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No. 79/171

October 5, 1979

TO COUNTY ASSESSORS:

EFFECT OF ASSEMBLY BILL 1488 UPON
ESCAPE ASSESSMENTS AND REFUNDS

Many of the inquiries we have received concerning Assembly Bill 1488 (Chapter 242, Statutes of 1979) have pertained to Section 43 thereof, which provides as follows:

"Except as otherwise provided in this act, or in Chapter 49 of the Statutes of 1979, no escape assessments shall be levied and no refund shall be made for any years prior to 1979-80 for any increases (or decreases) in value made in 1978-79 as the result of the enactment of Article XIII A of the Constitution, and Chapter 292 and 332 of 1978 or this act, except that any refunds which result from appeals filed for 1978-79 in a timely manner or pursuant to Chapter 24 of the Statutes of 1979 shall be made."

In our view, the purpose and intent of Section 43 is to prohibit escape assessments and refunds for assessment years prior to 1979-80 because of any increases or decreases in value in 1978-79 resulting from the application of Senate Bill 154/Stats. 1978, Chapter 292 and Senate Bill 2212/Stats. 1978, Chapter 332 or increases or decreases in value resulting from the application of Assembly Bill 1488 in 1979-80. Stated differently, if Assembly Bill 1488 requires a 1979 value which varies from that value enrolled in 1978, as a general rule, no escape assessment should be made and no refund should be granted for 1978 because of that change.

There are exceptions to the above rule, several of which are set forth in Section 43 itself. The provision in Section 43 which provides that refunds which result from appeals filed for 1978-79 in a timely manner shall be made, however, is limited to instances in which refunds for 1978 are authorized under applicable law for 1978. In other words, no refunds for 1978 are authorized or should be made just because appeals were filed for 1978-79. Rather, any such refunds are proper only in those instances in which statutes in effect for 1978 authorize them.

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In addition, Section 42 of Assembly Bill 1488 provides that no creation, termination, assignment or sublease of a leasehold interest on or after March 1, 1975, and no transfer of property subject to a lease on or after March 1, 1975, shall constitute a change in ownership, unless it is defined as a change in ownership under Revenue and Taxation Code Section 61(c). As it pertains to leases then, Assembly Bill 1488 is, for all practical purposes, retroactive, and escape assessments and refunds which result from the application of Assembly Bill 1488 in instances involving leases in 1978 should be made.

Accordingly, a transfer, other than a transfer of property subject to a lease or a leasehold interest, constituting a change in ownership under the law as it existed in 1978 but not constituting a change in ownership under Assembly Bill 1488 should be correctly enrolled for 1979, but a change to the 1978 roll should not be made. Similarly, no refunds should be made where appeals were filed for 1978-79 on the basis that transfers into revocable inter vivos trusts were not changes in ownership. Pursuant to former Revenue and Taxation Code Section 110.6 and former Board Rule No. 462 (f), in effect in 1978, such transfers were changes in ownership.

Conversely, if a transfer of property, for example, an outright sale, occurred in July 1977, that transfer constituted a change of ownership under Senate Bill 154, Senate Bill 2212, and Assembly Bill 1488, and it was just recently reported or discovered, escape assessments should be made for both 1978 and 1979. Likewise, the creation, termination, assignment or sublease of a leasehold interest or a transfer of property subject to a lease constituting a change in ownership under Assembly Bill 1488 but not under Senate Bill 154 and Senate Bill 2212, should result in an escape assessment for 1978. Finally, any transfer, for example, one from a husband to a wife, incorrectly considered as a change in ownership should result in a refund.

Please refer any inquiries or additional questions to John McCoy of this Division, (916) 445-4982.

Sincerely,



Verne Walton, Chief
Assessment Standards Division

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