



(916) 445-5047

September 20, 1978

Dear

This is in response to your August 14, 1978, letter to our Board in which you asked whether you were entitled to interest on a property tax refund made to you by the Ventura County Tax Collector.

Your letter says in July of 1976 you paid your taxes under protest. I presume then that you sought legal remedy under Sections 5136 through 5143 of the Revenue and Taxation Code in effect at that time. Any interest claim must then be sought through those provisions of law.

California case law holds that interest cannot be recovered on a tax refund unless a statute specifically provides for such recovery (see cases listed 88 ALR 2d at p. 336 and 57 ALR at p. 362; Ball v. County of Los Angeles, (1978) 82 Cal. App. 3d 312 at p. 317). The statute under which you must qualify for the recovery of interest is Section 5141 of the Revenue and Taxation Code in effect when you made your claim for refund (and in effect until January 1, 1977, when it was repealed and replaced by section 5150).

Section 5141 requires that you are entitled to interest only "[i]f the court finds" you are entitled to the recovery of taxes paid and then interest shall be allowed from the date of payment under protest to the date of entry of judgment.

You are therefore not entitled to interest because there has been no adjudication of your claim for refund (see Wells Fargo v. City of San Francisco, (1944) 25 Cal. 2d 37 at p. 43 and footnote 1 where the court infers the necessity of adjudication). Your claim for refund was apparently voluntarily paid by the county without any court action. Absent a court action by you to recover taxes paid, there is no provision in law to require the county to pay you interest on the taxes you paid under protest.

Very truly yours,

Robert R. Keeling
Robert R. Keeling
Tax Counsel

RRK:fr