



STATE BOARD OF EQUALIZATION

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November 12, 2002

JAMES E. SPEED
Executive Director

Assistant Assessor
County of Tuolumne
Administration Center
2 South Green Street
Sonora, CA 95370

Re: *Historical Aircraft Exemption - Claim Filed in Wrong County*

Dear _____ :

This letter is in response to your letter dated October 2, 2002 to Ms. Kristine Cazadd in which you requested our opinion on how the historical aircraft exemption should be handled in the unique facts described. For the reasons set forth below, it is our opinion that the historical aircraft exemption should be granted.

Facts

Mr. _____ (D) is the owner of a historical aircraft that satisfies all of the requirements of exemption under Revenue and Taxation Code¹ section 220.5. D purchased the aircraft in 1993 while he was a resident of Los Angeles County. The situs of the aircraft had been in Los Angeles County until June of 2001, at which time the aircraft was moved to Tuolumne County.

In February of 2002, D received an Aircraft Ownership Verification from the Los Angeles County Tax Assessor. D filed the 2002 Claim for Exemption with the Los Angeles County Assessor timely. Subsequent to filing the Claim for Exemption, Los Angeles County sent D an Aircraft Ownership Verification form. D completed and filed the Aircraft Ownership Verification form on or before March 13, 2002, in which he notified the Los Angeles County Assessor that the aircraft had been moved to Tuolumne County. The Los Angeles County Assessor forwarded the notice to the Tuolumne County Assessor in May 2002, but did not forward the Claim for Exemption. Tuolumne County did not grant the historical aircraft exemption because the exemption claim was not filed timely with Tuolumne County.

You wish to know whether Tuolumne County can accept the timely filing the D's historical aircraft claim for Exemption in Los Angeles County, even though it was filed in the wrong county and you only recently received a copy.

¹ Hereinafter, all section references are to the Revenue and Taxation Code, unless otherwise specified.

Legal Analysis

Section 220.5 provides for an exemption from property taxation for aircraft of historical significance. Subdivision (c) provides:

When claiming an exemption pursuant to this section, the claimant shall provide all information required and answer all questions contained in an affidavit furnished by the assessor. The claimant shall sign and swear to the accuracy of the contents of the affidavit before either a notary public or the assessor or his or her designee, at the claimant's option. The assessor may require additional proof of the information or answers provided in the affidavit before allowing the exemption.

Section 259.11 provides: "The affidavit for the aircraft of historical significance exemption shall show that both the property and the owner meet all the requirements entitling the property to the exemption."

Section 260 provides: "If any person, claiming any exemption named in this article, fails to follow the required procedure, the exemption is waived by the person."

Section 251 provides: "The [Board of Equalization] shall prescribe all procedures and forms required to carry into effect any property tax exemption enacted by statute or constitutional amendment. Pursuant to this authority the Board prescribed form BOE-260-B (Claim for Exemption). Form BOE-260-B provides "This claim must be filed annually with the Assessor by 5:00 p.m., February 15 for the preceding January 1 lien date." While not statutory, the February 15 due date was established by the Board pursuant to its quasi-legislative authority.

Nevertheless, the Legislature has adopted a very broad "curative" statute in section 166, that allows taxpayers to prove that they timely filed any statement, affidavit, application or other pager or document with a taxing agency by the specified date through the U.S. Mail.

Section 166 provides:

(a) Whenever a taxpayer is required to file any statement, affidavit, application, or any other paper or document with a taxing agency by a specified time on a specified date, such filing shall be deemed to be within the specified period if it is sent by United States mail, properly addressed with postage prepaid, and bears a post office cancellation mark of the specified date, or earlier within the specified period, stamped on the envelope, or on itself, or if proof satisfactory to the agency establishes that the mailing occurred on the specified date, or earlier within the specified period.

With regard to whether section 166 takes precedence over sections 220.5 and 251-260, subdivision (b) states:

(b) The provisions of this section shall supersede any contrary special provision of this division unless such special provision specifically provides that this section shall not be applicable.

There is no language in section 220.5 that specifically provide that section 166 shall not apply.

As to whether section 166 applies to "voluntary" filings of affidavits or claims for exception, subdivision (c) states:

(c) The provisions of this section are applicable to any filing required to be made by ordinance, rule, or regulation of a taxing agency.

