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Executive Director

July 5, 2006

Re: Revenue and Taxation Code Section 469 and Property Tax Rule 305.3

Dear Mr. :

This is in response to your December 16, 2005 letter addressed to the Chief Counsel Kristine Cazadd. In that letter, you requested our opinion as to whether an assessment appeal applicant must overcome the "material value" standard prescribed by Property Tax Rule 305.3, subdivision (b)(2), to obtain an equalization hearing on all property at a location when a county assessor has issued audit findings identifying property subject to an escape assessment.[1] As explained below, it is our opinion that appeals applicants are not required to overcome that "material value" standard to obtain an equalization hearing on all of their property at a location if the assessor has presented that applicant with audit findings disclosing property subject to an escape assessment.

Background and Facts

As described in your letter and accompanying trust documents, the following facts are relevant to this analysis:

1. On March 8, 2004, the County Assessor-Recorder issued an audit letter regarding your client's assessments for the years 2000, 2001, 2002, and 2003.

2. Accompanying that letter were portions of the assessor's audit findings, an Audit Summary Sheet, and a Cost Analysis. You provided us with copies of all of those documents.

3. For years 2000 and 2001, the assessor's Cost Analysis showed that some property at your client's location had escaped assessment. However, those escapes were fully off-set by over-assessments discovered during the audit; the assessor issued no escape assessments for either year.

[1] All references to Property Tax Rules, or Rules, are to Title 18 of the California Code of Regulations.

4. For years 2002 and 2003, the assessor's Cost Analysis again showed that some property had escaped assessment. Refunds were, however, issued for these years because the over-assessments discovered during the audit exceeded the amount of property that had escaped assessment.

5. Your client filed timely appeals of the audit findings pursuant to Revenue and Taxation Code section 469.[2]

6. Citing the definition of "material value" found in subdivision (b)(2) of Rule 305.3, the County Assessor-Recorder has contested your client's right to appeal the assessments of all of the property at that location, as permitted under section 469 and Property Tax Rule 305.3.

Law and Analysis

Does an assessment appeals applicant need to present evidence demonstrating escape assessments of "material value" before becoming eligible to appeal all of its property at the location subject to the audit?

No. If the county assessor has presented that applicant with audit findings disclosing property subject to an escape assessment, that applicant need not overcome the "material value" standard to obtain an equalization hearing on all of its property at that location.

Local boards of equalization and the assessment appeals process are governed by statutes, Board-issued 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. provide the relevant statutory provisions for the filing of an application for changed assessment. Those statutes contemplate that an applicant may appeal increases in assessed value (section 1603) and escape assessments (section 1605).

In regard to escape assessments, section 469 clearly states that if escape assessments are discovered during an audit, the property owner shall have the right to appeal all of the property at that location to the local board of equalization. Property Tax Rule 305.3 interprets and implements the provisions of section 469 that afford a right of assessment appeal when the results of an audit disclose property subject to escape assessment. Subdivision (a) of the rule provides the general rule regarding an applicant's right to appeal the assessments of its property following an audit:

> In addition to any rights of appeal of escape or supplemental assessments as described in Rule 305(d)(2) of this subchapter, if the result of an audit discloses property subject to an escape assessment for any year covered by the audit, then, pursuant to section 1605 of the Revenue and Taxation Code, an application may be filed for review, equalization, and adjustment of the original assessment of all

[2] All statutory references are to the Revenue and Taxation Code unless otherwise specified.

> property of the assessee at the location of the profession, trade, or business for that year, except any property that has previously been equalized for the year in question.

Terms used in subdivision (a) of Rule 305.3 are defined in subdivision (b) the rule. Subdivision (b)(5) defines the phrase "all property of the assessee" to mean "any property, real or personal, assessed to the assessee, or the assessee's statutory or legal predecessor in interest, at the location of the profession, trade, or business for the year of the audit." Subdivision (b)(6) defines "location of the profession, trade, or business" to mean "a site, as determined by the board, where the property subject to the escape assessment is located. "Site" includes all property within the same appraisal unit as the property that is subject to escape assessment."

Based on the foregoing, if an audit discloses property subject to escape assessment, the property owner has the right to appeal the original assessment of any real property assessed to that same owner at that location of its profession, trade or business for the year(s) of the audit, as long as the property was not previously equalized for the year in question. Thus, if the real property is the site of the property owner's trade, location, or business and the owner is actually assessed for that property, then the owner would have the right to appeal the original assessment of the real property for the years audited upon the assessor's finding of any escape assessments. This right of appeal is not contingent on any value limitation so long as the audit discloses property subject to an escape assessment.

You report that your client experienced a property tax audit for the years 2000, 2001, 2002, and 2003. In addition, you report that the assessor discovered escape assessments for all four years at issue. For two of those years—2000 and 2001—the assessor offset those escape assessments against other over-assessments, enrolling no changes in value. However, for 2002 and 2003, the over-assessments exceeded the escape assessments resulting in refunds.

Property Tax Rule 305.3 describes whether your client's situation resulted in escape assessments. Subdivision (b)(2) of Rule 305.3 provides, in relevant part:

> Property is subject to an escape assessment even if the audit discloses an overassessment of another portion of an item of the property, and the amount of the underassessment could be offset completely by the amount of overassessment.

As applied to the facts reported in your inquiry letter, the assessor's audit found escape assessments for all four years at issue. The Shasta County Assessor-Recorder issued audit findings when it sent your client (the property owner) its letter dated March 8, 2004. Even though those escape assessments were offset by other over-assessments, subdivision (b)(2) of Rule 305.3 clearly states that your client's property was "subject to an escape assessment" notwithstanding those offsets. Thus, the right of appeal prescribed by subdivision (a) of Rule 305.3 allows your client the right to appeal the value of all its property at that site, including the underlying real property.

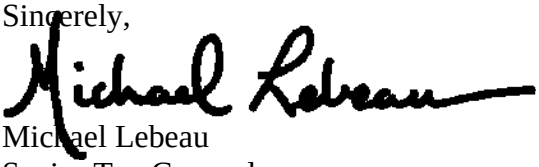
Furthermore, it is our opinion that recent amendments to subdivision (b)(2) of Rule 305.3 do not abridge your client's right to an appeal. As you are aware, Rule 305.3 was amended to add a "material value" requirement to subdivision (b)(2):

> *If no such finding is made by the assessor*, the taxpayer may file an application and present evidence to the board of the existence and disclosure of property of material value subject to escape assessment. For purposes of this regulation only, "material value" means value of no less than 1 percent of the audited value of the taxpayer's trade fixtures and tangible personal property for the year under audit. If the board determines that property subject to escape assessment was disclosed as a result of an audit, the board shall permit the taxpayer's section 469 appeal. [Emphasis added.]

As provided above, taxpayers have the right to file an application for changed assessment and present evidence disclosing property of "material value" subject to escape assessment. However, it is important to note that such applications are contingent upon the assessor's failure to issue audit findings. Under the facts presented in your letter, the Shasta County Assessor-Recorder's Office issued audit findings to your client in its letter dated March 8, 2004. Since the contingency was not met, i.e., the assessor has issued audit findings disclosing escape assessments, your client may appeal all of the property at its location of business without proving that the audit disclosed property of "material value" subject to escape assessments.

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

Sincerely,



Michael Lebeau
Senior Tax Counsel

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cc: Honorable
County Assessor

Mr. David Gau, MIC:63
Mr. Dean Kinnee, MIC:64
Ms. Mickie Stuckey, MIC:62
Mr. Todd Gilman, MIC:70