

Memorandum

FEB 7 1985

Valuation Division
Board of Equalization

Date : February 6, 1985

: Mr. Gene Mayer

From : Robert R. Keeling

Subject: Valuation Division's Statute of Limitations Waiver Form

This is in response to your memorandum dated January 4, 1985. You first ask if an employee of a corporation who is not a corporate officer, but who is authorized by the corporation to sign Val's property statements, may also sign Val's audit waiver forms. The answer to this question depends upon the corporate document authorizing the employee's signature. If the document is couched in terms that give the employee full power to bind the corporation in tax matters, then the employee's signature would be sufficient to bind the corporation to the waiver. In my view, you must be more careful to test the employee's power to waive the corporation's rights under the statute of limitations for audit than you would to test the employee's right to sign the property statement. The reason is that under the waiver form the employee is waiving the corporation's right to avoid assessment for escape assessments made outside of certain statute of limitations. On the other hand, a signature on the property statement does not waive the corporation's rights but simply authenticates a declaration of corporate property subject to the Board's assessment jurisdiction. An unauthorized signature on the property statement would not prevent a timely escape assessment while an unauthorized signature on the waiver form could very possibly prevent the Board from escape assessing.

You next ask whether a non-officer should have a power of attorney in order to sign the waiver form. In my view, it is not necessary for the employee to have a formal "power of attorney" in order to sign the waiver form. It is sufficient for the employee to have authorization through a Board of Director's instruction, an officer's letter of instruction, or a corporate job description. Any such similar document which demonstrates the corporation's intent to authorize the employee to bind the corporation to the waiver would be sufficient for our purposes. In any event, if you are suspicious of the employee's authority to sign the waiver,



I suggest you correspond with a corporate officer to confirm the waiver and to inform the corporation that the Board is foregoing an arbitrary assessment for the right to perform a post-statute of limitations audit and escape assessment, if such assessment is found appropriate.

I have reviewed the information accompanying your memorandum which describes the sales tax department's decision to require a written power of attorney when the signatory is other than the owner, partner, or corporate officer. In my view, the sales tax department is simply being extra careful. Your property tax department could initiate the same precautions, however, in light of the absence of problems of this sort in the past, such precautions appear to be unnecessary. Moreover, such precautions would add to the difficulty of obtaining signatures on the waiver forms.

Apparently, the difficulty the sales tax department had was that a controller signed a sales tax waiver form without corporate authority. The waiver form used was a document prepared by the Board. The form contained a written warning that a written power of attorney was required. As such, this form constituted an established administrative practice of long standing to require a signatory hold a power of attorney if not a corporate officer. I get the impression from Deputy Attorney General Charles C. Kobayashi's memorandum on this sales tax audit waiver case that the trial court felt it was the Board's responsibility to make sure the corporate employee had the required power to waive the corporation's rights under the audit statute of limitations. The case most troubling to Kobayashi was Paul L. McGirr v. Gulf Oil Corporation (41 Cal.3d 246) wherein the corporation was not held responsible under a rental lease. In that instance, the corporate representative made promises to a service station lessee which were not in writing as required by the statute of frauds and were not ratified by the corporation. Generally the case stood for the proposition that in the absence of actual or ostensible authorization granted to the signatory, the corporation could not be held liable on an oral lease if the law required such a lease to be in writing, provided the corporation did not later ratify the promises through subsequent acts or representations by a corporate officer. Applied to your case, it appears that even an unauthorized waiver could be cured by subsequent ratifying acts or representations by the corporate officers where such officers acted with full knowledge of the consequences of such ratification.

RRK:fr



cc: Mr. Gordon P. Adelman Mr. Gene DuPaul
 Mr. Robert H. Gustafson Mr. Bud Florence
 Mr. William Jackson