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(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)

(916) 323-7714

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February 25, 1992

Re: California Administrative Code - Rule 6

In your letter of January 9, 1992 to Richard H. Ochsner, Assistant Chief Counsel, you asked three questions concerning the referenced Property Tax Rule, Cal. Code Regs., tit. 18, sect. 6.

1. Is the language of Rule 6(c) of the California Administrative Code mandatory for use by the various county assessors?

Answer. Yes. The case noted in your letter, Prudential Ins. Co. v. City and County of San Francisco (1987), 191 Cal. App. 3d 1148, is a recent example wherein the assessor chose to follow guidance in an assessor's handbook that was in conflict with Rule 4. The court clearly decided that the rule was superior to the handbook and that it was obligatory on the assessor.

As an aside, the California Administration Code is now the California Code of Regulations.

2. What does the word "shall" mean when used in the first sentence of Rule 6(c)?

Answer. Since the rule is to be understood and carried out by county appraisers, we need go no further than a generally accepted dictionary to provide a common meaning. My Webster's New Collegiate states - used in laws, regulations, or directives to express what is mandatory.

3. When the original cost is known and the property has changed hands with a different acquisition price does the assessor have a choice of using either cost or must he use the original cost if known in his cost approach calculation?

Answer. I referred this question to our Assessment Standards Division for response in relation to an appraiser's understanding and application of Rule 6. It follows:

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The first and third sentences of Rule 6(c) clearly require that the assessor must use the original cost of the property, if known, as the starting point for a reproduction cost approach appraisal. The use of acquisition cost as the starting point for a reproduction cost approach is permitted only when the original cost is unknown.

If the original cost is not known, the third (last) sentence of 6(c) provides that the assessor may use the acquisition cost as the starting point for a reproduction cost appraisal.

In reality, the use of the acquisition cost is a sales approach to value. Rule 4(c) states that the assessor shall:

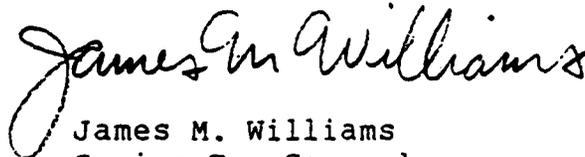
"Convert a sale to the valuation date of the subject property by adjusting it for any change in price level of this type of property that has occurred between the time the sale price was negotiated and the valuation date of the subject property."

The third (last) sentence of Rule 6(c) describes the mechanics making the adjustment required by Rule 4(c).

The result of this is that if the assessor has the original cost available but instead uses acquisition cost and labels it a reproduction cost approach, the assessor is guilty of using the wrong label. The correct terminology would be a sales approach, with the sale price adjusted for time.

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,



James M. Williams
Senior Tax Counsel

JMW:jd
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cc

Mr. John W. Hagerty
Mr. Verne Walton