STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
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(916) 445-4982

No. 85/75

June 27, 1985

TO COUNTY ASSESSORS:

QUESTIONS AND ANSWERS REGARDING
SUPPLEMENTAL ASSESSMENTS

Here is the fourth letter in our series of questions and answers regarding supplemental assessments.

Sincerely,

Verne Walton

Verne Walton, Chief
Assessment Standards Division

VW:wpc
Enclosure
AL-04D-2427A

QUESTIONS AND ANSWERS REGARDING SUPPLEMENTAL ASSESSMENTS

June 27, 1985

Question 1:

Should property that is eligible for tax relief pursuant to Revenue and Taxation Code Section 68 be subject to supplemental assessment?

Answer 1:

Because of the conflict between Section 68 and the supplemental assessment statutes (i.e., comparable replacement property is excluded from change in ownership and therefore supplemental assessment), we have not been able to satisfactorily resolve this issue. However, a legislative resolution appears near at hand in the form of AB 312 (Klehs). This measure, in the latest form available to us, amends Section 68 and specifies that any change in the adjusted base year value of the replacement property shall be treated as a change in ownership for supplemental assessment purposes. We will, of course, keep you up to date on the progress of this proposed legislation which we first reported in our legislative summary dated March 19, 1985.

Question 2:

If a property subject to a supplemental assessment is damaged by misfortune or calamity, can the owner receive tax relief under Section 170 on both the regular roll and the supplemental roll?

Answer 2:

Yes. Subdivision (b) of Section 75.1 states:

> "The other provisions of this division apply to assessments made pursuant to this chapter."

Further, subdivision (d) of Section 51 requires that property be assessed pursuant to Section 170 if it has been damaged or destroyed by disaster, misfortune, or calamity and the board of supervisors in the county in which the property is located has adopted an ordinance pursuant to Section 170. This, of course, would require two sets of calculations to determine the amount of tax relief--one for the regular roll and one for the supplemental roll.

Question 3:

What assessment procedure should be followed when real property that has been assessed by the Board is sold or otherwise transferred and, as a result, becomes locally assessable?

Answer 3:

Once a new base-year value has been established pursuant to Section 75.10, the taxable value on the current roll or the roll being prepared must be

Answer 6:

No. The homeowners' exemption can only be allowed to the extent of the supplemental assessment (in this case $5,000) not to exceed $7,000. Subdivision (a) of Section 75.21 states in part:

> "Exemptions shall be applied to the amount of the supplemental assessment, provided...the assessee is eligible for and makes a timely claim for the exemption."

Because of this language, we are of the opinion that each separate owner must qualify the property for exemption. To grant an exemption greater than the amount of the actual supplemental assessment is tantamount to granting an exemption to a property not qualified for the exemption.

Question 7:

A property acquired in May 1983 with a market value of $75,000 has a taxable value of $78,030 on March 1, 1985. A room is added, and construction is completed in April 1985. The full cash value of the addition is $20,000. However, in determining the value of the newly constructed property, you learn that, on March 1, the current market value of the original property (prior to new construction) was $60,000 (i.e., total value = $80,000 or $60,000 + $20,000). How should this be handled?

Answer 7:

Section 75.11(a) requires two supplemental assessments when new construction is completed between March 1 and May 31. In this case, both supplemental assessments would be in the amount of $20,000. However, the 601 roll procedure is a bit tricky in this situation, and care must be taken to enroll the proper value. Section 51 requires enrolling (on the regular roll) the lesser of current market value or factored base-year value. In this case the March 1, 1985 601 roll value should be $60,000 rather than $78,030. For March 1, 1986, factored base-year value would equal $99,991 ($78,030 + $20,000 = $98,030 and $98,030 x 1.02 = $99,991). You would also need to calculate the current market value so you could enroll the appropriate value pursuant to Section 51.

State of California

Board of Equalization
Legal Division-MIC: 82

Memorandum

To : Mr. Dick Johnson, Deputy Director
Property Taxes Department

Date: March 5, 1998

From : Dan Nauman

Subject: Supplemental Assessments of Property Acquired by State Assesses

This is to follow up on your December 5, 1997 oral inquiry to Larry Augusta, following your conversation with Al Flory about supplemental assessments on property originally locally assessed, but sold to a state assessee after the lien date. Apparently Mr. Flory and Deputy County Counsel Steve Nocita wanted to know the legal basis behind our position that such property would not be subject to supplemental assessment.

The Answer to Question 4 of our LTA 85-75, which letter is annotated at 790.0220, states that:

> "When the property is acquired by a state assessee, it becomes assessable by the state at the time of transfer. However, since the property is no longer subject to Article XIII A, it will be added to the utility roll on the following March 1 lien date at its market value on that date. It would not be subject to any supplemental assessment at the time of change in ownership to the state assessee."

