2002-SBE-008

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of	)	
	)	
Helen Cantor,	)	No. 154350
	)	
Betty M. Asman, and	)	No. 155148
	)	
Yakov Kras	)	No. 162361
	)	

Representing the Parties:

For Appellants:	Helen Cantor Betty M. Asman Yakov Kras
For Respondent:	Greg W. Heninger, Senior Legal Analyst Rachel Abston, Legal Assistant
Counsel for Board of Equalization:	Ian C. Foster, Tax Counsel

O P I N I O N

These appeals are made pursuant to sections 19324, and 20645[1] of the Revenue and Taxation Code from the actions of the Franchise Tax Board (FTB or respondent) in denying the claims of Helen Cantor, Betty M. Asman, and Yakov Kras (appellants), under the Homeowners and Renters Property Tax Assistance (HRA) Law for the 2001 claim year. Appellants claimed the following amounts of assistance:

Helen Cantor:	$215
Betty M. Asman:	$240
Yakov Kras:	$1.00 or more[2]

[1] Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the year in issue.

[2] The record does not clearly indicate the amount at issue for appellant-Kras.

The issue is whether the owners of appellants' residences made payments in lieu of taxes that were substantially equivalent to property taxes paid on properties of comparable market value.

Applicable Law and Contentions

Appellants, renter-claimants, filed timely claims for property tax assistance for 2001. Respondent denied each claim on the basis that appellants' residences were not subject to property tax. The HRA Law gives claimants the right to appeal denials of assistance to this Board. (Rev. & Tax. Code, § 20645; *Appeals of Jeremiah Xavier Spicer, et. al.*, 2001-SBE-003, May 31, 2001.[3]) Appellants filed these appeals, which were consolidated for decision because the facts and issues are similar and no substantial right of any party will be prejudiced. (Cal. Code Regs., tit. 18, § 5074.)

Section 20541 permits certain renters of residential dwellings to claim property tax assistance from the State of California; under section 20544, the amount of assistance is a specified percentage of $250, determined according to the claimant's income. Sections 20503 through 20514 set forth a number of definitions and qualifications, most of which are not at issue here. Section 20505, subdivision (a), requires, as relevant to these appeals, that the claimant be the "renter of a rented residence." Section 20509 defines a "rented residence" as:

> "[P]remises rented and occupied by the claimant as his or her principal place of residence during the calendar year for which assistance is claimed."

However, the term "rented residence" does not include:

> "Premises which are exempt from property taxation, except those premises on which the owner pays possessory interest taxes, or makes payments in lieu of property taxes which are substantially equivalent to property taxes paid on properties of comparable market value."

(Rev. & Tax. Code, § 20509, subd. (a).)

In these appeals, it is undisputed that the appellants' residences are exempt from property taxation, but appellants have presented evidence to show that their respective landlords

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[3] All Board of Equalization cases cited herein are available for viewing on our website (www.boe.ca.gov).

make payments in lieu of taxes (PILOT's).[4] In each case, respondent concluded that the residence is excluded from the definition of a "rented residence" because the payments were not "substantially equivalent to property taxes paid on properties of comparable market value." Accordingly, respondent determined that appellants did not qualify for assistance.

Discussion

In order to determine whether appellants' residences are included in the definition of a "rented residence," we must define term "substantially equivalent," as it is used in section 20509, subdivision (a). We must also ascertain the meaning of the phrase "properties of comparable market value."

I. Substantially Equivalent

"Substantially equivalent" is not defined in the HRA law, in title 18 of the California Code of Regulations (relating to public revenues), or elsewhere in the Revenue and Taxation Code. Accordingly, we will search for guidance among definitions of similar terms in other areas of law. Any dispute involving section 20509 will necessarily focus on a numerical comparison between the relevant PILOT and the property tax paid on properties of comparable market value. Therefore, our search can be narrowed to definitions that are put in numerical or percentage terms. We also recognize that a PILOT may be less than 100 percent of the property tax and still be considered "substantially equivalent." A basic principle of statutory construction is that, whenever possible, a statute must be read so as to give meaning to every word. (*Agnew v. State Board of Equalization* (1999) 21 Cal.4th 310, 330.) Had the legislature intended that a PILOT be 100 percent of property taxes paid on properties of comparable market value, then it simply could have used the word "equivalent," or perhaps the words "equal to."[5] But the legislature chose instead to use the expression "substantially equivalent," and we must give meaning to the word "substantially." We infer from this choice of wording that something less than 100 percent is sufficient.

