STATE BOARD OF EQUALIZATION
LEGAL DIVISION (MIC:82)
450 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 324-3828
FAX (916) 323-3387

MEMBER
First District

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

November 23, 1994

Mr. [B]
[H]
XXXX --- ---, Suite XXX
--- ---, CA XXXXX

RE: S- -- XX-XXXXXX
Local Tax- City of [X]

Dear Mr. [B]:

I am answering your letter to me of September 15, 1994, which you wrote pursuant to our recent telephone conversation on this subject. You are requesting that the Board make a reallocation to the City of [X] under Section 7209.

I. FACTUAL BACKGROUND.

You describe the factual background of your request as follows:

"One of our employees noticed a missing third quarter 1993 payment by taxpayer. Assuming that the Board would act on its own as it had done before, we took no further action. Shortly thereafter, [consultant] noticed we had pulled this account and pulled it also **???**. They requested reallocation on behalf of their client cities and the Board complied.

"The Board did not reallocate for our client City of [X]. Their position was that we had not timely notified them, so reallocation could not be made for [X].

"The notice provision requires that the Board receive timely notice of the error. When [consultant] notified the Board that Schedule C had not been filed by taxpayer for that quarter, the Board was on notice of the error in that quarter for all affected cities, including [X]. When making corrections requested by [consultant], staff had to consciously not correct for [X].

> "There is no requirement that notice to the Board be given by a city or its representative. This position reads something into the notice requirement that is not there. The notice requirement refers to the Board. It does not specify that the taxpayer, the city, their representative, nor any limited class of person must provide the Board with the required notice. Anyone can provide it. In this case [consultant] provided it." (Emphasis in original.)

II. OPINION

I have investigated this matter and have learned that Local Tax has already taken care of it. Therefore, no opinion from this office is required at this time.

We emphatically reject, however, any notion that notice regarding a misallocation to one city is automatically notice that other cities are affected. Whether notice as to an error for one city can be notice as to other cities depends entirely on the facts of the particular case and the contents of the notice itself. BTGB 59-12 specifically provides that facts indicating a misallocation contained in Board records cannot provide a date of knowledge until they are questioned, either by a Board employee or a city.

Your letter underscores the necessity of the local tax consultants doing their job properly. When [consultant] was here auditing this account, he not only did not call the attention of Local Tax to this problem, he signed off the account as having no errors. Local Tax was entitled to rely on his evaluation. Had he noted the error, it would have been corrected at that time.

I hope the above discussion has answered your question. If you need anything further, please do not hesitate to write again.

Sincerely,

John L. Waid
Tax Counsel

JLW:te

cc: Mr. Larry Micheli (MIC:27)