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State Controller, Sacramento

JAMES E. SPEED
Executive Director

July 5, 2002

RE: *Application of Revenue and Taxation Code Section 69.5, Subdivision (g) – Request for Opinion Letter*

Dear Mr. _____ :

This is in response to your June 18, 2002 letter to the Honorable Dean Andal, Board Member Second District, in which you request our opinion regarding the facts contained in your Petition for Writ of Mandate (filed in Superior Court) to set aside the recent decision of the County Assessment Appeals Board (AAB) denying your application claim for the benefit under Revenue and Taxation Code section 69.5. Upon the sale of your original property, the assessor determined that the fair market value was \$170,000 and enrolled that amount as the new base year value. However, you state that the purchase price of the home was \$190,000 which would qualify for the transfer of the base year value from the original property to the replacement dwelling for which you paid \$190,000. You have asked that Board legal staff review the facts and provide you with an opinion letter to be used at trial.

As you are aware, eligibility for the benefit depends upon the factual circumstances, such as valuation for the purpose of comparison, to be determined by the trier of fact. For that reason, we decline to give an opinion or determination on the factual issues and instead address the two significant legal issues involved, based on our review of the materials submitted. As explained below, it is our position that 1) a properly filed application by a claimant vests an AAB with jurisdiction to determine whether the claimant meets the requirements of section 69.5 (including the full cash value of the original property under section 69.5, subdivision (g)(2)); and 2) the purchase price presumption in Property Tax Rule 2, subsection (a) requires that the party asserting that the full value is other than the purchase price bears the burden of proving that the sale price was different.

Question 1. Does the Assessment Appeals Board have jurisdiction to hear and decide an application appealing the assessor's determination of full cash value of the original property for purposes of qualification based on the value comparison required by section 69.5 ?

Response: Yes. Article XIII, section 16 of the California Constitution provides in relevant part that “[e]xcept as provided in subdivision (g) of Section 11, the county board of equalization, under such rules of notice as the county board may prescribe, shall equalize the values of all property on the local assessment roll by adjusting individual assessments.” The court of appeal has interpreted article XIII, section 16 (former section 9) to grant assessment appeals boards the broad authority “to equalize the valuation of taxable property within their jurisdiction. *Firestone Tire & Rubber Co. v. County of Monterey* (1990) 223 Cal.App.3d 382, 387; *County of Sacramento v. Assessment Appeals Bd. No. 2* (1973) 32 Cal.App.3d 654, 662.

Revenue and Taxation Code section 1601 *et seq.* provide statutory requirements and procedures for the assessment appeals boards and the appeal process. The State Board of Equalization has adopted regulations, Title 18, California Code of Regulations, Sections 302 through 326 (referred to as Property Tax Rules) that implement the constitutional and statutory provisions that define the jurisdiction of and grant authority to assessment appeals boards. Property Tax Rule 302 provides, in relevant part, that the functions of an appeals board include

- (a) To lower, sustain, or increase upon application, or to increase after giving notice when no application has been filed, individual assessments in order to equalize assessments on the local tax assessment roll,
- (b) To determine the full value and, where appealed, the base year value of the property that is the subject of the hearing.

Property Tax Rule 301, attached, defines a party affected or a person affected as “any person or entity having a direct economic interest in the payment of property taxes on the property for the valuation date that is the subject of the proceedings . . .”

Your application appealed the assessor’s denial of your claim for base year value transfer pursuant to section 69.5. The denial resulted in a higher assessed value for the replacement property which you contend qualifies for a transfer of the base year value of the original property. The subject of the application and the proceedings was the replacement property on which you, as the owner, have a direct economic interest in the payment of the property taxes for the valuation date, i.e., the date of the change in ownership. Thus, you are a party affected within the meaning of Rule 301 and entitled to full hearing on the merits of the application.

The issue that the board must determine for purposes of qualification is whether the full cash value of the original property was \$190,000 and not the \$170,000 value determined by the assessor’s office. If the board finds in your favor, the current owner of the original property would incur an increased tax liability based on the higher base year value of \$190,000. Consequently, the current owner of original property must be afforded due process by providing an opportunity to be heard by the Board. Moreover, the current owner is a party affected who has a direct economic interest in the payment of the property taxes on the original property. Therefore, the appeals board must notify the current owner of its intention to hear and decide an application appealing the denial of a section 69.5 claim for transfer of base year value when such a hearing involves a determination of value for the original property. The current owner has the right to participate as a party to the matter in the same manner as the applicant.