Taxpayers asserting the provisions of section 166 have only one year to do so:

(d) Any statement or affidavit made by a taxpayer asserting such a timely filing must be made within one year of the deadline applicable to the original filing; provided, however, that this subsection shall not apply to any statement or affidavit asserting the timely filing of a property statement or to any statement made by the taxpayer in connection with an escape assessment imposed pursuant to Section 531.

Based on the Legislative intent expressly stated in the statute section 166 seems to apply to the date of filing Historical Aircraft Claims for Exemption, when sent through the U. S. Mail:

(e) It is the intent of the Legislature that this section be liberally construed in favor of the taxpayer and be applicable to all filings relating to property taxation which are required to be made by a taxpayer by a specified time on a specified date.

In other situations, the filing of applications for assessment appeal hearings, we have held that the proper application of Rule 305(d) and Section 166 require that where an applicant, by means of U.S. mail, timely files an application on or before the filing deadline in a county other than the one in which the property subject to appeal is located, i.e., the "wrong" county, the clerk in the "proper" county may deem the application to be timely filed within the specified period, upon proof of the post office cancellation on the envelope or of the date stamp made by the clerk in the wrong county on the application. (Cazadd letter dated April 23, 1997, copy enclosed.)

D received a Form 260-B from the Los Angeles County Assessor and timely filed the form there. The assessor accepted the form, and then asked for additional proof of the information in the affidavit. D timely and accurately responded to the assessor's request, notifying the Los Angeles County Assessor of his change in address and change in aircraft situs to Tuolumne County.

It appears that D complied in good faith with each requirement necessary to qualify for the historic aircraft exemption. He filed an affidavit upon receipt of the form and he promptly responded to further inquiries by the assessor and sent that form. The Claim for Exemption in the wrong county cannot be construed to be a waiver of the exemption under section 260.

While the April 23, 1997 letter referenced above addresses filing applications for assessment appeal hearings, section 166 broadly applies to the filing of any statement, affidavit, application, or any other paper or document with a taxing agency by a specified time on a specified date. Accordingly, the rationale would apply to the unusual facts in this matter.

In sum, we believe that Form 260-B may be accepted as filed timely and the historical aircraft exemption claimed should be allowed.

The views expressed in this letter are, of course, advisory only and are not binding on the assessor or the clerk of any county. You are advised to consult again with the appropriate clerk in order to resolve any remaining factual determinations and to confirm that the described circumstances will be handled in a manner consistent with the conclusions stated herein.

Sincerely yours,

/s/ Paul A. Steinberg

Paul A. Steinberg
Senior Tax Counsel

Attachment: Cazadd Opinion 4/23/97

PAS:lg

Precedent/Equalizatn/02/08Pas.doc
Precedent/GenExemp/02/15Pas.doc

cc:

The Honorable David W. Wynne
Assessor-Recorder, County of Tuolumne

Ms. Kristine Cazadd, MIC:82
Mr. David Gau, MIC:63
Mr. Dean Kinnee, MIC:64
Ms. Jennifer Willis, MIC:70



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KATHLEEN CONNELL
Controller, Sacramento

JOHN CHIANG
Acting Member
Fourth District, Los Angeles

E. L. SORENSEN, JR.
Executive Director

April 23, 1997

In Re: **Reinstatement of Assessment Appeal Application When Timely Filed in Wrong County.**

Dear Mr. :

This is in response to your telephone request of April 22, 1997, and to our discussions regarding circumstances in which a application for reassessment is correctly completed for the appeal of real property located in one county, and is timely filed in another county, i.e., the "wrong" county, (a county other than the one in which the property is located). Where such error is not discovered until after the filing deadline has passed, you question whether that application may be re-filed or reinstated in the proper county with the same filing date that was stamped or marked by the clerk in the wrong county. For the reasons hereinafter explained, we believe that the answer to this questions is "yes".

Property Tax Rule 305(d) prescribes the applicant's responsibilities in regard to the time of filing and provides in relevant part that:

"The application shall be filed with the clerk beginning July 2 but no later than September 15. An application will be deemed to have been timely filed if it is sent by U.S mail, properly addressed with postage prepaid and is postmarked on September 15 or earlier within such period."

The principle set forth in this section of Rule 305 is that an application is deemed to be timely filed if it is postmarked on September 15 or earlier, and thereby preserves the applicant's due process rights to maintain an appeal within the statutory time limits. Although the current statutes and rules do not specifically address the situation where an applicant timely filed the application in a county without jurisdiction, the "wrong" county, we believe that the clerk of the

appeals board in the "proper" county should undertake any reasonable steps to follow the basic policies underlying existing law with regard to accepting and reinstating such application.

