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No. 84/103

October 23, 1984

TO COUNTY ASSESSORS:

THE EFFECTS OF ASSEMBLY BILL 2345
ON SUPPLEMENTAL ASSESSMENTS

The above captioned legislation which serves as clean-up for the supplemental assessment process, was signed by the Governor on September 7, 1984 and is Chapter 946 of the statutes of 1984. This legislation makes many changes to the statutes affecting supplemental assessments.

Section 75, which is an intent statement was expanded. It now includes a statement that the provisions of this chapter shall apply only to supplemental assessments and shall not be considered interpretive of any other provision of Division 1 of the Revenue and Taxation Code.

The definition of property in Section 75.5 was amended to delete the exclusion of fixtures. That is to say, fixtures are subject to supplemental assessments.

Section 75.10 was amended in that it now has two subdivisions. In subdivision (a), the words "resulting from actual physical new construction on the site" were inserted as a means of further defining new construction for purposes of supplemental assessments.

Also added was subdivision (b) which states that the term "actual physical new construction" includes the discovery of previously unknown reserves of oil or gas.

Section 75.11(a) was amended so that it now specifies procedures relative to the second supplemental assessment for transfers of partial interest in property as well as transfers of the full interest. Further, it specifies that for new construction, the second supplemental assessment shall be an amount equal to the value attributable to the new construction. This is significant because it precludes, in situation's where the value attributable to the new construction is exceeded by the amount of the inflation adjustment, the occurrence of negative supplemental assessments.

Section 75.12 has undergone extensive reworking. This section now defines date of completion of new construction for purposes of supplemental assessments. Generally under this section, construction is deemed to be complete when the property is available for use. However, such is not the case if the owner does not intend to occupy or otherwise use (e.g., rent or lease) the property and so notifies the assessor prior to or within 30 days of commencing construction. Failure to so notify the assessor results in the conclusive presumption that the date of completion is the date the property is available for use. For property subject to such notice, the date of completion is the date the property is occupied or used with the owner's consent (except when the occupancy or use is incidental to a change in ownership, including the use of the property as a model home). Whatever form you are now using for notification under Section 75.12 should suffice under this reworked section. When you re-order the form, or if you devise a new one, the filing requirement should be noted as "prior to, or within 30 days of, commencement of construction.

Date of completion, under subdivision (a)(3), is the date that a property can be functionally used or occupied even though it may be available for use prior to its being functionally usable or occupiable. When making such a determination, consideration should be given to the type of property and any special facts or circumstances affecting use or occupancy.

An example of this might be a storage tank completed on a specific date with the supply pipeline not yet in place. Completion would not occur until the pipeline was finished and the tank was used for storage.

Another example of such a situation might occur in the construction of an office building or retail store. A basement parking facility in such a project likely will be completed long before the entire project. Even though such is the case, the parking lot would not be subject to supplemental assessment (assuming the assessor received timely notification) until the entire project was completed (i.e., the parking lot and building are available for use). However, should the owner use the lot or consent to its use, the lot would be subject to supplemental assessment at the time it was first used.

Subdivision (e) of Section 75.12 provides that, for property subject to such delay in completion of construction, the owner must notify the assessor of any use that would result in the construction being deemed complete. Notification must be made within 45 days of the date of the action or use requiring notification. Failure to make such notice shall result in a penalty in the amount specified in Section 482.

Section 75.13 was amended to say that any supplemental assessment shall not be deemed to be an escaped assessment subject to Section 4837.5. This precludes the spreading of payments over the three year period specified in Section 534.5 as provided in Section 4837.5

Section 75.15 is added to the Revenue and Taxation Code by Section 6.5 of Chapter 946. This section requires that fixtures other than those included in a change in ownership or those included in a structure and assessed at the completion of new construction - shall be reported by the taxpayer, beginning in 1985, to the assessor once each year at the time the annual property statement is due. The report shall include fixtures added to and removed from the property as well as the dates of those additions and removals, and the cost of each for the twelve month period from March 1 to March 1. Even though Section 75.15 calls for reporting "value," we think the taxpayer should be reporting cost. One supplemental tax bill shall result, and it shall be based on the values added and subtracted considering the dates of addition and removal and the appropriate tax rate. It should be noted, however, that removals - in and of themselves - do not constitute new construction. See letter to assessors number 83/128, questions 7 and 8.

Section 75.15, as added by Section 6.5 of Chapter 946 has a sunset provision in subdivision (d). This section is repealed automatically as of March 1, 1987.

