Mr. Robert H. Gustafson April 16, 1986

Ken McManigal

Supplemental Roll, Exemptions

This is in response to your February 28, 1986, memorandum to Richard Ochsner wherein you referred to SB 813/Stats. 1983, Ch. 498 (Exemptions may be applied to the amount of the supplemental assessments), to AB 399/Stats. 1983, Ch. 1102 (Exemptions shall be applied to the amount of the supplemental assessment), and to the staff's interpretation thereof (that there had to be a positive supplemental assessment against which an exemption could apply, and that the amount of an exemption could not exceed the amount of the supplemental assessment), and you asked whether there is any basis for accepting a contrary interpretation advanced by the California Assessor's Association, which would permit exemption in instances in which supplemental assessments are negative:

> "It now has been suggested that when there is a negative supplemental amount, the property has not received an exemption on the regular roll, and the new owner qualifies for a homeowners' exemption, the amount of the exemption should be added (negatively) to the negative assessment. That is, if the supplemental amount is -$10,000 and the exemption is $7,000, then Section 75.21 would require the assessor to show -$17,000 on the supplemental roll . . . . ."

Recounting events leading up to your inquiry, Section 75.21 (a) has provided from its inception that exemption(s) may or shall be applied to the amount of the supplemental assessments(s). As construed by the staff in the June 19, 1984, Letter to Assessors No. 84/58, Example A3, if a change in ownership occurred in December of 1984, when the property had been valued at $80,000 on the current roll, and the property was reassessed at $75,000, resulting in a supplemental assessment of a negative $5,000, an exemption could not be applied to a supplemental assessment of a negative amount because "Section 75.21(a) provides than an exemption shall only be applied to the amount of the supplemental assessment". By letter dated November 26, 1984, to Assessor Wells, Assessor Triplett pointed out that while Example A3 used the word "only", Section 75.21(a) merely stated that an exemption shall by applied to the amount of the supplemental assessment, and he requested that the matter be reconsidered. That request was apparently discussed at a meeting between the Association and the staff in December of 1985, for in January of 1986, Verne Walton conveyed the request to Gordon, Richard, and you by memorandum dated January 6, 1986. Thereafter, at a January 13, 1986, meeting attended by Gordon, Richard, Verne, you, and me, it was agreed that since Section 75.21 stated that exemptions shall be applied to the amount of the supplemental assessment, there could be no exemptions in cases involving

negative supplemental assessments, the staff's interpretation would remain unchanged, and Verne would convey the decision to the Association.

Against this background then, while it is true that Section 75.21(a) does not use the word "only", use of the language to the effect that exemptions shall be applied to the amount of the supplemental assessment suggests that the staff's interpretation is correct. According to Webster's Third New International Dictionary, one of the primary definitions of "apply" is "to use for a particular purpose or in a particular case", such as, "apply money to the payment of a debt". As defined in Black's Law Dictionary, 4th Edition, one definition of "apply" is "to use or employ for a particular purpose, to appropriate and devote to a particular use, object, demand, or subject-matter. Thus, to apply payments to the reduction of interest. Foley v. Hastings, 107 Conn. 9, 139 A. 305, 306. See Appropriate." Similarly, one definition of "appropriate" therein is "to prescribe a particular use for particular moneys; to designate or destine a fund. . . for the payment of a particular demand. McKenzie Const. Co. v. City of San Antonio, Tex., 50 S.W.2d 349, 352;. . . ."

Accordingly, "apply" or "applied" imply the offsetting of one amount against another, which in the case of a positive supplemental assessment is the result when the amount of an exemption is applied against the amount of the supplemental assessment, not the adding of one amount to another. Such is not the result in the case of a negative supplemental assessment, however, since the amount of an exemption, a negative amount, cannot be applied against the amount of the supplemental assessment, another negative amount, but rather, must be added to the amount of the negative supplemental assessment, which results in a larger negative amount. If this is what the Legislature intended, it would seem that it would have used a word other than "applied" or a word in addition to "applied" in Section 75.21(a) to convey its intent.*

A further basis for concluding that the staff interpretation of Section 75.21(a) is correct is that subsequent to the interpretation as set forth in the June 19, 1984, Letter to Assessors No. 84/58, the Legislature via AB312/Stats. 1985, Ch. 186 again amended Section 75.21, including Section 75.21(a), but it did not change the word "applied" when doing so. Such was the case even though the Legislature** had previously been advised of the June 19, 1984, Letter to Assessors in a July 20, 1984, Legislative Implementation Report pertaining to AB 399/Stats. 1983, Ch. 1102 and in a July 24, 1984, Legislative Implementation Report pertaining to SB 813/Stats. 1983, Ch. 498. Copies of the July 20 and July 24 are attached.

