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July 2, 1996

Honorable Kenneth A. Pettit
County Assessor-Recorder-Clerk
105 East Anapamu Street, Room 204
Santa Barbara, CA 93101-2062

Attention: Walter V. Alves
Chief Appraiser

Re: Assessment Appeal, Base Year Value and Sections 51.5 & 80

Dear Mr. Alves:

This is in response to your letter to me of May 3, 1996 in which you request our opinion on a variety of questions based on the following facts described in your letter.

1. The "original" property sold March 1992, for a purchase price of \$440,000.
2. The "replacement" lot was purchased, and new construction completed by February 1993, for a total cost of \$420,000.
3. The applicant timely filed for section 69.5 base year value transfer, and meets all qualifications, except for your opinion of base year value of the original property.
4. The original property was purchased by an oil company, along with several others in the city block, as the property was a "tank farm" prior to subdivision and crude oil was uncovered just below the land surface.
5. The full cash value, on the transfer date was never enrolled, as "contamination" was reported by the purchaser, and a

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diminished value, based upon the existing conditions, was enrolled.

6. The section 69.5 applicant's agent filed an application for changed assessment on August 4, 1995, with the original property as the subject of the application.
7. The AAB has determined that it will, on its own motion, hear the base year value issue on the original property and also the base year value issue on the replacement property.
8. The AAB will establish a base year value for each property after a full and proper hearing involving each property, with the expressed purpose of determining value for possible qualification under Section 69.5.

The hearing on the value of each property has not been rescheduled, but will probably occur in July. You cannot prejudge what evidence will be most convincing, but assuming that (1) the base year value of the original property is increased, or (2) the base year value of the replacement property is decreased, or (3) both are adjusted, resulting in values which now qualify under section 69.5, you ask the following questions:

- A. Under item (1), the increase in the base year value of the original property:
 1. Does the appeal year, under the AAB's own motion, become 1993-94 or the year of its decision to hear, i.e., 1995-96?

Response: 1993-94. In our view, section 80 is applicable to challenge the base year value of the replacement dwelling on the ground that all of the requirements of section 69.5, including satisfying the equal or lesser value test, have been met and that the base year value of the original property, therefore, should be transferred to the replacement dwelling. Section 80, subdivision (a)(5) provides that any reduction in assessment made as a result of an appeal under that section shall apply for the assessment year in which it is taken and prospectively thereafter. Nothing in Section 80, however, suggests that the same rule should apply with respect to increases in value made as a result of an appeal under section 80. Thus, if the AAB determines a higher value for the original property in the course of determining values for the possible application of section 69.5, such increase, in our opinion, is effective for the date as of which the

change in ownership occurred and would apply for the 1993-94 year for regular roll purposes.

2. Does section 51.5 (c) allow the substitution of the AAB "judgment" for that of the assessor's?

Response: Yes. Section 51.5 (b) provides that any error or omission in the determination of a base year value which involves the assessor's judgment as to value may be corrected only if it is placed on the current roll or roll being prepared, or is otherwise corrected within four year after July 1 of the assessment year for which the base year value was first established.

Section 51.5(c) provides that an error or omission involving the exercise of an assessor's judgment as to value shall not include errors or omissions resulting from the taxpayer's fraud, concealment, misrepresentation, or failure to comply with any provision of law for furnishing information required by sections 441, 470, 480, 480.1, and 480.2 or from clerical errors.

Subdivisions (b) and (c) of section 51.5 thus address limitations on the right of the assessor to make base year value corrections under section 51.5 generally. In enacting section 51.5, the Legislature determined that "fairness and equity require that county assessors have express authority to make corrections to property tax base-year values whenever it is discovered that a base year value does not reflect applicable constitutional or statutory valuation standards or the base-year value was omitted." (§1(a) of Stats. 1987, Ch. 537.) Section 51.5, therefore, is a procedure for assessors to correct errors in base year value which is distinct from the procedure used by taxpayers and the AAB under section 80 to correct errors in base year values. See Sea World Inc. v. County of San Diego (1994) 27 Cal. App. 4th, 1390, 1403-1407. Thus, section 51.5 (c) does not preclude the substitution of the AAB's judgment for that of the assessor.

Moreover, Rule 324(a) provides that the AAB "shall determine the taxable value of the property . . . which is the subject of the hearing." In that event, the decision of a county board constitutes an independent and conclusive judgment abrogating and taking the place of the judgment of the assessor. Eastern-Columbia, Inc. v. Los Angeles County (1943), 61 Cal. App 2d 734, 743; McClellan v. Board of Supervisors (1947) 30 Cal. 2d 124, 129.) Section 51.5(c) does not provide to the contrary.

3. If the answer is "no" to #2., does section 51.5(d) require any change to be made in the taxable value for 93-94?

Response: No. In our opinion, the answer to #2. is "yes". We note, however, that section 51.5(d) does not require a change in taxable value to be made in any event. Instead, it states what action is required when a correction of base year value under subdivisions (a) or (b) of section 51.5 is made by the assessor, i.e., refunds or cancellations if the correction reduces the base year value and escape assessments if the correction increases the base year value.

4. If the answer is "yes" to #2., do the AAB findings require the enrollment of escaped billing of the newly determined base year value?

