



STATE OF CALIFORNIA

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STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001
TELEPHONE (916) 324-2855
FAX (916) 323-3387

JOHN KLEHS
First District, Hayward

DEAN F. ANDAL
Second District, Stockton

ERNEST J. DRONENBURG, JR.
Third District, San Diego

KATHLEEN CONNELL
Controller, Sacramento

JOHN CHIANG
Acting Member
Fourth District, Los Angeles

E.L.SORENSEN, JR.
Executive Director

June 9,1998

Dear Mr.

Travis Fullwood, Professional Advisor to the Board of Equalization member Ernest Dronenburg, has forwarded your April 24, 1998 fax transmittal to the Board Legal Division for review and response. In your correspondence, you provided a summary of a series of fractional interest in real property, and ask us to review the issue of reassessment of fractional interest in property, especially the treatment of reduction in value as set forth in Letter to Assessors No.86/04, issued by Board Staff on January 8, 1986. We have done so, and again come to the conclusion that the procedures set forth in LTA 86/04 are not only authorized but are compelled by provisions of Revenue and Taxation Code section 51.

You relate the following summarize situation: Three family members own equal one-third tenant in common interest in commercial building. The index base year value was \$3 million. In mid-1990, one owner transferred his one-third interest in a manner resulting in a change in ownership of that one-third interest. At the time of the transfer, and also on the March 1, 1991 lien date, the market value of the building with \$6 million. Accordingly, the transferred one-third interest was reassessed at 2 million, resulting in an aggregate base your value of the building of 4 million (2 million for the transferred one-third interest and 1 million each for the two other one third interests).

By 1992, the market value of the building had fallen to 4.5 million. At that time, the factored base your value of the building was about 4.1 million. The owner of the one third interest reassessed in 1990 sought a Proposition 8 (California Constitution Article XIII A, Section 2, Subd. (b)), reduction in 1992 assessed value of that interest from about 2 million (indexed) to 1.5 million (one-third of 4.5 million), which would have reduced the assessed value of the building to 3.6 million. The assessor denied the reduction because the aggregate base your value of 4.1 million was still less than the aggregate market value of 4.5 million, citing LTA 86/04, which advises that the aggregate base your value of the entire property must be considered for Proposition 8 purposes, even though the fractional interest in the property has previously been reassessed after a change in ownership. It is your contention that LTA 86/04 is inconsistent with section 51, subdivision (d).

We do not agree. In our view, LTA 86/04 correctly states the law and, indeed, the procedures set forth therein is compelled by the provisions of subdivision (d) section 51, which, as you note, provides as follows: "For purposes of this section, 'real property' means that appraisal unit that person is in the marketplace commonly buy and sell as a unit, or that normally valued separately."

You know that the concept of "real property" is treated differently in an initial change in ownership reassessment, in which only the fractional interest transferred is reassessed, then in the Proposition 8 situations you describe, in which the value of the whole property, not it's fractional interest, as compared to the comparable factored base year value. Your observation is correct; however, the differentiation is compelled by provisions of Proposition 13 (Article XIII A) and section 51 subdivisions (a), (d), and (e).

Article XIII A, section 2, subdivision (a) requires a reassessment of real property upon its change in ownership. This necessitates that when a change an ownership occurs with respect to a fractional interest in real property, that fractional interest be reassessed and the value indicated thereby add to the base your value of the subject real property. See Revenue and Taxation Code sections 110.1, 50, and 65.1, which implement section 2 subdivision (a)

On the other hand, Article XIII A section 2, subdivision (b) authorizes a reduction in the full cash value base to reflect a decline in value. This subdivision has been implemented by the Legislature in Section 51, subdivision (a), which specifically applies to "each lien date *after* the lien date in which to base your value is determined pursuant to Section 110.1Section 51, subdivision (d), of course, contains the appraisal unit requirement quoted above, a provision comparable to which, it must be noted, does not appear in Section 50, the statute providing for reassessment upon changing ownership. Applicable there, instead, all the provisions of section 65.1 ("...when an interest in a portion of real property is purchased or changes ownership, only the interest or portion transferred shall be reappraised...") But section 51 does not authorize the separate assessment of fractional interest in real property for purposes of Proposition 8 reductions in value (Section 51 subdivisions (a) an (e), unless such fractional interest constitutes appraisal units that persons in the market place commonly buy and sell as a unit, or that are normally valued separately. Section 51, subdivision (d)).

We acknowledge your argument that persons do, in fact buy and sell fractional interest in real property for various reasons. However, we would disagree that fractional interest constitute an "appraisal unit" as that phrase is understood by assessors when assessing. The concept of appraisal unit connotes the identification of the combination of items or parcels of property that are commonly or most likely to be sold as a unit if the property were exposed to the market. See Assessors Handbook Section 501, Basic Appraisal, Pages 10 and 11, copy enclosed. For example, land and improvements are typically sold together, and priced as a unit. They would therefore constitute the appraisal unit. Similarly, a farm may be composed of several parcels, but operated together as a single unit. If, in the market, it would most likely be sold as a unit, the parcels taken together, rather than each parcel individually, would be appraised as the appraisal unit. On the other hand, if individual condominiums are cabins are the units typically bought and sold, it's condominium or cabin would constitute separate appraisal unit, even if it was a part of a larger parcel or property that is not commonly bought and sold as a unit.

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Viewed in this context, it is clear that an undivided interest in real property cannot constitute an appraisal unit as the term is utilized in Section 51 for Proposition 8 decline in value determinations.

Therefore, upon further review of LTA 86/04, in light of the statutory and constitutional provision set forth above, we are out of the view that the analysis and conclusions of LTA 86/04 continue to be accurate.

The views expressed in this letter are, of course, only advisory in nature, they represent the analysis of the legal staff of the Board based on present law and the fact set forth herein, and are not binding on any person or public entity.

Sincerely
Daniel G Newman
Tax Counsel

DGN:jd

<h:/property/precedent/13genral/1998/98002.dgn>

Enclosure

Cc:

Honorable Ernest J. Dronenburg, Jr

Mr. Travis S. Fullwood

Honorable Gregory J. Smith

San Diego County Assessor

Mr. Dick Johnson MIC, 63

Mr. Randy Bischof MIC: 64

Mr. David Gay MIC: 64

Ms. Jennifer Willis, MIC:70