State of California Board of Equalization

620.0025

Memorandum

To:

Date: September 20, 1993

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Division of Assessment Standards
SACRAMENTO

From:

Staff Counsel III

Subject: Correct Values to Use for the Comparison Under Section 423(d)

This is in response to your memo of August 30, 1993 to Mr. Richard Ochsner in which you request our assistance in determining the correct values to use for the unrestricted portions of a property when making the value comparison under section 423(d) of the Revenue and Taxation Code. The issue you raise is when establishing the restricted value for the comparison, what values should be used for property that is part of a farm or ranch but that is not subject to the LCA contract. Should it be the factored base year value of the unrestricted property or the lesser of the factored base year value or the current market value of the unrestricted portions of the property? Normally, a property is treated as an appraisal unit. However, in this situation you ask whether a portion of land and an unrelated portion of the improvements can be treated as an appraisal unit? If not, then should the assessor look at the unrestricted portions individually and use the lower of the two indicated values in determining the restricted value for the comparison?

Revenue and Taxation Code Section 51 provides in relevant part:

> "For purposes of subdivision (b) of Section 2 of Article XIIIA of the California Constitution, for each lien date after the lien date in which the base year value is determined pursuant to Section 110.1, the taxable value of real property shall be the lesser of:
>
> "(a) Its base year value, compounded annually since the base year by an inflation factor, ...
>
> "(b) Its full cash value, as defined in Section 110, as of the lien date, taking into account reductions in value due to damage, destruction, depreciation,

> obsolescence, removal of property, or other factors causing a decline in value.
>
> * * *
>
> "(e) For purposes of subdivisions (a) and (b), 'real property' means that appraisal unit which persons in the marketplace commonly buy and sell as a unit, or which are normally valued separately."

Revenue and Taxation Code Section 52, subdivision (a), provides, however, that "[n]otwithstanding any other provision of this division, property which is enforceably restricted pursuant to Section 8 of Article XIII of the California Constitution shall be valued for property tax purposes pursuant to Article 1.5 (commencing with Section 421)...of Chapter 3 of Part 2."

Section 423 provides that, subject to exceptions not relevant here, the assessor shall value enforceably restricted land "by the capitalization of income method".
Section 423(d) provides in part that:

> "Unless a party to an instrument which creates an enforceable restriction expressly prohibits such a valuation, the valuation resulting from the capitalization of income method described in this section shall not exceed the lesser of either the valuation that would have resulted by calculation under Section 110, or the valuation that would have resulted by calculation under Section 110.1, as though the property was not subject to an enforceable restriction in the base year."

Neither section 423(d) nor any other statutory provision of Article 1.5 of Chapter 3 of Part 2 provides any guidance as to the valuation of the unrestricted portions of a property subject to an LCA contract.

Accordingly, under the foregoing provisions we must conclude that the unrestricted portions of real property subject to an LCA contract must be valued each year in accordance with section 51 set forth above, i.e., at the lesser of factored base year value or current market value assuming of course, that subdivisions (c) and (d) of section 51 are not applicable.

AH 521A, The Valuation of Open-Space Property, provides at page 69 that "[t]he unrestricted portion should always be valued as a separate unit. The contractual separation has implied a different potential use and a different potential market value for this portion of the property and has in effect created a separate unit for appraisal purposes." We believe that the foregoing quoted provisions are a reasonable interpretation of the law.

The following example from your memo will illustrate our position:

	LCA	Market Value	Factored Base Year Value
Restricted Land	$ 50,000	$ 75,000	$100,000
Unrestricted Land	-	15,000	25,000
Restricted Living Improvements	30,000	40,000	50,000
Unrestricted Improvements	-	60,000	75,000
		$190,000	$250,000
Using Factored Base Year Value	$180,000		
Using the Lower of Market Value or Factored Base Year Value	$155,000		

In our view, the correct value under the foregoing example would be $155,000, i.e., $80,000 for the restricted portion plus $75,000 for the unrestricted portion as a separate unit. Similarly, if the market value and the factored base year value of the unrestricted improvements were reversed, the correct value for the total property would be $165,000, i.e., $80,000 for the restricted portion plus $85,000 for the unrestricted portion as a separate unit because the factored base year value of that unit would be $5,000 less than the market value.

Eric Eisenlauer

EFE:ba
nonprect\walton
cc: Mr. John Hagerty -- MIC:63