STATE OF CALIFORNIA

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TO COUNTY ASSESSORS:

BASE-YEAR VALUE CORRECTIONS AND ESCAPE ASSESSMENTS
SENATE BILL 587 - 1987

Chapter 537 of the Statutes of 1987 (Senate Bill 587) became effective January 1, 1988. This Board-sponsored legislation adds and amends sections of the Revenue and Taxation Code relating to base-year value corrections and escape assessments.

In the case of Dreyer's Grand Ice Cream, Inc. v. County of Alameda, 178 Cal.App.3d 1174 (1986), the court left several issues open to interpretation when it ruled that the four-year statute of limitations on escape assessments "...begins to run from the time when the base-year value of the property was originally determined under Proposition 13,..." and not, as the Board had previously advised assessors, "...from the assessment year in which the property, in all or in part, escaped taxation."

Because the facts in Dreyer's related to an underassessment situation, it was not clear whether the same four-year rule would apply where property completely escaped taxation. Additionally, since the court's decision was based solely on Proposition 13, the effect on escape assessments on personal property (not governed by Proposition 13) was ambiguous. Chapter 537 is intended to clarify some of the questions raised by the Dreyer's decision.

Section 51.5

Newly added Section 51.5(a) states:

> "Notwithstanding any other provision of the law, any error or omission in the determination of a base-year value pursuant to paragraph (2) of subdivision (a) of Section 110.1, including the failure to establish that base-year value, which does not involve the exercise of an assessor's judgment as to value, shall be corrected in any assessment year in which the error or omission is discovered." (Emphasis added.)

Section 51.5(b) reads:

> "An error or an omission described in subdivision (a) which involves the exercise of an assessor's judgment as to value may be corrected only if it is placed on the current roll being prepared within four years after July 1 of the assessment year for which the base-year value was first established." (Emphasis added.)

Thus, for errors involving value judgment, the new law is consistent with the interpretation by the court in Dreyer's, while in the case of nonjudgmental errors, the assessor's duty to correct base-year values whenever such errors are discovered is reaffirmed.

Although there is no direct definition of the meaning of "an error or an omission involving the exercise of an assessor's judgment as to value," Section 51.5(c) provides that the term does not include errors or omissions resulting from the taxpayer's fraud, concealment, misrepresentation, failure to provide information required by law, or clerical errors. This list is not necessarily exclusive, however. The term would also not include, for example, a mistake of law that a particular transaction did not constitute a change in ownership or certain activities did not result in new construction. Correction of the base-year value for these types of errors could occur in any year since they do not involve the assessor's judgment as to value.

Section 51.5(d) provides that appropriate cancellations or refunds shall be granted for reductions in the base-year value, while appropriate escape assessments shall be imposed when corrections authorized by Section 51.5 increase the base-year value. Note that this provision does not authorize roll corrections pursuant to Section 4831.

Section 51.5(e) provides a specific standard of proof to be applied in establishing the existence of a clerical error. Where the base-year value correction is made within four years after July 1 of the assessment year for which the base-year value was first established, the existence of the clerical error need be proved by only a preponderance of evidence. If the correction to the base-year value is made more than four years after July 1 of the assessment year for which the base-year value was first established, then the existence of the clerical error must be proved by clear and convincing evidence. This is a higher standard of proof which falls between a mere preponderance of the evidence and proof beyond any reasonable doubt. Subdivision (e) expressly recognizes that papers in the assessor's office can be used in achieving this standard of proof. Further, the subdivision specifically recognizes that the standard of proof applicable to proving the existence of a clerical error does not change the standard of proof applicable to a determination of the value of property. Thus, the clear and convincing standard has no application to valuation questions.

Section 51.5(f) provides that the term "assessment year" means the period defined in Section 118. It also defines "clerical errors" as defects of a mechanical, mathematical, or clerical nature, not involving judgment as to value, where it can be shown from the papers in the assessor's office or other evidence that the defect resulted in a base-year value that was not intended by the assessor at the time it was determined. It should be noted that only errors which fall within the terms of this definition may be classified as clerical errors. The term is not intended to be used as a catch-all phrase encompassing every category of problem which the assessor wishes to correct.

Section 80

This section is amended to conform with newly added Section 51.5 by providing that after a correction is made to a base-year value according to Section 51.5, the assessee may file an application for equalization of the base-year value during the appropriate equalization period for the year in which the correction is made or in any of the three succeeding years.

Sections 531.2 and 532

Sections 531.2 and 532, relating to escape assessments, are amended to clarify that the term "assessment year" means the period defined in Section 118; that is, from a given lien date to the next succeeding lien date. Included in this legislation is an express legislative finding which reads in part:

> "...the amendments to Sections 531.2 and 532...are necessary to make clear that an escape assessment resulting from the correction of an error in a base-year value may be made within four, six, or eight years, as applicable, after the first day of July of the assessment year, as defined in Section 118...,in which the property either wholly escaped taxation or was underassessed, as determined by applying the applicable Article XIII A valuation standards."

If, for example, new construction takes place in 1980 but is not discovered and entered in the assessor's records until 1988, the assessor may correct the base-year value of the property for 1980 and each year thereafter to reflect the new construction plus the appropriate inflation adjustments. After making the appropriate adjustments to the base-year value for 1980 and years thereafter, the assessor will review the enrolled value for those years to determine whether any underassessments occurred. While correction for previously undiscovered new construction would normally result in underassessments, it is possible that a subsequent market value decline in the property prevented any underassessment in certain years. Escape assessments must be made for any underassessments that are identified for 1980 or subsequent years provided that the escape for each underassessment is made within four years (or six years in the case of fraud, or eight years in

the case of an unreported change in ownership) after July 1 of the assessment year for which the property was underassessed.

Enclosed is a copy of Senate Bill 587 for your information. Please call our Real Property Technical Services Section at (916) 445-4982 if you have any questions concerning this matter.

Sincerely,

Verne Walton

Verne Walton, Chief
Assessment Standards Division

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Enclosure