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[4] Appellants also argue that they are entitled to assistance because they claimed and received assistance for previous claim years. We do not doubt the veracity of appellants' assertions that they received assistance in prior years, but we do note that each year must be examined individually and considered on its own merits. (*Appeal of Duane H. Laude*, 76-SBE-096, Oct. 6, 1976.)

[5] For example, Government Code section 7510 authorizes local governments to impose a fee in lieu of taxes that is "equal to" the taxes they cannot collect when public retirement plans own real estate. Thus, the legislature clearly knew how to write a statute that used the term "equal to" in the context of a fee-in-lieu-of-taxes.

Having narrowed our definition of "substantially equivalent" for purposes of section 20509 to a numerical definition of something less than 100 percent, we will provide a brief review of other sources that discuss the word "substantially" in numerical terms.

California tax law: A property tax statute relating to the lease-leaseback of publicly owned property defines the term "substantially all" to mean at least 85 percent. (Rev. & Tax. Code, § 107.8, subd. (b).) In a sales and use tax statute defining "sale" and "purchase" at a social gathering, "substantially all" is defined as 80 percent or more. (Rev. & Tax. Code, § 6010.30, subd. (b).) In a sales tax regulation relating to the transfer of business property, "substantially all property" means 80 percent or more. (Cal. Code Regs., tit. 18, § 1595, subd. (b)(2).)

Other California law: In determining whether a conditional sales agreement existed on an automobile, lease payments totaling 75 percent of the value of the vehicle were not "substantially equivalent" to the value. (*Estate of Gonzalez* (1990) 219 Cal.App.3d 1598.) For purposes of determining whether an election was required to approve a municipal annexation, a plot of land was "substantially surrounded" by an annexing city where 98 percent of the land was surrounded by the city. (*Fig Garden Park No. 2 Assn. v. Local Agency Formation Comm.* (1984) 162 Cal.App.3d 336.) Three different plots of land were "substantially surrounded" by an annexing city where 79.8 percent, 89.1 percent, and 82.4 percent of the respective plots were surrounded by the city. (*Scuri v. Board of Supervisors* (1982) 134 Cal.App.3d 400.)

Federal tax law: For purposes of certain corporate reorganizations under Internal Revenue Code (IRC) section 368, a transfer of "substantially all" of a corporation's property may be satisfied by a transfer of 80 percent of fair market value. (Treas. Reg., § 1.368-2(d)(2).) For purposes of the IRC section 521 tax exemption for farmers' cooperatives, shareholder-produces who own 85 percent of the voting stock own "substantially all" of the cooperative. (Rev. Rul. 73-248, 1973-1 C.B. 295.) The IRC section 521 "substantially all" requirement was met by 91 percent ownership, but not by 72 percent ownership. (*Farmers Cooperative Creamery v. Commissioner* (1930) 21 B.T.A. 265; *Petaluma Cooperative Creamery v. Commissioner* (1969) 52 T.C. 457.)

Considering the above-cited statutes, regulations, and cases that have applied the word "substantially" in other areas of law, we find that "substantially equivalent," as used in section 20509, can be reasonably defined as at least 80 percent. We believe this definition is consistent with the common and legal uses of the word "substantially," as well as with the general structure and purpose of the HRA law.

II. Comparable Market Value

Consistent with our discussion of the term "substantially equivalent," section 20509, subdivision (a), requires the PILOT for a tax-exempt residence to be at least 80 percent of the amount of property taxes paid on "properties of comparable market value." Although it may at first seem to be self-evident, the phrase "properties of comparable market value" requires further scrutiny. This language was drafted prior to the passage of Proposition 13, which created a disconnect between the market value of property and the assessed value of property, for tax purposes. (See Cal. Const., art. XIIIA.) Because section 20509 does not account for this disconnect, a literal application of section 20509 may lead to absurd results.