Where a statute has been in effect and the Board has been administering the statute, legislative amendment of the statute which results in little or no change in the substance of the statute gives rise to a presumption that the statutory amendments were made with full knowledge of the construction which had been placed upon the statute by the Board. See the attached pages, 922 from Coca-Cola Co. v. State Bd. of Equalization, 25 Cal.2d 918, and 43 from Universal Eng. Co. v. Bd. of Equalization, 118 Cal.App.2d 36. As stated in Industrial Welfare Com. v. Superior Court, 27 Cal.3d 690:

*And in Verne Walton's February 10, 1986, letter to Assessor Wells, he stated that the staff's position was somewhat influenced by knowledge of legislative intent, and that the wording of Section 75.21 was difficult to reconcile with the author's intent.

**Assemblyman Hannigan, Senator Hart, Assembly Revenue and Taxation Committee, Assembly Ways and Means Committee, Senate Rules Committee, Senate Revenue and Taxation Committee, Senate Finance Committee, and Joint Legislative Budget Committee.

> ". . . .As California courts have noted, '(r)eenactment of a provision which has a meaning well established by administrative construction is persuasive that the intent was to continue the same construction previously recognized and applied. ' (Cal. M. Express v. St. Bd. of Equalization (1955) 133 Cal.App.2d 237, 239-240. . . . .)"

In view of the above, we do not believe that there is any basis at this time for accepting the contrary interpretation advanced by the Association, and we intend to respond to a recent April 8, 1986, letter from Assessor Triplett, copy attached, in the same manner in which we have responded hereinabove.

JKM:fr

Attachments

cc: Mr. J.J. Delaney
Mr. Richard H. Ochsner
Mr. Gordon P. Adelman
Mr. Verne Walton

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
PROPERTY TAX DEPARTMENT
1020 N STREET, SACRAMENTO, CALIFORNIA
(PO BOX 1799, SACRAMENTO, CALIFORNIA 95808)
(916) 323-7715



April 24, 1986

Mr. David W. Triplett, President
California Assessors' Association
P.O. Box 1068
Modesto, CA 95353-1068

Dear Mr. Triplett:

This is in response to your April 8, 1986, letter to Mr. Richard Ochsner wherein you requested a legal opinion on the application of a homeowner's exemption pursuant to Revenue and Taxation Code section 75.21 when a negative supplemental assessment occurs. In this regard, you referred to your November 26, 1985, letter to Mr. Duane K. Wells, Chairman of the Association's Standards Committee:

> "Section 75.21 (copy enclosed) says that the exemption shall be applied to the amount of the supplemental assessment. However on page 2 of the examples attached to Assessor's Letter #84/50 (copy enclosed) there is an indication that the exemption shall only be applied to the amount of supplemental assessments and that the exemption cannot be applied to a supplemental assessment of a negative amount. The word 'only' appears in the assessors' letter and not the statute.
>
> "Are we to assume that there are different criteria applied to negative and positive assessments? For example, a property that is sold without a prior homeowner's exemption which requires a $10,000 supplemental will receive a $7,000 homeowner's exemption if the new owner qualifies. A similar home with a $10,000 negative supplemental and also a refund on the extended amount would not receive the homeowner's exemption even though the new owner qualifies. Is this what the legislators were thinking when they wrote section 75.21?"

Section 75.21(a) has provided from its inception that exemption(s) may or shall be applied to the amount of the supplemental assessment(s) (SB 813/Stats. 1983, Ch. 498 (Exemptions may be applied to the amount of the supplemental assessments), and AB 399/Stats. 1983, Ch. 1102 (Exemptions shall be applied to the amount of the supplemental assessment)), and the staff's interpretation of the section has been that there

must be a positive supplemental assessment against which an exemption can apply, and that the amount of an exemption cannot exceed the amount of the supplemental assessment. As set forth in the June 19, 1984, Letter to Assessors No. 84/58, Example A3, if a change in ownership occurred in December of 1984, when property had been valued at $80,000 on the current roll, and the property was reassessed at $75,000, resulting in a supplemental assessment of a negative $5,000, an exemption could not be applied to a supplemental assessment of a negative amount because "Section 75.21(a) provides that an exemption shall only be applied to the amount of the supplemental assessment."

