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No. 86/82

TO COUNTY ASSESSORS:

DREYER'S GRAND ICE CREAM, INC. V. COUNTY OF ALAMEDA
(1986) 178 CAL.APP.3d 1174

The California Supreme Court has denied a hearing in the above matter and, thus, the decision of the First Appellate District is now final. Briefly, this decision appears to prevent an assessor from enrolling an escape assessment based on an adjustment to a post-1975 base-year value of property when that adjustment is made more than four years after the date for which the base-year value was determined.

The decision involves a cold storage warehouse on which construction was completed in December 1975. The Alameda County Assessor physically inspected and appraised the completed warehouse as of the March 1, 1976 lien date for the 1976-77 assessment year. This value was also used for the 1977-78 assessment year. Following the enactment of Proposition 13, the assessor added a 2 percent inflation increase for the 1978-79, 1979-80, and 1980-81 assessment years. The assessor audited the taxpayer's records in the fall of 1980 and found that the improvements had been substantially underassessed for 1976-77 and all subsequent years. The assessor revised the base-year value of the warehouse and imposed corresponding escape assessments for 1977-78 to 1980-81. After paying the tax and exhausting its administrative remedies, the taxpayer filed a court action for refund of tax paid. The trial court concluded that the escape assessments were barred by the four-year statute of limitations.

The First District Court of Appeal affirmed, holding that Revenue and Taxation Code Section 532 may be harmonized with Proposition 13 only if the reference in that section to "assessment year" is interpreted to mean the year when the base-year value of the property was determined pursuant to the California Constitution, Article XIII A and Section 110.1 of the Revenue and Taxation Code. It found that the four-year statutory base prescribed for escape assessments "begins to run from the time when the base-year value of the property was originally determined under Proposition 13" and not "from the assessment year in which the property, in all or in part, escaped taxation." Concluding that the base-year value of the newly constructed warehouse was determined as of March 1, 1976, the Court determined that Section 532 required that the assessor enroll the escape assessments before March 1, 1980.

The effect of the Court's decision is a judicial rewriting of the language of Section 532. Where that section permits an escape assesment "within four years after July 1 of the assessment year in which the property escaped taxation or was underassessed," the decision states that an escape assessment must be made within four years after the date as of which the new base-year value is determined. In this case, the Court found that the value was determined as of the lien date following the date of completion of construction, March 1, 1976. Presumably, it would apply a similar analysis for all new construction or changes in ownership occurring up to July 1, 1983. Following that date, Section 75.10 of the Revenue and Taxation Code, relating to supplemental assessments, provides for reappraisal on the date the change in ownership occurs or new construction is completed and states that the value so determined shall be the new base-year value. We assume that a court applying the Dreyer's theory to Section 75.10 would conclude that the four-year limitation period begins to run from the actual date of change in ownership or completion of new construction, rather than from the following March 1 lien date.

The Court's "interpretation" of Section 532 creates two immediate questions which are left unresolved. The first relates to the application of Section 532 to property which completely escaped taxation and was not merely underassessed. The facts in Dreyer's relate to an underassessment situation. Although some language in the decision touches upon property which escaped taxation, it is not clear what the court meant. None of the reasoning employed by the court touches on the issue of property which has completely escaped taxation even though Section 532 expressly covers such property. Thus, it is not clear whether the court would apply the same four-year rule to property which wholly escaped assessment. The second question raised by the decision is the proper interpretation of Section 532 as applied to personal property not subject to Proposition 13. Since the Court's decision is based solely on Proposition 13, it seems illogical to extend that interpretation to escape assessments affecting personal property. Section 532, however, applies to both real and personal property. Since the latter never has a base-year value, a literal reading of the decision would yield the absurd result that there is no time limit for making escape assessments on personal property.

In light of the various problems created by the Dreyer's decision, the Board's legal staff makes the following recommendations:

(1) That all escape assessments on real property be made within four years of the date of change in ownership or completion of new construction wherever possible, in order to avoid challenges based upon the Dreyer's decision and to protect county revenues.

(2) That if it is not possible to comply with the statute of limitations described in (1) above, then:

(a) Based on the theory that the Dreyer's decision does not affect real property that has totally escaped assessment, the statute of limitations for such property would be four years after July 1 of the assessment year (as defined in Revenue and Taxation Code, Section 118) in which the property escaped taxation.

(b) With respect to real property which was underassessed, assessors in jurisdictions outside the boundaries of the First District Court of Appeal may wish to discuss with his/her county counsel the feasibility of relitigating the Dreyer's issues on the grounds that the case was wrongly decided.

(3) That the Dreyer's decision not be applied to the escape assessment of personal property.

The Board staff is currently studying a proposal to recommend that the Board sponsor corrective legislation in the 1987-88 legislative session. In the meantime, we caution you to enroll escapes on real property on or before the four year anniversary date of transfer of ownership or completion of new construction whenever possible.

Sincerely,

Verne Walton

Verne Walton, Chief
Assessment Standards Division

VW:wpc
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