



State of California
Franchise Tax Board

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Date: 02.20.15

Case: 17280423325775363

Case Unit: 17280423325775366

In reply refer to 410:DTG

TO: ANTHONY S. EPOLITE
 TAX COUNSEL IV
 APPEALS DIVISION, LEGAL DEPARTMENT
 STATE BOARD OF EQUALIZATION
 450 N STREET, MIC: 81
 SACRAMENTO, CA 95814

FROM: DAVID GEMMINGEN

RE: Appeal of William R. and Donya Dobkin
 Appeal Case ID No. 728014
 Appeal of Deborah Dobkin Appeal Case ID 725828
 Taxable Year 2006

MEMORANDUM

This is a brief response to Appellants' representative's February 19, 2015, submission regarding their response to the question of inflation calculation.

The issue in this appeal concerns the actual cost of the underlying land and home construction costs incurred by Appellants in constructing their Long Beach residence. The issue in this appeal does not concern the fair market value of the Long Beach home, or overall market valuation at all. Appellants in their February 19, 2015, reply are attempting to incorrectly substitute valuation concepts and fluctuations for actual cost expenditures. Appellants refer to "value" at least three times in their February 19, 2015, submission, and their inclusion of the "History of a housing bubble" article is misleading and a red herring with respect to the issue before your Board.

The total cost of what Appellants expended (their adjusted basis) is a fixed amount that would not be affected by the fluctuations of home prices after the home was completed, or whether there was a housing bubble or temporary setback of housing prices with respect to previously constructed homes. Your Board's previous reference to the Dryer appraisal was to reconstruction cost, not the fluctuating value of the property, and the

STATE BOARD OF EQUALIZATION



Appeal Name: Dobkin, William, Donya & Deborah
 Item #: B11a-b Case 728014 & 725828
 Date: 2/24/15 Exhibit No: 2.13

TP **(FTB)** DEPT PUBLIC COMMENT

FTB 2140 PASS (REV 12-2011)

Appeals\Correspondence \Inflation Value Boom

FTB EXHIBIT

B11a-b

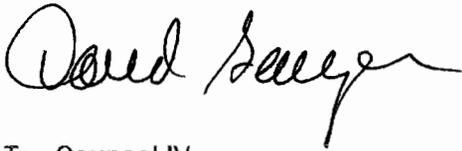
February 24, 2015

William R. Dobkin and Donya Dobkin
 728014

Deborah M. Dobkin
 725828

Date : 02.20.15
Appeal Name : William R. and Donya Dobkin
Appeal Case ID No. : 728014
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inflation factor, which is a cost based factor, was a way of approximating the cost of underlying materials, and was not a measure of what the market would be willing to bid for a completed home due to investment and rental interest, scarcity, and other market conditions. To be sure, commercial home builders chose to build homes and have a business model designed to produce a profit measured by the difference between what it costs them to build the homes and what purchasers are willing to pay for the completed home, and builders certainly do not expect the amounts to be equivalent. The cost of the home's materials and land do not necessarily reflect the subsequent and vacillating "value" of the home, and the Appellants' attempt to attribute a drop in general housing value to the fixed cost of their home is erroneous and improper.



Tax Counsel IV

cc: Joseph E. Mudd

RESPONDENT FRANCHISE TAX BOARD'S
LAND – IMPROVEMENT REALLOCATION EXHIBIT
BOARD OF EQUALIZATION LETTER DATED AUGUST 2, 2005

FOR

FEBRUARY 24, 2015

CULVER CITY, CALIFORNIA

INCOME TAX APPEAL HEARING

CONCERNING CONSOLIDATED APPEALS OF
WILLIAM AND DONYA DOBKIN CASE ID NO. 728014

AND

DEBORAH M. DOBKIN CASE ID NO. 725828

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2 of 2



STATE BOARD OF EQUALIZATION

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Executive Director

August 2, 2005

Re: Land – Improvement Reallocation Following Major Renovation of Improvements

Dear Ms. _____ :

