



STATE BOARD OF EQUALIZATION  
20 N STREET, SACRAMENTO, CALIFORNIA  
(P.O. BOX 1799, SACRAMENTO, CALIFORNIA 95808)  
(916) 445-1516

CONWAY H. COLLIS  
First District, Los Angeles  
ERNEST J. DRONENBURG, JR.  
Second District, San Diego  
WILLIAM M. BENNETT  
Third District, Kentfield  
RICHARD NEVINS  
Fourth District, Pasadena  
KENNETH CORY  
Controller, Sacramento  
DOUGLAS D. BELL  
Executive Secretary  
No. 83/29

February 24, 1983

TO COUNTY ASSESSORS:

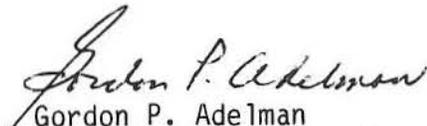
BARRETT AND ARMSTRONG CASES

Our Assistant Chief Counsel, Property Taxes, Larry Augusta, recently wrote a memorandum in which he explained in detail the history and status of the Barrett and Armstrong cases, and the California code sections relevant to claims for refund. Judging by the number of telephone calls and letters we are getting on the topic, we are confident that you are fielding a large volume of such inquiries.

Enclosed is a copy of Larry's memo. We believe it may be of help when you are answering taxpayers' questions because it is a clear explanation of the complicated series of events.

If you have any questions on the subject, please contact Gordon Adelman or Bob Gustafson at (916) 445-1516 or 445-1517 respectively.

Sincerely,

  
Gordon P. Adelman  
Assistant Executive Secretary  
Property Taxes Department

GPA:ab  
Enclosure  
AL-04B-1814A

# Memorandum

To : Property Tax Attorneys  
Mr. Gordon P. Adelman  
Mr. Robert H. Gustafson

Date : February 18, 1983

From : Lawrence A. Augusta  
Assistant Chief Counsel

Subject: Status of Barrett and Armstrong Cases;  
Procedures for Claiming Refunds

We have recently received a number of inquiries concerning the background and status of the Barrett and Armstrong cases and the procedure for filing claims for refund in order to protect taxpayers' interests should there be a final judgment in favor of the taxpayers. The following sets forth this information. Please be advised, however, that our policy will be to advise taxpayers to contact their local county tax collector for information in the first instance. If after contacting their tax collector, they are still uncertain, we can attempt to help them.

## Background

In May 1979, Mr. Fred W. Armstrong (now deceased) filed a suit in the Superior Court of San Mateo County (Armstrong v. County of San Mateo). In June, 1979, Robert E. Barrett, Robert F. Coleman and Eva G. Coleman as individuals and as principals in Concerned Citizens for Implementation of 13-A filed suit in the Superior Court in Santa Clara County (Barrett v. County of Santa Clara). Howard Burnside is the attorney for the plaintiffs in both actions, and the State Board of Equalization is a defendant in both actions.

The plaintiffs alleged that the provision of Proposition 13 permitting an annual adjustment of base year values to reflect inflation up to 2% from year to year was applicable beginning on the lien date in 1979, not with the lien date in 1976 as provided by statute and Board rule.

The cases were co-ordinated for trial in the San Mateo County Superior Court before Judge Melvin Cohn.

## Decision of the Superior Court

On August 12, 1981, the trial court decided in favor of the plaintiff taxpayers.

The judge ruled that Sections 110, 110.1 and 51 of the Revenue and Taxation Code and Rule 460 of the Board were unconstitutional to the extent they "direct, require or permit" county assessors to apply the inflation factor of Section 2(b) of Article XIII A to base year values for any lien date prior to July 1, 1978.

He further mandated that the Board amend Rule 460 to require that the inflation factor be applied commencing with the lien date for the year 1979-80.

On December 9, 1981, all defendants filed a notice of appeal.

#### Present Status of Case

The case is now on appeal to the First District Court of Appeal, Division 2.

With the filing of the Appellants' Reply Brief on January 19, 1983, the briefing of the appeal is complete. I am advised by the Deputy Attorney General handling the case that it is difficult to predict when the case will be set for oral argument, but based on his experience, it will be at least six months before oral argument, even if some priority is given to the case because it is a state tax case of importance. Following completion of oral argument, there will be another period of time, perhaps six months or more, before a decision is rendered. An appeal to the Supreme Court is also a possibility.

#### Procedure for Filing Claims

The Board staff is not offering advice on the advisability or necessity for filing claims. However, we do offer the following information on the six requirements of the Revenue and Taxation Code for the filing of claims for refund. It should be noted that the counties may have a claim form that can be used. Taxpayers should contact their county tax collector for information.

