STATE OF CALIFORNIA

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October 12, 1993

TO COUNTY ASSESSORS AND ASSESSMENT APPEALS BOARDS: No. 93/62

THE MORGAN PROPERTY TAXPAYERS' BILL OF RIGHTS

Senate Bill 143 was enacted on September 8, 1993 (Chapter 387, Statutes of 1993). This act contains numerous provisions relating to assessment appeals, escape assessments, and information to be provided to assessees, all discussed below. It also establishes The Morgan Property Taxpayers' Bill of Rights, also discussed below.

The provisions of this act take effect January 1, 1994.

Uniform Appraisal and Assessment Practices

SB 143 adds Section 169 to the Revenue and Taxation Code. Section 169 requires the Board to encourage uniform statewide appraisal and assessment practices. This section reinforces several existing sections of the Government Code and the Revenue and Taxation Code that require the Board to promote uniformity in assessment practices.

Records Available to an Assessee

The act rearranges much of the existing language of Section 408 of the Revenue and Taxation Code and adds requirements that the assessor shall permit the assessee or designated representative to copy market data (comparable sales) and "inspect or copy all information, documents, and records, including auditors' narrations and workpapers . . . relating to the appraisal and the assessment of the assessee's property, and any penalties and interest thereon." If the assessee requests the assessor to make copies, the assessee must reimburse the assessor for reasonable costs.

We suggest you advise your staff of the revisions to Section 408 so they will be aware of the types of records they are required to disclose to an assessee or assessee's designated agent. Also, you will have to establish a reasonable fee for copying records if you have not already done so.

Notice of Proposed Escape Assessment

Section 3 of the act adds Section 531.8 to the Revenue and Taxation Code to provide that an escape assessment may not be levied under Article 4 of Chapter 3 (sections 531 through 538) before 10 days after the assessor has mailed or delivered to the taxpayer a "Notice of Proposed Escape Assessment." Section 4 of the act amends Section 532.1 to extend the statute of limitations

for up to 90 days after mailing of the notice of proposed assessment. We will provide detailed instructions on the "Notice of Proposed Escape Assessment" in a separate letter.

Assessment Appeals on Penalties

Section 5 of the act amends Revenue and Taxation Code Section 1605.5 to require county boards of equalization and assessment appeals boards to hear appeals on penalties.

Notice of Assessment Appeals Hearing

The act adds Revenue and Taxation Code Section 1605.6 to require the clerk of the county board to provide the applicant with at least 45 days' notice of the time and date of the hearing. If the hearing is vacated, 10 days' notice is required for the rescheduled hearing. In either case, the assessor and applicant may stipulate to a shorter time.

Note that Section 1605.6 provides for different notice requirements than existing Property Tax Rule 307. The requirements of Rule 307 must be followed for the balance of the 1993 calendar year. Section 1605.6 takes effect January 1, 1994.

Notice of Lien

The act amends Revenue and Taxation Code 2191.3 to require the county recorder to send a notice to the assessee of the filing of a lien on unsecured assessments and on possessory interest taxes secured only by the possessory interest.

Non-Valuation Assessment Appeals

Revenue and Taxation Code Section 5142 is amended to provide if a property tax dispute does not involve valuation, the taxpayer and the assessor may file a stipulation to that effect to satisfy the requirement of exhausting administrative remedies. The county board of equalization may accept or reject the stipulation.

Although Section 1605.5 specifically requires the county board of equalization or assessment appeals board to hear change in ownership and penalty issues, those are nonvaluation issues subject to stipulation within the meaning of Section 5142. Therefore, the county board may accept such stipulations.

Interest Rates on Impounded Funds

Section 5153 is added to the Revenue and Taxation Code to alter interest rates paid to taxpayers on refunds involving impounded funds from a fixed rate to the interest rate actually earned by the county on the funds.

PROPERTY TAXPAYERS' BILL OF RIGHTS

Part 14 (Sections 5900 through 5910) is added to the Revenue and Taxation Code to establish "The Morgan Property Taxpayers' Bill of Rights." Here are the key features of this new Board-administered program.

The Legislature finds and declares that taxes are a sensitive point of contact between citizens and their government. Disputes and disagreements often arise as a result of misunderstandings and miscommunications. Dissemination of property tax information and promotion of enhanced understanding will improve the relationship between taxpayers and government. Proper assessment and collection of property taxes is essential and is to be promoted by advancing uniform practices of property tax appraisal and assessment.

