720.0005

(916) 323-7715

February 28, 1986

Dear Mr. Greenwood:

This is in response to your November 20, 1985, letter to Mr. James J. Delaney wherein you asked whether a taxpayer, F[illegible], Inc., can claim refunds of property taxes paid more than four years ago for the 1979-80 and 1980-81 fiscal years under the following circumstances:

> Taxpayer is a company dealing in the sales and rental of irrigation equipment. It was sent Business Property Statements for the years 1979, 1980, 1981, and 1982, and it returned those statements timely. Taxpayer's declarations in those statements were the basis of the original assessments for those years.
>
> Taxpayer was audited in September 1982 under Revenue and Taxation Code Section 469, and escape assessments were made for 1979, 1980, 1981, and 1982.
>
> In April 1985, Taxpayer pointed out to your office that some of its personal property qualified as business inventory and should have been exempt from taxation under the business inventory exemption.
>
> Taxpayer was audited for the open years 1981, 1982, 1983, 1984 and 1985, and the audit disclosed that some of the personal property did qualify for exemption. Refunds were recommended for the years 1981 through 1984. Because the escape assessments made for 1979, 1980, 1981, and 1982 had been paid in November 1982 (within four years from the date of the payment per Revenue and Taxation Code Section 5097.2), your office cancelled those additional billings also.

Per your letter, Taxpayer maintains that it is entitled to refunds for the 1979-80 and 1980-81 fiscal years because in September 1982, your auditor should have discovered the personal property qualifying for exemption and instructed it how to report properly. Your position is that for whatever reason an audit discloses escape assessments or refunds, the four year Statute of Limitations under Revenue and Taxation Code Sections 532 and 5097(2) is controlling, and you cannot go beyond the Statute of Limitations for any reason as to pierce an original assessment that was made timely. As further support therefor, you noted that Taxpayer's declarations had all been on State-mandated forms which included instructions on how to file properly, that Taxpayer did not in September 1982 bring to the auditor's attention that it had personal property which qualified for the exemption, and that Taxpayer did not file applications for reduction in assessments for the 1979-80 and 1980-81 fiscal years, thus waiving its right to any reduction in assessments for those years.

Reduced to its simplest terms, your question is whether there is any exception to the statutory requirement of Revenue and Taxation Code Section 5097(2) that in order for a refund of property taxes to be made, a claim therefor must have been "filed within four years after making of the payment sought to be refunded." As you suggest, the answer is that there is none.

Per the Legislative Counsel's Digest pertaining to SB 1752/Stats. 1978, Ch. 732, which added the third and fourth paragraphs to Section 469:

> "Under existing law, if property subject to property taxation has not been assessed or has been undervalued for assessment purposes, such property is subject to an escape assessment, subjecting it to taxation.
>
> "This bill would require the review, equalization and adjustment of the assessment of all property on the business premises where property is subjected to an escape assessment, unless such property has been equalized, and would provide for the refund of any overpayment of taxes which have been determined in such review to have been incorrectly assessed."

As you know, the fourth paragraph of Section 469 as enacted stated that if an audit for a particular tax year disclosed that property of a taxpayer was incorrectly valued or misclassified for any cause, to the extent that this error caused the property to be assessed at a higher value than the assessor would have entered on the roll had such incorrect valuation or misclassification not occurred, then the assessor shall notify the taxpayer of the amount of the excess valuation or misclassification, and the fact that a claim for cancellation or refund may be filed with the county as provided by Sections 4986 and 5096.

Accordingly, if an audit discloses that property of a taxpayer had been incorrectly valued or misclassified such that the error caused the property to be assessed at a higher value than the assessor would have entered on the roll had such incorrect valuation or misclassification not occurred, the assessor is to notify the taxpayer of the amount of the excess valuation or misclassification and of the fact that a claim for refund may be filed with the county as provided by Section 5096.

