(916) 445-4588

April 26, 1985

Dear Frank:

This is in response to your letter of February 12, 1985, requesting advice on questions relating to assessment appeals of supplemental assessments.

Effect of Appeals Board Decision on Subsequent 601 Roll

Your first question relates to a situation in which an assessee files a timely supplemental assessment appeal, is successful in securing a reduction in base year value, but has not filed a timely assessment appeal (by the following September 15) for the base year value which was placed on the regular 601 roll for the succeeding assessment year. (The appeal decision on the supplemental assessment may not be issued until after the September 15 cut-off date and, in some cases, the supplemental billing may not even be issued until after that date.) Your question is whether an assessment appeals decision adjusting the base year value placed on the supplemental roll is effective for all subsequent assessment years or whether, in some circumstances, the base year value on the following regular 601 roll is "frozen" because the assessee failed to file a timely appeal for that period?

Section 80 of the Revenue and Taxation Code (all section references herein are to the Revenue and Taxation Code) is the key to this question. Subdivision (a)(3) states, in effect, that the lien date base year value determined by the assessor after a change in ownership shall be conclusively presumed to be the base year value unless an application for equalization is timely filed within the first four years. The second paragraph of the subdivision further states that once an application is filed, the value found by the assessment appeals board will be conclusively presumed to be the base year value for the appealed assessment. Subdivision (a)(4) of Section 80 goes on to provide that any reduction in assessment made as a result of an assessment appeal "shall apply for the assessment year in which the appeal is

taken and prospectively thereafter." (Emphasis added.) "Assessment year" is defined in Section 118 as the March 1 to February 28 period. This results in a system under which the base year value found by the assessor following a change in ownership will apply unless, and until, an assessment appeal is filed. If a timely appeal results in a reduction in assessment, the new base year value found by the assessment appeals board applies to the assessment which was appealed. The new base year value also applies to the assessment year (March 1 to February 28) in which the appeal is taken and to each assessment year thereafter until there is a change in ownership, new construction, etc. Of course, in the usual situation where the appeal is timely filed by September 15, the base year value for the appealed assessment and the base year value for the assessment year in which the appeal is taken are the same so the distinction will have no real significance in situations where the assessment is made during the regular assessment period.

Subdivision (c) of Section 80 applies to the situation where an assessment is made outside the regular assessment period. Such assessments are governed by Section 1605, which requires that an application for equalization be filed within 60 days of the date the assessee is notified of the assessment. Subdivision (c) of Section 80 provides that an equalization determination made pursuant to Section 1605 "shall be conclusively presumed to be the base year value in the same manner as provided herein". Presumably, the word "herein" refers us back to subdivisions (a) (3) and (4), as discussed above. Thus, where an application for equalization is timely filed within the 60 days prescribed by Section 1605, the value determined by the appeals board establishes the base year value for the appealed assessment and for the assessment year in which the appeal is taken and for all assessment years thereafter.

Turning to supplemental assessments, Section 75.31, subdivision (c) provides, in part, that a supplemental assessment shall be considered, for equalization purposes, as an assessment made outside of the regular assessment period pursuant to Section 1605. Thus, a value reduction granted on an appeal of a supplemental assessment should be given the same effect as a Section 1605 value reduction.

If, for example, a 1983 supplemental assessment was noticed in January of 1985 and the assessee filed an appeal on or before February 28, 1985, any value reduction granted by the appeals board would be available for the 1983 supplemental assessment (Section 80(a)(3)) and also for the 1984 regular assessment, and thereafter, since the appeal was filed during the 1984-85 assessment year (Section 80(a)(4)). Unfortunately, if the 1983 supplemental assessment was not noticed until April of 1985, relief could only be available for 1983, 1985 and thereafter. Relief could not be available for the 1984 regular assessment since the appeal could not be filed during the 1984-85 assessment year.

While this pattern of relief may seem a bit strange, it is in full conformity with the statute. A taxpayer's failure to obtain relief for assessment years between the year for which the supplemental assessment was made and the year in which the appeal is filed can be avoided by the timely filing of an appeal of the regular roll assessment. Thus, taxpayers are protected for all periods if they properly exercise their appeal rights.

If a timely appeal is not filed on a supplemental assessment, then the assessee will be bound by the assessor's value until an appeal is filed in the regular appeal period during one of the subsequent assessment years. Where an application is filed in years following the supplemental assessment, the equalization decision will affect the base year value for the year in which the appeal is filed and subsequent years. It will not affect the base year value used to compute the supplemental assessment or any assessment year prior to the year of filing.

This discussion raises an additional issue. Subdivision (a)(3) of Section 80 limits the time during which an application for equalization may be filed to "the regular equalization period for the year in which the assessment is placed on the assessment roll or in any of the three succeeding years". This language works well when applied to lien date changes in base year value added to the regular 601 roll since there is a "regular equalization period". There is no express explanation, however, dealing with the application of this four-year time limit to assessments made outside the regular assessment period pursuant to Section 1605. The question is whether the language of subdivision (a)(3), when applied to a Section 1605 assessment, extends the window for appeals beyond the standard four assessment years. We conclude that it does not.

