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JAMES E. SPEED
Executive Director

January 18, 2001

Subject: ***Request for Opinion Letter – Compliance with Revenue and Taxation Code Section 1604, subdivision (c)***

Dear Mr. ,

This is in reply to your letter of November 15, 2000 addressed to Senior Tax Counsel Kristine Cazadd in which you pose six questions, restated below, concerning interpretation of the above referenced code provision and request our opinion concerning the proper application of that provision. In this case, the assessment appeals board failed to hold a hearing and establish values based upon hearing officers' recommendations on approximately 1500 applications within the two year period prescribed by section 1604, subdivision (c). However, the board enrolled the applicant's opinion of value pursuant to that provision only if the applicant specifically requested that it be done. The other taxpayers, whose opinions of value were not enrolled, now propose filing a class action petition for a writ of mandamus to compel the county to enroll their opinions of value.

As further explained in our responses to your questions, the appeals board's hearing and decision on the hearing officer's recommendation must be completed within two years to comply with section 1604, subdivision (c). If the appeals board fails to hear and to make a final determination within the prescribed two-year period, then the county is required to enroll the taxpayer's opinion of value, regardless of whether the taxpayer requests relief. A taxpayer's claim for refund of taxes resulting from such relief must be filed within four years of the payment of the taxes sought to be refunded pursuant to section 5096. Additionally, the notice of overpayment required pursuant to section 2635 would not be appropriate in these circumstances and, therefore, the refund claim filing period pursuant to section 5097 would not be triggered by that event. Moreover, the taxpayer is entitled to a refund only if a claim is filed within the four-year statutory time limitations period. Finally, section 5096 does not prescribe a procedure to compel a county to enroll the taxpayer's opinion of value as required by section 1604, subdivision (c). Rather, a taxpayer's remedy is a petition for a writ of mandamus.

Facts Presented

In 1992, approximately 1500 timely filed applications for reduced assessment were heard by hearing officers within two years of the filing of the applications. The clerk sent notice of the

hearing officers' determinations and recommendations on those applications to the assessment appeals board. However, the appeals board's hearings on adoption of the hearing officers' recommendations took place after the two year period expired on September 15, 1994. For each of the applications, the applicant's opinion of value was enrolled only if the taxpayer requested that it be done. One applicant desires to file a class action requesting that the court compel the county (1) to comply with section 1604, subdivisions (c) and (d) by enrolling the applicants' opinions of value and (2) to comply with section 2635 "so that the correct amount of the tax refund can be determined, and the affected taxpayers can pursue their available administrative remedies . . ."

Law and Analysis

1. Does the two-year period of section 1604(c) expire upon the hearing officer's recommendation to the Board, or upon the Board's holding of its hearing when it finally determines the application after receiving the hearing officer's recommendation?

   Answer: Upon the Board's final determination of the application.

Section 1604, subdivision (c) provides, in relevant part, that, subject to two conditions not present here, "the taxpayer's opinion of market value as reflected on the application for reduction in assessment shall be the value upon which taxes are to be levied for the tax year covered by the application" if the "*county assessment appeals board* fails to hear evidence and fails to make a final determination on the application for reduction in assessment of property within two years of the timely filing of the application." (Italics added) Thus, the statute clearly contemplates that the assessment appeals board, rather than a hearing officer, must hold a hearing and render a final determination within the two-year period. Although the hearing officer conducts a hearing and prepares a recommendation, the assessment appeals board establishes the value based upon that recommendation pursuant to Revenue and Taxation Code section 1641. Therefore, the appeals board's hearing and adoption of a hearing officer's recommendation as a basis for establishing the assessed value constitutes a final determination for purposes of section 1604, subdivision (c).

2. Does the County have a duty to comply with section 1604(c) even if the taxpayer did not request the County to comply with the statute after the two year period expires?

   Answer: Yes

Subdivision (c) mandates that, in the event that an application is not heard and determined within two years, the applicant's opinion of value "shall be the value upon which taxes are to be levied for the tax year covered by the application." In our view, the provision is self-executing and does not require that an applicant request that the board enroll its opinion of value. Our view is confirmed by *United Enterprises, Ltd. v. Assessment Appeals Bd.* (1994) 22 Cal.App.4th 152, 160, in which the court of appeal, in construing subdivision (d), stated that "the application for reduction is essentially deemed granted by lapse of time" by operation of

subdivision (c). Thus, the court concluded that an applicant is entitled to the relief provided by subdivision (c) upon the happening of the specified event, i.e. when a final determination is not made within two years of filing and is not dependent upon an applicant's request that the board enroll the applicant's opinion of value.

Contrary to your analysis of this issue, it is our view that section 1613 has no application when an appeals board orders enrollment of the applicant's opinion of value in compliance with section 1604, subdivision (c). Section 1613 provides that the appeals board may direct the assessor to take specified actions with respect to assessment of property or assessment roll entries. However, those actions do not include adjustments to reflect enrollment of an applicant's opinion of value as required by section 1604, subdivision (c).