Response: Yes. Section 531 provides, in part, that "[i]f any property . . . has escaped assessment, the assessor shall assess the property on discovery at its value on the lien date for the year for which it escaped assessment." This rule has been held to apply as well to property which has been underassessed. See, e.g., Hewlett-Packard Co. v. County of Santa Clara (1978) 50 Cal. App. 3d 74. Thus, when the assessor discovers, as a result of the AAB's decision, that the original property had been undervalued as of the date the change in ownership occurred, the assessor must make escape assessments for each year there was an underassessment resulting from such undervaluation.

5. If the answers to #2. and #3. are no, and the answer to #1. is 95-96, is section 80 controlling?

Response: No. By its terms, section 80 applies only with respect to applications for reductions in base year value, not increases. See also our response to #1., above.

6. Section 80(a)(5) speaks to reductions. Does it also apply to increases so as to be prospective only?

Response: No. See our response to #5., above.

7. Finally, if section 80 is controlling, does this determination satisfy the mandate of new base year value under section 69.5(e), perhaps suggesting retrospectively?

Response: Subdivision (e) of section 69.5 provides:

Upon the sale of original property, the assessor shall determine a new base year value for that property in accordance with subdivision (a) of Section 2 of Article XIII A of the California Constitution and Section 110.1, whether or not a replacement dwelling is subsequently purchased or newly constructed by the former owner or owners of the original property.

This section shall not apply unless the transfer of the original property is a change in ownership which either (1) subjects that property to reappraisal at its current fair market value in accordance with Section 110.1 or 5803 or (2) results in a base year value determined in accordance with this section or Section 69, or Section 69.3 because the property qualifies under this section or Section 69, or Section 69.3 as a replacement dwelling or property.

As indicated above, section 80 does not apply with respect to base year value increases. Thus, any base year value increase determined by the AAB for the original property is effective as of the date of the change in ownership of the original property.

B. Under item (2), the reduction in the full cash value of the replacement dwelling:

1. Does the appeal year, under the AAB's own motion, become 1993-1994 or the current year of its decision to hear, thus 1995-1996?

Response: 1995-1996. As discussed above, section 80 is applicable for purposes of claiming a base year value reduction of a replacement dwelling as a result of transferring the base year value of the original property to the replacement dwelling under section 69.5. An application for reduction of base year value under section 80 may be filed during the regular equalization period for the year in which the assessment is placed on the roll or in any of the three succeeding years. (§80, subd. (a)(3).) Any reduction in assessment made as a result of an appeal under section 80 shall apply for the assessment year in which the appeal is taken and prospectively thereafter. (§80, subd. (a)(5).) Since the appeal was filed in August 1995, the appeal year for the replacement dwelling would be 1995-1996.

We realize that the original property was made the subject of the appeal. Rule 324(b) provides, however, that the Board's authority to determine the taxable value of property, while limited by state and federal law and usually

exercised in response to an application for equalization, " is not ... limited by the applicant's request for relief." Thus, the AAB had the authority to treat the appeal as a request for reduction of the base year value of the replacement dwelling under section 80 based on the application of section 69.5.

2. The question is the same as #2., above.

Response: Our response is the same as our response to #2., above, i.e., yes.

3. The question is the same as #3., above.

Response: Our response is the same as our response to #3. above, i.e., yes.

4. If the answer is "yes" to #2., does the reduction cause the transferred base year value to be enrolled for 1993-1994?

Response: No. It is important to recognize that the base year value referred to in section 80 is a control figure, not the amount entered on a particular assessment roll. While it is true that the amount of the base year value and the amount entered on the roll for a particular year may be the same, the two concepts should not be confused. As discussed under our response to question #B. 1. above, any reduction in base year value under section 80, including a reduction resulting from the transfer of a base year value pursuant to section 69.5, applies only for the assessment year in which the appeal is filed and prospectively thereafter. This is so even though the base year value which is reduced is for an earlier year. See Osco Drug, Inc. v. County of Orange (1990) 221 Cal. App. 3d 189. The purpose of this provision was to prevent retroactive relief to a taxpayer who slept on his rights. Presumably, the Legislature believed that the base year value reduction should not adversely affect the county for prior years when an appeal was available but the taxpayer failed to file it. Thus, while a new 1993 base year value would be established for the replacement dwelling, pursuant to section 69.5, such reduced base year value would not affect any assessment prior to 1995 because no appeal was filed until 1995.

5. If the answers to #2. and #3. are "no", and the answer to #1 is "95-96", is section 80 controlling?

Response: See our response to #A. 4., above.

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6. Finally, if section 80 is controlling, does this permit qualification for section 69.5 for 95-96 and following only, since it is within the 3 year filing qualifications?

Response: See our response to # A. 4., above.

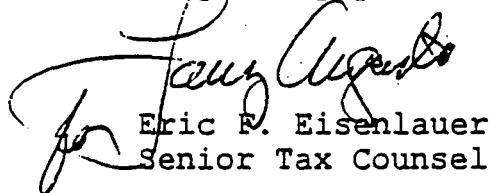
- C. Under item (3), the adjustment of both properties:

If Section 80 is controlling and thus the original property's base year value is 95-96 and prospectively and its increase is needed along with the reduction of the base year value of the replacement dwelling to qualify under section 69.5, is the new base year value test under section 69.5(e) met?

Response: See our response to #A. 7., above.

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,



Eric F. Eisenlauer
Senior Tax Counsel

EFE:sao

cc: Mr. James Speed - MIC: 63
Mr. Richard Johnson - MIC: 64
Ms. Jennifer Willis - MIC: 70