As you know, "change in ownership" is a Proposition 13 concept, which triggers a property tax reappraisal of real property. California Constitution, Article XIII A, section 2, subdivision (a). As you also know, state-assessed property (Article XIII, section 19) is not subject to the acquisition value assessment system of Proposition 13. *ITT World Communications, Inc. v. City and County of San Francisco* (1985) 37 Cal.3d 859. The legal basis for our position as set forth in LTA 85-75 is that there is no legal authority to authorize applying a Prop. 13 concept -- change in ownership -- to a state assessee not subject to the benefits or detriments of the Prop. 13 acquisition value system. Also, there are no provisions in the state assessed properties statutes for supplemental assessments. Moreover, it is clear that supplemental assessments are a local, Proposition 13 creature. In fact, Revenue and Taxation Code section 75 provides that it "is the intent of the Legislature in enacting this chapter [3.5 - Change in Ownership and New Construction After the Lien Date] to fully implement Article XIII A of the California Constitution . . ." It further states that it "is also the intent of the Legislature that the provisions of this chapter shall be limited to assessments on the supplemental roll which are authorized by the provisions of this chapter and *none of its provisions shall be applied,*

construed, or used as a basis for interpreting legislative intent when determining the effect of any other provision of this division." (Emphasis added.)

One would, in the face of this statement of intent, therefore be hard pressed to conclude, for example, that a county assessor or the Board, by analogy to section 75 *et seq.*, has the authority to impose supplemental assessments on state assessees. The Board's property tax authority is found in the same statutory division as section 75.

I could find nothing other than LTA 85-75 in which we addressed this issue, except LTA 83-128, in which state assessed property is listed among the types of property not subject to supplemental assessment.

On February 19, 1998, I called Steve Nocita, Yolo County Counsel's Office, and finally was able to speak with him last week. He told me that he and Mr. Flory were not asking for an opinion on this issue. Among other things, in light of LTA 85/75, they knew what our opinion would be. Also, they had not realized that this issue had gotten to the Legal Division.

However, Mr. Nocita told me that he and Mr. Flory share a point of view which is contrary to the Board's view on this issue, and that perhaps a majority of the other counties' assessors' offices share that contrary point of view. That view is based upon the revenue raising purpose and intent underlying the supplemental assessment statute. The whole purpose, in his view, was to collect property taxes based upon the property's full value in the interim between the change in ownership and the next lien date. Mr. Nocita believes that an interpretation that the property becomes assessable by the State at the next lien date, as opposed to at the time of being acquired by a state assessee, is more consistent with the revenue raising purposes of the Legislature. Under this interpretation, the county assessor would continue to have authority to make supplemental assessments during this interim. He concedes, however, that nothing he is aware of in the statutes hints at this interpretation.

Of course, Section 19 of Article XIII of the California Constitution provides that "*The Board* shall annually assess . . . property . . . owned or used by [state assessees]," and provides a very limited authority for the Board to delegate assessment authority to a local assessor ("a property used but not owned by a state assessee on which the taxes are to be paid by a local assessee"). That section also provides, however, that state assessed property "shall be subject to taxation *to the same extent and in the same manner* as other property." (Emphasis added.) The California Supreme Court has held that this latter requirement "does not impose a requirement of equal valuation between public utility and other property, but simply specifies that public utility property, after it has been placed on the local tax rolls, be levied on at the same *rate* as locally assessed property, instead of being subject to a special gross receipts 'in lieu' tax." It requires "only that the property be *taxed* equally with other property and not that it be *valued* on the same basis." *ITT World Communications, Inc. v. City and County of San Francisco* (1985) 37 Cal.3d 859, 870 (emphasis in original).

The Revenue and Taxation Code is not explicitly clear that county assessors may not make supplemental assessments on property acquired by state assessees, although that result is indicated by implication. Section 722.5 provides:

> (a) Real property assessed by the board pursuant to Section 19 of Article XIII of the California Constitution on January 1, which thereafter becomes subject to local assessment, shall not be assessed locally during the remainder of the assessment year, except as provided in Chapter 3.5 (commencing with Section 75) of Part 0.5 of Division 1.
>
> (b) Personal property that becomes subject to board assessment after January 1, and real property that becomes subject to board assessment on or after January 1, and on or before the following January 1, shall not be state assessed until the assessment year commencing on the latter January 1.

By implication, for purposes of subdivision (a), formerly state assessed property becomes "subject to local assessment" by virtue of having been transferred by a state assessee to a local assessee; and similarly, for purposes of subdivision (b), property becomes "subject to board assessment" when it is acquired by a state assessee.[1] It is clear from this section that becoming "subject to board assessment" is not the same as, and does not occur at the same time as, *being* "state assessed." The interpretation being urged by Mr. Nocita, as noted above, is inconsistent with this statute. Moreover, it would seem apparent that property which "becomes subject to board assessment" would not thereafter, while being such, be subject to supplemental assessment by a county assessor.

In addition, in subdivision (a), the Legislature *expressly* authorizes the use of supplemental assessments for formerly Board-assessed property which becomes locally assessed after the lien date. Subdivision (b) is silent on this point for property becoming Board assessed after the lien date. Again, by implication, the omission must be assumed to be intentional and dispositive of this issue.

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[1]The previous version of Section 722.5, operative through December 31, 1996 made this more clear. Subdivision (b), which was repealed when the local lien date was changed to January 1, provided: "Real property which becomes subject to board assessment *...as a result of a lease, a purchase, a change in ownership, or creation of a possessory interest* after January 1 and before the following March 1 shall be deemed to be subject to board assessment *as of January 1."* (Emphasis added.) Clearly, this section contemplated a change in status upon a change in type of owner.

Please feel free to call me if you have any questions or if you would like to discuss any of the above further.

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property/precednt/suppases/1998/98001.dgn