



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082
TELEPHONE (916) 445-5580
FAX (916) 323-3387
www.boe.ca.gov

JOHAN KLEHS
First District, Hayward

DEAN ANDAL
Second District, Stockton

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KATHLEEN CONNELL
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JAMES E. SPEED
Executive Director

May 31, 2001

Subject: Amending An Application For Changed Assessment - Rule 305(e)

Dear Mr. :

This is in reply to your letter of April 9, 2001 in which you request a legal opinion concerning the effect and interpretation of the application amendment provisions of Property Tax Rule 305 in view of the Statement of Decision and Findings of Fact ("findings and decision") made by the assessment appeals board in the recent appeal of your client, Inn. Specifically, the appeals board held it did not have authority under applicable regulatory provisions and controlling case law to grant your request to amend an application from an appeal of a decline in value for the 1999 lien date to an appeal of the base year value as of that lien date. However, you contend that the amendments to Property Tax Rule 305, which added subsection (e)(2)(c), were intended to allow an applicant to amend an application under such circumstances. For the reasons set forth below, it is our view that the assessment appeals board incorrectly interpreted and applied the current amendment provisions of Rule 305 and, thus, the board had authority to consider and to allow your request for amendment.

Facts Presented

A change in ownership of the subject property occurred on August 28, 1998, but the supplemental assessment was not appealed. An application was timely filed on September 15, 1999, stating as the basis of the claim for relief that under section 51(a)(2) the adjusted base year value on lien date 1999 exceeded the fair market value. On August 17, 2000, the applicant's agent notified the appeals board in writing that the applicant intended to amend the application to change the basis for relief from a decline in value to a reduction in the base year value established for lien date 1999 under section 80. At the noticed hearing held on August 24, 2000, the applicant's agent submitted an amended application to which the assessor did not enter any objection. The appeals board did not make a determination as to the validity of the amendment.

Shortly after the applicant commenced presentation of its case, the assessor requested a continuance in order to permit a review of new evidence in support of the amendment produced by the applicant at the hearing. The assessor also proposed that the parties pursue settlement based

on the new evidence. The appeals board ordered the case continued to November 27, 2000 and heard the entire matter, including the issue of the validity of the amendment. In its Statement of Decision and Findings of Fact dated February 12, 2001, the appeals board held that the amendment was prohibited by Property Tax Rule 305, subsection (e), as a request for relief additional to or different in nature than the relief originally requested by the application.

Law and Analysis

Revenue and Taxation Code section 1603, subdivision (a) provides in relevant part that

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.

Property Tax Rule 305 interprets and implements section 1603 by setting forth detailed application filing procedures and content requirements. Subsection (e) of rule 305 governs the procedures for amendments and corrections of applications and provides, in relevant part, that an application may be amended after the final filing date to request relief additional to or different in nature from that originally requested, as follows:

- (e)(2)(C)(i) Upon request of the applicant or the applicant's agent, the board, in its discretion, may allow the applicant or the applicant's agent to make amendments to the application in addition to those specified in subdivisions (A) and (B) to state additional facts claimed to require a reduction of the assessment that is the subject of the application.
- (ii) The applicant or the applicant's agent shall state the reasons for the request, which shall be made in writing and filed with the clerk of the board prior to any scheduled hearing, or may be made orally at the hearing. If made in writing, the clerk shall provide a copy to the assessor upon receipt of the request.
- (iii) As a condition to granting a request to amend an application, the board may require the applicant to sign a written agreement extending the two-year period provided in section 1604 of the Revenue and Taxation Code.
- (iv) If a request to amend is granted, and upon the request of the assessor, the hearing on the matter shall be continued by the board for no less than 45 days, unless the parties mutually agree to a different period of time.

The foregoing provision was added to Rule 305, effective June 25, 2000, to grant a local appeals board the discretion to allow an applicant's request to amend an application to seek any relief that could have been sought when the application was originally filed. Under former

subsection (e) an applicant was denied any opportunity to amend an application “after 5:00 p.m. on the last day upon which the application might have been filed if the effect of the amendment is to request relief additional to or different in nature from that originally requested.” By promulgating this provision, the Board liberalized former subsection (e) under its statutory authority to interpret the Revenue and Taxation Code sections governing assessment appeal application procedures.

