

Memorandum

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To: Mr. Bill Minor
Staff Services Analyst - MIC:64

Policy, Planning & Standards Div.
State Board of Equalization

Date: August 15, 1997

From: Daniel G. Nauman *DGN*
Tax Counsel

Subject: Homeowners' Exemption/Tax Roll Corrections

Enclosed please find a copy of our response to the correspondence from the San Diego County Assessor's Office which you forwarded to Larry Augusta with your July 9, 1997 memorandum. In your memorandum, you raised the possibility that San Diego's apparent error in failing to send the homeowners' exemption claim form to the taxpayer's correct address might be correctable under the provisions of Rev & Tax Code §4831. I did not address that issue in our response to the assessor's office, and I wanted you to know why, in case you may have discussed this with Ms. Carter and you might get a call on it.

Section 4831, read at initial face value, can be deceiving. Its language, that "any error resulting in incorrect entries on the roll may be corrected..." could indeed mislead one into believing that this section provides a broad "correct-all" for any mistakes in the assessment process that ultimately lead to an erroneous assessment. However, when it is understood contextually and historically, it is clear that this section applies only to clerical type defects or errors in the process of putting together the assessment roll itself, such that the roll does not reflect what the assessor intended when putting it together. Examples might be mathematical miscalculations, erroneously transcribed numbers, or an improper property identification.

Section 4831 has been amended numerous times, and a review of its prior provisions is helpful to understand its intended scope. For example, prior to the 1979 amendments, which put the section in substantially its present format (St. 1979 ch. 516 §8 p.1694), subdivision (a) provided in relevant part: "When it can be ascertained from an inspection of the property, the records of the assessee, or from the roll or any papers in the assessor's office what was intended, or what should have been assessed, defects in description or form or clerical errors of the assessor ... or other errors of the assessor not involving the exercise of judgment as to value which result in the entry on the roll of assessed values other than those intended by the assessor, ... may be corrected under this article at any time after the roll is delivered to the auditor and prior to the expiration of four years after the making of the assessment which is being corrected."

The California Supreme Court has held, in United States Borax & Chemical Corp. v. Mitchell (1980) 27 Cal.3d 84, 91:

In general, this statute was intended to provide the assessor with a simple and efficient mechanism for correcting clerical defects or errors that were discovered after the assessment roll had been completed and delivered to the auditor. Unlike the escape assessment procedure embodied in Revenue and Taxation Code section 531 et seq., through which an increase in an improperly low assessment can be secured whether the underassessment was due to a clerical error, an error in judgment, or otherwise (see *Bauer-Schweitzer Malting Co. v. City and County of San Francisco* (1973) 8 Cal.3d 942 [106 Cal.Rptr. 643, 506 P.2d 1019]; *Hewlett-Packard Co. v. County of Santa Clara* (1975) 50 Cal.App.3d 74 [123 Cal.Rptr. 195]), the correction procedure of section 4831 was reserved for errors of a clerical nature which did not involve the assessor's "judgment as to value." Moreover, under the terms of former section 4831, subdivision (a) -- the provision which governs the present case -- the correction of even clerical errors pursuant to this procedure was proper only when it could be ascertained from an inspection of certain designated sources that such an error had in fact occurred.

"The manifest intention of the legislature was to more narrowly define the terms of the grant of power, so that after equalization no changes might be made except those of a purely clerical or formal nature..." *Southwest Land Co. v. Los Angeles Co.* (1920) 46 Cal.App. 9, 14. See also *Pasadena University v. Los Angeles Co.* (1923) 190 Cal. 786, 793.

As noted above, in 1979, § 4831 was amended by the legislature into substantially its present format (i.e., "Any error..."). A review of the legislative history of SB 839, the bill which made the amendment, establishes that this bill was Board-sponsored housekeeping legislation proposing "technical changes to property tax laws". The explanation for the change to § 4831 provided to the legislature, and adopted in committee analysis, was:

Section 8 clarifies and simplifies the substance of Section 4831 of the Revenue and Taxation Code. This section provides for the correction of the assessment roll if the assessor has made an erroneous entry. However, over the years the section has become so complex as a result of numerous piecemeal amendments that assessors are uncertain when it should be utilized. Consequently, some county assessors are very reluctant to recommend roll corrections while others use the section perhaps too liberally. The intent of this proposed change is to clarify the meaning of the section without changing its substance. (Emphasis added.)

The Supreme Court in *United States Borax*, supra, took note of this amendment, and in dicta observed that its effect was to "delet[e] the evidentiary limitations formerly embodied in the statute." 27 Cal.3d at 92 n2. The evidentiary limitations noted by the court referred to the ability to correct only errors "ascertained from an inspection of the property, the records of the assessee, or from the roll or any papers in the assessor's office", as opposed to other parole evidence. It is likely, therefore, that the amendment to § 4831 may, in fact, be interpreted to have changed "its substance" in this regard, notwithstanding the explanation noted above under which the Legislature considered this amendment. However, there is no indication in the legislative history of SB 839 or

in United States Borax that the scope of § 4831 was intended to be expanded beyond that which existed before that amendment.

The purpose of §4831, then, is to permit corrections of a clerical or formal nature so that the roll actually reflects the intent of the assessor when compiling it. It is not intended to allow correction of errors involving value judgments or related to aspects of the assessment process not involving producing the assessment roll. For example, in the question raised by the San Diego County Assessor's office, the assessor error was in incorrectly recording the mailing address of the purchaser of the property, and therefore failing to mail a claim form for the homeowner's exemption to him. As a consequence, the homeowner failed to timely file for the exemption. This did not constitute an error in producing the assessment roll. When the assessor placed this property on the roll at its full cash value, it was what he intended to do. No affidavit having been filed, the property was intentionally placed on the roll showing no homeowners' exemption. Thus, §4831 cannot properly be utilized to correct the roll to reflect the intention of the assessor, since the roll already reflected that intention when it was prepared.

Finally, a contrary interpretation of § 4831 in this instance would result in the granting of an exemption that, pursuant to Article XIII, § 6, has been deemed waived.

On a side note, Rev & Tax Code § 255.3 was not intended to be the sole source of information about the homeowners' exemption for taxpayers. Not only, as we noted in our letter to the assessor, did the Legislature specifically provide that failure to receive the mailed claim form does not excuse timely filing of the required affidavit, but the obvious purpose of Property Tax Rule 135(a)(1) is to make claim forms easily accessible.

On another side note, please note that if an assessor's office did attempt to make a correction of this type under § 4831, it would result in a decrease in the amount of unpaid taxes. As such, the provisions of § 4835 would be called into effect, and the consent of the county board of supervisors would be necessary to the correction.

If you have any questions, or if you would like to discuss any of the above, do not hesitate to call me (324-2655).

DGN:ba

cc: Mr. Richard C. Johnson - MIC:64

Mr. Peter Gaffney - MIC:64

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