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TO COUNTY ASSESSORS:

STATUTE OF LIMITATIONS FOR SUPPLEMENTAL AND ESCAPE ASSESSMENTS

Chapter 544 of the Statutes of 1994 (Senate Bill 1726, Kopp) amended Sections 75.11, 531.2, and 532 of the Revenue and Taxation Code (all statutory references are to the Revenue and Taxation Code unless otherwise indicated). These amendments change the statutes of limitations for supplemental and escape assessments resulting from changes in ownership. Chapter 544 also amended the penalty provisions under Section 504. These amendments are effective January 1, 1995.

Section 75.11, Supplemental Assessments

Previously under Section 75.11, the statute of limitations for making supplemental assessments began to run on the July 1 of the assessment year in which an event triggered a supplemental assessment. The statute of limitations was four years from that July 1. However, in the case of fraud or concealment the statute of limitations was extended to six years; in the case of an unrecorded change in ownership, it was eight years.

Chapter 544 amended Section 75.11 to provide that the statute of limitations for making supplemental assessments would not begin to run until a change in ownership statement required by Section 480, 480.1, or 480.2 was filed. The supplemental assessment must be placed on the supplemental roll on or before the fourth July 1 following the July 1 of the assessment year in which the change in ownership statement is filed. If the penalty provided for in Section 504 is added to the assessment, then the supplemental assessment must be made on or before the sixth July 1. Chapter 544 deletes the provision for an eight year statute of limitations.

Assessment year means the period beginning with 12:01 a.m. on the first day of March and ending immediately prior to the succeeding first day of March.

Subdivision (d) of Section 75.11 as amended (changes denoted by italics) now reads:

> "(d) No supplemental assessment authorized by this section shall be valid, or have any force or effect, unless it is placed on the supplemental roll on or before the applicable date specified in paragraph (1) *or (2)*, as follows:
>
> "(1) The fourth July 1 following the July 1 of the assessment year in which *either a statement reporting the change in ownership was filed pursuant to Section 480, 480.1, or 480.2, or the new construction was completed.*
>
> "(2) The sixth July 1 following the July 1 of the assessment year in which *either a statement reporting the change in ownership was filed pursuant to Section 480, 480.1, or 480.2, or the new construction was completed*, if the penalty provided for in Section 504 is added to the assessment.
>
> "For the purposes of this subdivision, 'assessment year' means the period beginning annually as of 12:01 a.m. on the first day of March and ending immediately prior to the succeeding first day of March. *No limitations period specified in paragraph (1) or (2) shall commence unless the filing or transmittal specified in the relevant paragraph has been completed.*"

Chapter 544 only changed the statute of limitations for supplemental assessments triggered by change in ownership events. This chapter did not change the statute of limitations for making a supplemental assessment for new construction.

The modified statute of limitations applies to any supplemental assessment placed on the supplemental roll on or after January 1, 1995. If no change in ownership statement was ever filed, you may now make the supplemental assessment, even if you were precluded from making a supplemental assessment by the previous statute of limitations.

Please note that if a change in ownership statement is filed timely, the assessor may have less than four years to make the supplemental assessment(s). If a change in ownership statement is filed between July 2 and the last day of February, then the assessor will have less than four years to place the supplemental assessment(s) on the supplemental roll. For example, a change in ownership occurred in January 1995 and the change in ownership statement was filed on February 1, 1995. The assessor has four years from July 1, 1994, or until July 1, 1998 (the assessment year in this example is March 1, 1994 through February 28, 1995) to place the supplemental assessment on the supplemental roll.

Sections 531.2 and 532, Escape Assessments

Escape assessments are retroactive assessments levied after the roll was delivered and are intended to rectify omissions or errors in the assessment of taxable property. Once an

omission or error occurs resulting in an underassessment, the property escapes assessment each year thereafter until the underassessment is discovered and corrected. Generally, there are two types of escape assessments: property totally escaping taxation (property never assessed or undiscovered new construction) and property that has been undervalued (e.g., undiscovered changes in ownership). If a property escapes assessment, the assessor is required to value the property upon discovery for the appropriate valuation date, enroll the appropriate factored base year value on the roll being prepared, process corrections to the current roll, and process appropriate escape assessments for the prior years within the statute of limitations.

