

M e m o r a n d u m**702.0900**

To: Mr. Larry Micheli, Supervisor

Date: July 27, 1990

From: John Abbott
Senior Tax CounselSubject: [C]
[M] date of knowledge for local tax allocation

This is in response to your May 18, 1990 memorandum to me regarding the date of knowledge to be used in reallocating local tax to the city of [M] because of misallocations by [C]. Briefly, you contend that the date of knowledge which the Board must apply in limiting the reallocation of local tax under Revenue and Taxation Code section 7209 is established by a letter dated March 5, 1990 from Mr. [Y] of [Z] to you. But in a letter to you dated May 7, 1990, Mr. [Q] of [Z], contends that an earlier date of knowledge was established by a letter dated June 29, 1989 from Mr. [Q] to Mr. M. J. Munekawa, Senior Tax Auditor, and also by Board audits of the fourth quarter 1988 and first quarter 1989 returns of this taxpayer. On [C]'s fourth quarter 1988 return, there is a stamp which states "Local Tax Questioned," and the stamp was dated by the auditor with another stamp, May 9, 1989.

With respect to the "Local Tax Questioned" stamp, your contention is that the stamp does not establish a date of knowledge because that stamp is used in audits only for questioning whether a sublocation of the taxpayer listed on the return is correctly registered with the Board. In the information you included with your memo to me, paragraph 8 on page 1 of the return processing instruction for SY accounts, indicates that if all of the taxpayer's sublocation addresses do not appear in the Board's records, the auditor should indicate the discrepancy by using the "Local Tax Questioned" stamp.

You also contend that the June 29, 1989 letter from Mr. [Q] does not establish a date of knowledge, for several reasons. First, it deals with [C]'s allocations affecting the cities of [H], [L], and [R], rather than the City of [M]. Second, the misallocations questioned in the June 29, 1989 letter were unrelated to the misallocations brought to the Board's attention in the March 5, 1990 letter. Third, the letter was never received by the Board, since it was addressed to Mr. Munekawa at 208 T Street, rather than 2014 T Street, the correct address.

I agree that the date of knowledge the Board must use in this case is Mr. [Y]'s March 5, 1990 letter to you. As you note, the "Local Tax Questioned" stamp merely relates to discrepancies between taxpayer-listed sublocations and Board-registered sublocations, rather than to the correctness of the dollar amounts of allocations among registered sublocations. Since the phrase "Local Tax Questioned" could be taken to refer to possible erroneous allocations

between sublocations, you may wish to consider suggesting a change in the wording of this stamp. For example, perhaps the stamp could state instead "sublocations questioned."

I also agree with your contention that the June 29, 1989 letter does not establish a date of knowledge, since it does not refer to [C]'s City of [M] allocations or to the same type of error that resulted in misallocations affecting the City of [M]. With respect to the addressing of the June 29, 1989 letter, we do not know for certain whether the letter was received by any unit of the Board. If any unit of the Board did, in fact, receive the letter, even though misaddressed, and if the letter had referred to the misallocation affecting the City of [M], then it would be my opinion that the date of knowledge would be the date of that letter. The date can be established by the knowledge of any employee of the Board, not just the Local Tax Unit.

JA:jb

cc: Ms. Ann Peifer
Ms. Joan Albu