

STATE BAR OF CALIFORNIA
TAXATION SECTION
STATE AND LOCAL TAX COMMITTEE
2015 SACRAMENTO DELEGATION

AMENDING SECTION 5140
TO GIVE CORPORATE PARENT AND
SUBSIDIARY ENTITIES STANDING TO
FILE PROPERTY TAX REFUND ACTIONS
FOLLOWING ASSESSMENT APPEALS
BOARD DECISIONS.

This proposal was prepared by Cris K. O'Neill, member of the State Bar Taxation Section.¹ The author wishes to thank reviewers Michael Lebeau and Christopher Campbell for their helpful comments.²

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STATE BOARD OF EQUALIZATION



Appeal Name: Property Tax - O'Neill read on record

Case ID: _____ ITEM #: _____

Date: 6/23/15 Exhibit No: 6.9

TP _____ FTB _____ DEPT PUBLIC COMMENT

¹ The comments contained in this paper are the individual views of the author who prepared them, and do not represent the position of the State Bar of California.

² Although the authors and/or presenters of this paper might have clients affected by the rules applicable to the subject matter of this paper and have advised such clients on applicable law, no such participant has been engaged by a client to participate on this paper. No author has a direct personal or financial interest in the issue addressed in this paper.

EXECUTIVE SUMMARY

Revenue and Taxation Code section 5140 (“Section 5140”) gives only the person who paid property taxes standing to bring an action in Superior Court for a refund of those taxes. Section 5140 was drafted, however, in a time when property taxes were paid by cash or check. Modern corporations and their subsidiaries no longer handle their finances in the manner contemplated by Section 5140.

Record title to real property is now usually held in the name of a corporate subsidiary. In many cases it is the subsidiary that exhausts its administrative remedies by filing and prosecuting any assessment appeals board proceedings challenging their assessed values. That subsidiary’s property taxes are usually paid its corporate parent, or even another subsidiary in the same family of companies.

After prosecuting an assessment appeal and losing, property owners may file suit for refund in Superior Court. When the Superior Court action is filed, the counties assume that the property tax payments were by the corporate parent—instead of the subsidiary—and move to dismiss the case under Section 5140. This requested dismissal filing occurs even when the subsidiary and the parent are both named plaintiffs in the Superior Court action, thus satisfying the requirements of Section 5140.

Section 5140, which was appropriate for a time when everyone paid their taxes by check or in cash; it does not fit modern times where tax payments are made electronically and corporate controllers pay expenses for the corporation’s subsidiaries from joint consolidated bank accounts. We propose to amend Section 5140 so that property owners can still have their “day in court” even their property taxes are paid by a corporate parent or by another subsidiary.

DISCUSSION

Background: Under existing California law, *Revenue and Taxation Code* section 5140 (“Section 5140”) gives only the person who paid property taxes standing to bring an action in Superior Court for a refund of those taxes.

Problem Identified: Section 5140 was drafted in a time when property taxes were paid by cash or check. Modern corporations and their subsidiaries no longer handle their finances in the manner contemplated by Section 5140.

Record title to real property is now usually held in the name of a subsidiary. In those cases, the subsidiary files and prosecutes any assessment appeals board proceedings challenging their assessed values. Property taxes, on the other hand, are not usually paid by the subsidiary—but instead by its corporate parent, or even another subsidiary in the same family of companies.

In fact, it is common for corporate subsidiaries to put their funds in “cash sweep” accounts maintained by the corporate parent, and for the corporate parent (or a sister subsidiary) to pay the property taxes from that sweep account. While the payment is made with the subsidiary’s money, the named payor is often the corporate parent.

After prosecuting an assessment appeal and losing, property owners may file suit for refund in Superior Court. When the Superior Court action is filed, the tax authorities assume that the property tax payments were by the corporate parent—instead of the subsidiary—and move to dismiss the case under Section 5140. This requested dismissal filing occurs even when the subsidiary and the parent are both named plaintiffs in the Superior Court action, thus satisfying the requirements of Section 5140.