This letter is in response to your e-mail message addressed to Chief Counsel Kristine Cazadd, dated April 11, 2005. In that message you made three inquiries regarding the County Assessor's reallocation of land and improvement values for a single-family residence when a property is substantially renovated within two years of its original purchase. You ask: (1) Whether the _____ County Assessor's policy reflects the policy of other county assessors or the State Board of Equalization (BOE); (2) What provisions of Proposition 13 and/or the California Revenue and Taxation Code authorize that practice; and, (3) If that practice is not authorized what steps you can take to get the assessor's office to reconsider its policy.

Although the BOE does not have a policy promoting or prohibiting the assessor's reallocation practice, we have knowledge that some other county assessors also employ that practice in the assessment of new construction. For the reasons hereinafter set forth, it is our opinion that Revenue and Taxation Code section 51.5 requires the county assessor to correct any base year value error or omission within four years after enrolling an assessment, if that error was the result of the exercise of value judgement. Notwithstanding that conclusion, you may appeal that reallocation to your local assessment appeals board if you believe that no error in value judgment occurred.

Background and Facts

As described in your e-mail message, the following facts are relevant to this analysis:

1. In an arm's length transaction, a property owner acquired a single-family residence located in _____ County on October 31, 2003, for \$245,000.
2. On April 8, 2004, the county assessor issued a Notice of Supplemental Assessment showing a total assessed value of \$245,000, which allocated \$200,000 to land and \$45,000 to improvements. That value allocation was also used to determine the property taxes for the 2004-2005 fiscal year.

3. At the time of purchase, the house was inhabitable but was also "run down."
4. While renovating the improvements, the owner encountered problems that caused the renovation to become a major remodel.
5. To correct an error unrelated to the assessed value of the property, the county assessor sent an appraiser to visit the property.
6. After that visit, the county assessor sent the property owner another Notice of Supplemental Assessment, dated January 27, 2005. Although that notice also reflected the \$245,000 purchase price, it showed a reallocation of that value: \$244,000 to land and \$1,000 to improvements.
7. Upon making an inquiry with the assessor's office, the duty appraiser informed the property owner that it is the assessor's policy to reallocate most of the purchase price to the land if a property is substantially renovated within two years of its original purchase. REALLOCATE
to
LAND
8. In defense of that practice, the duty appraiser relied on the rationale that the owner bought the property for the land value alone if the improvements were torn down within that two-year period.
9. When the property owner asked the duty appraiser what provisions of law authorize that practice, the owner reported that the appraiser suggested that the owner could file an assessment appeal.

Law and Analysis

1. Does the county assessor's reallocation practice reflect the policies of county assessors throughout California or the BOE?

To our knowledge, other county assessors have also employed this practice. However, the BOE has not issued any policies or guidelines promoting or prohibiting its application.

Article XIII, section 13 of the California Constitution and Revenue and Taxation Code section 607 require an assessor to separately assess land and improvements.¹ Section 607 provides that "Land and improvements thereon shall be separately assessed." To meet those constitutional and statutory mandates, county assessors must allocate assessed values between land and improvements upon establishing new base year values for a property.

Through the Assessment Practices Survey Program (see Government Code §§15640, et seq.), the BOE regularly reviews the assessment practices of all 58 California county assessors. Those surveys include a thorough review of each assessor's new construction program. While completing those surveys, and through contact from other taxpayers, we have learned that some other county assessors' offices also employ the reallocation practice described in your e-mail message.

¹ All statutory references are to the Revenue and Taxation Code, unless noted otherwise.

To the extent of my knowledge, the BOE has not published any regulations or advisory guidance promoting or prohibiting this practice. At this time we are aware of no policy decisions by the BOE on this topic.

2. What provisions of Proposition 13 and/or the California Revenue and Taxation Code authorize this practice?

We believe that this practice is authorized by section 51.5, which requires county assessors to correct errors or omissions made in the determination of new base year values.