Section 6.9 of Chapter 946 adds Section 75.15 which becomes operative on March 1, 1987, and applies to supplemental assessments for the 1987-88 fiscal year and fiscal years thereafter. This version of 75.15 deletes the definition of fixture found in the first edition of 75.15. An additional letter dealing specifically with fixtures will be forthcoming in the near future.

The only change to the exemption provisions is not substantive. The word "after" replaces the word "of" to make Section 75.22 read properly.

Section 75.31 was amended with the addition of subdivision (d) which provides that for counties of the first class, an appeal of a supplemental assessment must be received within 60 days of the date of the mailing of the tax bill rather than 60 days of the notice of supplemental assessments.

This section, in stating - in both subdivision (c) and (d) - that the appeal must be "received" within 60 days, is misleading. To be consistent with other statutes, the word received should be read as "filed." This ambiguity, hopefully, will be corrected in the 1985 legislative session.

Newly added was Section 75.32 which provides that the validity of a supplemental assessment shall not be affected by the failure of the assessee to receive a notice pursuant to Section 75.31.

The amendment to Section 75.40 amounts only to the deletion of previous subdivision (h) and the re-lettering of previous subdivision (i) to (h).

Section 75.41(a) was also amended, and it now provides that, for property on the supplemental roll, the taxes due shall be computed in two equal installments. Subdivision (c)(1), (2), and (3) were amended by the addition of a zero in front of the decimal fraction used to prorate the tax amount.

The amendment to Section 75.42 was a wording change. The section now refers to the extension of the refund rather than extension of the negative amount.

Section 75.43 was added by this legislation. However, this section is basically former Section 75.55 - which was repealed - relocated at this point. The section was changed in that the refund must be made within 30 days of enrollment rather than 90 days. Further, subdivision (b) now specifies that interest is to be computed from a date 30 days after enrollment to the date of payment.

Section 75.50 no longer refers to refunds since that subject is now dealt with in Section 75.43.

Section 75.52 was amended to provide for new payment and delinquency dates. This is in connection with the change allowing two installments for all supplemental tax bills. This change was originally provided for in Chapter 512 of the Statutes of 1984 (SB 1352). Subdivision (a) provides that bills mailed from July 1 through October 31 shall have delinquency dates of December 10 at 5 p.m. (for the first installment) and April 10 at 5 p.m. (for the second installment). Subdivision (b) provides that bills mailed from November 1 through June 30 shall have the first installment become delinquent at 5 p.m. on the last day of the month following the month of mailing. The second installment shall become delinquent on the last day of the fourth calendar month following the date the first installment would be delinquent. Subdivision (c) now refers to the addition of the time (5 p.m.) stated in (a) and (b). Subdivision (d) is a new section that speaks to the collection of cost enumerated in Section 2621.

The amendment to Section 75.53 was the deletion of the date June 30, and the insertion of alternative language.

Section 75.54 has undergone a significant reworking. Previous to this change, an initial change in ownership followed by a subsequent change in ownership prior to supplemental assessment billing caused the entire supplemental assessment for the initial change in ownership to become an unsecured assessment. Under the current statute, the lien is extinguished (i.e., the assessment becomes unsecured) for the portion of the supplemental assessment attributable to the assessee from the date of the initial change in ownership or completion of new construction to the date of the subsequent change in ownership. This portion of the supplemental assessment is entered on the unsecured roll and the remaining portion becomes a lien against the real property on the date of the subsequent change in ownership.

The remainder of the change effected by AB 2345 are relative to administrative areas (i.e., Article 6.5 - Reimbursement for County Costs, and Article 7 - Disposition of Revenues) and do not affect actual appraisal or assessment functions. Therefore, we will not comment on them.

TO COUNTY ASSESSORS

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October 23, 1984

Section 28 of Chapter 946 provides that supplemental assessments billed pursuant to Section 75.52 - providing for two equal installments on all supplemental assessments - as amended by this bill prior to the effective date of this bill are valid and legally effective.

Chapter 946 is declared to be an urgency statute in Section 33 and its provisions go into effect on September 10, 1984 - the date the chapter was filed with the Secretary of State.

Enclosed, is a letter from the State Controller's Office. It was mailed to all county auditors and tax collectors, and it explains, in detail, those sections of the legislation affecting computation and collection of taxes for supplemental assessments.

If you have any questions regarding supplemental assessments, please contact Gene Palmer at (916) 445-4982.