Subdivision (c) of Section 80 merely states, in effect, that the same system applicable to regular appeals shall be applied to Section 1605 applications. Some interpretation is necessary, however, since Section 1605 applications are technically not filed during "the regular equalization period". For purposes of Section 1605 situations, we conclude that the filing of an application for equalization in the 60-day period should be deemed to be filed during the "regular equalization period" since that is the regular filing period for this class of appeals. Also, this interpretation provides Section 1605 assessees with essentially the same four-year appeal window as that granted other assessees. Since Section 75.31(c) provides that supplemental assessments shall be considered to be Section 1605 assessments for equalization purposes, the same rule should be applied to supplemental assessments.

Effect On Subsequent Supplemental Assessments

Your next question deals with the effect of an appeals board decision upon subsequent supplemental assessments. You

ask whether a reduction in base year value ordered by an appeals board will necessitate adjustments to subsequent supplemental assessments which have been issued prior to the appeals decision.

As an example, you cite property with a 1983 lien date value of $10,000. A change in ownership occurred in September 1983, resulting in an assessor's new base year value of $50,000 and a supplemental assessment for the difference of $40,000. In December 1983, there was a second transfer but no change in the assessor's base year value and a zero supplemental assessment. The first assessee successfully appealed to the local board of equalization which found that the first transaction was not a change in ownership and cancelled the $40,000 supplemental assessment. Assuming the second transaction was, in fact, a change in ownership, then we agree with your analysis that a supplemental assessment for $40,000 should be issued to the assessee of the second transfer.

As indicated in your letter, there are a variety of situations which can arise as the result of assessment appeals adjustments which can necessitate changes or corrections of supplemental assessments issued for subsequent transactions. Although we have not found any express correction provisions contained in the supplemental roll sections, commencing with Section 75, it is clear that the Legislature intended that all supplemental assessments conform to these provisions. If the assessor has failed to issue a supplemental assessment or if an assessment no longer conforms to the requirements of the code, because of changed circumstances arising from an assessment appeals board decision, then the assessor has the inherent authority to make the necessary corrections to conform the assessment to the requirements of the code. In addition to this inherent authority, the provisions of Section 75.1 make all of the general provisions of Division 1 relating to the correction of assessment rolls applicable. It would be illogical to suppose that the Legislature intended that the assessor could not make necessary corrections in existing supplemental assessments in order to conform them to the requirements of the code. We conclude, therefore, that supplemental assessments may be issued, cancelled, or corrected in order to conform to decisions of the assessment appeals board and the requirements of the Revenue and Taxation Code.

Zero-Assessment Appeals Rights

The third question, arising from our telephone conversation, deals with the situation where there is a change in ownership but the assessor finds no change in base year value and, therefore, the supplemental assessment is zero. The question is whether the assessee may utilize the 60-day period specified in subdivision (c) of Section 75.31 in order to appeal the base year value or whether the assessee is required to file an appeal within the regular September 15th deadline.

For example, certain property had a 1984 lien date value of $57,000. In November 1984 the property was purchased for $35,000. The assessor did not reflect the new purchase price, however, and appraised the property on the date of change in ownership at $57,000. The supplemental assessment was zero because the new base year value equaled the taxable value on the current roll. The assessee filed an assessment appeal within the 60-day period, in January 1985, challenging the $57,000 base year value. We suggest that this be treated as a timely appeal.

Section 75.10 of the Revenue and Taxation Code requires the appraisal of property at its full cash value on the date there is a change in ownership. It states that the value so determined shall be the "new base year value" of the property. This requirement applies even though the appraised value found by the assessor may be the same as the taxable value shown on the current roll. Section 75.11 provides that supplemental assessments shall be the difference between the new base year value found pursuant to Section 75.10 and the taxable value shown on the current roll. Obviously, the amount of the supplemental assessment is zero if there is no difference between the new base year value and the current roll value.

Section 75.31, subdivision (a), requires that the assessor send a notice to the assessee "whenever the assessor has determined a new base year value as provided in Section 75.10". This means that the notice is sent even though the supplemental assessment is zero. The notice is required to include the new base year value, the old taxable value, the amount of the supplemental assessment, etc. This notice provides the basis for the appeal.

Subdivision (c) of Section 75.31 provides that "The notice shall advise the assessee of the right to appeal the supplemental assessment, and, ... that the appeal must be received within 60 days of the date of the notice." (Emphasis added.) A strict construction of this language could limit the right to appeal under this subdivision to instances involving either a positive or negative supplemental assessment on the theory that there is no supplemental assessment when the amount is zero. Under this construction only assessees whose property received a new base year value which either exceeded or was less than the current taxable value would receive the benefits of the appeal rights granted by this section. Assessee's with a zero supplemental assessment would be denied this benefit even though they may have equally important financial interests at stake. There seems to be no legitimate governmental interest served in denying equal appeal rights to this class of assessee, however. We conclude that the courts would probably view such discriminatory treatment as a violation of the Equal Protection Clause. Thus, although the plain language of the law might permit an

interpretation denying appeal rights to such persons, we recommend that the language be given broader interpretation in order to avoid such problems and to give all supplemental assessees equal appeal rights, regardless of the amount of the assessment.

Very truly yours,

Richard H. Ochsner
Assistant Chief Counsel

RHO:mw