3. May a taxpayer file a claim under section 5096 for a refund that would be due as a result of the County's failure to determine the application within the two-year period if the County has not yet adopted the taxpayer's value pursuant to section 1604(c) and actually placed the new value on the roll?

   Answer: A taxpayer may file a claim for refund even though the appeals board has not yet adopted the taxpayer's opinion of value. Moreover, such a claim must be filed within the four-year statutory time limitations period of section 5097.

A taxpayer may file a claim for refund even if the County has not yet adopted the taxpayer's value pursuant to section 1604, subdivision (c) and actually placed the new value on the roll. In *Mission Housing Development Co. v. City and County of San Francisco* (1997) 59 Cal.App.4th 55 the court of appeal held that the taxpayers were required to file timely claims for refund even though they were awaiting a decision on their applications for reduction in assessment. The court interpreted the language of section 5097 as requiring taxpayers to file a refund claims within the four-year limitations period, notwithstanding the filing of applications for reduction in assessment. Thus, the court's decision clearly contemplates the filing of claims for refund prior to an appeals board's reduction of assessed value on the taxpayer's property.

4. May the tax collector send a notice of overpayment to the taxpayer pursuant to section 2635, notifying the taxpayer that he or she may file a tax refund claim on the basis of an overpayment caused by the County missing the two-period, if the County has not yet complied with section 1604(c) by adopting the taxpayer's lower valuation on the actual roll?

   Answer: As you are aware, section 2635 prescribes a duty of the county tax collector; however, the Board of Equalization, pursuant to Government Code section 15606, is charged with oversight of the practices of county assessors and county boards of equalization. For that reason, we have referred your question to the State Controller's Office, the state agency charged with oversight of county tax collectors, for a legal opinion. As soon as we receive their opinion we will forward it to you. Attached is a copy of the most recent information published by the State Controller's Office on the application of section 2635 to be made by auditors and

tax collectors, per the State Controller's County Tax Collector Reference Manual (1999).

5. Is there any procedure in section 5096 of the Revenue and Taxation Code to compel a County to comply with section 1604(c) where it has failed to do so?

   Answer: No

Chapter 5, Article 1 of Part 9 of the Revenue and Taxation Code are the statutory provisions for procedures governing claims for refund of taxes paid. Among those comprehensive statutory provisions, section 5096 sets forth the reasons for which taxes paid shall be refunded. *See e.g. Plaza Hollister Ltd. Partnership v. County of San Benito* (1999) 72 Cal.App. 4th 1, 34. As a statute pertaining only to claims for refund, section 5096 does not prescribe any procedure or, by any other means, provide authority to compel a County to comply with section 1604, subdivision (c).

6. What is the proper procedure to force the County to comply with section 1604(c) and (d) so that the taxpayers may file a verified refund claim under sections 5096 and 5097 (assuming a claim is necessary)? Is mandamus the proper procedure?

   Answer: Writ of mandate – yes.

As you indicate, a petition for a writ of mandamus is a taxpayer's remedy for County's failure to comply with the provisions of section 1604, subdivisions (c) and (d). Similarly, a petition for writ of mandate has been accepted as the appropriate remedy to compel the tax collector to issue a notice of refund. (*Bishop, McIntosh & McIntosh v. Molmen* (1981), 116 Cal.App.3d 278.) However, a taxpayer's right to file a claim for refund is prescribed by the procedure referred to above, which procedure is separate from the enrollment requirement imposed by section 1604, subdivision (c). Therefore, even if a court granted the taxpayer's petition for a writ mandating enrollment, such relief would not compel the payment of refunds, unless the petitioner had complied with the refund statutes and the tax collector's records showed that his/her claim was within the scope of those statutes.

The court of appeal recently affirmed, in *Mission Housing Development Co. v. City and County of San Francisco* (2000) 81 Cal.App.4th 522, the principle that a taxpayer's right to a refund for a reduction pursuant to section 1604, subdivision (c) was contingent on compliance with the statutory refund claim provisions. In that case, the court of appeal had ruled that the applicants' opinions of value were required to be enrolled pursuant to section 1604, subdivision (c) because the assessment appeals board failed to hear and decide their applications within two years of timely filing. Based on that ruling, the taxpayers contended they were entitled to a refund based on the values they submitted in their applications to the assessment appeals board. However, the court disagreed noting that correction of the base-year value figure does not automatically entitle the taxpayer to a refund. Rather, the court held that the taxpayers were

obligated to comply with the statutes governing refunds and could only recover refunds by complying with those statutes. *Id.* at 528.

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

Very truly yours,

/s/ Louis Ambrose

Louis Ambrose
Tax Counsel

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Attachments

cc: Mr. Dick Johnson, MIC:63
Mr. David Gau, MIC:64
Ms. Jennifer Willis, MIC:70