Sincerely,



Verne Walton, Chief
Assessment Standards Division

VW:wpc
Enclosure
AL-08A-1763A/W-2



KENNETH CORY

Controller of the State of California

SACRAMENTO, CALIFORNIA 95805

October 16, 1984

TO: All County Auditors and All County Tax Collectors

SUBJECT: NEW SUPPLEMENTAL ASSESSMENT PROVISIONS

AB 2345 was signed into law as Chapter 946 of 1984, effective September 7, 1984. This law amends numerous supplemental assessment provisions of the Revenue and Taxation Code and §33670, Health and Safety Code. Unless otherwise specified, all legal references in this letter are to the California Revenue and Taxation Code.

Our analysis omits some portions of the new law applicable to the assessor's function. You should read the entire statute if the purely assessment provisions are of interest to you.

Summary of Major Revisions

Of greatest consequence to your work are the following provisions of Chapter 946:

1. The assessment of trade fixture improvements (§75.15);
2. Payment of interest on refunds not mailed within thirty days after their enrollment (§75.43);
3. Proration of supplemental taxes when a change in ownership occurs before a prior supplemental assessment on the same property is billed (§75.54);
4. Detailed procedures for apportioning revenue from supplemental assessments (§§75.60, 75.70).

Trade Fixture Improvements to be Assessed

The amendment of §§75.5 and addition of §75.15 will now require supplemental assessment of trade fixtures. Beginning in 1985, taxpayers must report to the assessor trade fixtures added or removed over a "12-month period from March 1 to March 1". The report is to be filed between March 1 and either five p.m. on the last Friday in May or a filing deadline, set by the assessor, earlier than the last Friday in May.

Only one supplemental tax bill per account, covering the entire assessment year, is to be prepared. In determining the bill for trade fixture improvements, the statute implies the auditor must extend a tax calculation or an amount of refund for each reported instance, factor each appropriately in accordance with §75.41 and, presumably, make any prorations called for by the new provisions of §75.54(c). All of these elements would then be combined into a net amount to be billed or refunded. The most practical way to handle these tax calculations is for the assessor to provide summarized, net assessments for the auditor to extend.

Bills for supplemental assessment of trade fixture improvements are to be collected the same as other supplemental bills produced in the same period. These bills must provide two installments. For events occurring between March 1 and July 1, you must compute taxes for two fiscal years. Delinquency deadlines will be determined by when the bills are mailed. See our letter of July 30, 1984, for a discussion of billing supplemental assessments in two installments.

Chapter 946 contains two Sections numbered 75.15. The first defines the nature of fixtures subject to supplemental assessment and establishes initial reporting and collecting procedures. The second §75.15 becomes operative on March 1, 1987; it applies to supplemental taxes for 1987-88 and subsequent fiscal years.

Escape Supplemental Assessments

Chapter 946 amends §75.13, to read: "Any supplemental assessment shall not be deemed to be an escaped assessment subject to Section 4837.5." The original wording of §75.13 implied that supplemental assessments not billed within one year after a change in ownership or completion of construction might be subject to payment in accordance with §4837.5 -- by annual installments after a twenty percent initial payment. The current language seems to preclude any interpretation permitting application of §4837.5, even should the county's original supplemental bill be understated through no fault of the assessee.

Notification of Equalization Hearings

Filing periods for supplemental assessment equalization appeals are found in §75.31. Los Angeles County assesseees must appeal within sixty days after the supplemental tax bill has been mailed. For all other counties, the appeal is to be filed within sixty days after the notice of assessment is sent. New §75.32 states that failure of the assessee to receive a notice does not affect the validity of the supplemental assessment or of any taxes subsequently levied.

Information Transmitted to Auditor

A minor amendment of §75.40 deletes the former paragraph (h), which read: "The actual amount of the supplemental assessment or assessments." Other provisions of the Section remain as before.

Computation of Taxes

Section 75.41 requires computation of taxes in two equal installments for "property on the supplemental roll" [sic]. This concept includes taxes for normally unsecured types of property: mobilehomes, possessory interests, etc.

Further, §75.54(c) now provides for proration of taxes according to period of ownership in those cases where change in ownership occurs before billing is made for a prior supplemental assessment. In such a situation, the earlier event is treated somewhat like an unsecured escape assessment. This constitutes the one exception to the rule of billing supplemental assessments in two installments. After computing the total supplemental assessment due using the secured tax rate in effect when the original event took place, the auditor must compute an unsecured, single-installment bill for the tax collector to send to the former assessee. Based on days of ownership within a portion of a fiscal year, this unsecured bill is calculated by the following formula:

$$\frac{\text{Supplemental Value} \times \text{Tax Rate} \times \text{\$75.41 Factor}}{\text{Days in remainder of Fiscal Year}} \times \text{Days of ownership} = \text{Tax}$$

We feel the intent of this law is to prorate taxes even when two events take place in one month.

