

M e m o r a n d u m

To: Mr. Richard C. Johnson, Deputy Director
Property Taxes Department

Date: March 31, 2000

From: Lou Ambrose
Tax Counsel

Subject: *Request for a Legal Opinion – Refunds*

This is in reply to your memo dated February 14, 2000 to Larry Augusta in which you request a legal opinion in response to two questions, restated below, relating to a taxpayer's right to file an application for changed assessment when the change in assessment results in a refund of taxes paid.

Question 1: Can someone file an application on a refund due to a change in assessed value, e.g. lowered value as the result of an audit or pursuant to section 4831(b)?

Question 2: Does such a lowered value result in "an assessment made outside the regular period" which would allow the taxpayer to file an application pursuant to section 1605?

For the reasons set forth below, an application may not be filed to appeal a change in assessed value resulting in a refund due to an audit or to a correction made pursuant to Revenue and Taxation Code section 4831, subdivision (b). As suggested by the second question, section 1605 governs application filing requirements and provides for appeals of assessments made outside the regular period. However, a roll correction or roll change reducing a value and resulting in a cancellation or refund is not an assessment made outside the regular period which would allow the taxpayer to file an application pursuant to section 1605. Moreover, other Revenue and Taxation Code sections prescribe refund claim procedures and roll correction procedures and, thereby, preclude relief by way of appeals board review.

Law and Analysis

The assessment appeals process and boards of equalization are governed by statutes and Board regulations and by rules adopted by county boards of supervisors *Stevens v. Fox Realty Corp.* (1972) 23 Cal.App.3d 199. Revenue and Taxation Code sections 1601 et seq. are the relevant governing statutory provisions and include provisions for the filing of an application for changed assessment. Those sections contemplate that a taxpayer may file an

application appealing an increase in assessed value resulting in an increased assessment (section 1603) or appealing an escape assessment (section 1605).

Pursuant to Section 1603, an appeals board has no jurisdiction to make a reduction in an assessment unless the taxpayer timely files a complete, valid application. With respect to the appeal of an assessment made outside the regular assessment period, such as an escape assessment resulting from an audit, section 1605 provides in relevant part that

- (a) An assessment made outside of the regular assessment period is not effective for any purpose, including its review, equalization and adjustment by the county board, until the assessee has been notified thereof personally or by United States mail at the assessee's address as contained in the official records of the county assessor.
- (b) Upon application for reduction pursuant to subdivision (a) of Section 1603, the assessment shall be subject to review, equalization and adjustment by the county board.

Thus, section 1605 contemplates that an appeals board has jurisdiction to hear and determine only properly noticed escape assessments in instances in which the taxpayer has filed a complete, valid application. Neither section 1603 nor 1605 nor any other section in Part 3, Chapter 1 (Sections 1601 et seq.) provide for the filing of an application for a roll correction or a roll change that reduces value and results in a cancellation of taxes or a refund of taxes paid. There exist exclusive statutory provisions for obtaining relief when a roll correction or roll change results in a cancellation or refund.

Refund Provisions

Revenue and Taxation Code sections 5096 et seq. are the relevant governing statutory provisions for filing a claim for refund of taxes paid with the board of supervisors. Section 5096 states the grounds for which taxes must be refunded and provides in relevant part that

Any taxes paid before or after delinquency shall be refunded if they were:

* * *

- (c) Illegally assessed or levied.

* * *

- (g) Paid on an assessment in excess of the value of the property as determined by the assessor pursuant to Section 469.

Section 5097 prescribes claim filing requirements, and with respect to applications for equalization, it states.

- (b) An application for a reduction in an assessment filed pursuant to Section 1603 shall also constitute a sufficient claim for refund under this section if the applicant states in the application that the application is intended to constitute a claim for refund. If the applicant does not so state, he or she may thereafter and within the period provided in paragraph (2) of subdivision (a) file a separate claim for refund of taxes extended on the assessment which applicant applied to have reduced pursuant to Section 1603 or Section 1604.
- (d) If an application for equalization of an escape assessment is filed pursuant to Section 1603, a claim may be filed on any taxes resulting from the escape assessment or the original assessment to which the escape relates within the period provided in paragraph (2) of subdivision (a) or within 60 days from the date the board of equalization makes its final determination on the application, whichever is later.

Thus, subsections (b) and (c) of section 5097 provide for the filing of a claim for refund in conjunction with the filing of an application appealing an increase in assessed value resulting in an increased assessment or an application appealing an escape assessment. Again there is no provision for the filing of an assessment appeal application merely because a refund may be available.

As an aside, the above analysis and conclusions are consistent with those in Board Issue Paper Number 00-011, Property Tax Rule 305.3, Issue 3, Staff Recommendation 3: Equalization Provisions Do Not Apply To Audits That Disclose Overassessments And Result In Refunds.

Roll Corrections

Revenue and Taxation Code sections 4831 et seq. are the relevant governing statutory provisions for making roll corrections. Section 4831 provides in relevant part that

- (a) Any error resulting in incorrect entries on the roll may be corrected under this article. The correction may be made at any time after the roll is delivered to the auditor but, except as provided in subdivision (b), shall be made within four years after the making of the assessment that is being corrected. This section does not apply to either of the following:
 - (1) Except as provided in subdivision (b), errors involving the exercise of value judgments.

- (2) Escape assessments caused by the assessee's failure to report the information required by Article 2 (commencing with Section 441) of Chapter 3 of Part 2.

If any error referred to in this subdivision is discovered as the result of an audit of a taxpayer's books and records, that error may be corrected at any time prior to the expiration of six months after the completion of the audit.

- (b) Any error or omission involving the exercise of a value judgment that arises solely from a failure to reflect a decline in the taxable value of real property as required by paragraph (2) of subdivision (a) of Section 51 shall be corrected within one year after the making of the assessment that is being corrected.

Furthermore, section 4836 provides for appeals board review of roll corrections only for increased assessments but not for corrections resulting in cancellations or refunds. That section provides that

If the correction will increase the amount of unpaid taxes, the assessor shall notify the assessee of the procedure for obtaining review by the county board under Section 1605 and the procedure for applying for cancellation under Section 4986.

When a roll correction results in an increased assessment, an application may be filed and, thereupon, cancellation or refund may be sought. However, as is the case with refunds, there is no provision authorizing the filing of an application merely because a roll correction may be available.

In sum, specific sections provide for the filing of applications appealing increases in assessed values resulting in increased assessments and of applications appealing escape assessments, but there are no sections which provide for the filing of applications merely because a refund may be available or because a roll correction or roll change may be available.

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