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January 21, 1982

Mr. William C. Greenwood
Fresno County Assessor
P. O. Box 1146
Fresno, CA 93715-1146

Attention: Mr. Redacted
Assistant Assessor

Dear Mr. Redacted:

This is in response to your November 20, 1981, letter to Mr. Glenn Rigby wherein you requested any assistance we might provide in construing provisions of Revenue and Taxation Code Sections 531 (Property escaping assessment) and 4831 (Corrections of Assessor's errors).

As you have noted, Assessor's Handbook AH 271, Assessment Roll Procedures, includes a section on escape assessments (pages 32-45); and an escape assessment is defined on page 32 as one made after the assessor has certified the roll as complete. Your interpretation thereof, that taxable, tangible property not previously enrolled on the current or past assessment rolls should be considered as escaped property and should be enrolled as an escape assessment on the current roll or on the roll being prepared, is correct.

Where property belonging on the local roll has escaped assessment, the assessor must assess the property on discovery at its value on the lien date for the year for which it escaped assessment (Article XIII, Section 1 of the California Constitution; Bauer-Schweitzer Malting Co., Inc. v. City and County of San Francisco, 8 Cal. 3d 942; and General Dynamics Corp. v. San Diego County, 108 Cal. App. 3d 132). Thus, where property has not been assessed at the proper time, the assessor must assess it upon discovery of its physical existence, its taxable status, or the fact that it has not been assessed. The constitutional requirement that all taxable property be assessed and taxed in proportion to its value is self-executing and authorizes and requires assessors to levy escape assessments against underassessed property (Hewlett-Packard Co. v. Santa Clara County, 50 Cal. App. 3d 74; California Computer Products, Inc. v. Orange County, 107 Cal. App. 3d 731; and General Dynamics Corp. v. San Diego County, supra).

You then ask whether not only taxable, tangible property not previously enrolled should be considered as escaped property, but whether increases in value to such property that has previously been enrolled should also be so considered.

Such increases also are escape assessments, as defined, and escape assessments are proper where property has been underassessed as well as where there has been no assessment at all (Bauer-Schweitzer Malting Co. v. City and County of San Francisco, *supra*; Ex-Cell-O Corp. v. Alameda County, 32 Cal. App. 3d 135; and Hewlett-Packard Co. v. Santa Clara County, *supra*). As hereinafter explained, we do not believe that this interpretation conflicts with Section 4831.

Assessor's Handbook AH 271, Assessment Roll Procedures, also includes a section on corrections (pages 45-48). Going back in time, as of January 1, 1974, section 4831 provided as follows:

"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 on the roll 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, or which result in the assessment of nonexistent improvements or personal property, may be corrected under this article at any time after the roll is delivered to the auditor. . . ."

The corrections so authorized could be made only under the limited circumstances mentioned, however (Southwest Land Co. v. Los Angeles County, 46 Cal. App. 9; United States Borax & Chemical. Corp. v. Mitchell, 27 Cal. 3d 84). Per the Court in United States Borax & Chemical Corp. v. Mitchell, *supra*, the former section 4831 was intended to provide the assessor with a simple and efficient mechanism for correcting clerical defects or errors discovered after the roll had been completed, but this correction procedure was limited to errors of a clerical nature which did not involve the assessor's "judgment as to value", and it was proper only when it could be ascertained from an inspection of certain designated sources that such an error had, in fact, occurred.

Section 4831 was amended in 1974 to add subdivision letters, subdivision (a) to that portion of the section set forth above, and again in 1978 to add the last sentence to subdivision (a). As can be seen, these changes did not affect the substance of that portion of the subdivision with which we are concerned.

Section 4831 was again amended in 1979, and subdivision (a) was restated:

" (a) Any error of the assessor resulting in the entry of incorrect values on the roll may be corrected under this article. The correction may be made at any time after the roll is delivered to the auditor. . . This section does not apply to the following:

(1) Errors involving the exercise of value judgment; or

(2) Escape assessments caused by the assessee's failure to report the information required by Article 2. . . ."

Per the Legislative Counsel's Digest of SB 516/Stats. 1979, Ch. 839, under existing laws relating to property taxation, various provisions have been enacted for the administration of such taxes, and this bill would revise some of the administrative provisions contained in such taxes.

Section 4831 was again amended in 1981, and subdivision (a) was amended to read:

" (a) Any error of the assessor resulting in incorrect entries on the roll may be corrected under this article. . . ."

Per the Legislative Counsel's Digest of SB 241/Stats. 1981, Ch. 261, existing law permits the correction of errors of the assessor resulting in the entry of incorrect values on the assessment roll. This bill would permit the correction of errors of the assessor resulting in incorrect entries, except those errors involving the exercise of value judgments or escape assessments caused by the assessor's (assessee's) failure to correctly report specified information.

As it presently reads then, Section 4831 (a) permits the correction of any error of the assessor resulting in incorrect entries on the roll, excluding, as before, errors involving the exercise of value judgments. We believe that the Court's analysis in United States Borax & Chemical Corp. v. Mitchell, *supra*, is equally applicable to Section 4831 (a), as amended in 1979 and 1981:

Section 4831 is intended to provide the assessor with a mechanism for correcting clerical defects or errors discovered after the roll has been completed not involving the assessor's judgment as to value.

To summarize to this point, we believe that escape assessment provisions are applicable to both taxable, tangible property not previously enrolled and to increases in value to such property that has previously been enrolled; and that while Section 4831 (a) provides that any error of the assessor resulting in incorrect entries on the roll may be corrected, it is errors or defects of a clerical nature that are contemplated, not errors which have allowed properties or portions of properties to escape assessment. Again, Section 4831 (a) continues to provide that the section does not apply to errors involving the exercise of value judgments.

At the same time, we see nothing inconsistent with such an interpretation of Section 4831 (a) and Section 4985 (b), which refers to increases made pursuant to Section 4831. Those kinds of errors contemplated by Section 4831 (a) could result in either the decrease or increase in tax, and in the event of the latter, Section 4985 merely permits cancellation of penalties, etc., in certain circumstances.

Turning to your example, then, in the case where you receive late notice of a change in ownership due to death, we believe that escape assessments should be made both on prior years' rolls, as applicable, and on the current year's roll to reflect the increases in value. It is possible that Section 4831 could be applicable to the current year's roll, but only if you received notice of the change in ownership, reappraised the property, and then neglected to enter the reappraised value on the roll or did enter that value on the roll but did so incorrectly.

If, on the other hand, you received notice of the change in ownership but failed to act, for whatever the reason, being a question of exercise of value judgment, an escape assessment should be made.

Other examples of corrections are as follows:

A special tax not carried to or entered in the column for total tax, but roll already shows the total amount of the omitted tax (San Luis Obispo County v. White, 91 Cal. 434) ;

Erroneous notation of exemption for property, and carrying forward of amount of tax involves only a mathematical calculation (Pasadena University v. Los Angeles County, 190 Cal. 786).

Very truly yours,

James K. McManigal, Jr.
Tax Counsel

JKM:fr

cc: Mr. Glenn L. Rigby

bc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Verne Walton
Mr. Don Brower
Legal Section