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June 29, 2001

Honorable Gus S. Kramer, Assessor
County of Contra Costa
834 Court Street
Martinez, CA 94553

Attention: Jim Lynch

RE: Rescission Deeds.

Dear Mr. Lynch:

This is in reply to your letter dated April 12, 2001 to Assistant Chief Counsel Larry Augusta regarding the change in ownership consequences related to the rescission of a grant deed to property.

As discussed further below, it is our opinion that the rescission of a transfer of real property may "relate back" to its formation and dissolve a transfer as though it had never been made. A rescission has the result of returning the parties to a transaction to their original position prior to the reappraisal of the subject property taking effect, so that a property reverts back to its previous base year value with appropriate inflation factor adjustments. However, a rescission can only be applied prospectively and no refund of taxes is available to the parties for the period of time under which a deed transfer is treated as a change in ownership.

Factual Background

As detailed in your letter, Person A purchased a home on August 10, 2000 from Person B. After Person A acquired title, Person A found defects in the property and commenced legal action against Person B. The parties pursued mediation to resolve the matter. The mediation resulted in a return of the property to Person B on March 24, 2001, by way of a rescission deed.

For the reasons set forth below, the answers to the questions you posed are as follows:

1. When a contract for the sale of real property is rescinded, either by mutual consent of the parties, by court order, or otherwise, may an assessor's office cancel the original transfer (e.g., August 10, 2000) and valuation adjustment which recognized a change in ownership of the property? **NO. REGARDLESS OF THE RESCISSION, THE ORIGINAL TRANSFER IS RECOGNIZED AS A CHANGE IN OWNERSHIP.**

2. Does a rescission deed have to be approved by a court order to be recognized by an assessor's office? **NO. PARTIES MAY MUTUALLY CONSENT TO A RESCISSION ABSENT A COURT ORDER.**
3. When parties record a rescission deed, does an assessor's office restore the base year value of the original transferor (e.g., Person B) as of the date of recordation (e.g., March 24, 2001)? **YES, WITH THE APPROPRIATE INFLATION FACTOR ADJUSTMENTS.**
4. Is there a distinguishable passage of time that can be used to determine whether an original transaction is considered to be a transfer? In other words, is an assessor obligated to revalue a property and subsequently restore the property's original base year value after the rescission of a short-lived transaction, such as a transaction only 2 or 3 weeks in length, in contrast to the rescission of a contract occurring 2 years after execution? **AN ASSESSOR IS OBLIGATED TO RECOGNIZE A CHANGE IN OWNERSHIP, REGARDLESS OF THE LENGTH OF THE OWNERSHIP, AND ENROLL A SUPPLEMENTAL ASSESSMENT.**

Law and Analysis

The rescission of a transfer of real property may "relate back" to its formation and dissolve a transfer as though it had never been made. *Long v. Newlin* (1956) 144 Cal.App.2d 509. Each party to a transaction must restore, or offer to restore, to the other party all of the consideration which was received under the contract of sale, upon the condition that the other party do likewise, unless the other party is unable or positively refuses to do so. Civil Code section 1691, subdivision (b). Upon rescission, a contract becomes a nullity and each of its terms and provisions cease to exist and are unenforceable against the other party. *Holmes v. Steele* (1969) 269 Cal.App.2d 157.

Parties to a contract of sale may, on their own accord, mutually consent to the rescission. The provisions of the Civil Code do not require a court order or approval for a contract rescission to be valid when the parties to the contract mutually agree to rescind. Thus, a rescission deed does not have to be approved by a court order to be recognized by an assessor's office.

A rescission has the result of returning the parties to a transaction to their original position prior to the reappraisal of the subject property taking effect. In the property tax context, however, should parties resort to the rescission of a contract, the rescission can only be applied prospectively and no refund of taxes is available to the parties for the period of time under which a deed transfer is treated as a change in ownership, as the deed is effective for that period of time. This is so because property taxes are determined by the facts that exist as of the lien date or the date of change in ownership for the supplemental roll. *Doctors General Hospital v. County of Santa Clara* (1957) 150 Cal.App.2d 53.

Thus, the rescission of an original transfer will not provide any relief from increases in property tax which vest and become liens on a property prior to the date of rescission. An assessor's office is precluded from canceling an original transfer and valuation adjustment since, as discussed above, property taxes are determined by the facts as they exist on the lien date and these facts recognize deeds and other recorded documents which indicate changes in ownership. However, since the purpose of a rescission is to return the parties to their original position prior to the reappraisal of the subject property taking effect, the recording a rescission deed is not considered a change in ownership. Rather, the rescission deed causes a property to revert back to its previous base year value and it should be enrolled at that value with appropriate inflation factor adjustments.

With the recording of the March 24, 2001 deed here, the parties are returned to the same position they stood in before the execution and recording of the grant deed on August 10, 2000, since the effect of a rescission is to extinguish the deed. Thus, with the conveyance of title back to Person B, there is no change in ownership and the property reverts back to its previous base year value with appropriate inflation factor adjustments. However, the rescission of the contract of sale will not provide any relief for the increase in property taxes due to the August 10, 2000 transfer to Person A. Thus, the assessor's office may not "cancel" the original transfer nor "cancel" the valuation adjustment due to the August 10, 2000 transfer. The August 10, 2000 transfer is recognized as a change in ownership of the subject property.

Finally, regarding the minimum passage of time necessary to recognize an original transfer, if property vests in a purchaser, a reappraisable event occurs at the time the property changes ownership. If the transfer is later rescinded, such rescission has no effect on the property taxes determined due on the date of the change in ownership. A change in ownership occurs on the date the present beneficial interest in property transfers. The length of that ownership is irrelevant.

Section 75.11, subdivision (c) provides for the enrollment of net supplemental assessments when there are multiple changes in ownership of property during the same assessment year. Thus, an assessor is obligated to recognize multiple changes in ownership within a short period of time. Although section 75.41, subdivision (b) requires an auditor to compute the supplemental tax liability according to a proration factor which presumes that a change in ownership event occurred on the first day of the month following the actual event date, this section does not conflict with nor impact an assessor's duty to issue supplemental assessments, including net supplemental assessments, in accordance with section 75.11, subdivision (c). The computation of supplemental tax liabilities by the auditor is distinct from an assessor's obligation to enroll the supplemental assessments related to the change in ownership of a property. The multiple supplemental assessments and the proration of taxes are discussed in the attached chapter of the State Controller's *County Tax Collectors' Reference Manual*.¹

¹ Please note in particular Paragraphs 3106 and 3110 of the chapter.

Honorable Gus S. Kramer

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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/ Anthony Epolite

Anthony Epolite
Tax Counsel

Attachments: Property Tax Annotations 220.0595, 220.0596, & 220.0597
County Tax Collectors' Reference Manual, Chapter 3000

ASE:eb

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cc: Mr. Dick Johnson, MIC:63
Mr. David Gau, MIC:64
Mr. Charlie Knudsen, MIC:62
Ms. Jennifer Willis, MIC:70