



STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082
TELEPHONE (916) 445-5580
FAX (916) 323-3387
www.boe.ca.gov

JOHAN KLEHS
First District, Hayward

DEAN ANDAL
Second District, Stockton

CLAUDE PARRISH
Third District, Torrance

JOHN CHIANG
Fourth District, Los Angeles

KATHLEEN CONNELL
State Controller, Sacramento

May 22, 2000

Ms. Agnes M. Gill-Martinez, County Counsel
County of Tulare
2900 W. Burrel Avenue
Visalia, CA 93230

JAMES E. SPEED
Executive Director

Re: *Request for Legal Opinion – Effect of the Withdrawal of an Assessment Appeal Application that also Constitutes a Claim for Refund*

Dear Ms. Gill-Martinez:

This is in reply to your email correspondence of March 14, 2000 in which you request a legal opinion concerning the withdrawal of an application for changed assessment that also constitutes a claim for refund. In such event, you ask whether the claim for refund should be processed. For the reasons set forth below, if the appeals board permits a complete withdrawal of the application without consideration, then the claim for refund is also withdrawn and should not be processed because the withdrawal of the application constitutes a withdrawal of the claim for refund.

Law and Analysis

The application for changed assessment and claim for refund are separate administrative remedies for taxpayers seeking reduction of property taxes. While they are two distinct remedies, the Revenue and Taxation Code section 5097, subdivision (b) provides that the application for changed assessment and claim for refund may be filed concurrently on the application form as follows:

- (b) An application for a reduction in an assessment filed pursuant to Section 1603 shall also constitute a sufficient claim for refund under this section if the applicant states in the application that the application is intended to constitute a claim for refund.

If the appeals board grants the reduction requested in the application, the applicant is entitled to a refund of the corresponding tax paid. Section 5096 provides that

Any taxes paid before or after delinquency shall be refunded if they were:

* * *

- (f) Paid on an assessment in excess of the equalized value of the property as determined pursuant to Section 1613 by the county board of equalization.

Furthermore, a denial of an application that also constitutes a claim for refund is a denial of the claim for refund for purposes of filing a refund action in superior court. In this regard, section 5141 provides, in relevant part,

- (a) An action brought under this article, except an action brought under Section 5148, shall be commenced within six months from and after the date that the board of supervisors or city council rejects a claim for refund in whole or in part.

* * *

- (c) If an applicant for the reduction of an assessment states in the application that the application is intended to constitute a claim for refund pursuant to Section 5097, the claim for refund shall be deemed denied on the date the final installment of the taxes extended on such assessment becomes delinquent or on the date the equalization board makes its final determination on the application, whichever is later.

As the foregoing provisions indicate, the filing of an application that also constitutes a claim for refund is considered as the filing of both the application and claim for refund. Thereafter, the disposition of the application by the appeals board also operates to dispose of the claim for refund. Thus, if the application is disposed of by withdrawal, then such action operates as a withdrawal of the claim for refund. And in that event, therefore, the claim for refund should not be processed for decision by the county board of supervisors. Rather, section 5097(a)(2) would become the applicable section:

- (a) No order for a refund under this article shall be made, except on a claim:

* * *

Ms. Agnes M. Gill-Martinez

May 22, 2000

Page 3

- (2) Filed within four years after making of the payment sought to be refunded or within one year after the mailing of notice as prescribed in Section 2635, or the period agreed to as provided in Section 532.1, whichever is later.

On the other hand, in the event that an application for changed assessment that also constitutes a claim for refund is acted upon by the appeals board, whether the result is no change or otherwise, the disposition of the application also operates to dispose of the claim for refund.

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Very truly yours,

/s/ Louis Ambrose

Louis Ambrose
Tax Counsel

LA:tr

prop/prec/equalizn/00/07lou

cc: Mr. Dick Johnson, MIC:63
Mr. David Gau, MIC:64
Ms. Jennifer Willis, MIC:70