As acknowledged by the appeals board, your request for amendment on August 17, 2000 was governed by the revised language of subsection (e) which was effective June 24, 2000.¹ However, the appeals board interprets new subsection (e) as not allowing the type of amendment requested. In this regard, the board's findings and decision states on page 7 that subsection (e)(2)(C) does not permit an amendment that requests a reduction based on an appeal of a different assessment as, in this case, from a decline in value assessment to a base year value assessment. As stated by the appeals board, subsection (e)(2)(C)

only permits an amendment to state additional facts claimed to require a reduction. Applicant is not simply asking to state additional facts in the amended application. Applicant is clearly asking for new relief not requested in the original application, namely a change in base year value pursuant to section 80 as opposed to a decline in value pursuant to section 51, subd. (a)(2), that is the subject of the application.

Contrary to the appeals board's understanding, the *additional facts* referred to in the language of subsection (e)(2)(C) is intended to include new relief not requested in the original applications such as a change in the basis of the appeal from decline in value relief to a base year value reduction. The phrase “additional facts” within the meaning of subsection (e)(2)(C) refers to the type of relief requested by the applicant as indicated in section 6 of the application form. Section 6 requests that the applicant state “the facts” relied upon to support the requested change in value. The applicant states the “facts”, i.e. relief requested, by checking one or more of the boxes in section 6, which includes boxes for decline in value and change in ownership – incorrect base year value. Thus, subsection (e)(2)(C) expressly authorizes an appeals board to allow the type of amendment at issue here.

Second, the addition of subsection (e)(2)(C) was proposed by staff to the Board Property Tax Committee in Formal Issue Paper 99-065 (copy attached) which the Board adopted based upon that recommendation. In that document, the Description of Staff Recommendation sets forth the reasons for the addition of the subsection and makes clear that the language was added so that,

Under this authority, the local board may accept amendments to consider any request for relief that could have been made part of the original Application for the property and the assessment year that is the subject of the Application.

¹ The finding and decisions states on page 6 that “the board is applying amended Property Tax Rule 305, effective June 25, 2000 to all of the applications that are the subject of this hearing.”

In this case, the request for base year value reduction could have been made part of the original application for the property and the assessment year that is the subject of the application. The statutory authority for appeals of base year values is set forth in section 80, which provides in relevant part that

An application for reduction in the base-year value of an assessment on the current local roll may be filed during the regular filing period . . . for the year in which the assessment is placed on the assessment roll or in any of the three succeeding years.

The base year value assessment for which you seek a reduction was placed on the assessment roll on lien date 1999, the lien date following the 1998 change in ownership in accordance with section 50.² The regular filing period for lien date 1999 during which the base year value appeal could have been filed, was from July 2 to September 15, 1999, inclusive.³ The subject application was filed on September 15, 1999, which was during the regular filing period for lien date 1999. Thus, the request for base year value reduction could have been made part of the original application for the property and the assessment year that is the subject of the application.

Finally, the appeals board erroneously relies on prior court cases which interpret former subsection (e), as guidance for the application of current subsection (e)(2)(C). In the findings and decision, the appeals board finds on page 6 that the appellate court cases construing former Rule 305, subsection (e) “are equally applicable to said amended Property Tax Rule 305.” Based on the holdings of those cases⁴, the appeals board concludes that new subsection (e) permits amendments only so long as the amendment does not request relief additional to or different in nature from that originally requested. However, contrary to the appeals board’s finding, the addition of subsection (e)(2)(C) was intended to authorize an appeals board to allow amendments which would have been prohibited under former subsection (e). In this regard, Board Issue Paper Number 99-065 expressly states

For example, this change would now permit the amendments that were not permitted in the *Helene Curtis* case, viz. Requesting a change in assessment of the real property at the location where the original Application challenged only the personal property and fixtures.

² Revenue and Taxation Code section 50 provides in relevant part that: “For purposes of base year values as determined by Section 110.1, values determined for property which is purchased or changes ownership after the 1975 lien date shall be entered on the roll for the lien date next succeeding the date of the purchase or change in ownership.”

³ Revenue and Taxation Code section 1603, subdivision (b)(1) and Property Tax Rule 305, subsection (d).

⁴ *Helene Curtis, Inc. v. Assessment Appeals Bd.* (1999) 76 Cal.App.4th 124; *County of Sacramento v. Assessment Appeals Bd. No. 2* (1973) 32 Cal.App.3d 654; *Midstate Theatres, Inc. v. Board of Supervisors* (1975) 46 Cal.App.3d 204.

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Thus, the provisions of new subsection (e)(2)(C) reverse case law relied upon by the appeals board to the extent that those cases prohibit amendments requesting relief additional to or different from the relief originally requested.

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Very truly yours,

/s/ Louis Ambrose

Louis Ambrose
Tax Counsel

Enclosure

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cc:

Mr. Dick Johnson, MIC:63

Mr. David Gau, MIC:64

Ms. Jennifer Willis, MIC:70