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STATE BOARD OF EQUALIZATION

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July 21, 1995

Honorable Gary L. Orso, Assessor
County of Riverside, Administrative Center
4080 Lemon St. 6th Floor
Riverside, CA 92502-2204

Attn: Mr. James N. Hansson, Chief Appraiser

RE: Revenue and Taxation Code, Section 1604(c)

Dear Mr. Orso:

In your letter of September 6, 1994 you requested clarification on an apparent conflict in the referenced code section in regards to the starting time of the two year period in which the local board must make a final determination. You question whether it is the actual date of the filing of an application or the end of the filing period which with the exception of weekends usually falls on September 15.

In the first paragraph of subdivision (c) the Legislature used the phrase "within two years of the timely filing of the application". Contrastingly, the first sentence of the final paragraph of that same subdivision states:

The reduction in assessment reflecting the taxpayer's opinion of market value shall not be made, however, until two years after the close of the filing period during which the timely application was filed.

Although at first glance there may appear to be a conflict within the subdivision, closer consideration permits resolution of the problem.

Our advice would be to take the most conservative interpretation in order to minimize county exposure in the event that a judicial decision would interpret the statute in favor of the appeal applicant. In our view each provision should stand on its own without any interaction between the two mandates. In other words the first mandate requires the board to track each individual application so that the application may be heard and a final determination made within two years of its actual filing. If that is accomplished the county will avoid the penalty consequences of the statute.

In your letter, you state:

"We have reviewed the recent appellate case of *United Enterprises, Ltd., vs. County of San Diego Assessment Appeals Board*. Unfortunately the date mentioned which started the two year period for that case was September 15. It is unclear whether that was the actual filing date."

In *United Enterprises, Ltd. V. County of San Diego Assessment Appeals Board* (1994) 22 Cal.App.4th 152, the court stated at page 156:

"On September 15, 1987, taxpayer filed its application seeking equalization of the 1984, 1985, 1986 and 1987 – 1988 assessments. It claimed that reassessment was improper because no "change in ownership" had occurred within the meaning of Proposition 13; and it also asserted that it wished to reserve the right to challenge the individual revaluations in the event the change of ownership issue was decided adversely to taxpayer. This September 15, 1987 filing began the two-year period under section 1604 within which the AAB was required to act on taxpayer's application³"

Footnote 3 on page 156 stated:

"3. County asserted an oral argument that since taxpayer's reduction assessment applications were several in number, pertained to different parcels of property, and were filed over a period of time commencing with September 15, 1987 but terminating at a much later date, the two-year statute should not commence until the date of the last-filed application. We decline to consider this theory (though an interesting one) at the appellate level because the contention was not raised or mentioned in any fashion in the trial proceedings (not in written papers and not in the County's motion for reconsideration or during oral argument). See 9 Witkin, Cal.Procedure (3d ed. 1985) Appeal. Section 311. pp. 321-322."

Thus, while September 15 was the last date within which an appeal could be filed, the close of the filing period, it seems clear from the above that the actual filing date in *United Enterprises, Ltd. v. County of San Diego Assessment Appeals Board, supra*, was September 15, which "filing began the two-year period under section 1604 within which the AAB was required to act on taxpayer's application.³"

When a two year period expires, the latter mandate in Section 1604(c) does not require immediate enrollment of the taxpayer's opinion but instead defines a precise date (two years after the close of the filing period – nominally September 15) when all such taxpayers' should be enrolled. So the overall effect on the county board is to individually track applications by exact date of filing but make a one-time roll correction two years after the close of the filing period for

all applications that remain unheard. In actual practice most filings do occur fairly close to the September 15 deadline so that both times will probably be fairly close together. However, in the extreme instance in certain counties a filing could occur as early as July 2 and their boards would not meet until early October; thus they would lose almost three months of that two year period. It is for this reason that we recommend that no chances be taken. In this instance the period for final determination would expire two year later on July 1 but the applicant's opinion would not be enrolled until the subsequent September 15.

An interpretation of Section 1604(c) similar to that above is found in Plant, Eager and Daigh's California Tax Analysis, Volume 4, section 90.101, Timely Hearing Required, at page VI-1215:

"The taxpayer's opinion of market value as reflected on the application for reduction is the value on which taxes must be levied for the tax year covered by the application, but only if the county board both fails to hear evidence and fails to make a final determination within two years after the timely filing of the application. Moreover, the reduction in assessment reflecting the taxpayer's opinion of market value cannot be made until two years after the close of the filing period during which a timely application was filed..."

Our review of the legislative history of the statute did not reveal any apparent reason for the selection of different start and stop dates. If you conclude that the county workload could be eased by the selection of a single date, i.e., September 15 for both stop and start and applied to all applications, we would recommend legislative amendment via the appropriate committees and both the assessors' and the county clerks' associations. Please call if you have any additional questions.

Very truly yours,

James M. Williams
Staff Counsel III

JMW:jd

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