The act provides the Board shall designate an independent "Property Taxpayers' Advocate." The advocate is responsible for reviewing the adequacy of procedures for:

(1) the distribution of information regarding property tax assessment matters between and among the board, assessors, and taxpayers; and

(2) the prompt resolution of board, assessor, and taxpayer inquiries, and taxpayer complaints and problems.

The advocate is required to report at least annually to the Board's executive officer on the adequacy of existing procedures or the need for additional or revised procedures to accomplish the objectives of Part 14.

Among other things the advocate shall periodically review and report on:

> Development and implementation of educational and informational programs on property tax assessment matters for the benefit of the board and its staff, assessors and their staffs, local boards of equalization and assessment appeals boards, and taxpayers.

> Development and availability of property tax informational pamphlets and other written materials that explain, in simple and nontechnical language:

(1) Taxation of real and personal property in California.
(2) Property tax exemptions.
(3) Supplemental assessments.
(4) Escape assessments.
(5) Assessment procedures.
(6) Taxpayer obligations, responsibilities, and rights.
(7) Obligations, responsibilities, and rights of property tax authorities including, but not limited to, the board and assessors.
(8) Property tax appeal procedures.

> Review of property tax statements and forms and their instructions for promotion of compliance, and whether the forms or questions are germane.

> Review of taxpayer complaints and areas of recurrent conflicts, including but not limited to:

adequacy and timeliness of corrections, cancellations, and refunds;

timeliness, fairness, and accessibility of hearings and decisions on assessment appeals; amd

application of penalties and interest where failure to report accurately is due to reliance on written advice.

The Board is required to conduct an annual public hearing, soliciting the input of assessors, other local agency representatives, and taxpayers to discuss the advocate's annual report and to identify means to correct problems noted in the report.

Section 5907 provides that no state or local assessment officer or employee may be evaluated solely on assessments enrolled or property taxes collected.

Section 5908 provides that upon request of an assessor or assessors, the advocate is to assist assessors in their efforts to provide education and instruction to their staffs and taxpayers for purposes of promoting understanding, compliance, and uniformity in application of property tax laws.

Section 5909 provides that assessors may respond to a taxpayer's written request to a written ruling as to property tax consequences of an actual or planned transaction, or as to the property tax liability of a specified property. The assessor may consult with board staff prior to issuing a ruling. If the taxpayer has fully disclosed the relevant facts and the assessor does issue such a ruling, and as a direct consequence of the taxpayer's reliance on the ruling the taxpayer fails to report information or pay taxes timely, the taxpayer shall be relieved of any resulting penalties or interest.

Under existing law, if an assessor provided incorrect or misleading advice that resulted in a taxpayer filing late or paying taxes late, the penalty and/or interest would have to be assessed. The taxpayer would have to file an assessment appeal or other action to be relieved of the penalty or interest, even though the assessor may agree that the instructions were faulty. Section 5909 provides the assessor shall not add interest and penalties in these situations, thereby eliminating an unnecessary appeals process.

As written, Section 5909 apparently also applies to penalties and interest for late property tax payments. We suggest that in any written correspondence regarding payment of property taxes, the assessor should advise the taxpayer to contact the tax collector for information regarding payment of property taxes.

Note that Section 5909 refers only to timely reporting of information or payment of taxes. There is no forgiveness of assessed value or taxes, nor is the taxpayer relieved of the obligation to report accurately.

Section 5910 provides that on or before January 1, 1994, the advocate is to make specific recommendations to the board with respect to standardizing interest rates and statutes of limitations applicable to escape assessments and refunds, so as to place taxpayers on an equal basis with taxing authorities.

Section 5911 spells out the Legislative intent of Part 14. The Legislature intends to ensure that taxpayers are provided fair and understandable explanations of their rights and duties with respect to property taxation, and prompt resolution of legitimate questions, appeals, and corrections.

Burton W. Oliver, Executive Director, has designated Ms. Jennifer L. Willis as the Property Taxpayers' Advocate. Ms. Willis is also the Taxpayers' Rights Advocate for all other tax programs administered by the Board.

The telephone number for the Taxpayers' Rights Advocate Office is (916) 324-2798. The mailing address is:

State Board of Equalization
Taxpayers' Rights Advocate Office MIC: 70
P.O. Box 942879
Sacramento, CA 94279-0001

Section 5911 also provides that the Property Taxpayers' Advocate position shall be independent but not duplicative of the Board's existing property tax programs. The advocate is responsible for reviewing and reporting on existing property tax matters and programs, and to make any necessary recommendations for improving the program. Accordingly, the role of the Assessment Standards Division and other Board units that deal with property taxes will not change. The Property Taxpayers' Bill of Rights ensures that an independent position or office in the Board will regularly review the effectiveness of property tax administration, with an emphasis on the taxpayers' point of view.