By letter dated February 10, 1986, Mr. Verne Walton responded to the Standards Committee's December 1986 request that the staff reconsider its interpretation of the Section in light of your November 26, 1985, letter by stating, among other things, that having done so, the staff concluded that it should retain its original position, which was somewhat influenced by knowledge of legislative intent. A copy of the February 10 letter is enclosed for your information and review.

Additionally, however, while it is true that the word "only" appears in Example A3 of the June 19, 1984, Letter to Assessors and not in Section 75.21(a), of greater significance is the use of the language in Section 75.21(a) to the effect that exemptions shall be applied to the amount of the supplemental assessment. According to Webster's Third New International Dictionary, one of the primary definitions of "apply" is "to use for a particular purpose or in a particular case", such as, "apply money to the payment of a debt". As defined in Black's Law Dictionary, 4th Edition, one definition of "apply" is "to use or employ for a particular purpose; to appropriate and devote to a particular use, object, demand, or subject-matter. Thus, to apply payments to the reduction of interest. Foley v. Hastings, 107 Conn. 9, 139 A. 305, 306. See Appropriate." Similarly, one definition of "appropriate" therein is "to prescribe a particular use for particular moneys; to designate or destine a fund. . . . for the payment of a particular demand. McKenzie const. Co. v. City of San Antonio, Tex., 50 S.W.2d 349, 352;. . . ."

Accordingly, "apply" or "applied" imply the offsetting of one amount against another, which in the case of a positive supplemental assessment is the result when the amount of an exemption is applied against the amount of the supplemental assessment, not the adding of one amount to another. Such is not the result in the case of a negative supplemental assessment, however, since the amount of an exemption, a negative amount, cannot be applied against the amount, of the supplemental assessment, but rather, must be added to the amount of the negative amount. If this is what the Legislature intended, it would seem that it would have used a word other than "applied" or a word in addition to "applied" in Section 75.21(a) to convey its intent. This then provides another basis for concluding that the staff interpretation of Section 75.21(a) is correct.

A further basis for concluding that the staff interpretation of Section 75.21(a) is correct is that subsequent to the interpretation as set forth in the June 19, 1984, Letter to Assessors No. 84/58, the Legislature via AB 312/Stats. 1985, Ch. 186 again amended Section 75.21, including Section 75.21(a), but it did not change the word "applied" when doing so. Such was the case even though the Legislature* had previously been advised of the June 19, 1984, Letter to Assessors in a July 20, 1984, Legislative Implementation Report pertaining to AB 399/Stats. 1983, Ch. 1102 and in a July 24, 1984, Legislative Implementation Report pertaining to SB 813/Stats. 1983, Ch. 498. Copies of the July 20 and July 24 Reports also are enclosed.

*Assemblyman Hannigan, Senator Hart, Assembly Revenue and Taxation Committee, Assembly Ways and Means Committee, Senate Rules Committee, Senate Revenue and Taxation Committee, Senate Finance Committee, and Joint Legislative Budget Committee.

Where a statute has been in effect and the Board has been administering the statute, legislative amendment of the statute which results in little or no change in the substance of the statute gives rise to a presumption that the statutory amendments were made with full knowledge of the construction which had been placed upon the statute by the Board. See the enclosed pages, 922 from Coca-Cola Co. v. State Bd. of Equalization, 25 Cal.2d 918, and 43 from Universal Eng. Co. v. Bd. of Equalization, 118 Cal.App.2d 36.

As stated in Industrial Welfare Com. v. Superior Court, 27 Cal.3d 690:

> ". . . As California courts have noted, '(r)eenactment of a provision which has a meaning well established by administrative construction is persuasive that the intent was to continue the same construction previously recognized and applied.' (Cal. M. Express v. St. Bd. of Equalization (1955) 133 Cal.App.2d 237, 239-240 . . . .)"

In a view of the above, we do not believe that there is, at this point in time, any reason for departure from the staff interpretation of Section 75.21(a), as set forth hereinabove.

Very Truly Yours,

James K. McManigal, Jr.
Tax Counsel

JKM:fr
Enclosures

cc: Mr. J.J. Delaney
Mr. Richard H.Ochsner
Mr. Gordon P. Adelman
Mr. Verne Walton