The example on the next page illustrates the procedure required to comply with §75.54(c). Adjustments for Consumer Price Index are omitted so as not to complicate the example.

EXAMPLE:

1983-84 Taxable Value: \$50,000
1983-84 Secured Tax Rate: 1.20/\$100 of Assessed Value (.012)

Original Event: Completion of construction on 12/15/83

Supplemental Value: \$40,000
New Base Year Value: \$90,000 (effective 12/15; presumed date for
computing amount of tax, 1/1/84)

Second Event: Change in ownership on 4/23/84

Supplemental Value: \$20,000
New Base Year Value: \$110,000 (effective 4/23; presumed date for
computing amount of taxes, 5/1/84)

Computation of 1st Supplemental Assessment Tax:

$\$40,000 \times .012 \times .50 = \240.00

Proration of 1st Supplemental Assessment Tax - §75.54(c):

Days between Event and end of Fiscal Year: 199
Days of original assessee's ownership: 130
Days owned by current assessee: 69

$\$240.00 \div 199 \times 130 = \156.78 (Unsecured tax bill to original owner)
 $\$240.00 \div 199 \times 69 = \83.22 (Supplemental tax bill to current owner)

Computation of taxes for 2nd Supplemental Assessments:

1983-84: $\$20,000 \times .012 \times .17 = \40.80
1984-85: $\$20,000 \times .012 = \240.00

The prior owner will receive a single-installment, unsecured bill for 1983-84
in the amount of \$156.78.

The current owner's total obligation for supplemental taxes is

\$83.22 (proration of 1st 1983-84 supplemental)
40.80 (2nd 1983-84 supplemental)
240.00 (1984-85 supplemental)
\$364.02 - to be billed in two equal installments.

Note that you prorate taxes based on the actual period of ownership, whereas you calculate taxes as of the first day of the month following the actual date of an event's occurrence. If this seems illogical, remember that the lien date for establishing a new base year value and taxes is the date an event occurs [§§75.10, 75.54(a)]. The tax computation is established as the first day of the following month (§75.41) in order to simplify most tax calculations.

Always use the secured tax rate in effect when an event triggering a supplemental assessment occurred. If the two events in the example had taken place in different fiscal years, the tax rate for 1983-84 would apply to the first event, the rate for 1984-85 to the second event. And, of course, the prior owner would have been billed for the remainder of 1983-84 plus a portion of 1984-85.

The principles expressed here as applying to two supplemental assessment events also would apply to three or more occurrences. In such cases, the assessee for the most recent event would receive a supplemental tax bill; the previous owners would receive prorated unsecured bills.

Information on Prorated Tax Bills

It may prove difficult to illustrate on a tax statement the method by which supplemental taxes are calculated in compliance with §75.54(c). While the law does not require such illustration, you may wish to provide an explanation of the computation on a separate flyer accompanying the bill or to state that an explanation can be provided from county records. Otherwise, the data furnished on tax bills remains as listed on page 8 of our December 1, 1983 letter.

Collection of Taxes

Despite the radical change in the obligations of individual taxpayers occasioned by the new provisions of §75.54, you need not cancel currently outstanding supplemental bills issued before September 7, 1984. In fact, you have no legal authority to cancel, absent the traditional reasons for cancelling bills as provided in §4986.

Chapter 946 validates any bills formerly prepared pursuant to §75.52. (Some counties billed in two installments throughout the year before the passage of Chapter 946.) The amendment of §75.52 also clarifies the assessment of delinquency penalties and cost charges. By inference, bills issued before September 7 in accordance with former provisions of law are valid.

There will be cases where a former owner is billed for an entire supplemental assessment because you are unaware of the change in ownership having occurred before issuance of the bill. It would be appropriate to cancel the initial supplemental bill, on the basis that the taxes were erroneously levied [§4986(2)]. If such a bill is paid, you need take no further action, as the lien for taxes no longer exists. Of course, any bill could be cancelled if found faulty for any of the reasons specified in §4986.

Refunds

Former §75.55 has been repealed. The provisions for refunding are consolidated in new §75.43. Curiously, §75.43(a) requires refunds be made from taxes collected from supplemental assessments, but simultaneously requires that interest be paid if a refund is not made within thirty days after being enrolled.

We interpret this statute as meaning that refunds could be made, even though no collections had occurred, if the total supplemental amounts billed within the county more than offset the administrative costs, known negative assessments and expected delinquencies. Since refunds must be paid out of supplemental taxes collected, the immediate payment of refunds in instances where collections had not yet occurred may require utilizing other available means of financing, safeguarded by appropriate accounting procedures.

