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No. 2009/013

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TO COUNTY ASSESSORS:

BUSINESS PROPERTY AUDITS – SIGNIFICANT NUMBER OF AUDITS

Assembly Bill 550 (Stats. 2008, Ch. 297) changed the requirements for what was commonly known as a *mandatory audit*. Effective January 1, 2009, a county assessor must annually conduct a significant number of audits of the books and records of taxpayers engaged in a profession, trade or business who own, claim, possess, or control locally assessable trade fixtures and business tangible personal property in the county. Two previous Letters To Assessors (LTA's) have been issued on this legislation: LTA 2008/059, *Business Property Audits*, and LTA 2009/003, *Business Property Audits-Audit Selection*.

Since release of the LTA's, we have received additional inquiries on changes to the audit statute. Therefore, the following information is provided in the form of questions and answers to provide clarification on the issues raised.

1. **Question:** Can a two-year audit be counted as a required audit under Revenue and Taxation Code¹ section 469(b)(2)? For example, if an assessee started business operations in 2007, can an assessor conduct an audit in 2009 for two years (2008 and 2009) and count it as one of the significant number of audits under section 469(b)(2)?

Answer: Yes. A two-year audit may be included as an audit that falls under amended section 469(b)(2). Section 469, subdivisions (b)(1) and (b)(2) identify the types of taxpayers that comprise the *significant number of audits*. Section 469, subdivision (b), provides in part:

(1) Fifty percent of the audits required by subdivision (a) shall be performed on taxpayers selected from a pool of those taxpayers that have the largest assessments of locally assessable trade fixtures and business tangible personal property in the county...

(2) The remaining 50 percent of the required audits, as determined by paragraph (1) of subdivision (a), shall be selected in a manner that is fair and equitable to all taxpayers and may be based on evidence of underreporting as determined by the assessor.

If an audit is conducted on a taxpayer that falls under section 469(b)(2), there is no requirement that a four-year audit must be conducted, especially if the organization started operation in 2007. Under Property Tax Rule 193(a), an assessor may conduct an audit for only one of the fiscal years. If a discrepancy or irregularity is found, a county assessor must audit the remaining fiscal years for which the statute of limitations has not expired. In most

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

cases that would mean a four-year audit. However, in this example, it would mean a two-year audit.

2. **Question:** Can the assessable values on the 2008 lien date be used to establish the pool of the largest companies to be audited for 2009?

Answer: No. Similar to the selection of mandatory audits prior to January 1, 2009, the audits selected for the 2009-2010 fiscal year must be based on the value of assessable trade fixtures and business tangible personal property as of January 1, 2009.

3. **Question:** If waived accounts from the prior year (2008 workload) are carried forward, can these audits be counted as a current audit (2009)?

Answer: Yes. Audits not completed by December 31, 2008, now fall under the requirements effective January 1, 2009. If an audit was scheduled to be conducted during the 2008-2009 fiscal year and is still pending as of January 1, 2009 (and it is included in the pool of taxpayers with the largest assessments under the provisions of section 469 as of January 1, 2009), it may be selected as one of the significant number of audits for 2009. Conversely, if it is not included in the pool of taxpayers with the largest assessments for 2009, it may be selected as one of the significant number of audits from the pool selected in a manner that is fair and equitable to all taxpayers.

Although an audit may have been considered a mandatory audit under section 469 in 2008, it is no longer considered a mandatory audit effective January 1, 2009, under the amended provisions of section 469. Because the statutory change did not include language requiring completion of audits under waiver or of those previously considered mandatory, the county must determine if the audit should be conducted under the January 1, 2009 requirements.

4. **Question:** If a mandatory audit scheduled for 2008 (2008–2009 fiscal year) is pending as of January 1, 2009, and it falls below the top 50 percent (not part of the significant number of audits under section 469(b)(1)), must it be completed?

Answer: No. See question 3. Audits not completed by December 31, 2008, fall under the requirements effective January 1, 2009.

5. **Question:** Effective January 1, 2009, who can be assigned to conduct an audit?

Answer: All audits must be conducted by auditor-appraisers as provided in section 670. Section 670, subdivision (d) provides that:

(d) No employee of the state, or any county or city and county shall perform the duties or exercise the authority of an auditor or an auditor-appraiser under Section 469 or Section 15624 of the Government Code, unless he or she holds a degree with a specialization in accounting from a recognized institution of higher education, or is a licensed accountant in the State of California, or has passed the state, or a county, or city and county, or city

civil service or merit system examination regularly given for the position of accountant or auditor by the testing body, or holds the office of assessor.

Prior to January 1, 2009, audits that fell below the dollar threshold in section 469 could be conducted by an appraiser who did not meet the requirements of section 670(d). However, under amended section 469, the audit pool now includes any taxpayer in the county, regardless of the value of the tangible personal property and fixtures. Accordingly, all audits now must be completed by auditor-appraisers who meet the requirements of section 670(d).

If you have questions, you may contact Mrs. Ladeena Ford at 916-445-0208 or at ladeena.ford@boe.ca.gov.

Sincerely,

/s/ David J. Gau

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DJG:lf