1. NO REFUND CAN BE MADE UNLESS A CLAIM HAS BEEN FILED (§5097).
2. THE CLAIM MUST BE IN WRITING (§5097.2).
3. THE CLAIM MUST SPECIFY WHETHER THE WHOLE ASSESSMENT IS CLAIMED TO BE VOID; OR, IF ONLY A PART, WHAT PORTION (§5097.2)

In this case, the amount to be claimed would be only that portion of the tax attributable to adding to the base year value in 1978-79 and thereafter the 2% inflationary adjustment for the years 1975-76, 1976-77, and/or 1977-78.

4. THE CLAIM MUST SPECIFY THE GROUNDS ON WHICH THE CLAIM IS FOUNDED. (§5097.2)

In this case, the grounds would be that the terms of Article XIII A applied only after the Constitutional amendment (Proposition 13) was effective on July 1, 1978; that the provisions of Section 2(b) of Article XIII A permitting an annual adjustment of base year values to reflect inflation could not be applied before July 1, 1978; that the first lien date on which an inflation adjustment could be made is March 1, 1979; and, that it is improper to adjust for inflation for the years 1975-76, 1976-77, and/or 1977-78.

5. THE CLAIM MUST BE VERIFIED BY THE PERSON WHO PAID THE TAX, HIS GUARDIAN, EXECUTOR, OR ADMINISTRATOR (§5097).

This requirement can be satisfied by concluding the claim with this statement: "I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Signed at           (City)          , California,           (Date)          ,           (Signature)          ."

6. THE CLAIM MUST BE FILED WITHIN FOUR YEARS AFTER MAKING THE PAYMENT SOUGHT TO BE REFUNDED, OR WITHIN ONE YEAR AFTER THE MAILING OF THE NOTICE PRESCRIBED IN SECTION 2635, WHICHEVER IS LATER (§5097).

The meaning of "within four years after making the payment," while clear on its face, is not entirely free from doubt. There is case law which suggests, though it does not specifically hold, that for taxes on the secured roll and paid in two installments, the four-year statute of limitations for the entire year begins to run on the delinquency date of the second installment, April 10, notwithstanding the statutory language and the fact that the first installment may have been paid much earlier (McDougall v. Marin County (1962) 208 Cal.App. 2d 65). Under this theory, the deadline for filing claims for the 1978-79 fiscal year would be April 10, 1983. A later case, Singer v. Kings County (1975) 46 Cal.App. 3d 862, suggests that with respect to taxes on the unsecured roll (for example, possessory interests), a claim is required within four years of the actual payment.

The Section 2635 Question. Section 2635 may make the issue of the four-year statute moot. Section 2635 requires the tax collector, whenever his records show that taxes might

have been erroneously or illegally collected, to give notice by letter to the taxpayer. Section 5097 then gives taxpayers one year after the mailing of the notice to file a claim for refund, even if that date is more than four years after payment.

#### Denial of Claims; Filing of Suit

After the claim is filed, the Board of Supervisors, has six months within which to act on the claim. If they do not act within six months, the claimant has the option to consider the claim rejected. After denial, the taxpayer has six months within which to bring an action in court to recover the taxes. If he does not bring an action within six months, the Statute of Limitations would bar the action (Section 5141).

#### Retroactivity of Ruling

There have been some questions raised because Judge Cohn's judgment did not deal with the issue of refunds for the years 1978-79 through 1980-81. Instead, he ordered the assessors of Santa Clara and San Mateo to adjust their assessed valuations for the 1981-82 years and years thereafter.

It seems clear from the case law that a ruling of unconstitutionality means the statute was void ab initio. A void act is not a law, confers no rights, imposes no duties, affords no protection. In legal contemplation, a void act is as inoperative as though it had never been passed. (Norton v. Shelby County (1886) 118 U.S. 425; Brandenstein v. Hoke (1894) 101 C 131; Cummings v. Morez (1974) 42 Cal.App. 3d 66; 13 Cal.Jur. 3d §81; Sutherland, Statutory Construction §2.07; Witkin, Summary Const. Law §64).

While these are some exceptions to this rule, they are not applicable here. It would thus appear that refunds for past years would be due to taxpayers if the appellate court upholds the trial court.

#### Where to File Claims

The procedure differs from county to county, some requiring filing with the clerk of the board of supervisors, some with the auditors, some with the tax collector. For information and claim forms, taxpayers should contact their county tax collector.

LAA:jlh

cc: Mr. Douglas D. Bell  
Mr. Sid Mandel

