the base year value are required under Section 51.5. Corrections to the roll that do not involve the exercise of value judgment are authorized under Section 4831(a). The only correction to the roll that involves an exercise of value judgment is a failure to reflect a decline in the taxable value of real property as required by Section 51(a). This is authorized under Section 4831(b). As a consequence of changes in base year values and/or roil corrections, refunds or escape assessments may be issued. If refunds are warranted, they are authorized under Section 5096 and limited by the conditions in Section 5097. If escape assessments are warranted, they are issued under Section 53.1 and are subject to the statute of limitations of Section 532. Section 532(a) provides a four- or six-year statute of limitations for issuing escape assessments. An exception to (a) is contained in subdivision (b) which provides that the statute of limitations period for a change in ownership shall not commence until the Preliminary Change of Ownership Report or a Change in Ownership Statement is fried. If the assessor missed a change in ownership in which a Preliminary Change of Ownership Report was filed, the assessor can only issue escape assessments for the four years open under the statute of limitations listed in subdivision (a) because subdivision (b) no longer applies.

I hope this information is helpful to you. If you have any questions regarding this subject, please contact our Real Property Technical Services Section at (916) 445-4982.

Sincerely,

Charles G. Knudsen
Principal Property Appraiser
Assessment Standards Division

GS:jm

Enclosure

cc: Legal Division

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