The primary authority on most questions regarding taxpayer filing obligations is found in Section 166, "Date of Filing by United States Mail." The language throughout Section 166 is very broad as applied to all required forms, documents, or applications which are filed taxpayers by delivery through the U.S. mail. Subdivision (a) provides in part as follows:

"Whenever a taxpayer is required to file any statement, affidavit, application, or any other document with a taxing agency by a specified time on a specified date, **such filing shall be deemed to be within the specified period if it is sent by United States mail**, properly addressed with postage prepaid, and bears a post office cancellation mark of the specified date, or earlier within the specified period, stamped on the envelope, or on itself, or if proof satisfactory to the agency establishes that the mailing occurred on the specified date, or earlier within the specified period".

In construing the Legislature's intent, we have held that a taxpayer/applicant seeking to exercise his right to a hearing on his assessment is, under the language of Section 166, filing an application related to property taxation by a specified date (Section 1603). Since subdivision (e) states the Legislature's intent that Section 166 is to be "liberally construed in favor of the taxpayer," an interpretation of this section to include assessment appeal applications is both logical and consistent with that legislative intent. (See Cazadd Letter, pgs.6-7, 2/11/97, attached.)

We have also held that the word, "required", used therein, does not mean that Section 166 applies only when the filing of forms or documents is mandated under law, but that it also applies where taxpayers have the option of filing forms or documents, as with the parent-child exclusion or assessment appeal applications. Subdivision (c) of Section 166 states that the section's provisions are applicable to "any filing required to be made by an ordinance, rule or regulation of a taxing agency." Similarly, subdivision (e) expressly provides that the section is applicable to "all filings relating to property taxation which are required to be made by a taxpayer by a specified time on a specified date." Thus, there is no question that a taxpayer/applicant who mails an application which is properly addressed with postage prepaid, bearing the post office cancellation mark of the specified date (September 15) or earlier or other proof of mailing on or before that date, is deemed to have timely filed that application.

While the argument could be made that in the case where the application was sent to the "wrong" county one of the fundamental requirements under Section 166(a), that the envelope be "properly addressed," was not met, we would advise that the clerk in the "proper" county should make the most liberal interpretation of the statute in favor of the appeal applicant. This recommendation seems realistic considering the likelihood that a court would liberally construe the statute, based on the strong statement of legislative intent in subdivision (e).

Moreover, the protection available under Section 166 extends to a large category of taxpayers/applicants, including those who merely claim to have timely filed an application but do not actually possess such applications, permitting these applicants to submit affidavits

attesting to the mailing, up to one year beyond the initial deadline (subdivision (d)). Therefore, with even stronger reason it is logical that the protection under Section 166 should extend to the applicants who possess the actual date stamped application which was filed in the "wrong" county, to permit such applicant to reinstate it with the clerk in the "proper" county.

Whether any document, such as an assessment appeal application, was filed timely is a question of fact. Section 1603 and Rule 305(d) inferentially place the burden of proving this fact on the taxpayer/applicant. It is the role of the clerk to ultimately evaluate the facts to determine if he or she is satisfied with the sufficiency of the applicant's statement, affidavit, or date stamped application. However, where an applicant possesses a date stamped application or an envelope demonstrating that the application was deposited in the mail on or before the filing date, Section 166(a) provides that the burden of proof is met by the post office cancellation mark on the envelope alone, and that it such proof sufficient for the clerk to determine that a filing is within the specified period, (i.e., "such filing shall be **deemed** to be within the specified period").

The views expressed in this letter are, of course, advisory only and are not binding on the assessor or the clerk of any county. You are advised to consult again with the appropriate clerk in order to resolve any remaining factual determinations and to confirm that the described circumstances will be handled in a manner consistent with the conclusions stated herein.

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

Sincerely,

/s/ Kristine Cazadd

Kristine Cazadd
Senior Tax Counsel

KEC:ba
Attachment

cc: The Honorable
County Assessor

Mr.
County Assessment Appeals Board

Mr. James Speed, MIC:63
Mr. Richard Johnson, MIC:64
Ms. Jennifer Willis, MIC:70
Mr. Mark Nissan, MIC:64
Mr. Larry Augusta