In this matter, the September 1982 audit disclosed not that the Taxpayer's property had been assessed at too high a value but rather, that it had been assessed at too low a value. As the result, escape assessments were made for the 1979-80 through 1982-83 fiscal years, and there was no notification given to the taxpayer of any possible reduction in assessments as contemplated by the fourth paragraph of Section 469 since it was not applicable. Thus, the Taxpayer's remedy with respect to the escape assessments as well as for the original assessments for those years was, upon the payment of the resultant property taxes, still the filing of a claim or claims for refund thereof pursuant to Section 5096. This the Taxpayer did not do, and by the time the precise nature of the Taxpayer's personal property was ascertained and the matter resolved, more than four years had passed since the dates of Taxpayer's payments of property taxes for the 1979-80 and 1980-81 fiscal years, thus precluding the refund of the amounts of such taxes (Section 5097(2)).

While the Taxpayer contends that your auditor should have discovered the personal property qualifying for exemption and instructed it how to report properly, the fourth paragraph of Section 469 is based upon what the results of an audit disclose, not what they should have or might have disclosed. And, there is nothing to suggest, in Section 469 or elsewhere in the Revenue and Taxation Code, that "incorrect" audit

results operate or can be said to be the basis for concluding that the four year statute of limitations expressly provided for in Section 5097(2) can be ignored, waived, etc. Rather, in exemption matters, case law is to the effect that even where taxpayers have taken all necessary procedural steps to claim exemption prior to paying property taxes, they are not entitled to refunds of such taxes where they have not filed timely claims for refund therefor (Samarkand of Santa Barbara, Inc. v. Santa Barbara County (1963), 216 Cal.App.3d 341, and Hartford v. Los Angeles County (1963), 218 Cal.App.2d 613). Thus, whatever the circumstances which led to the payments of such taxes, once the payments were made, the Taxpayer's sole and exclusive remedy was to file a claim or claims for refund of the amount(s) of such tax(es) for the 1979-80 and 1980-81 fiscal years within four years from the date(s) of payment(s) thereof.

To a similar effect is an October 9, 1985, letter from Mr. Douglas D. Bell to Mrs. Shirley A. Prince wherein Mr. Bell advised that the four year statute of limitations of Section 5097(2) applied even where the Assessor's Office agreed that property had been mistakenly overassessed for the last eight years. A copy of that letter is enclosed for your information and review.

Very truly yours,

James K. McManigal, Jr.
Tax Counsel

JKM:fr

Enclosure

cc: Mr. Joe Shimmon, Jr.
Frasier Irrigation, Inc.
Honorable Rusty Areias
Assemblyman, 25th District
Honorable Conway H. Collis
Mr. J. J. Delaney

bc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Verne Walton
Mr. David Lucero

(916) 323-7715

February 28, 1986

Dear Mr.

This is in response to your January 13, 1986, letter to Mr. James J. Delaney wherein you provided information in addition to that provided by Fresno County Assessor Greenwood in his November 20, 1985, letter to Mr. Delaney. At issue is whether F , Inc., can now claim refunds of property taxes paid more than four years ago for the 1979-80 and 1980-81 fiscal years.

There appears to be no dispute as to the sequence of events:

> F is a company dealing in the sales and rental of irrigation equipment. It was sent Business Property Statements for the years 1979, 1980, 1981, and 1982, and it returned those statements timely. Its declarations in those statements were the basis of the original assessments for those years.
>
> F was audited in September 1982 under Revenue and Taxation Code Section 469*, and escape assessments were made for 1979, 1980, 1981, and 1982.
>
> In April 1985, F pointed out to the Assessor's Office that some of its personal property qualified as business inventory and should have been exempt from taxation under the business inventory exemption.

---

* All section references hereinafter are to Revenue and Taxation Code Sections.

> F was audited for the open years 1981, 1982, 1983, 1984 and 1985, and the audit disclosed that some of the personal property did qualify for exemption. Refunds were recommended for the years 1981 through 1984. Because the escape assessments made for 1979, 1980, 1981, and 1982 had been paid in November 1982 (within four years from the date of the payment per Section 5097.2), the Assessor's Office cancelled those additional billings also.

