

190.0013 Application. An application for reduction in assessment constitutes a claim for refund only if it is specifically so stated to be. Failure to claim a refund as part of an application does not prevent the filing of such a claim within four years of the date on which taxes were paid or as otherwise provided in Revenue and Taxation Code Section 5097. C 10/2/85.



STATE BOARD OF EQUALIZATION

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Executive Secretary

October 2, 1985

1500 Pine Street
Sacramento, CA 95811

Dear Mr. [Name]:

Request for Rulings Under Revenue and
Taxation Code Sections 5097 and 5141

In your letter of August 12, 1985 to Mr. Richard H. Ochsner,
Assistant Chief for Property Tax, you requested that the
State Board of Equalization rule as follows:

1. Taxpayer's Application for reduction in assessment did not constitute a claim for refund of taxes under Revenue and Taxation Code Section 5097(b) because Taxpayer did not state in its Application that it intended the Application to constitute a claim for refund.
2. Taxpayer may file a separate claim for refund of taxes paid on the property which Taxpayer applied for a reduced assessment at any time within the four-year period after such taxes were paid.
3. Upon denial of its claim for refund, Taxpayer may bring a refund action in Superior Court at any time within six months from the date of the denial of the claim for refund.

Unfortunately, there is no procedure in law nor by tradition wherein the Board makes formal rulings at the request of taxpayers. However, in response to such requests the staff will provide its interpretation of the applicable property tax statutes and Board issued regulations. Please be on notice that the views expressed by the staff are only advisory in nature. They are not binding on the Board of Supervisors of any county. You may wish to consult the appropriate county counsel in order to confirm that the described appeal will be treated in a manner consistent with the conclusions stated below.

October 2, 1985

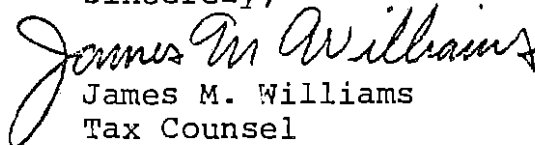
In regard to request No. 1. I have examined the application for changed assessment form, Exhibit A to your letter, and did not find any provision thereupon for an applicant to state that the application is intended to constitute a claim for refund. Furthermore, your letter states: "Neither the Application nor any other oral or written communication with the Board contains any statement or indication by the Taxpayer that the Application is intended to constitute a claim for refund of taxes paid." Under these facts, it is my view that Revenue and Taxation Code, Section 5097(b), first sentence, does not apply and no claim for refund was made thereunder.

It subsequently follows that I agree with your second request. The second sentence of Revenue and Taxation Code, Section 5097(b), clearly points out the alternative to the first sentence; that is, the applicant may now file within four years after making of the payment sought to be refunded a separate claim for refund of taxes extended on the assessment which he applied to have reduced. I know of no other provision in law whereby the Board of Supervisors on their own initiative may treat an application for a reduction in an assessment as a claim for refund. Such treatment must originate solely with the applicant.

Once a valid claim for refund has been filed pursuant to Revenue and Taxation Code, Section 5097(a)(1) and (2), it is clear that judicial action for refund is controlled by Revenue and Taxation Code, Section 5141. Subsection (a) thereunder mandates the requirements specified in your third request. It should also be noted that subsection (b) provides for the case wherein the Board of Supervisors fails to mail notice of its action on the claim. Finally, I should point out that subsection (c) controls the timing of a claim that is made pursuant to an application for reduction in assessment and it again specifies that it is the applicant that must state that the application constitutes a claim.

In general, under the facts and circumstances provided in your letter, it is my conclusion that your three propositions have correctly stated the appropriate results when the applicable law is applied to a claim.

Sincerely,


James M. Williams
Tax Counsel

JMW:cb

cc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Verne Walton

bc: Mr. Thomas M. Fries

Imperial Co. Counsel