



December 17, 1982

RE: Four year Escape Limitation

This is in response to your November 30, 1982, letter in which you ask how far back the four-year escape limitation can be extended when an appeal has been filed.

The facts are as follows:

In early 1979 your office discovered several items of construction, which it was felt had been in place for at least two years. Due to a lack of confirming information, the improvements were enrolled for the 1979-1980 Assessment Roll. The assessee filed an appeal covering that assessment.

The appeal was not heard until 1982. Testimony was presented indicating the improvements were completed in early 1975 and your records were revised accordingly and escape assessments were made. However, the County Auditor has questioned whether or not you have a legal right to make escape assessments beyond the four-year statute of limitation.

The statute of limitations for escapes are set forth in Section 532 of the Revenue and Taxation code. Basically that section provides that except for fraud, an escape assessment must be made within four years after July 1 of the assessment year in which the property escaped taxation. Therefore, unless there is some statutory or court-declared exception to this rule, it is our opinion the four-year statute is not extended by filing the assessment appeal. (See Phil Silver v. Phill Watson 26 Cal.App. 3d 905.)

There is no section in the Revenue and Taxation Code that modifies the four-year statute based solely on the fact an assessment appeal was filed. Under case law, however, there is an exception to the running of the statute of limitation. This is the so-called "late-discovery exception." (See Silver v. Watson, supra.) To obtain the benefit of the late-discovery exception to the statute of limitations, one must present facts showing that cause of action could not with reasonable diligence have been discovered prior to the running of the statute. (See Orange Co. Rock, etc. Co. v. Cook Brothers Equipment Co. (1966) 246 Cal.App. 2d 698.

It doesn't appear that the facts in the present case bring you within the exception since you had the opportunity to make a full investigation of the situation once the matter was brought to your attention in 1979.

In view of the foregoing, it is our opinion that you cannot make an escape assessment beyond the four-year statute of limitation.

Very truly yours,