Based upon your recollection of what transpired at the time of audit in September 1982, however, your position is that the auditor, Mr. James Aleru, should have discovered and disclosed to you property qualifying for the business inventory exemption:

> "Mr. Aleru questioned us as to the scope of our business. We explained that we were in the short term rental business, and that our average rental period was about eleven days. Also, we told him that we were in sales and service. We very definitely explained to the auditor that the reason we reported nothing on the line stating; Equipment on Rental to others, was because we did not want the tax charged to our customers. The auditor did not explain to us that only equipment rented on the 1st day of March was taxable. The only thing which Mr. Aleru was concerned with was to correct the deficiency of what we had reported as compared to our depreciation schedule. He charged us tax on all of our rental equipment even though the rental receipts and tags showed that not all of our equipment was rented as of the first day of March. As a result of this audit, we were assessed additional tax. We also paid penalty and interest for each of the years in question.
>
> * * *
>
> "Now, our question is why is an audit conducted? In our case since inventory for sale is not taxable, the taxable items are assets which support rentals and sales, and rental equipment which is rented as of the first day of March. Our contention is that the auditor has a

> binding duty to disclose to us the laws and regulations upon which he is auditing. Since we are a rental business, he should have looked at the rentals, and especially those as of March 1."

Thus, if you had overreported, as was ultimately determined to have been the case in 1985, you contend that "refunds with interest should be paid to us, refunds should be made for all years which were erroneously taxed to us; also refunds should be made for the years 1979 and 1980 because the audit in 1982 and subsequent assessment delayed the escape date of the payment."

Under the California Constitution, all property is taxable unless otherwise provided therein or by federal law. The Constitution provides further that such property must be assessed at the same percentage of fair market value and must be taxed in proportion to its full value. And the Revenue and Taxation Code provides that all property in the state, not exempt under state or federal law, is subject to taxation under that Code.

The county assessor's duties in these regards are annually, at a specified time, to assess all the taxable property in his or her county, other than state-assessed property, to the persons owning, claiming, possessing, or controlling it at that time; to ascertain the names of taxable inhabitants and the assessable property in the county, and to list and value the property for purposes of taxation; to see that the valuation placed on various kinds of property is in proportion to the worth of such properties; and to assess such property in his or her county as may have escaped assessment either in whole or in part.

To assist the county assessor in the performance of his or her duties, the property statement, required by Section 441, is utilized. For example, in 1979 the Statement had to show all taxable property owned, claimed, possessed, controlled, or managed by the person filing it and required to be reported thereon, including inventory, equipment out on lease or rent to others, and equipment held for lease or rent to others. The accompanying Instructions for Parts II and III of the Statement stated, in part:

Part II Line 1. INVENTORY. Enter amount brought forward....

* * *

Line 3. EQUIPMENT. Enter total from Schedule C, Line 91.

Line 4a. EQUIPMENT OUT ON LEASE OR RENTAL TO OTHERS. Report cost....The inventory exemption is not allowed on this equipment.

Line 4b. EQUIPMENT HELD FOR LEASE OR RENT TO OTHERS. OTHER EQUIPMENT ON YOUR PREMISES HELD FOR LEASE OR RENT. Report cost on Line 4b and attach schedule reporting cost by year of acquisition. The assessor will allow the inventory exemption.

Part III Lines 14-43....Report all tangible inventories,... A business inventory exemption allowed by law will be computed by the Assessor.

* * *

Lines 68-90....Segregate and report on Line 4b, Part II the cost of equipment held for lease, or report on Line 4a, Part II the cost of equipment out on lease or rent....

Line 91. Add totals on Line 90...Enter the same figure on line 3, Part II...."

However, the statement does not limit the powers of a county assessor, and in instances in which the filing of incomplete statements with an assessor have resulted in property escaping proper assessment, escape assessments have been held to have been not only authorized but required (Ex-Cell-O Corp. v. Alameda County (1973), 32 Cal.App.3d 135; Beckman Instruments, Inc. v. Orange County (1975), 53 Cal.App.3d 767; General Dynamics Corp. v. San Diego County (1980), 108 Cal.App.3d 132). And in addition to Section 531, the basic escape assessment section, in 1979 and 1980 Sections 531.3, 531.4, and 531.5 pertained specifically to escaped personal/business property and to the levy of escape assessments. Section 531.4 stated in this regard:

