

Memorandum

To: Honorable Antonio Vazquez, Chairman
Honorable Mike Shaefer, Vice Chairman
Honorable Ted Gaines
Honorable Malia Cohen
Deputy Controller Yvette Stowers

Date: May 22, 2020

From: Henry D. Nanjo /s/Henry D. Nanjo
Chief Counsel

Note: Attorney-Client Privilege waived by the
Board on 06/09/2020. /s/HDN

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Subject: **Revenue & Taxation Code section 155 – *Authority of the Board to Extend Deadlines Applicable to Taxpayers***

As requested, this memorandum explains the Board's authority to extend deadlines under Revenue and Taxation Code¹ section 155.

Issue

Division 1 of the Revenue and Taxation Code (Division 1) fixes deadlines for the performance of acts by certain parties, including taxpayers, assessors, and county boards. Section 155 allows the Board to extend, for up to 40 days in a public calamity, deadlines fixed in Division 1 for the performance of any act by the assessor or county board. Is a taxpayer filing required by Division 1 also an act of an assessor or county board such that the Board may extend the filing deadline under section 155?

Law and Analysis

Section 155 provides:

The time fixed in this division for the performance *of any act by the assessor or county board* may be extended by the board or its executive director for not more than 30 days, or, in case of public calamity, 40 days. If an extension of time is granted, the executive director of the board shall give written notice thereof to the county auditor, county tax collector, and the officer or county board to whom the extension is granted. The executive director shall inform the board at its next regular meeting of any action with respect to extensions taken by him or her. There shall be the same extension of time for any act of the board dependent on the act for which time was extended.

(Emphasis added.)

¹ All further statutory references are to the Revenue and Taxation Code unless otherwise indicated.

The “division” referred to in section 155 is Division 1 of the Revenue and Taxation Code which governs property taxation.

Settled canons of statutory construction direct that the plain meaning of a statute controls the interpretation of that statute unless its words are ambiguous. (See *Elk Hills Power, LLC v. Board of Equalization* (2013) 57 Cal.4th 593, 609-610; See also *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 527.) If the language of a statute is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature. (*In re Lance W.* (1985) 37 Cal.3d 873, 886; See also *J.A. Jones Const. Co. v. Superior Court* (1994) 27 C.A.4th 1568, 1575, 33 C.R.2d 206 [where text of statute is clear, court should not inquire into legislative intent].)

Here, the plain language of section 155 is clear. It authorizes the Board or its Executive Director to grant a 30-day extension (40 days in the event of public calamity) for the performance of any act by the assessor or county board. The requirement of a taxpayer to perform an act (e.g., the filing of a business personal property statement or the filing of an assessment appeal application) is not an act performed by the assessor or the county board. It is an act performed by the taxpayer. This is made clear by the relevant statutes themselves. For example, section 441, subdivision (a) provides that “each person owning taxable personal property ... shall file a signed property statement with the assessor” and therefore, section 441, subdivision (b) imposes a penalty on property statements *not filed* by May 7 and section 463, subdivision (a) states, “*If any person who is required by law ... to make an annual property statement fails to file ... within the time limit specified by Section 441 ... a penalty of 10 percent of the assessed value ... shall be added to the assessment made on the current roll.*”² As another example, section 1605, subdivision (b)(1) provides that “In the case of an assessment made ... outside the regular assessment period ... the application shall be filed with the clerk ... [in certain counties] no later than 60 days after the date of mailing printed on the notice of assessment, or the postmark therefor, whichever is later.”

Thus, it is clear that the required act set out in the statutes is performed by the person filing the statement or the application, not by the assessor or the county board. For this reason, also, it cannot be said that the act of accepting the form or the application is an act of the assessor or county board that may be extended under section 155. Division 1 does not fix a time for the assessor or the county board to receive a statement or application. It sets the time for the taxpayer to file a statement or application. Therefore, section 155, by its plain language, does not authorize the Board to extend the deadlines of acts required to be performed by taxpayers.

Furthermore, even if a taxpayer’s requirement to file by a certain deadline is also an act of the assessor or county board to accept that filing, section 155 would only authorize the Board to extend the time for assessors and county boards to accept the filing. It would not change the filing deadline that applies to taxpayers because relevant statutes make clear that the act that must be performed by the applicable deadline is the filing and not the acceptance of that filing by an assessor or county board.

² On May 6, 2020, the Governor issued executive order N-61-20 extending the due date to file business personal property statements without a late filing penalty from May 7 to May 31.

Finally, even if the plain language was deemed to be ambiguous such that a resort to legislative history was necessary, the legislative history demonstrates clearly that section 155, which existed in some form since 1872, does not apply to taxpayer deadlines.

