180.0110

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 323-7714

WILLIAM M. BENNETT
First District, Kentfield

CONWAY H. COLLIS
Second District, Los Angeles

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

PAUL CARPENTER
Fourth District, Los Angeles

GRAY DAVIS
Controller, Sacramento

CINDY RAMBO
Executive Director

November 30, 1990

Re: Incremental Shopping Center Reassessment

In your letter you asked several specific questions in regard to the assessment of tenant improvements in shopping centers. Your experience indicates that these improvements merely enable the tenant to remain competitive and add little or no value to the property. You have interpreted Rule 307 and the Revenue and Taxation Code to preclude an appeal of only the newly constructed portion of the center. In your view "the Board is unable to rule on whether the reassessable portion of the property has been properly assessed without potentially increasing the entire property."

In preparation of this response we consulted several counties to ascertain the validity of your perception of the shopping center assessment process. We were advised that there is a great deal of misunderstanding on this subject. It was suggested that you consult with the assessor's office and discuss the appraisal of specific properties of your clients in order to clarify the assessor's current procedures.

Questions:

1. Does the taxpayer have recourse to challenge a reassessment for new construction without causing reappraisal of the entire property by the appeals board?

Answer: Yes, you have correctly noted that rule 463(a) mandates reappraisal of only the newly constructed portion of the property which will establish a new base year full value for that portion. Section 2 of Article XIII A of the state constitution prohibits the reassessment of the remaining portion of the property that has not been newly constructed. Apparently you have misinterpreted part of Rule 307(a) to conclude that the entire property would be reappraised by the board. The latter portions of that section which include (e.g., land only or improvements only) and (e.g., only the improvement or only the personal property portion of machinery and equipment) become effective only when the entire property is constitutionally subject to reassessment. When that is the case, the rule prevents isolated reductions that could result from arbitrary classifications and value allocations by the assessor.

2. Property Tax Rule 463 specifically allows reassessment of only the newly constructed portion of a property. How can the taxpayer challenge this reassessment if the previous assessed value (before improvement) is enrolled at substantially less than the current full cash value?

Answer: Since only the newly constructed portion is subject to reappraisal and reassessment, the cost of construction would be a prime indicator of value, particularly because it would be current. As in number one above, no other part of the property would be subject to reassessment.

3. Couldn't the assessor levy arbitrary assessments on new construction for older buildings knowing that the taxpayer cannot challenge without risk of reassessing the entire property?

Answer: The appeals process will prevent this from happening. Once the taxpayer presents his evidence (cost), the burden of persuasion shifts to the assessor. He would have to convince the appeals board that the taxpayer's data does not equal market by a preponderance of evidence.

4. Can the County of Orange add new real property assessments to the secured roll on the basis of taxpayer supplied information on Form 571L (Business Property Statement) without properly providing supplemental notice of such reassessment and inclusion of the new value on the supplemental roll?

Answer: No, Revenue and Taxation Code, section 75.31 requires that the assessor shall send notice to the assessee. It provides for eight seperate items of information. Most

importantly subsections (c) and (d) require notice of the right to appeal the supplemental assessment.

5. Does proper supplemental notice allow the taxpayer the opportunity to challenge only the supplemental increase? If not, do the same appeals board provisions to review the entire property apply to supplemental assessments as well?

Answer: Yes, the constitution permits only the new construction to be reassessed and this controls both the assessor and the appeals board.

6. Is the method of reassessment via the 571L tax return improper? Does such reassessment constitute an assessment error, affording a potential correction of prior years and/or correction of base year valuation?

Answer: The assessor is not limited by any form or property statement in his duty to discover and correctly assess all property in the county. If errors are discovered by way of any source of information, the base year value shall be corrected pursuant to Revenue and Taxation Code, section 51.5, which limits corrections due to "an assessor's judgment as to value" to four years from July 1 of the assessment year which established the base year value. This is a very complex statute and you would be well advised to review it with your counsel.

Please excuse my delay in response which was due to personal illness and a check of counties for the current practices. Our intent is to provide timely and helpful responses; suggestions to assist us are appreciated.

Very truly yours,

James M. Williams

James M. Williams
Tax Counsel

JMW:jd
3572H