Should you experience net negative supplemental assessments over the course of an entire year, it would appear to be impossible to comply with the law. There would be either refunds owing that were accruing monthly interest or refunds that had been paid with no prospect of obtaining revenue to replace such expenditures. Your respective legislative committees may wish to deal with this issue in 1985.

Chapter 946 makes minor amendments of §§5097 and 5097.2. Paragraph (e) added to §5097.2, brings refunds arising from assessment equalization hearings under the same four-year statute of limitations as other refunds. The other amendments apply only to property taxes levied by the City of Fresno.

Apportionment, Allocations

A county is permitted to retain as much as five percent of supplemental assessment-generated revenue for the 1983-84 and 1984-85 fiscal years, for purposes of administration. A minor amendment of §75.60 now allows you to make these deductions regardless of when the costs being defrayed were incurred. You are free to compute the cost of administration as a percentage of the total supplemental charge (rather than net revenue) and to deduct the entire amount in the first apportionment. Some of you may prefer to impute a proportionate percentage of each distribution to administrative costs.

Revenue from all supplemental assessments for the 1983-84 fiscal year, less administrative expenses, is to be distributed to your schools. This includes any revenue from supplemental assessments billed on the unsecured roll, in accordance with §74.54(c). Distribution to schools of all supplemental assessment revenue for 1984-85 has been deleted. Instead, the schools will share money in accordance with the distribution set forth in §75.70.

Any penalties, costs or other charges arising from delinquency must now be distributed in accordance with §§4651 - 4717 (§75.72).

Another amendment of §75.70* establishes means of allocating supplemental taxes for the 1984-85 and 1985-86 fiscal years. To allocate 1984-85 supplemental tax revenues, the auditor should take the following steps.

1. Deduct amounts refunded, including any interest paid.
2. From the gross revenue, deduct the costs of administration allowed by §75.60 (0 - 5%).
3. Make distributions to redevelopment agencies, following the provisions of Health and Safety Code §33670.

The remaining computations are made against net revenue after deduction for administrative costs and for redevelopment agencies.

4. Apply the §97.5 ("AB 8") apportionment factors for:
 - a. the county;
 - b. each community college district and county superintendent of schools;
 - c. each city;
 - d. each special district.
5. Based on average daily attendance, allocate "remaining revenues" (i.e., the difference between computations made in the preceding step and the limitation imposed by Proposition 13) to elementary, high and unified school districts.
6. Allocate to the appropriate debt service fund additional revenues generated by a tax rate in excess of the Proposition 13 limitation

*Effective September 27, 1984, §75.70 has been further amended by SB 1300 (Chapter 1325 of 1984). Chapter 1325 amends provisions of SB 794 (Chapter 447 of 1984, effective July 16, 1984) dealing with allocations. The new language clarifies that independent districts will not contribute revenue from supplemental assessment to augmentation funds, and redevelopment districts are not to receive supplemental assessment revenue for 1983-84.

EXAMPLE: 1984-85 Fiscal Year Supplemental Roll Allocation

Facts

Supplemental tax levy	=	\$1,000,000
County administrative costs* ($\$1,000,000 \times .05$)	=	\$ 50,000
Debt service rate	=	.11

Collections

Taxes collected		\$900,000
Less: refunds		(\$ 40,000)
Net taxes available for allocation	=	<u>\$860,000</u>

Allocation

County administrative cost (based on levy)		\$ 50,000
Redevelopment (based on revenue available for allocation - \$860,000)		90,000
"AB 8" factors (applied to remaining revenue - \$720,000)		
a. County	\$150,000	
b. Comm. college districts and county superintendent of schools	100,000	
c. Cities	120,000	
d. Special districts	<u>80,000</u>	450,000
K - 12 (A.D.A. components)		175,000
Debt service (.11 applied to \$860,000)		94,600
Total Allocation	=	<u>\$860,000</u>

*For the 1985-86 fiscal year and thereafter no revenues will be allotted to the counties for administrative costs.

Conclusion

Bear in mind that implementation of the supplemental assessment provisions discussed in this letter begins September 7, 1984. You should not rescind any tax bills issued prior to that date in accordance with former provisions of law. If you do not agree with aspects of our analysis and suggested procedures for implementation the new provisions of law, please let us know -- and the sooner the better.

Auditors should call either John Korach (916-332-9896) or Michael Havey (916-322-9891). Tax collectors may call Gary Hays (916-323-2353).

Cordially,

KENNETH CORY, STATE CONTROLLER

By



Earl L. Lucas
Assistant Deputy State Controller
Local Government

GWH/nm