State of California

360.0016

Board of Equalization
Legal Division

Memorandum

To : Mr. Verne Walton

Date: November 16, 1992

From : Richard H. Ochsner

Subject: Mendocino County Disaster Relief Inquiry

This is in response to your request for advice, via FAX, dated November 6, 1992, which transmitted a copy of a letter of the same date from the Mendocino County Assessor requesting advice regarding the application of disaster relief under Revenue and Taxation Code Section 170. (All section numbers refer to the Revenue and Taxation Code unless otherwise indicated.)

The assessor's letter indicates that, for a variety of reasons relating to the decline in the salmon fishery, many small fishing vessel owners in his county have discontinued commercial fishing operations. As a result, the assessor states that it was necessary to deny the benefits of section 227 to approximate one-fourth of the commercial fishing fleet in his county this year. The Mendocino County Board of Supervisors has apparently expressed its belief that these vessels should qualify for disaster relief under section 170. Included with the letter is an opinion from Deputy County Counsel Yves A. Hebert, which concludes that, based upon the disaster relief granted by section 170, the salmon fishing trollers are entitled to the benefits of section 227 (assessment at 4% of market value) during the period of the ongoing salmon drought as long as the vessels are not engaged during the same period in other commercial activities not within the purview of section 227. The assessor asks for our views on this approach. For the reasons set forth below, I am unable to agree with the county counsel opinion.

Section 227 provides, in part, that a documented vessel shall be assessed at 4% of its full cash value "only if the vessel is engaged or employed exclusively...in the taking and possession of fish...for commercial purposes." The section further provides that the State Controller shall audit all claims for reimbursement to determine whether those claims are valid with

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respect to the requirements of this section. (Presumably, this relates to state reimbursement to local government for revenue lost as a result of the 4% assessment.) Section 227 is implemented by Property Tax Rule 151.

The California courts generally follow the rule that tax exemptions are to be strictly construed. Section 227 is, in effect, an exemption of 96% of the market value of a qualified vessel. For that reason, I believe the courts would apply the same rule of strict construction. That is, the exemption granted by section 227 is applicable only to vessels which qualify under the terms of that provision. As I understand it, the assessor's problem is that a growing number of vessels fail to meet the requirements of section 227 because they are no longer exclusively used in the taking of fish for commercial purposes. The question is whether the benefits of section 227 can, nevertheless, be extended to these nonqualifying vessels under the terms of the disaster relief provisions contained in section 170. My conclusion is that vessels which do not qualify under the terms of section 227 cannot receive its benefits regardless of Section 170.

Section 15 of Article XIII of the California Constitution provides that the Legislature may authorize local government to provide for the assessment or reassessment of taxable property physically damaged or destroyed after the lien date to which the assessment or reassessment relates. Section 170 implements this constitutional authorization by providing that the board of supervisors may, by ordinance, provide that every assessee whose taxable property was damaged or destroyed without his fault may apply for reassessment of that property "as provided herein". The words "as provided herein" make it clear that the benefits to be provided under this provision are set forth in section 170.

The reassessment permitted by section 170 is described in subdivision (b). It provides that the assessor shall appraise the property and determine the full cash value of the property immediately before and after the damage or destruction. If the value of the property before damage or destruction exceeds the value after damage by $5,000, the assessor must determine the percentage reduction in value due to the damage or destruction. The assessor is then required to reduce the value appearing on the assessment roll by the percentage of damage or destruction computed, and the taxes are to be adjusted accordingly. The last clause in subdivision (b) expressly states that the amount of the reduction (i.e., the reduction in assessed value) shall not exceed the actual loss.