Section 155 was first enacted in 1872 as section 3705 of the Political Code. The 1872 version of section 3705 stated:

The State Board of Equalization may, by an order entered upon its minutes, and certified to the County Auditor of any county, extend, for not exceeding thirty days, the time fixed in this Title [Title IX, Revenue] for the performance of any act.

Political Code section 3705 was amended in 1895 to read:

The State Board of Equalization may, by an order entered upon its minutes, and certified to the County Auditor of any county, extend, for not exceeding twenty days, the time fixed in this title [Title IX, Revenue] for the performance of any act, *by the county Assessor, county Auditor, or county Boards of Equalization.*

(Emphasis added.)

The 1895 version of Political Code section 3705 was enacted as a portion of Revenue and Taxation Code section 155 in 1939 without substantive changes, and exists today in substantially similar form.³ Thus, since the statute was changed from allowing the Board to extend the time for any act, which arguably includes acts of taxpayers including the filing of forms, to allowing the extension of acts performed only by the assessor, auditor, and county boards, the Legislature limited the Board's authority by excluding authority over extending taxpayer deadlines.⁴ For the Board to extend the deadline fixed in Division 1 (e.g., to file business property statements or to file appeals on supplemental assessments) now would be reading back into section 155 a power explicitly removed by the Legislature. And administrative acts not authorized or inconsistent with acts of the Legislature are void. (*Izana v. Turlock Irrigation Dist. Bd of Directors* (2019) 35 Cal.App.5th 429, 446.)

Prior Board Guidance

In spite of the above, two prior Boards⁵ (of which we are aware) have extended taxpayer filing deadlines, as follows:

- Letters to Assessors (LTAs) Nos. 2001/063 & 2001/077 provided extensions of time for taxpayers to file applications for reductions in assessments under sections 1603 and 1605, and the time for filing applications for reduced assessment under section 170.

³ Of course, the Board's authority to extend County Auditor deadlines has been removed.

⁴ While we are not certain that the initial version of Political Code 3705 included the authority to extend taxpayer deadlines in spite of its broad language, to the extent that it did, that authority was clearly removed by the 1895 amendment.

⁵ We are also aware of LTA No. 1978/205 *Failure to File Penalty Applies to Aircraft Statement*, that established a uniform deadline for assessors to send out aircraft property statements and a 30-day time period for taxpayers to return it before the assessor applies the 10% penalty. That LTA, however, was not published under the authority of section 155, and was a suggestion to assessors based on authority given to assessors by statute.

- LTA No. 17/009 *Extension of Time for Accepting Claims for Property Tax Exemption*

LTA Nos. 2001/063 & 2001/077 were published after the terrorist attacks on September 11, 2001. Those LTAs were part of several actions taken by the Board to mitigate some of the effects on taxpayers from that event.⁶ LTA No. 17/009 was published after flooding affected a number of counties near Lake Oroville. We note, however, that no legal explanation or analysis was given as to the use of section 155 to extend those deadlines. Further, we are not aware of any legal analysis in support of those LTAs. It appears, that prior Boards tried to characterize the receipt of forms required to be filed by taxpayers as “acts” of an assessor or county board contrary to the well settled law and plain interpretation of the statute, RTC 155.

A repeat of such characterization now risks the Board’s overreach to exercising powers not granted to it by statute which may be met with disfavor and lead to potential controversy and lawsuits in the future. Furthermore, it may erode trust in the Board’s ability to act fairly and according to legal standards.

Interaction with Governor’s Executive Order

On March 12, 2020, the Governor issued executive order N-25-20, paragraph 6 of which states, in relevant part:

... the Board of Equalization ... shall use their administrative powers where appropriate to provide those individuals and businesses impacted by complying with a state or local public health official's imposition or recommendation of social distancing measures related to COVID-19 with the extensions for filing, payment, audits, billing, notices, assessments, claims for refund, and relief from subsequent penalties and interest.

The Board’s administrative powers do not include changing statutes. Thus, this provision cannot be viewed to authorize the Board to administratively change statutory deadlines where there is no prior statutory authorization to do so. And as explained above, section 155 does not grant the Board the authority to extend deadlines for the performance of acts required by taxpayers.

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⁶ The Board, at that time, also promulgated Property Tax Rule 139 which allowed for reductions in real property values under section 170 without any physical damage to the real property. That Rule was challenged by assessors and the appeals court in *Slocum v. State Board of Equalization* (2005) 134 Cal.App.4th 969, held that the Rule was invalid as inconsistent with section 170.