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May 17, 1988

Mr. Charles N. Brough
Chief Appraiser
Madera County Assessor's Office
209 West Yosemite Avenue
Madera, CA 93637

Dear Mr. Brough:

This is in response to your letter of January 28, 1988 requesting advice on the proper interpretation of the statutes relating to the correction of base year values and escape assessments. I regret that the press of other business, particularly current legislation, has prevented my response until this time. Please accept my apologies.

You letter quotes from sections 531 and 532 (all section references are to the Revenue and Taxation Code), our Assessors Letter 86/82 relating to the Dreyers' Grand Ice Cream case and portions of Chapter 537 of the Statutes of 1987 (SB 587). You request our advice in interpreting these provisions stating "The language of this body of law at present appears to require reasoning so convoluted as to make it more capable of personal revelation than legal interpretation in a common usage of the English language."

Your letter presents a factual example for analytical purposes involving taxpayer A who builds a steel building in October 1981. Presumably, the assessor is unaware of this new construction and it is wholly omitted from the roll for 1982-83 and years thereafter. You conclude in "Case I" that "the last date upon which an escape can be levied is June 30, 1986, and the assessor is then empowered to send an escape tax bill for the 1982-83, 1983-84 and 1984-85 fiscal years and add the steel building to the 1985-86 roll. In "Case II" you state that if the building was not discovered until September of 1988 the assessor could only place the 1981 factored base year value of the steel building on the current roll and no escape assessments could be made. In "Case III" you indicate that the Board's staff, Dennis Miller and Arnold Fong, advised that if the building escaped assessment until its discovery in September of 1988, "the Assessor is empowered to place the building on the 1987-88 roll (thru a roll change) and issue escape tax bills for 1984-85, 1985-86 and 1986-87 fiscal tax

years." You state that you have difficulty supporting this conclusion and request a "straightforward answer" which provides "specific citations" and "English language translations as appropriate."

Before discussing your specific question, some general comments may be helpful. Section 531 generally mandates that the assessor assess all property belonging on the local roll which has escaped assessment. The escape assessment is subject to the tax rate in effect in the year of the escape. If property escaped assessment over a five- or six-year period, section 531 recognizes that the property escaped assessment in each one of those years and requires the assessor to make an assessment for each of those years (subject to the Statute of Limitations) and to apply to each one of those assessments the tax rate which was in effect in the year for which the escape assessment is made. The key point being that in your example taxpayer A's steel building escaped taxation not only in the 1982-83 assessment year but also in each assessment year thereafter until the property was discovered by the assessor.

The Statute of Limitations generally applicable to escape assessments is found in the second sentence of section 532 which states that escape assessments "shall be made within four years after July 1 of the assessment year in which the property escaped taxation or was underassessed." Until the court decision in Dreyer's Grand Ice Cream v. County of Alameda (1986) 178 Cal.App. 3d 1174, the meaning of this sentence seemed rather clear. Expressed in the terms of your example, it simply meant that if taxpayer A's steel building escaped taxation in the 1982-83 assessment year the assessor could make an escape assessment pursuant to section 531 if it was made within four years after July 1 of 1982 (i.e., before July 1 of 1986). Similarly, if the building escaped assessment in the 1983-84 assessment year, an escape assessment for that year could be made within four years after July 1 of 1983. The same analysis would apply to each subsequent assessment year that the property escaped taxation. This analysis applied whether the property being assessed was land, improvements, or personal property.

The meaning of the quoted portion of section 532 was substantially changed, however, by the court's decision in the Dreyer's Grand Ice Cream case. As indicated in our 1986 Assessors Letter, the court construed section 532 as limiting the authority of the assessor to make escape assessments on Proposition 13 property to escapes made within four years after the date on which the new base year value was established. Ignoring the existing definition of the term "assessment year" found in section 118, the court interpreted the term to mean base year. The court justified its decision, in part, on the fact that the Legislature had provided

no express guidance on the correction of post-March 1, 1975 base year values.

Chapter 537 was the Legislature's response to the Dreyer's Grand Ice Cream decision. Briefly, it provides express authority for assessors to correct any error or omission in the determination of a base year value. Section 51.5(a) provides that if the error or omission does not involve the exercise of an assessor's judgment as to value it shall be corrected in any assessment year in which it is discovered. Subdivision (b) of section 51.5 provides that an error or omission in the determination of a base year value which involves the exercise of an assessor's judgment as to value may be corrected only within four years after July 1 of the assessment year for which the base year value was first established. Subdivision (d) requires appropriate cancellations or refunds of tax or escape assessments depending upon whether the correction reduces or increases the base year value. Chapter 537 also amends sections 531.2 and 532 by adding a clarification that the term "assessment year" means the period defined in section 118. In our view, this amendment and the statement of legtislative intent included in the measure overcome the interpretation made in the Dreyer's Grand Ice Cream case that the term "assessment year" really meant base year. The amendment restores these sections to their original meaning, as described above. Thus, after an error or omission in a base year value is corrected pursuant to the terms of subdivisions (a) or (b) of section 51.5, the assessor will then determine whether, applying the corrected base year value, any underassessments occurred in the base year or subsequent assessment years. To the extent an escape or underassessment is identified for any particular assessment year, section 532, as amended by Chapter 537, permits the assessor to make an escape assessment if it is made within four years after July 1 of that assessment year.

Turning to your example involving the steel building constructed in October of 1981 but not discovered by the assessor until September of 1988, the assessor is required by subdivision (a) of section 51.5 to correct the base year value omission. This correction can be made in 1988 because the omission did not involve the exercise of the assessor's judgment as to value. After making the base year value correction for the 1982-83 assessment year and the subsequent assessment years, the assessor would determine whether escapes or underassessments have occurred in any of those years. It is, of course, possible that even though the base year value is increased for the 1982-83 assessment year, that subsequent declines in the market value of taxpayer A's property resulted in a situation in which there were no underassessments, at least in those assessment years for which the assessor can still make a timely escape assessment. But if we assume that underassessments occurred in each of the assessment

years, then the assessor is required to make an escape assessment for each assessment year which falls within the period specified in section 532. If the escape assessments were made in September of 1988, it does not appear that an escape for the 1984-85 assessment year could be made since the time limit for that assessment year is July 1, 1988. Escape assessments could be made for all of the later assessment years, however.

Again, please accept my apologies for the delay in this response. I hope that the above comments will be helpful to you.

Very truly yours,

Richard H. Ochsner
Assistant Chief Counsel

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cc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Verne Walton
Mr. Dennis Miller
Mr. Arnold Fong
Mr. Mark Nisson