Some additional confusion has arisen concerning whether Section 5140 implicitly requires that the entity who pays the property taxes also be the same entity who prosecuted the assessment appeals to exhaust their administrative remedies.

On October 28, 2014, the California Court of Appeal issued a decision which addresses this specific issue (*Chevron USA, Inc. v. County of Kern*, F066273). The appellate court found that when a parent corporation which holds funds of a subsidiary, and pays property taxes on behalf of that subsidiary, the requirements of Section 5140 are met. (Ibid. at pp. 5-10) The proposed statutory language set forth below is supported by the Court of Appeal's decision in *Chevron USA, Inc.*

The confusion in this area is growing for two reasons:

- (1) Corporate subsidiaries are often the title holder of property. As record title holders and the named assessee on the tax rolls, the subsidiaries are the proper parties to prosecute administrative proceedings before the assessment appeals board. Assessment appeals board applications neither contemplate nor require the corporate subsidiary to include the corporate parent (who pays the tax) as a co-applicant.
- (2) The financial arrangements in families of companies (corporate parent with many subsidiaries) have grown increasingly complex. Frequently, the corporate parent pays the tax, or at least sends in the money to pay the tax, even when the money may actually belong to the subsidiary.

Our firm has participated in at least three cases involving major corporations where the tax authority asserted (and in one case successfully) that the standing requirements of Section 5140 were not satisfied when the subsidiary had prosecuted assessment appeals on behalf of the corporate parent.

Proposed Solution: We need to clean up this area of the law so that subsidiaries and their parents are not constantly being "whipsawed" in this circumstance. Section 5140, which was written at a time when everyone paid their taxes by check or in cash, does not fit the times where tax payments are made electronically and corporate controllers pay expenses for the corporation's subsidiaries from joint consolidated bank accounts.

Proposed Statutory Language: We propose to amend Section 5140 as follows:

(a) The person who paid the tax, his or her guardian or conservator, the executor of his or her will, or the administrator of his or her estate may bring an action only in the superior court, but not in the small claims division of the superior court, against a county or a city to recover a tax which the board of supervisors of the county or the city council of the city has refused to refund on a claim filed pursuant to Article 1 (commencing with Section 5096) of this chapter.

(b) (1) Except in the case where a legal entity is the named assessee, No other person may bring such an action; but if another should do so, judgment shall not be rendered for the plaintiff.

(2) When a legal entity is the named assessee, the named assessee, its corporate parent, or another subsidiary of the same corporate parent may bring such an action.

Merits of the Proposal: This proposal creates a uniform standard for determining whether a legal entity has standing to file a property tax refund action in Superior Court. It acknowledges that property tax payment systems have changed since the enactment of Section 5140 and that the state will allow its businesses to prosecute refund actions without threat of frivolous motions for dismissal.

Discussion of Proposal: This proposal has not yet been fully discussed outside the tax bar.

Statement of Interest: The author listed below has previously litigated this issue but has no current cases involving this interpretation of Section 5140.

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Revenue and Taxation Code
Section 1603

(a) A reduction in an assessment on the local roll shall not be made unless the party affected or his or her agent makes and files with the county board a verified, written application showing the facts claimed to require the reduction and the applicant's opinion of the full value of the property. The form for the application shall be prescribed by the State Board of Equalization.

(b) (1) The application shall be filed within the time period from July 2 to September 15, inclusive. An application that is mailed and postmarked September 15 or earlier within that period shall be deemed to have been filed within the time period beginning July 2 and continuing through and including September 15.

(2) Notwithstanding paragraph (1), if the taxpayer does not receive the notice of assessment described in Section 619 at least 15 calendar days prior to the deadline to file the application described in this subdivision, the party affected, or his or her agent, may file an application within 60 days of receipt of the notice of assessment or within 60 days of the mailing of the tax bill, whichever is earlier, along with an affidavit declaring under penalty of perjury that the notice was not timely received.