"When an assessee files with the assessor a property statement or report on a form prescribed by the board with respect to property held or used in a profession, trade or business and the statement fails to report any taxable tangible property accurately, regardless of whether this information is

> available to the assessee, to the extent that this failure causes the assessor not to assess the property or to assess it at a lower valuation than he would enter on the roll if the property had been reported to him accurately, that portion of the property which is not reported accurately, in whole or in part, shall be assessed as required by law. If the failure to report the property accurately is willful or fraudulent, the penalty and interest provided in Sections 504 and 506 shall be added to the additional assessment; otherwise only the interest provided in Section 506 shall be added."

Against this background then, it is admitted in the third paragraph of the first page of your letter that Frasier's property statements were incomplete:

> "... the reason we reported nothing on the line stating; Equipment on Rental to others [Line 4a], was because we did not want the tax charged to our customers...."

Presumably, there were other omissions from Frasier's property statements because otherwise, had equipment held for lease or rent been reported on Line 4b, the Assessor would have allowed the business inventory exemption from the beginning.

In any event, for whatever reason and to whatever extent the property statements were incomplete, once Frasier's property was assessed for the 1979-80 and 1980-81 fiscal years, it had the three month statutory period (Section 1603) to file applications for reductions in assessments to contest the amounts of the assessed valuations and/or upon payment of the corresponding amounts of property taxes, it had the four year statutory period from the date or dates of payment of such amounts (Section 5097(2)) to file a claim or claims for refund thereof pursuant to Section 5096 and following. Frasier did neither. Thus, when more than four years from the date or dates of payment of the amounts of taxes for the 1979-80 and 1980-81 fiscal years passed, the assessments/payments became final and Frasier was precluded from obtaining any refund of the amounts thereof by the express provisions of Section 5097(2).

With respect to the contention that the auditor should have discovered and disclosed to Frasier that property qualifying for the business inventory exemption, assuming

that your recollection of what transpired at the time of audit in September 1982 is correct, such does not provide any basis for ignoring, waiving, etc., the provisions of Section 5097(2) and concluding that Frasier is entitled to a refund of taxes paid for the 1979-1980 and 1980-81 fiscal years. While several Revenue and Taxation Code Sections specifically recognize the possibility of assessor's error and others provide for relief therefrom, none of the relief sections provides that in the event of an assessor's error, the four year statutory period of Section 5097(2) can be ignored, waived, etc., such that property taxes paid more than four years before could be refunded. Nor are we aware of any court decisions to such an effect. Rather, case law has consistently supported the "timely filing of a claim for refund" construction, hereinabove discussed. See North Whittier Heights Citrus Assn. v. Bryant (1954), 126 Cal.App.2d 688; Samarkand of Santa Barbara, Inc. v. Santa Barbara County (1963) 216 Cal.App.2d 341; and Hartford v. Los Angeles County (1963), 218 Cal.App.2d 613.

If, as the result of discussions with the auditor during the course of the audit and/or the resultant escape assessments, Frasier had any question concerning the basis for the audit, the manner in which it was conducted, the correctness of the audit results, etc., it could have, and should have, pursued the matter further with the auditor's supervisor and with the Assessor himself, if necessary; filed claims for refund of property taxes paid for the 1979-80, 1980-81, and 1981-82 fiscal years; and filed an application for reduction of assessments with respect to the escape assessments made for the 1979-80, 1980-81, 1981-82, and 1982-83 fiscal years. Any one or more of these actions would have probably clarified the matter much sooner, while at the same time probably permitting the opportunity for the filing of a timely claim for refund of property taxes paid for the 1980-81 fiscal year and, possibly, for the 1979-80 fiscal year also.

Finally in this regard, while they typically disclose the authority pursuant to which they conduct audits, auditors are not bound to disclose the laws and rules or regulations upon which they are auditing in other than in a general sense. For example, an auditor conducting a local property taxation audit would do so pursuant to applicable Revenue and Taxation Code provisions and related property tax rules or regulations, not, say, Sections 129 and 219 and Rule 133 which pertain to the Business Inventory Exemption. Instances in which auditors have begun auditing single aspects of taxpayers'

businesses and ended up finding numerous reporting errors in various other aspects of such businesses by the times they have completed their respective audits are numerous.

