

720.0021 Claim. The untimely filing of an application for reduction of assessment is not cured by the filing of a claim for refund within three years of the assessment. Even though inquiries were directed to the assessor's office and a reduction in value was obtained for a subsequent year, a claim for refund and/or a suit for refund would likely be dismissed for failure to exhaust administrative remedies. C 5/16/89.



STATE BOARD OF EQUALIZATION

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Executive Director

May 16, 1989

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Dear M

This is in response to your letter to me of April 12, 1989 in which you request our opinion with respect to the following facts set forth in your letter.

On December 24, 1985, your client acquired real property subject to a lease in an "arms'-length" transaction from an unrelated third party for a total purchase price of \$1.5 million. The property was reassessed to a valuation of \$1.5 million following such sale, as reflected in the 1986 tax bill, mailed on August 15, 1986. Your client duly paid the entire amount of the tax on the assessment for 1986 based on the increased valuation, as well as the tax on the supplemental assessment for the prior year from the date of purchase to the end of the tax year.

The assessed valuation of the subject property was subsequently increased to \$2.8 million as reflected in the supplemental tax bill, mailed May 8, 1987, for the year 1985-86. An adjusted tax bill for the year 1986-87 was mailed to your client on June 2, 1987, reflecting the \$2.8 million increased valuation.

On June 17, 1987, your office forwarded a request for a hearing to the Assessor's Office regarding the increased valuation. No response was received. A follow-up letter was sent to the Assessor's Office on September 16, 1987 which resulted in a telephone call from Mr. John Dortch of the Assessor's Office. Mr. Dortch requested and subsequently reviewed the lease to which the property was subject and concluded that the property was worth more than the purchase price because the rent payable under the lease was less than the market rent.

On October 9, 1987, you filed an application for reduction of assessment with the Los Angeles Assessment Appeals Board ("Board"). The Board determined the application to be invalid as it was not filed with the Board within sixty days from mailing the supplemental tax bill. You subsequently sought and

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received a reduction on the current year (1988) valuation; the value was reduced to \$2.4 million.

You have asked whether filing a claim for refund for the years prior to 1988 is an applicable remedy under the circumstances described above and if not whether there are any other administrative remedies which you should consider prior to filing a suit for refund.

Filing a claim for refund as you suggest is not only an applicable remedy but a necessary prerequisite to filing a suit for refund under Revenue and Taxation Code* section 5142. Filing a claim for refund, however, is not a substitute for first seeking relief from the Board where an issue of valuation is involved and failure to seek such relief is a bar to judicial review (Stenocord Corporation v. City and County of San Francisco 2 Cal.3d 984; C.H.B. Foods, Inc. v. County of Los Angeles 195 Cal.App.3d 821).

Such relief must be sought by filing an application for reduction in assessment with the Board between July 2 and September 15 for assessments made during the regular assessment period and no later than 60 days after the date on which the assessee was notified for assessments made outside the regular assessment period (§§ 1603, 1605). No application was filed with the Board here until October 19, 1987 which was not timely under either section 1603 or 1605. The Board therefore had no jurisdiction to hear the application (see Property Tax Rule 305(d)).

Although you sought and received a reduction in assessment from the Board for 1988, such reduction, pursuant to section 80(a)(5), "shall apply for the assessment year in which the appeal is taken and prospectively thereafter." Under section 80(a)(3), the base-year value of \$2.8 million determined by the Assessor as of December 24, 1985 shall be conclusively presumed to be the base-year value for 1986 and 1987.

Since the issue in a suit for refund in this matter is the market value of the property and since timely application to the Board was not made for the years prior to 1988, any suit for refund for those years almost certainly would be dismissed for failure to exhaust administrative remedies (Stenocord, supra, and C.H.B. Foods, Inc., supra).

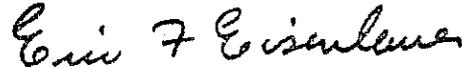
*All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

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No other judicial or administrative relief appears to be available in this matter unless you are able to convince the Assessor that there was an error in the determination of the base-year value of \$2.8 million which involved the exercise of the Assessor's judgment as to value. If so, such error may be corrected by the Assessor under section 51.5(b).

The views expressed in this letter are, of course, advisory only and are not binding upon the assessor of any county. It is within the power of the assessor to determine how property located within his jurisdiction should be appraised.

Very truly yours,



Eric F. Eisenlauer
Tax Counsel

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cc: Hon. John J. Lynch
Los Angeles County Assessor
Mr. John W. Hagerty
Mr. Robert H. Gustafson
Mr. Verne Walton