

M e m o r a n d u m

To: Mr. Ramon Hirsig, Acting Chief
Valuation Division

From: James M. Williams

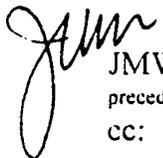
Subject: Application of Revenue and Taxation Code. Section 830(c)

Date: April 16, 1996

In your Email of Friday, April 12 to Assistant Chief Counsel Larry Augusta you first asked: What constitutes failure to file in whole or in part?, as used in the statute. If you refer to subsections (1) through (3) of subdivision (c), you will note that they specifically refer to the unit, allocated and nonunitary properties. So on its face the statute is concerned with acquiring the information that is necessary for the division to calculate the annual values. Since information is what the statute seeks, then your second question: Is this section literally referring to the physical filling of the form/s, without regard to the accuracy of its content?, is properly answered by accurate content because that is the basis for accurate annual valuation.

Your third and final question raises an issue that must be viewed as immaterial: If the taxpayer sends in statements with unacceptable contents, what authority if any, does staff have to add a penalty for "negligence". The term negligence is not part of the statute and its absence was clearly known to the Legislature because in subsection (4) of subdivision (c) it had no difficulty in adopting the terms fraudulent or willful. Your review of the statements should be objective and limited to two functions, one simple and one complex. First, is the form complete? If pages are missing or applicable sections are blank, then there is a clear failure to file "in part". (If the form is not returned at all or if a completely blank form is returned, that is a failure to file "in whole".) The second and more complex function is to analyze the reported data for accuracy. Here you can judge the data as reviewed by experienced staff members and also by comparison to the statements and data therein of other companies that are similarly situated. The judgment will be either "wholly accurate", "partially accurate and partially inaccurate", or "wholly inaccurate." Negligence as a factor of causation is not material to your decision.

Finally, I would suggest that you review the division's instructions that direct how the statement should be completed. Sections 826 and 827 confer ample authority for you to decide the precise information that you need and the format in which you need it. If you conclude that a filed statement does not accord therewith, then you have the authority under subsections (1) through (4) of subdivision (c) to assess the appropriate penalty without any consideration of negligence. In other words it's either there or it's not, and why makes no difference.


JMW:jd

precednt/valuadiv/1996/96008.jmw

cc: Mr. Jim Speed, MIC:63
Mr. Dick Johnson, MIC:64
Ms. Jennifer Willis, MIC:70