State of California

580.0021

Board of Equalization

Memorandum

To : Verne Walton

Date : August 31, 1990

From : Jim Williams

Subject : Mandatory Audit Definition (Revenue and Taxation Code Section 469, Rule 192)

In your memo of August 8, 1990 you asked our concurrence in the interpretation of Revenue and Taxation Code section 469 which would preclude the the double-counting of leased property in the ascertainment of the mandatory audit limit.

Section 469 provides in pertainent part:

> In any case in which locally assessable trade fixtures and business tangible personal property owned, claimed, possessed or controlled by a taxpayer engaged in a profession, trade, or business has a full value of two hundred thousand dollars ($200,000) or more, the assessor shall audit the books and records of such ... at least once each four years.

You have postulated the situation wherein certain property could be owned by the lessor but possessed or controlled by the lessee so that it could, in fact, cause both parties to exceed the statutory limit and therefore be subject to a mandatory audit.

Your proposal takes note of the exact parallel language in Revenue and Taxation Code section 405 in regard to ownership and you recommend that the assessor's action under section 405 should control assignment of the property for audit purposes. In other words if the property is assessed to the lessee, then it should be included for purposes of the lessee's audit but excluded from the lessor's total.

This application of both statutes in conjunction may appear to be quite reasonable and may lead to economy of effort on the assessor's part but there is no legislative intent to indicate mutuality. The history of each section shows complete disassociation to the point that the one parallel expression almost appears to be coincidental. When 469 is considered

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independently, it is clear, unambiguous and unequivocal. All of the property held by the taxpayer in the manner specified must be cumulated to test the audit limit. It must be so applied to both a lessor and lessee under the plain language of the provision.

Your proposal would best be implemented by an addition to the statute. A single sentence: For purposes of the full value limit property shall only be included in the total of the ultimate assessee; would probably do the job.

JMW:jd
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