The provisions of subdivision (b) are quite explicit. They provide for a pro rata reduction in assessed value reflecting the percentage loss in market value due to the damage or destruction. In no case may the reduction in the assessed value of the property exceed the amount of actual loss in market value. Nothing in these provisions expresses any intent on the part of the Legislature to extend the 4% assessment benefits of section 227 to damaged property which qualifies under Section 170 for disaster relief. It is obvious that if the Legislature had intended such a result it could have easily so stated. It seems clear that property qualifying for relief under the terms of section 170 is entitled only to the benefits provided in that section. Further, we find nothing in Mendocino County Counsel's Opinion which would support a contrary conclusion.

Stated in another way, a careful reading of the provisions of section 170 and 227 indicate that each is a separate and independent provision. Each section provides certain benefits to property which qualifies under the terms of each respective section. Our review of those provisions demonstrates no evidence that the qualifications for disaster relief under section 170 were intended as a substitute for the qualifications required under section 227 for the 4% assessment benefit. Thus, the documented vessels in Mendocino County may not receive the benefits of section 227 unless they qualify under the express terms of that section.

While the above analysis disposes of the issue, I would also question whether the subject vessels may qualify for disaster relief under the terms of section 170. First, I doubt whether the long term conditions which have brought about a situation in which a significant portion of the Mendocino fleet find it uneconomical to continue commercial fishing qualify as a misfortune or calamity, as that term was intended by the Legislature under section 170. As indicated above, the authority for section 170 is found in section 15 of Article XIII of the Constitution which authorizes the Legislature to permit local government to provide for reassessment of taxable property physically damaged after the lien date. These provisions are based upon the premise that taxable property should be provided tax relief where the property sustains a significant loss in value due to some unforseen disaster after the lien date. These provisions clearly contemplate that the disaster will be some specific identifiable event. That is made clear by not only the constitutional language, but also the provisions in section 170 which provide for the filing of a claim within 60 days after the event. There are also alternate provisions which provide for application at a later time but in

no case more than 6 months after the occurrence of the damage. The relief provided is predicated upon the assumption that there will be a loss of value flowing from this identifiable event and the assessor will be able to determine the value of the property both before and after this event. These types of requirements are entirely inconsistent with the long term trends in the fishing industry which have brought about the problems in Mendocino County.

There is also a basic requirement, based upon the language of the Constitution, that there be physical damage to the taxable property. There is no evidence here that there has been any physical damage to the property. Presumably, the affected vessels have diminished in value.

Generally speaking, section 170 does not provide relief for diminution in value. Section 170 contains one exception to this general rule. Subdivision (a)(1), relating to a major misfortune or calamity in an area proclaimed by the Governor to be in a state of disaster, expressly provides that for purposes of that paragraph, the term "damage" includes a diminution in the value of property as a result of restricted access to the property where such restricted access was caused by a major misfortune or calamity.

I am unable to agree with the county counsel's analysis which attempts to extend this language to the situation at hand. First, this exception is limited to situations where the calamity has been proclaimed by the Governor. That has not happened in this case. Further, the diminution in value to be recognized is only that resulting from restricted access to the property. In this case, the property would be the vessels seeking relief. There is no evidence that the access to these vessels has been restricted in any way. The generally accepted rule of statutory construction is that words should be given their ordinary meaning. (See Delaney v. Superior Court (1990) 50 Cal. 3d 785, 798, 799, 800.) The county counsel's analysis, which concludes that the diminution in value language is applicable is based upon a strained construction which fails to give the words of the statute their ordinary meaning.

Finally, even if we were to assume that the vessels qualify under section 170, they could only receive the relief granted by subdivision (b) of that section. Assuming some event occurred after the 1992 lien date, the relief would be in the form of the reduced assessment based on the value of a property immediately before and the value immediately after the identified event. If the value loss did not exceed $5,000 no relief can be granted. Obviously, if the lien date value

accurately reflected the current market value of the vessel, it would seem that losses attributable to any particular event during the succeeding year would be fairly minimal and would certainly not be in the magnitude of the 96% exemption provided under section 227.

I will be happy to discuss this with you or your staff if you have any questions.

RHO:ba

cc: Mr. John Hagerty
Mr. Ken McManigal

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