(3) Notwithstanding paragraph (1), the last day of the filing period shall be extended to November 30 in the case of an assessee or party affected with respect to all property located in a county where the county assessor does not provide, by August 1, a notice, as described in Section 619, to all assesseees of real property on the local secured roll of the assessed value of their real property as it shall appear or does appear on the completed local roll, including the annual increases in assessed value caused solely by increases in the valuation of property that reflect the inflation rate, not to exceed 2 percent, pursuant to the authority of subdivision (b) of Section 2 of Article XIII A of the California Constitution.

(A) The county assessor shall notify the clerk of the county board of equalization and the county tax collector by April 1 of each year as to whether the notice specified in this paragraph will be provided by August 1.

(B) The clerk shall certify the last day of the filing period and shall immediately notify the State Board of Equalization as to whether the last day of the filing period for the county will be September 15 or November 30.

(C) The State Board of Equalization shall maintain a statewide listing of the time period to file an application in each county.

(D) The provisions of Section 621 may not be substituted as a means of providing the notice specified in this paragraph.

(4) If a final filing date specified in this subdivision falls on Saturday, Sunday, or a legal holiday, an application that is mailed and postmarked on the next business day shall be deemed to have been filed within the requisite time period specified in this subdivision. If on any final filing date specified in this subdivision, the county's offices are closed for business prior to 5 p.m. or for that entire day, that day shall be considered a legal holiday for purposes of this section.

(c) The application may be filed within 12 months following the month in which the assessee is notified of the assessment, if the party affected or his or her agent and the assessor stipulate that there is an error in the assessment as the result of the exercise of the assessor's judgment in determining the full cash value of the property and a written stipulation as to the full cash value and assessed value is filed in accordance with Section 1607.

(d) Upon the recommendation of the assessor and the clerk of the county board of equalization, the board of supervisors may adopt a resolution providing that an application may be filed within 60 days of the mailing of the notice of the assessor's response to a request for reassessment pursuant to paragraph (2) of subdivision (a) of Section 51, if all of the following conditions are met:

(1) The request for reassessment was submitted in writing to the assessor in the form prescribed by the State Board of Equalization and includes all information that is prescribed by the State Board of Equalization.

(2) The request for reassessment was made on or before the immediately preceding March 15.

(3) The assessor's response to the request for reassessment was mailed on or after September 1 of the calendar year in which the request for reassessment was made.

(4) The assessor did not reduce the assessment in question in the full amount as requested.

(5) The application for changed assessment is filed on or before December 31 of the year in which the request for reassessment was filed.

(6) The application for reduction in assessment is accompanied by a copy of the assessor's response to the request for reassessment.

(e) In the form provided for making an application pursuant to this section, there shall be a notice that written findings of facts of the local equalization hearing will be available upon written request at the requester's expense and, if not so requested, the right to those written findings is waived. The form shall

provide appropriate space for the applicant to request written findings of facts as provided by Section 1611.5.

(f) The form provided for making an application pursuant to this section shall contain the following language in the signature block:

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing and all information hereon, including any accompanying statements or documents, is true, correct, and complete to the best of my knowledge and belief and that I am (1) the owner of the property or the person affected (i.e., a person having a direct economic interest in the payment of the taxes on that property—"The Applicant," (2) an agent authorized by the applicant under Item 2 of this application, or (3) an attorney licensed to practice law in the State of California, State Bar No. _____, who has been retained by the applicant and has been authorized by that person to file this application.

(g) The clerk of a county board of equalization may accept an electronically filed application for changed assessment containing an electronic signature if all of the following criteria are met:

(1) The application complies with all other requirements for filing the application.

(2) The electronic signature is accompanied by the certification described in subdivision (f).

(3) The electronic signature is authenticated in a manner that is approved by the county board of supervisors, which manner may include, but is not limited to, the use of personal identification numbers the clerk has assigned to applicants.

(h) The clerk shall refund any filing fee collected from an applicant in the event that the application is granted, in whole or in part, by the board.