

~~REVENUE AND TAXATION CODE SECTION 5096~~

In your letter of July 10, 1984, to Richard H. Ochsner, Assistant Chief Counsel, you request a legal opinion as to whether a local Board of Equalization or Assessment Appeals Board has the power to grant a claim for refund. The question arises from a quote in Schoderbek v. Carlson, 113 Cal. App. 3d 1029 at 1032:

...the administrative remedy is to file a claim for refund with the County Board of Equalization or Assessment Appeals Board. An application for a reduction in an assessment filed pursuant to Revenue and Taxation Code Section 1603 constitutes a claim for refund if the applicant states in the application that the application is intended to constitute a claim for refund.

The court also points out Revenue and Taxation Code Section 5097 which supplies the authority for the quoted section. You have noted that Revenue and Taxation Code Section 5141(c) reiterates that the application may serve as a valid claim for refund.

Your research has not revealed any other code section that states a relationship between refunds and equalization boards; what you found only relates to the Board of Supervisors. We concur and invite your attention to Revenue and Taxation Code Section 5096 which directs that refunds be made "on order of the board of supervisors".

It is our opinion that there is no basis for the conclusion that the Schoderbek case holds that local boards, per se, have the power to grant refunds. The main concern in that case was that the taxpayers did not file any claim for refund and therefore the administrative remedies were not exhausted. Clearly, without the claim, it cannot be said that the court dealt with the power to act on the claim. The same applies to Section 5141(c), which basically operates as a statute of limitations in setting up the time period in which a lawsuit must be filed after a claim has been denied.

Revenue and Taxation Code Section 5097 (2) (b) was enacted by the Legislature as a matter of convenience to the taxpayer and to prevent duplication of effort when the taxpayer has decided prior to equalization that he will exhaust his administrative remedies. It does not address the question of power to act on the claims.

In general, we would conclude that claims for refund may not be granted as part of the equalization process except for two instances. If the board of supervisors is sitting as a board of equalization and has adopted an applicable procedural rule, they would have the power to "change hats" and act on the claim. Secondly, when the supervisors have granted prior approval, Revenue and Taxation Code Sections 1612, 1613 and 1614, collectively applied, result in an indirect grant of the claim when even an appeals board finds in favor of the taxpayer. Of course, for the taxpayer's convenience, a finding against is held to be a denial of the claim for purposes of exhaustion of remedies.

Very truly yours,

James M. Williams
Tax Counsel

JMW:fr

bcc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Verne Walton
Legal Section