Proposition 13 limits the basic ad valorem assessment on real property to one percent of "full cash value." (Cal. Const., art. XIIIA, § 1(a).) "Full cash value" is generally defined as the valuation shown on the 1975-76 tax bill, or the appraised value of property after new construction or changes in ownership. (*Id.*, § 2(a).) Absent new construction or a change in ownership, increases in "full cash value" are limited to two percent per year. (*Id.*, § 2(b).) Under these conditions, the assessed value of property for tax purposes may be considerably different from the market value of the property, which is generally defined as the highest price a willing buyer will pay a willing seller on the open market. (*People ex rel. Department of Public Works v. Lynbar, Inc.* (1967) 253 Cal.App.2d 870, 881.)

The disconnect between market value and assessed value created by Proposition 13 leads to considerable uncertainty in the application of section 20509. As a matter of statutory construction, we need not follow the literal meaning of a statute when such a reading will lead to absurd results. (*People v. Belleci* (1979) 24 Cal.3d 897, 884.) Here, because properties with comparable market values may have widely differing assessed values, one cannot say with any certainty what amount of property tax is paid by a property of "comparable market value."[6] Consequently, there is no reliable amount of tax against which to compare the exempt property's PILOT, and a literal application of section 20509 could lead to absurd results.[7]

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[6] For example, assume three similar apartment complexes each have a market value of $2,000,000 in the year 2000. Complex A was constructed in the year 2000, so its assessed value is $2,000,000. Complex B was constructed in 1990 and appraised at that time at $1,000,000. Complex B's assessed value in 2000 is $1,218,994 (1,000,000 multiplied by $(1.02)^{10}$). Complex C was constructed in 1980 and appraised at that time at $500,000. Complex C's assessed value in 2000 is $742,974 (500,000 multiplied by $(1.02)^{20}$).

[7] If complex B (see footnote 6) is tax exempt, should its PILOT be compared to the tax it would owe on its assessed value of $1,218,994, or to the tax paid on another complex with a comparable market value of $2,000,000? If compared to another property, is the PILOT compared to the tax paid by complex A, with an assessed value of $2,000,000, or to complex C, with an assessed value of $742,974? The choice in comparisons will have a drastic effect on whether the PILOT is "substantially equivalent" to the tax.

We will read section 20509 in a manner that is consistent with the intent of its drafters and that will apply clearly and consistently in every case. We interpret the phrase "properties of comparable market value" as actually requiring a comparison with taxes paid on properties of comparable assessed value. This reading is consistent with the pre-Proposition 13 world, in which market value and assessed value were closely connected, and is likely to reflect the original intent of the statute. This interpretation also will provide a clear comparison in every case, leading to fair and consistent application.

III. Application

Applying section 20509, subdivision (a), we have set forth the relevant facts in the following table:

Appellant	Assessed value of residence	Property tax on assessed value	PILOT	**PILOT as a percent of tax**
Cantor	$ 10,729,795	$ 107,298	$17,919	**16.7 %**
Asman	$ 448,039	$ 4,480	$ 3,226	**72.0 %**
Kras	$ 2,121,450	$ 21,215	$ 3,324	**15.7 %**

The PILOT's paid on appellants' residences are less than 80 percent of the amount of tax that would be owed on a non-exempt property of comparable assessed value. Therefore, appellants' residences do not qualify as "rented residences" under section 20509, subdivision (a).

Conclusion

For the reasons set forth above, appellants' residences do not qualify as "rented residences" under section 20509, subdivision (a). This disqualifies appellants from receiving renter assistance. Accordingly, respondent's denials of assistance are sustained.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, pursuant to section 19333 of the Revenue and Taxation Code, that the actions of the Franchise Tax Board in denying the 2001 claims of Helen Cantor, Betty M. Asman, and Yakov Kras, for property tax assistance in the amounts of $215.00, $240.00, and $1.00 or more, respectively, be and the same are hereby sustained.

Done at Sacramento, California, this 13th day of November, 2002, by the State Board of Equalization, with Board Members John Chiang, Johan Klehs, Dean Andal, Claude Parrish and *Ms. Marcy Jo Mandel present.

John Chiang, Chairman

Johan Klehs, Member

Dean Andal, Member

Claude Parrish, Member

*Ms. Marcy Jo Mandel, Member

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* For Kathleen Connell per Government Code section 7.9