With respect to the demand for interest on the amounts of such property taxes for the 1979-80 and 1980-81 fiscal years, even in instances in which claims for refund are filed timely and granted, there is no implied contract that interest will be paid on such claims. Rather, interest may be paid only pursuant to a specific statute (Ball v. Los Angeles County (1982), 82 Cal.App.3d 312, cert. den. 439 U.S. 1116). See in this regard Sections 5150 and 5151, copies enclosed, which pertain to interest on refunds.

Very truly yours,

James K. McManigal, Jr.
Tax Counsel

JKM:fr

Enclosure

cc: Honorable Rusty Areias
Assemblyman, 25th District
Honorable Conway H. Collis
Mr. William C. Greenwood
Fresno County Assessor
Mr. J. J. Delaney

bc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Verne Walton
Mr. David Lucero

(916) 323-7715

March 11, 1986

Dear

This is in response to your March 4, 1986, letter concerning taxes paid for your residence at the above address, A.P. No. 007-352-39, for the 1978-79, 1979-80, 1980-81, and 1981-82 fiscal years and the possibility of refunds thereof:

> "I spoke with the Orange County Assessor's Office and I was refunded for four years. I overpaid the County for eight years. I would like a refund for the other four years and also interest received, since it was the Assessor's error, not mine. I was told by the Orange County Assessor to write to Sacramento regarding the other four years."

The provisions of California law relating to refunds of property taxes paid are found at Revenue and Taxation Code Section 5096 and following, copies enclosed. Section 5096 states that any taxes paid shall be refunded if they were erroneously or illegally collected or illegally assessed or levied. Section 5097(a)(2), however, places the following condition upon refunds:

> "(a) No order for a refund under this article shall be made, except on a claim:
>
> * * *
>
> (2) Filed within four years after making of the payment sought to be refunded....
>
> * * *"

Reduced to its simplest terms, your question is whether there is any exception to the Section 5097(a)(2) requirement that in order for a refund of property taxes to be made, a claim therefor must have been "filed within four years after making of the payment sought to be refunded." Unfortunately, the answer is that there is none.

As you will note, neither Section 5096, Section 5097(a)(2), nor any other Section provides for any exception to the four year period. Neither is there any provision in the California Constitution or in any other section of the Revenue and Taxation Code which authorizes an assessor, a county board of supervisors, this Board, or anyone else to adjust, extend, waive, etc. the four year period. And the California courts, when called upon in the past to consider the previous refund limitation period, which was three years rather than the present four years, have permitted no exception to the Section 5097(a)(2) requirement (McDougall v. Marin County 208 Cal.App.2d 65), even when the property was otherwise exempt from property taxation (Hartford v. Los Angeles County 218 Cal.App.2d 613).

While the effect of this strict interpretation of Section 5097(a)(2), no doubt, seems harsh, in that it precludes action on otherwise valid claims for refund, it must be noted that assessments made by an assessor similarly must be made within a four year period. See Revenue and Taxation Code Section 532 in this regard. Thus, the assessor also is precluded from making assessments which would otherwise be valid if the four year period has expired.

In closing, I note that one of the years in question is the 1981-82 fiscal year. The first installment of taxes for that year was due November 1, 1981 (Revenue and Taxation Code Section 2605), and was delinquent December 10, 1981 (Section 2617), and the second installment was due February 1, 1982 (Section 2606), and was delinquent April 10, 1982 (Section 2618). Assuming that you paid the property taxes for the property for the 1981-82 fiscal year timely and in two installments for that fiscal year, while more than four years from the date of payment of the first installment has passed, a claim for refund of all or a portion of the second installment of taxes made within four years from the date of payment of those taxes could be timely under Section 5097(a)(2).

Very truly yours,

James K. McManigal, Jr.
Tax Counsel

JKM:fr
Enclosure
cc: Mr. Bradley L. Jacobs, Orange County Assessor