



STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082
TELEPHONE (916) 445-5580
FAX (916) 323-3387
www.boe.ca.gov

JOHAN KLEHS
First District, Hayward

DEAN ANDAL
Second District, Stockton

CLAUDE PARRISH
Third District, Torrance

JOHN CHIANG
Fourth District, Los Angeles

KATHLEEN CONNELL
State Controller, Sacramento

JAMES E. SPEED
Executive Director

May 29, 2001

Subject: Assessment Appeal Applications – Proposition 8 Appeal

Dear Mr. _____ :

This is in reply to your letter of April 19, 2001 addressed to Assistant Chief Counsel Larry Augusta in which you request our opinion concerning the validity of an application to appeal a Proposition 8 decline in value. To summarize the facts, a change in ownership occurred in 1998 but supplemental assessments were not enrolled until November 2000. The taxpayer filed an application appealing a decline in value for lien date 2000 in September 2000 but did not appeal the supplemental assessments or new base year value. You state that the assessor’s office has taken the position that the application is invalid because the application appealed the roll value for lien date 2000, which was superseded by the roll changes resulting from the 1998 change in ownership as indicated above. For the reasons stated below, it is our view that the roll changes described would not affect the validity of applications appealing the decline in value.

Facts Presented

Your firm represents a taxpayer with property located in _____ County and you timely filed applications appealing a decline in value of the subject property for lien date 2000. Subsequent to the filing of the applications, in November 2000 the assessor reappraised the property for a change in ownership that occurred in 1998. Notices of supplemental assessment and notices of escape assessment resulting from the increased base year value were issued, but you did not file applications appealing the supplemental assessments, base year value or escape assessments.

Under cover of a faxed memo dated March 29, 2001 from you to _____ of the _____ Assessor’s Office you provided information to the assessor’s office regarding the 2000 Proposition 8 Appeal for the subject property.

In reply to your memo, Ms. _____ replied by faxed memo that the assessor’s office has taken the position that the “former assessments ceased to exist and . . . appeals needed to be filed

within 60 days of the [notice] dates to be timely for the supplemental assessment and 1999 and 2000 annual rolls. We will ask the board to deny above appeals.”

Law and Analysis

As you know, when the fair market value of a property declines below its assessed value on the assessment roll, the property must be revalued and reassessed in accordance with section 51 as of the January 1 lien date. Section 1603 of the Revenue and Taxation Code and Property Tax Rule 305 require that an application filed to appeal a decline in value, i.e. the lien date value, “shall be filed within the time period from July 2 to September 15” following the lien date for which the value was established. In this case, the applications appealing the lien date 2000 value were timely filed on September 11, 2000 and were valid, assuming all other requirements were met.

As indicated above, the assessment appeals process is governed by specific statutory authority, as interpreted by Property Tax Rules 301 through 326, which prescribes the requirements for a valid application, and an appeals board has no jurisdiction to hear and decide an invalid application. (See *Shell Western E & P, Inc. v. County of Lake* (1990) 224 Cal.App.3d 974, 984 which states: “As any tax proceeding is in invitum in nature, ... each step must be taken in compliance with law or the proceeding is void.”) Thus, an application filed within the time period prescribed for appealing a specific assessment is not effective to appeal another assessment. See *Sea World, Inc. v. County of San Diego* (1994) 27 Cal.App.4th 1390, 1402.

Based on the foregoing principles, we disagree with Ms. _____’s statement that, as a result of the supplemental and escape assessments based on the 1998 change in ownership, “the former assessments ceased to exist and . . . assessment appeals needed to be filed within 60 days of the [notice] dates to be timely for the supplemental assessment and 1999 and 2000 annual rolls.” First, by stating that “the former assessments ceased to exist”, the assessor’s office incorrectly suggests that the supplemental and escape assessments invalidated the applications appealing the declines in value. As stated above, the content and filing requirements for a valid application are set forth in Property Tax Rule 305 which prescribes the prerequisites for a valid application. There exists no provision in that rule or any other rule that would invalidate an application based on the fact that the supplemental and escape assessments were made subsequent to the filing of the application appealing a decline in value.

Secondly, the filing period described by the faxed reply from the assessor’s office is the period prescribed by section 1605 for applications appealing the supplemental and escape assessments, and not the filing period for an application appealing the decline in value (of the lien date 2000 assessment) prescribed by section 1603. The notices were mailed approximately two months after the final date for filing within the period to appeal the lien date 2000 assessment. Thus, an application filed within the time limitations period of section 1605 would not be valid for an appeal of the 2000 lien date assessment and, therefore, the appeals board would have no authority to hear and decide the application. In this regard, the court of appeal in *Sea World, Inc.*

May 29, 2001

Page 3

v. County of San Diego, supra. recognized that a supplemental assessment and the enrollment of the base year value are two separate assessment events and that, in order to have valid applications appealing each assessment, a taxpayer is required to comply with two different filing periods.

Finally, as noted above, the taxpayer's applications appealing the lien date 2000 value were timely filed on September 11, 2000 and are, therefore, valid in that respect. The fact that the subject property had a new base year value (due to the 1998 change in ownership) which was not shown on the roll as of the 2000 lien date does not preclude the assessment appeals board from determining the fair market value of the property as of that lien date for purposes of deciding an application appealing a decline in value. Thus, if a timely filed application indicates that the taxpayer believes the property to be less than the assessment shown for the current roll year, the appeals board has both the jurisdiction and the responsibility to decide that issue.

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.

Very truly yours,

/s/ Louis Ambrose

Louis Ambrose
Tax Counsel

LA:lg

prop/precedent/astandiv/01/06lou

cc: Mr. Dick Johnson, MIC:63
Mr. David Gau, MIC:64
Ms. Jennifer Willis, MIC:70