220.0661

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-4588

WILLIAM M. BENNETT
First District, Kentfield

BRAD SHERMAN
Second District, Los Angeles

ERNEST J. DRONENBURG, JR.
Third District, San Diego

MATTHEW K. FONG
Fourth District, Los Angeles

GRAY DAVIS
Controller, Sacramento

BURTON W. OLIVER
Executive Director

July 16, 1992

Honorable

Dear

This is in response to your letter of June 19, 1992, regarding Your letter requests our views on a problem arising from Revenue and Taxation Code section 480, and following, relating to change in ownership statement filing requirements.

Your letter indicates that Ms. was a "strawman" in a property transfer on June 24, 1983. As I understand it, she would qualify as an "intermediate transferee" as that term is defined in subdivision (f) of Revenue and Taxation Code section 480.3, in that she was both a transferee and transferor of the same property as part of a series of simultaneous transfers. As a result of this transfer, you sent a change in ownership statement to Ms. requesting that it be completed and returned. Apparently Ms. states that she left town shortly after the transaction and never received your statement. In any case, her failure to submit a completed change in ownership statement resulted in a penalty as required by Revenue and Taxation Code section 482. Ms. has now returned to Fresno and is attempting to purchase property. She now finds that she is subject to a judgement lien in the amount of the penalty plus interest. She is requesting that she be relieved of the penalty on the grounds that she never received notice of the change in ownership statement requirement and that the penalty will prevent her from financing the purchase of her new home in Fresno.

Revenue and Taxation Code section 480 contains the basic change in ownership statement requirements. The section provides, in part, that the change in ownership statement will provide a notice stating that the statement must be filed within

45 days from the date of a written request by the assessor or a penalty of $100 or 10% of the taxes applicable to the new base year value of the transferred property, whichever is greater, (not exceeding $2,500) shall apply. The described penalty provisions are found in Revenue and Taxation Code section 482. It is worth noting that the language of section 482 makes it clear that the application of the penalty for failure to file a change in ownership statement within 45 days after written request by the assessor is mandatory. The assessor has no discretion and must add the penalty to the roll when a failure to file a statement occurs. Subdivision (d)(3) of section 482 provides that if the property is transferred to a bona fide purchaser after the transfer of ownership resulting in the imposition of the penalty, the penalty shall be entered on the unsecured roll in the name of the transferee (in this case, Ms. Ziering) whose failure to file the change in ownership statement resulted in the imposition of the penalty. Finally, subdivision (f) requires that notice of any penalty added to either the secured or unsecured roll be mailed by the assessor to the transferee at her address contained in any recorded instrument evidencing a transfer of an interest in real property or at any address reasonably known to the assessor. Your letter does not state whether or not the required notice was sent to Ms. Ziering.

Relief from the penalty may be granted pursuant to the provisions of Revenue and Taxation Code section 483. Subdivision (a) provides that if the assessee establishes to the satisfaction of the County Board of Supervisors that the failure to file the change in ownership statement within the time required by subdivision (a) of section 482 was due to reasonable cause and not due to willful neglect, and has filed the statement with the assessor, the Board of Supervisors may order the penalty abated, provided the assessee has filed with the Board written application for abatement of the penalty "no later than 60 days after the date on which the assessee was notified of the penalty". Assuming that Ms. [illegible] was sent the required notice of penalty sometime during 1983 or 1984, it would appear that she could not now qualify for relief from the penalty under the provisions of section 483 since she could not file a written application for abatement of the penalty within the required 60 days after the date on which the assessee was notified of the penalty. Of course, if the penalty notice was not sent, or you do not have substantial credible evidence demonstrating that the notice was sent, then you could reasonably conclude that the time limit for filing a written abatement application has not yet commenced to run. In that case, she could still timely file her application for relief from the penalty with the County Board of Supervisors.

As mentioned above, Revenue and Taxation Code section 480.3 which contains requirements for the filing of a Preliminary Change of Ownership Report, excuses intermediate transferees from this filing requirement. Intermediate transferees are not excused, however, from the change in ownership statement requirements of sections 480 and 482. The latter sections makes it clear that the penalty applies for failure to file a complete change in ownership statement notwithstanding the fact that the assessor determines that no change in ownership occurred. The purpose of the penalty, therefore, is to enforce the assessors request for information. The question of whether or not the person receiving the assessors request was involved in a reassessable transfer of property is irrelevant to the question of whether the penalty applies. Thus, if the Board of Supervisors considers Ms. Ziering's abatement application, the Board should focus on the question of whether the failure to file a change in ownership statement was due to reasonable cause and not on the question of whether Ms. Ziering was involved in a reassessable transaction.

If you have further questions regarding this subject, please feel free to contact Richard H. Ochsner, Assistant Chief Counsel, at (916) 445-4588.

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,

E. L. Sorensen
Chief Counsel

EEL:te/gre

cc: Mr.
Mr.
Mr.