As indicated by the foregoing discussion, we disagree with the county's position, set forth on page 8 of the Demurrer to the Petition for a Peremptory Writ of Mandate, that your application constituted only a *request* that the appeals board exercise its jurisdiction to equalize an assessment. The county cites *Stevens v. Fox Realty Corp.* (1972) 23 Cal.App.3d 199, 205 for its view that "the board has discretion to consider such an application on its own accord, but need not elevate the applicant to the status of a party to an assessment hearing." Following the procedure approved by the court in *Stevens*, the appeals board held a preliminary hearing in order to determine whether to exercise its jurisdiction to hear the matter.

In our view, the county's reliance on *Stevens* is misplaced. In *Stevens*, the application was filed by a third party who sought an increase in the assessed value of property owned by another party. The applicant had no economic interest in any property that was subject of the hearing and, thus, was not a party affected within the meaning of Rule 302. As discussed above, unlike the applicant in *Stevens*, you are a party affected in the appeal of the claim denial. Thus, when you filed your application, the appeals board was required to exercise jurisdiction to hear and decide the application. The board should have held a full hearing on the merits, rather than a preliminary hearing on whether to exercise its jurisdiction.

Question 2. Is the Assessment Appeals Board bound by Property Tax Rule 2, which creates a rebuttable presumption that the consideration valued in money is the full cash value of the property?

Response: Yes. In the exercise of its equalization function, an assessment appeals board is required to follow validly enacted statutes and validly adopted regulations. As the Assessment Appeals Manual explains on page 17, "[t]he assessment appeals process is governed by substantive and procedural law derived from constitutional provisions and implemented by statutes, regulations and local rules." Title 18, Public Revenue, Division 1, Chapter 1 of the California Code of Regulations is the main body of regulations implementing and interpreting the statutes governing property tax assessment and the assessment appeals process. These regulations are commonly referred to as the Property Tax Rules. Property Tax Rule 1 expressly provides, in relevant part, that "[t]he rules in this subchapter govern assessors when assessing [and] county boards of equalization and assessment appeals boards when equalizing." Rule 2 immediately follows Rule 1 and, thus, clearly governs an appeals board in a hearing and decision on an assessment.

In a number of decisions, the court of appeal has held that property tax rules are binding legal authority on assessors and assessment appeals boards. For example, in *Main & Von Karman Associates v. County of Orange* (1994) 23 Cal.App.4th 337, the court held that the appeals board improperly based its value determination on comparable sales data which was not adjusted to reflect the difference between the subject property and comparison properties as required by Property Tax Rule 4.

The so-called "purchase price presumption" is set forth in Rule 2, subsection (b) which provides, in relevant part, that

when valuing real property (as described in paragraph (a)) as the result of a

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change in ownership (as defining in Revenue and Taxation Code, Section 60, et seq.) for consideration, it shall be rebuttably presumed that the consideration valued in money, whether paid in money or otherwise is the full cash value of the property.

Property Tax Rule 313 establishes the “purchase price presumption” as a rule of hearing procedure. Subsection (c) of the rule requires that assessor bears the initial burden of production and the burden of proof on the assessor when the hearing involves

a change in ownership and assessor has not enrolled the purchase price, and the applicant has provided the change of ownership statement required by law. The assessor bears the burden of proving by a preponderance of the evidence that the purchase price, whether paid in money or otherwise, is not the full cash value of the property.

For further explanation, the Assessment Appeals Manual on page 83 discusses in more detail the application of the presumption as a valuation and procedural matter.

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Very truly yours,

/s/ Lou Ambrose

Lou Ambrose
Supervising Tax Counsel (Acting)

LA:tr

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Attachments

cc:

Honorable Dean Andal
Board Member Second District
Mr. David Gau, MIC:63
Chief - PPSD, MIC:64
Ms. Jennifer Willis, MIC:70