Previously, the statutes of limitations for making escaped assessments were four, six, or eight years after the July 1 of the assessment year in which the property escaped taxation, depending upon the circumstances causing the property to escape taxation. The statute of limitations was four years after July 1 of the assessment year in which the property escaped taxation or was underassessed except for situations involving fraud or concealment or an unrecorded change in ownership. In the case of fraud or concealment, the statute of limitations was extended to six years; and in the case of an unrecorded change in ownership, it was eight years.

Chapter 544 added subdivision (b) to Section 532 to provide that the statute of limitations for making escape assessments would not begin to run until a change in ownership statement required by Section 480, 480.1, or 480.2 was filed. The escape assessment must be made on or before the fourth July 1 following the July 1 of the assessment year in which the change in ownership statement is filed. If the penalty provided for in Section 504 is added to the assessment, then the escape assessment must be made on or before the sixth July 1. Chapter 544 deletes the provision for an eight-year statute of limitations.

Section 532, as amended, now reads in pertinent part (changes denoted by italics):

> "*(a) Except as provided in subdivision (b),* any assessment to which the penalty provided for in Section 504 must be added shall be made within six years after July 1 of the assessment year in which the property escaped taxation or was underassessed, *and* any other assessment made pursuant to Article 3 (commencing with Section 501) or this article shall be made within four years after July 1 of the assessment year in which the property escaped taxation or was underassessed.

"*(b) In the case where property has escaped taxation, in whole or in part, or has been underassessed, following a change in ownership, the applicable limitations period specified in subdivision (a) shall not commence until July 1 of the assessment year in which a change in ownership statement, as required by Section 480, 480.1, or 480.2, is filed with respect to the event giving rise to the escape assessment or underassessment.*

"*(c) For purposes of this section,* 'assessment year' means the period defined in Section 118."

Subdivision (b) provides that the statute of limitations for making escape assessments begins to run when the change in ownership statement is filed. Thus, it delays commencement of the limitations period for those escapes that occur prior to the time the statement is filed. After it is filed, there is no further delay and the regular limitations period, subdivision (a), applies. The statute does not limit the number of escape assessments that can be made but sets the time period in which they must be enrolled. From the time the change in ownership statement is filed (regardless of whether the statement is filed timely), the assessor has four (or six) years from July 1 of the assessment year in which the change in ownership statement was filed to enroll assessments for <u>all</u> prior years that the property has escaped taxation. The statute of limitations, as modified by subdivision (b), is effective for any escape assessments that are enrolled on or after January 1, 1995.

Effective Dates of Sections 480, 480.1 or 480.2. Subdivision (b) applies only to where a change in ownership statement is required by Sections 480, 480.1, or 480.2. However, where a change in ownership statement is not required by Sections 480, 480.1 or 480.2, then the provisions of subdivision (a) of Section 532 are applicable. Section 480 (change in ownership in general) was added to the Revenue and Taxation Code by Chapter 242 of the Statutes of 1979, effective July 10, 1979. Chapter 1141 of the Statutes of 1981 added Sections 480.1 (change in control of legal entities) and 480.2 (change in ownership involving legal entities and original coowners) and became operative January 1, 1982. Thus, except for change in control of legal entities and changes in ownership involving original coowners, a change in ownership statement is required to be filed for all changes in ownership occurring on or after July 10, 1979. For changes in control of legal entities and changes in ownership involving original coowners, a change in ownership statement is required to be filed for changes in ownership occurring on or after January 1, 1982.

Systems Modifications. With the addition of subdivision (b), it is imperative that the counties track the filing dates for change in ownership statements. If necessary, you may need to modify your system to track filing dates for change in ownership statements to ensure that the statutes of limitations will not expire for supplemental and escape assessments. We will be modifying our Legal Entity Ownership Program (LEOP) to also

track the filing date. Periodically we will notify you of the date an incomplete change in ownership statement is filed with the Board so that you are aware of the start date for the statute of limitations for that change in ownership event. In case we are not able to obtain all the information timely, you may want to independently obtain waivers or reassess all property in your county owned by the legal entity and process escaped assessments before the expiration of the statute of limitations.

