Memorandum

To : Mr.

Date : January 28, 1987

From : Jim Williams

Subject : Revenue and Taxation Code Section 4831.5

In your memo of January 6, 1987, you presented the following situation:

> As an example, assume the assessor valued a transferred residence at $200,000 using the cost and/or market approach. At a later date, the assessee submits data to show that the property was purchased for $180,000 in a market value transaction. The assessor calls this an assessee's error and makes a value change to $180,000 citing Revenue and Taxation Code Section 4831.5.

You ask whether the assessor's action is proper.

In pertinent part section 4831.5 provides:

> When it can be ascertained by the assessor from an audit of an assessee's books of account or other papers that there has been a defect of description or clerical error of the assessee in his property statement or in other information or records furnished to the assessor which caused the assessor to assess taxable tangible property which should not have been assessed or to assess it at a substantially higher valuation than he would have entered on the roll if the information had been correctly furnished to the assessor, the error on the roll may be corrected ...(emphasis added).

This provision is derived from section 3881 of the former Political Code where it has been very narrowly construed in Southwest Land Co. v. County of Los Angeles, 46 Cal.App. 9 (1920). It was held that the intention of the legislature was to narrowly define the terms of the grant of power to the assessor, so that after equalization no changes might be made except those of a purely clerical or formal nature and then not unless the error could be ascertained from the sources named, 46 Cal.App 13-14.

In your example it is not clear how the assessor's valuation of $200,000 was derived. Under the terms of the statute this value must have been caused by either a defect or error in information or records that was submitted at the outset. Subsequently the defect or error in the original submission may only be ascertained from the books of account of other papers that existed at the time of the submission. Later derived data may not be used to create an inference of error at the time the value is placed on the roll. United States Borax and Chemical Corporation v. Mitchell, 27 Cal.3d 84 (1980) at 95. Additionally, your facts do not explain the basis for the valuation difference of $20,000 so I would invite your attention to section 4831 which explicitly excludes errors involving the exercise of value judgments. This provision must be taken into account when construing the meaning of "defect of description or clerical error" in the subsidiary statute, 27 Cal.3d 94. We would conclude that the simple situation you describe would not meet the terms of section 4831.5

You further ask if it would make a difference if the assessor had sent the assessee a sales letter and it was not returned timely. You exclude approved sales questionnaires which I interpret to mean those required by Revenue and Taxation Code section 480. Here, I think it would be extremely farfetched to take a position that equates the failure to timely return a document with a defect of description or clerical error. Clearly the assessor would enroll a value based upon other information in his possession, and it could not be said that that figure was derived from information that did not get to the assessor. Clearly the failure to return the questionnaire had an effect on the assessment outcome, but it did not, as required by the statute, directly lead to an erroneous description or calculation.

In contrast, however, would be the situation that you excluded. If the assessee had filed a section 480 statement containing an incorrect figure as the result of a typographical error and this was later detected on audit, then we would have the precise situation that was contemplated by the statute.

Finally, I would invite your attention to Revenue and Taxation Code section 1603.1 which became effective on January 1, 1986. This provision directly deals with circumstances involving an error of judgment and provides for proper relief when the assessor is prepared to stipulate to a reduced value. In our view it is the correct procedure that is applicable to the situation that you have questioned.

JMW/rz
cc: Mr. Gordon P. Adelman
Mr. Robert Gustafson
Mr. Darold Facchini
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