



Memorandum

To : Hon. Brad Sherman
Chairman, State Board of Equalization
Property Taxes Committee

Date: December 1, 1992

From : Richard H. Ochsner
Assistant Chief Counsel

Subject: Time Limits for Supplemental Assessments

This is in response to your request that I review the various legal arguments offered by attorneys Mark Ancel and Robert Rubin, and others, in support of their position that a four-year time limit applied to the enrollment of supplemental assessments prior to the enactment of Chapter 663 of the Statutes of 1992 (AB 3280, Polanco) which amended Revenue and Taxation Code Section 75.11 to add express time limits for the enrollment of supplemental assessments. Set forth below are my analyses of the various statutory provisions which have been relied upon in the arguments presented to the Property Taxes Committee. For the reasons stated below, I conclude that none of the cited statutes may be properly applied to impose a time limit on the enrollment of supplemental assessments.

REVENUE AND TAXATION CODE SECTION 51.5

Section 51.5 authorizes the correction of any error or omission in the determination of a base year of value which is determined when a change in ownership occurs or new construction is completed. Subdivision (a) of Section 51.5 provides that if the error does not involve the exercise of the assessor's judgment as to value, then the base year value may be corrected in any assessment year in which the error or omission is discovered. Please note that there is no time limit placed on the correction of this type of error. Subdivision (b) provides that an error or omission involving the exercise of the assessor's judgment as to value may be corrected only if it is placed on the roll within four years after July 1 of the assessment year for which the base year value was first established. Subdivision (d) provides that if a base year value correction reduces the base year value, then appropriate cancellations or refunds of tax shall be granted, while if the correction increases the base year value then

appropriate escape assessments shall be imposed. These provisions recognized the distinction between the base year value, which is a control figure used for the purpose of determining the constitutional assessment limits for a particular property, and the assessment of tax which may occur after a particular base year value is established.

It is argued that subdivision (b) of Section 51.5 imposes a four-year time limit on the enrollment of supplemental assessments. This argument fails to recognize the distinction between a base year value and a tax assessment. Subdivision (b), which contains the four-year limit, only authorizes the correction of a base year value. Nothing in subdivision (b) speaks to the issuance of a tax assessment. Further, where there has been a change in ownership of a property, but the assessor has failed to reassess the property, give it a new base year value, or issue a supplemental assessment, then there has not been an exercise of the assessor's judgment as to value. If it is assumed that section 51.5 applies somehow in this situation, it would be subdivision (a) which would be applicable since the assessor has not yet exercised his, or her, judgment as to value in connection with the change in ownership which triggered the supplemental assessment. Thus, if it is applicable, section 51.5 would be express authority for the assessor to enroll a supplemental assessment in any assessment year.

REVENUE AND TAXATION CODE 532

Assessors are required by section 531 to escape assess on discovery any property belonging on the local roll which has escaped assessment. The time limits for making such escape assessments are set forth in sections 531.2 and 532. The general period applicable, as set forth in section 532, is four years after July 1 of the assessment year in which the property escaped taxation or was underassessed. It is important to note that the four-year limit specified section 532 commences on July 1 of the assessment year in which the property escaped taxation or was underassessed. These provisions were designed to complement the procedures applicable to the regular assessment roll process which requires that the assessor complete the roll by July 1, annually. See Revenue and Taxation Code Section 616. If taxable property is not included on the July 1 regular roll, or if it is included but assessed at less than its taxable value, then an escape has occurred and

the escape assessment provisions are applicable. As discussed at the last Property Taxes Committee meeting, however, the supplemental assessment provisions, which were added by Chapter 498 of the Statutes of 1983, contained no provision comparable to Revenue and Taxation Code Section 616, expressing a specific time for making a supplemental assessment. Without a provision specifying the time when the assessor must enroll the supplemental assessment, there can be no escape. Property has not escaped assessment because there was no time set for the assessment. A delay in the enrollment of a supplemental assessment simply means that the property has not yet been assessed, but it has not "escaped" assessment because there was no date certain when the assessment had to be made.

It is obvious that if property has not escaped assessment, then the escape assessment provisions are not applicable. As noted above, the general four-year statute of limitations for escape assessments contained in section 532 commences on July 1 of the assessment year in which the property escaped taxation. Since the property has not escaped taxation this time limit never commences.

CIVIL CODE SECTION 2911 AND CODE OF CIVIL PROCEDURE SECTION 343

Civil Code section 2911 provides, in pertinent part, that a lien is extinguished by the lapse of time within which, under the provisions of the Code of Civil Procedure, an action can be brought upon the principal obligation. Title 2 of the Code of Civil Procedure, commencing at sections 312, provides a whole array of time limits for commencing civil acts for various types of proceedings. Section 312, the first section in the title, provides that civil actions can only be commenced within the periods prescribed in Title 2, after the cause of action shall have accrued, unless a different limitation is prescribed by statute. The sections following section 312 contain various time limits for commencing dozens of different types of civil actions. While none of these provisions specifically refer to actions relating to property taxes, section 343 contains a general catchall provision, which states that an action for relief not "hereinbefore" provided for must be commenced within four years after the cause of action shall have accrued.

As I understand it, the argument based on these provisions is that by virtue of the combined effect of Civil Code Section 2911 which provides for the extinction of the lien based upon the lapse of time specified in the Code Civil Procedure for the commencement of an action, and on Code of Civil Procedure Section 343, which specifies a general four-year time limit for commencing civil actions, the lien for taxes created under the Revenue and Taxation Code is extinguished in four years and this four-year limit somehow limits the time in which supplemental assessments may be issued.

Assuming that property tax liens do expire in four years, it is not clear to me just how that would control the right and duty of the assessor to issue a supplement assessment after that time. I have not attempted to examine this issue further, however, because there are express provisions in both the California Constitution and the Revenue and Taxation Code which clearly indicate that the time for expiration of tax liens is 30 years.

Section 30 of Article XIII of the California Constitution provides, "Every tax shall be conclusively presumed to have been paid after 30 years from the time it became a lien unless the property subject to the lien has been sold in the manner provided by the Legislature for the payment of the tax." This constitutional language is reflected in Revenue and Taxation Code Section 2195 which provides, "After 30 years succeeding the time, heretofore or hereafter, when any tax becomes a lien, if the lien has not been otherwise removed, the lien ceases to exist and the tax is conclusively presumed to be paid. The official having charge of the records of the tax shall mark it 'Conclusively presumed paid.' Property which has been tax defaulted for nonpayment of taxes is not subject to the provisions of this section."

Thus, if there is any argument based upon the lien expiration theory that the assessors' authority to issue supplemental assessments is limited to the time in which tax liens expire, then assessors have a minimum of 30 years in which to issue supplemental assessments.

I would also point out that the California Supreme Court decided as early as 1892 that sections 312 and 343 of the Code of Civil Procedure are not applicable to a lien on real property for delinquent taxes. See Lewis v. Rothchild (1892) 92 Cal. 625.

In conclusion, it appears that none of the provisions of the Revenue and Taxation Code, Civil Code, or Code of Civil Procedure, discussed above, provide a sound basis for concluding that a time limit for the issuance of the initial supplemental assessment, following a change in ownership or completion of new construction, existed prior to the enactment this year of Chapter 663 (AB 3280).



RHO:ba

cc: Hon. Ernest J. Dronenburg, Jr.
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