Preliminary Change in Ownership Report (PCOR). We are aware that Sections 75.11 and 532 omit references to the Preliminary Change in Ownership Report (PCOR). This appears to be legislative oversight. The Board is sponsoring legislation to correct this problem. The correction will, if enacted, be effective from January 1, 1995.

Here are four examples:

1. ***No Change in Ownership Statement Required.*** If a change in ownership occurred in 1978 and was not discovered until 1995, the assessor can only make escape assessments for either four or six years as provided by subdivision (a) of Section 532 because the change in ownership statement requirement was not enacted until July 10, 1979.

2. ***Change in Ownership Statement Required but not Filed.*** A change in ownership occurred in February 1982, but no change in ownership statement was ever filed. The change in ownership was discovered in February 1995. The assessor shall establish a new base year value for the property for 1982 and determine a factored base year value for each subsequent year reflecting the appropriate inflation adjustments. Next, the assessor shall review the taxable value for the years in question to determine whether any underassessment occurred. While correction for a previously undiscovered change in ownership would normally result in underassessments, it is possible that a subsequent market value decline in the property will prevent an underassessment in certain years. Under subdivision (b), the statute of limitations has not yet begun to run because no change in ownership statement has yet been filed. Escape assessments must be made for any underassessments that are identified for 1982 and subsequent years.

3. ***Change in Ownership Statement Filed.*** A change in ownership occurred in 1982, but no change in ownership statement was filed. The change in ownership was discovered in January 1995. A change in ownership statement was filed after the discovery in February 1995. The assessor has until July 1, 1998, (assuming no Section 504 penalties) to make all the escaped assessments for the periods prior to the filing. If the assessor does **not** enroll the pre-filing escape assessments by July 1, 1998, the assessor can only correct the current roll under Section 4831 and

make prospective assessments and/or escape assessments for post-filing periods still open under Section 532, subdivision (a).

Section 504, Penalties

Previously, Section 504 authorized a penalty of 25 percent be added to any assessments made pursuant to Sections 502 or 503. Basically, Section 502 pertains to the concealment of tangible personal property while Section 503 concerns fraudulent acts and collusion which cause escape of taxable tangible property. Chapter 544 amended Section 504 to increase the penalty added to any assessment made pursuant to Section 503 from 25 percent to 75 percent. The provisions of this amendment apply to penalty assessments made on or after January 1, 1995.

Chapter 544 amended Section 504 to read (changes denoted by italics):

> "*(a)* There shall be added to any assessment made pursuant to *Section 502*, except *those* assessments as are placed *on* the current roll prior to the time it is originally completed and published, a penalty of 25 percent of the additional assessed value so assessed.
>
> "*(b) There shall be added to any assessment made pursuant to Section 503, except those assessments as are placed on the current roll prior to the time it is originally completed and published, a penalty of 75 percent of the additional assessed value so assessed.*"

Section 502 provides that where a person willfully conceals, fails to disclose, removes, transfers or misrepresents tangible personal property in order to evade taxation, the assessor on discovery must assess the property in the lawful amount and add to the assessment a penalty pursuant to Section 504. Subdivision (a) of Section 504 provides that assessments made pursuant to Section 502 will include a penalty of 25 percent.

Section 503 provides that where a taxpayer or his/her agent through a fraudulent act or omission causes, or if any fraudulent collusion between the assessor or any of his deputies causes, any taxable tangible property to escape assessment or be underassessed, the assessor shall assess the property in the lawful amount and add to the assessment a penalty pursuant to Section 504. The newly added subdivision (b) of Section 504 provides that the penalty for assessments made pursuant to Section 503 is 75 percent.

We are aware that this change to Section 504 has consequently affected other sections of the Revenue and Taxation Code which reference Section 504. For example, Sections 531.1 (veteran's exemption) and 531.6 (homeowners' exemption) state "the penalty provided by Section 504..." Section 504 now provides two penalties. None of these

sections have been amended to indicate which penalty in Section 504 is applicable. A separate letter to assessors discussing the effect and clarification of the changes of Section 504 on the veteran's and homeowners' exemptions is being prepared. As we discover other code sections affected by the change in Section 504, we will inform you of the application of the penalties to those statutory provisions.

If you have any questions about the implementation of Chapter 544, please contact our Real Property Technical Services Section at (916) 445-4982.

Sincerely,

John W. Hagerty

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