Section 51.5 provides, in part:

(a) 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, including the failure to establish that base year value, 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.

(b) An error or an omission described in subdivision (a) which involves the exercise of an assessor's judgment as to value may be corrected only if it is placed on the current roll or roll being prepared, or is otherwise corrected, within four years after July 1 of the assessment year for which the base year value was first established

Section 51.5 recognizes the difference between errors that result from the exercise of the assessor's value judgement and those that do not. If an error or omission involves the exercise of value judgement, subdivision (b) of section 51.5 imposes a four-statute of limitations on the correction of that value. Consequently, the assessor is required to correct any error or omission in the determination of new base year values upon discovery, subject to the four-year statute of limitations for errors in value judgment.

In the situation you described in your e-mail message, the county assessor established a new base year value for the property, as of the October 2003 date of the change in ownership. Based on the major renovation, the assessor apparently believed that an error in value judgment occurred when enrolling the original base year values for this property. Events subsequent to that change in ownership led the assessor to reallocate the land and improvement values, changing the base year values for both during January 2005, a date within the four-year statute of limitations. Since the assessor discovered an apparent error in value judgement within the four-year statute of limitations prescribed by subdivision (b) of section 51.5, we believe that the assessor was required to correct that error.

3. If this reallocation practice is not authorized, what steps you can take to get the assessor's office to reconsider its policy.

Although we believe that the Revenue and Taxation Code authorizes this practice, the property owner may wish to file an assessment appeal if he or she believes that no error in value judgement occurred.

As noted above, if an error in value judgement occurred, we believe that the assessor is required to correct that error within four years of enrollment. However, if the property owner disputes the assessor's conclusion, the owner may appeal that reallocation.

While most assessment appeals applications dispute the value of the entire appraisal unit, property tax rules governing the conduct of assessment appeals proceedings clearly contemplate the appeal of a portion of an appraisal unit. For example, subdivision (a) of Property Tax Rule 307 sets forth certain required information included in the notice of hearing by providing in part:

The notice shall include a statement that an application for a reduction in the assessment of a portion of an improved real property (e.g., land only or improvements only) . . . may result in an increase in the unprotested assessment of the other portion or portions of the property, which increase will offset, in whole or in part, any reduction in the protested assessment.

Moreover, subdivision (b) of Property Tax Rule 324 gives direction to an appeals board when deciding an application which appeals only a portion of the property by providing, in relevant part:

When an application for review includes only a portion of an appraisal unit, whether real property, personal property, or both, the [county board] may nevertheless determine the taxable value of other portions that have undergone a change in ownership, new construction or a decrease in value. Additionally, the [county board] shall, on its own motion or at the assessor's request, determine the market value of the entire appraisal unit whenever that is necessary to the determination of the market value of any portion thereof.

In the situation presented in your e-mail message, the property owner will contest the allocation of the total base year value between the land and improvements. Essentially, the property owner will contend that the assessor has established a base year value that is too high on either the land or the improvements. Thus, the property owner may appeal the base year value of that portion which he or she believes is too high.

Conclusion

The California Constitution and Revenue and Taxation Code section 607 require county assessors to allocate assessed values between land and improvements. Although we have become aware that other county assessors employ the reallocation practice described in your e-mail message, we are aware of no policy that directly promotes or prohibits that practice. Section 51.5 requires county assessors to correct errors in value judgement within four years of enrolling a new base year value. To the extent that the original land and improvement value allocation may have been an error in value judgment, we believe that section 51.5 would require its correction. Our conclusion notwithstanding, you may still appeal the assessor's value reallocation to your local assessment appeals board if you believe that no error in value judgement occurred.

August 2, 2005

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.

Sincerely,



Michael Lebeau
Senior Tax Counsel

ML:jlh

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cc: Honorable
County Assessor

Mr. David Gau, MIC:63
Mr. Dean Kinnee, MIC:64
Ms. Mickie Stuckey, MIC:62
Mr. Todd Gilman, MIC:70