



STATE BOARD OF EQUALIZATION
450 N STREET, SACRAMENTO, CALIFORNIA
(PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
TELEPHONE (916) 445-4380
FAX (916) 323-3387

JOHAN KLEHS
First District, Hayward

DEAN F. ANDAL
Second District, Stockton

ERNEST J. DRONENBURG, JR.
Third District, San Diego

KATHLEEN CONNELL
Controller, Sacramento

JOHN CHIANG
Acting Member
Fourth District, Los Angeles

E. L. SORENSEN, JR.
Executive Director

March 17, 1997

Dear Mr. _____ :

This is in response to your letter of January 31, 1997 and accompanying materials documenting the appeal of escape assessments of property owned by your client, _____ Corporation ("A _____"). You ask that we accept the letter "as a formal appeal to the State Board of Equalization to exercise its powers and duties provided in Section 15606 of the Government Code of The State of California by bringing an action in a court of competent jurisdiction to compel the Assessor and the Assessment Appeals Board of the County of _____ to comply with the provisions of the Revenue and Taxation Code and State Board Rules in the matter of the right of the assessee to have the original assessment of all property subject to review, equalization, and adjustment by the county assessment appeals board if the result of an audit for any year discloses property subject to an escape assessment." As further explained below, the legal staff of the Board of Equalization does not believe that resort to Government Code section 15606 is contemplated or warranted in this instance, and we are so advising Mr. E.L. Sorensen, Jr., the Board's Executive Director.

Background

To briefly recount the substance of the case: The _____ County Assessor's office conducted a mandatory audit of the books and records of A _____'s business for the years 1992, 1993, and 1994 pursuant to section 469 of the Revenue and Taxation Code. The audit was completed in late 1994 and resulted in escape assessments of personal property and fixtures for each of the years audited. Timely appeals of the escape assessments were filed with the _____ Assessment Appeals Board on March 6, 1995. Subsequently, _____ determined that there existed evidence of a lower market value of A _____'s real property than had been enrolled in the 1992 and 1993 assessment years.

Thereupon, E _____, as agent for A _____ notified the Assessor's Office and the Assessment Appeals Board of A _____'s intention to seek a review, equalization and adjustment of the real property assessments for 1992 and 1993 as part of the appeal of the escape assessments that resulted from the mandatory audit. At the assessment appeals hearing on August 28, 1996, counsel for the Assessor objected to A _____'s request for equalization of the real property arguing that A _____ had failed to file timely applications for the appeal of the assessments of the real property. At the conclusion of the hearing, the assessment appeals board allowed the parties an opportunity to submit written arguments in support of their positions. Thereafter, you requested a legal opinion from the Board of Equalization as to the proper interpretation of section 469 and of section 1605(e) of the Revenue and Taxation Code.

In your view, section 469 and section 1605(e) clearly require that when an escape assessment is made as a result of an audit, then both the real and personal property at the location of the business is subject to review, equalization, and adjustment regardless of whether the assessee has filed an application for appeal of the real property. In a legal opinion letter written by Senior Tax Counsel Ken McManigal, the Board of Equalization legal staff concurred with your interpretation based on the language of the statutes and explicit statements of intent from documents in the legislative bill files. Notwithstanding the analyses presented and arguments made in Mr. McManigal's letter, the assessment appeals board, in reliance on its prior decision in the _____ County Assessment Appeal Matter of _____ Corporation, Application No. _____, decided in favor of the assessor and denied A _____'s requests for an equalization of the original assessment. As a result of the adverse decision, you have requested that the Board of Equalization bring an action to compel the _____ County Assessor and the County Assessment Appeals Board to comply with the statutes because, as you contend in your letter, "_____ County's position . . . is in direct violation of the law and the taxpayers' statutory rights."

Legal Analysis

While the State Board of Equalization is responsible for equalizing entire county assessment rolls under Article XIII, Section 18 of the California Constitution, the equalization of the assessments of individual properties is a function performed by local government officials. Section 16 of Article XIII of the California Constitution provides, in pertinent part:

"Except as provided in subdivision (g) of Section 11, the county board of equalization, under such rules of notice as the county board may prescribe, shall equalize the values of all property on the local assessment roll by adjusting individual assessments."

The matter at issue concerns the equalization of a local assessment and is thus within the purview of the county assessment appeals board, not the State Board of Equalization. With a few exceptions not relevant here, when an assessee disputes a local property assessment, that assessee must follow the prescribed administrative remedy by filing an application for assessment appeal and exhausting his administrative remedies. "[A]n assessee who seeks judicial relief from an erroneous assessment must have exhausted his remedies before the administrative body empowered initially to correct the error." *Security-First National Bank v. County of Los Angeles* (1950) 35 Cal.2d 319, 320. Pursuant to section 469, the assessor audited A's locally assessable trade fixtures and business personal property and made escape assessments based on that audit. Where escape assessments are made pursuant to section 469, section 1605(e) specifically provides that the original assessment of all property "shall be subject to review, equalization and adjustment by the county board of equalization or assessment appeals board." Therefore, although the dispute centers on the meaning of the term "all property", the assessment appeals board clearly had jurisdiction to hear the matter in the first instance.

To pursue the denial of its assessment appeal, A must pay the tax and, unless the appeals application also served as a claim for refund, it must file a claim for refund with the county board of supervisors or designated county official within four years after making of the payment sought to be refunded. If the board of supervisors denies the claim for refund or fails to act on the claim for refund within six months of filing, A may then bring a refund action in superior court.

Revenue and Taxation Code section 5096 sets forth the permissible grounds for claiming refund, which grounds include taxes erroneously or illegally assessed and taxes erroneously or illegally collected. Therefore, in its claim for refund, A is not restricted to valuation issues but may challenge the legality of the escape assessment, that is to say, the proper interpretation of provisions for equalization set forth in sections 469 and 1605(e).

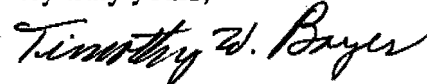
Section 15606(h) is a remedy in the nature of mandamus by which the Board may compel a local official or body to perform its duties as prescribed by statute or regulation. "It is well settled that mandamus, administrative or traditional, does not lie where there is an adequate remedy at law." *Mystery Mesa Christian Church, Inc. v. Assessment Appeals Board, No. 1* (1976) 63 Cal.App.3d 37. In *Mystery Mesa Christian Church, Inc.*, the court of appeal held that the statutory refund procedure of the Revenue and Taxation Code afforded an adequate remedy at law and therefore, administrative mandamus was not a permissible procedure for the redress of the petitioner's claimed wrong.

Section 15606(h) has been rarely invoked and is generally exercised only in instances where there has been a clear violation of a constitutional or statutory property tax provision or administrative regulation, not in instances of statutory interpretation for which specific statutory procedures exist, as indicated. In this instance, the meaning of "all property" as intended by

March 17, 1997

Section 469 is not entirely free of ambiguity. The Board has not adopted a rule definitively interpreting the provisions of Section 469. Although Board legal staff have taken a position contrary to that of the _____ County Assessor and the _____ County Assessment Appeals Board, please bear in mind that, as the disclaimer on our letters advises, Board legal staff opinions concerning local assessment matters are advisory only and are not binding upon the assessor of any county or upon other county officials.

Very truly yours,



Timothy W. Boyer
Chief Counsel

TWB:ba

cc: Mr. E. L. Sorensen, Jr. - MIC:73
Mr. James Speed, MIC:63
Mr. Dick Johnson, MIC:64
Ms. Jennifer Willis, MIC:70
Mr. Larry Augusta
Mr. Lou Ambrose

precednt\escapes\1997\97001.lou