STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 323-7714

180.0064

WILLIAM M. BENNETT
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MATTHEW K. FONG
Fourth District, Los Angeles
GRAY DAVIS
Controller, Sacramento

BURTON W. OLIVER
Executive Director

October 10, 1991

Re: Judicial Doctrine of Res Judicata

Dear Mr.

In your letter of September 26 to Richard H. Ochsner, Assistant Chief Counsel, you asked for our response to the specific question: Does the doctrine of Res Judicata apply to a current assessment appeals board case from a decision of a previous appeals board case?

You relate that in 1985 the assessment appeals board classified your client's property as a fixture (not personalty) but later cases such as Crocker National Bank v. City and County of San Francisco, 49 Cal 3d 881 (1989) have shed additional light on that classification. It is your opinion that appeals board decisions are not precedent setting and that each years assessment stands on its own. You intend to appeal a 1989 audit wherein the assessor made the same classification on the property that was subject to the 1985 board decision.

Res Judicata is the rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action. Black's Law Dictionary, Fifth Edition.

In response to your question we have reviewed Chapter 1 of Part 3 of Division 1 of the California Revenue and Taxation Code and Sections 301 through 326 of Title 18 of the California Code of Regulations. In addition we reviewed the California judicial decisions that are annotated to those statutes and regulations. We have found no authority that either states or implies that the doctrine of Res Judicata is applicable to the decisions of local boards of equalization.

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,

James M. Williams

James M. Williams
Tax Counsel

JMW:jd
4159H

cc: Mr. John W. Hagerty
Mr. Verne Walton

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
LEGAL DIVISION (MIC:82)
450 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 323-7714

First District
BRAD SHERM
Second District, Los Ange
ERNEST J. DRONENBURG, .
Third District, San Die
MATTHEW K. FO
Fourth District, Los Ange
GRAY DAV
Controller, Sacramen
BURTON W. OLIVE
Executive Direct

April 30, 1993

Honorable Bradley L. Jacobs
Orange County Assessor
P.O. Box 149
Santa Ana, CA 92702

Re: Application of Res Judicata to Assessment Appeals

Dear Mr. Jacobs:

This is in response to your inquiry of April 2, 1993 wherein you forwarded extensive briefs that urge the Orange County Assessment Appeal Board to apply the judicial doctrine of **Res Judicata** to a pending appeal. This doctrine embodies the judicial rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action. Black's Law Dictionary, Fifth Edition. In California five elements are required for application. 1. the issue between the parties must be identical. 2. the judgment must be final on the merits. 3.the party asserted against must have been a party in the prior action. 4. the prior decision-maker must have been acting in a judicial capacity. 5. the precise issue must have been properly before the decision-maker.

All of the foregoing elements present legal determinations that are within the competence of one who has received legal training, such as a judge or lawyer-hearing officer. In contrast the appeals board is tasked to decide factual questions (much as a lay jury) which ultimately determines "the full value of an individual property", Revenue and Taxation Code, section 1610.8. If the AAB actually attempted to apply the doctrine, it would hear the applicant's presentation on the five elements, then the assessor's rebuttal and perhaps advice from their county counsel. It would then either make its own unqualified decision or adopt the recommendation of the county counsel and thus not make the decision. In the same amount of time it could probably hear and decide the factual, valuation issue in a qualified manner.

In contrast to AAB proceedings appellate judicial decisions are fully reported and readily available to the second decision-maker. Even trial courts issue memoranda of opinion which can be reviewed for determination of the five required elements. AAB findings are only available upon request to the applicant, not systematically reported and not available to the general public.

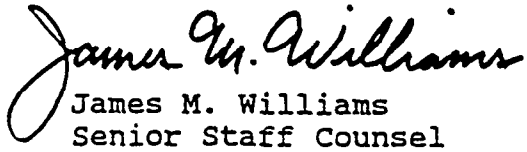
They are not designed to be used as legal precedent in a subsequent AAB hearing.

In many instances application of the doctrine would be extremely unfair to the assessor because his office is always one of the parties in every hearing. Consider a closely contested property whereupon his appraiser makes a valuation mistake that results in a decision in favor of the applicant. Should the assessor subsequently be prevented from correcting that mistake in the assessment of identical properties? More importantly, should the assessor have the right to use the doctrine against an applicant and prevent him from presenting the valuation facts of his appeal? See the attached copy of our response to an opinion request from a Los Angeles County taxpayer.

In the fourth paragraph of the attachment we point out that the legislature has not enacted any statutory incorporation of the doctrine for property tax appeals; similarly the State Board of Equalization has not adopted any rule to that effect, and no appellate court of this state has issued a reported decision that applies the doctrine to this administrative area of hearings. In addition I have reviewed **Taxing California Property**, Ehrman and Flavin, Third Edition and find no mention of it there.

Finally and most significantly a close look at **People v. Sims, 32 Cal. 3d (1982)**, a California Supreme Court decision, which is urged as authority for the application of Res Judicata, reveals that it provides absolutely no support. It involves an issue that was decided by a hearing officer in a social services hearing which was later asserted against the county, a party to the first hearing, in a superior court criminal trial. Note that it does not involve a property tax appeal, it does not involve the application of the doctrine from one administrative hearing agency to another,such as an AAB, and it does not involve untrained, lay board members. In Sims the issue was first decided and reported by a legally trained, administrative hearing officer but the doctrine was later interpreted and applied by a superior court judge. Here the circumstances were proper, the record was made and qualified, trained personnel applied the doctrine. That would not be the case from one AAB to another.

Very truly yours,



James M. Williams
Senior Staff Counsel

JMW:jd/93002
Equalizn
cc: Mr. John Hagerty, MIC:63
Mr. Verne Walton, MIC:64
Mr. Glen Rimbey, MIC:64
Honorable Virginia A. Loftus
Shasta County Assessor