Questions or comments concerning the legislation discussed in the first two pages of this letter should be directed to the Assessment Standards Division at (916) 445-4982. Questions or comments regarding the Advocate's role and responsibilities may be referred to Ms. Willis at (916) 324-2798.

Sincerely,

Verne Walton

Verne Walton, Chief
Assessment Standards Division

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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Controller, Sacramento

BURTON W. OLIVER
Executive Director

December 30, 1993

No. 93/80

TO COUNTY ASSESSORS:

Records Available to an Assessee

In letter to assessors No. 93/62 (The Morgan Property Taxpayers' Bill of Rights), we discussed briefly the amendments made to Section 408 of the Revenue and Taxation Code. We have received several comments that our description of the amendments suggested that some data previously considered confidential is now available for an assessee's inspection. That is not the case, and we regret any misunderstanding as a result of our letter.

As we stated in 93/62, Chapter 387 rearranged much of the existing language of Section 408. The letter went on to state that the act

> ". . . adds requirements that the assessor shall permit the assessee or designated representative to copy market data (comparable sales) and 'inspect or copy all information, documents, and records, including auditors' narrations and workpapers . . . relating to the appraisal and the assessment of the assessee's property, and any penalties and interest thereon.'"

We should have stated that the only new items that must be available to an assessee or designated representative are auditors' narrations, auditors' workpapers, and information, documents, and records relating to any penalties and interest. The foregoing items are for the assessee's property only; they are not public documents. In our view, these records should always have been available to the assessee, so the amendment has the effect of clarifying instead of changing the law.

Chapter 387 did not change the provisions regarding the assessee's right to ***inspect***, but did add the right to ***copy***, market data and other information relating to the assessment of the assessee's property. Chapter 387 made no changes to the prohibitions against disclosing information relating to the business affairs or property of another.

An additional amendment to Section 408 was made by Chapter 876 (SB 1068, Wright). Chapter 876 incorporated the amendments made by Chapter 387 but added the State Department of Social Services as an agency that has access to assessor's records. Chapter 387 is an urgency statute and became effective October 6, 1993.

The text of Section 408, as amended by Chapter 387, is enclosed. Note that nearly all of former subdivision (b) was moved to (d), former subdivisions (c) and (e) became (b) and (c) respectively, and subdivision (f) was added. The significant additions to the section are highlighted in bold italic type. Not highlighted are minor

wording changes and rearrangements of sentences and phrases.

If you have questions or comments concerning the confidentiality of assessor's records, please contact either our Real Property Technical Services section or our Business Property Technical Services Section. Their number is (916) 445-4982.

Sincerely,

Verne Walton

Verne Walton, Chief
Assessment Standards Division

Enclosure

SECTION 408 OF THE REVENUE AND TAXATION CODE AS AMENDED BY CHAPTER 876, STATUTES OF 1993, IN EFFECT OCTOBER 6, 1993.

408. (a) Except as otherwise provided in subdivisions (b), (c), (d), and *(e)* any information and records in the assessor's office which are not required by law to be kept or prepared by the assessor, and homeowners' exemption claims, are not public documents and shall not be open to public inspection. Property receiving the homeowners' exemption shall be clearly identified on the assessment roll. The assessor shall maintain records which shall be open to public inspection to identify those claimants who have been granted the homeowners' exemption.

(b) The assessor may provide any appraisal data in his or her possession to the assessor of any county.

The assessor shall disclose information, furnish abstracts, or permit access to all records in his or her office to law enforcement agencies, the county grand jury, the board of supervisors or their duly authorized agents, employees or representatives when conducting an investigation of the assessor's office pursuant to Section 25303 of the Government Code, the Controller, employees of the Controller for property tax postponement purposes, probate referees, employees of the Franchise Tax Board for tax administration purposes only, staff appraisers of the Department of Savings and Loan, the Department of Transportation, the Department of General Services, the State Board of Equalization, *the State Department of Social Services*, and other duly authorized legislative or administrative bodies of the state pursuant to their authorization to examine the records. Whenever the assessor discloses information, furnishes abstracts, or permits access to records in his or her office to staff appraisers of the Department of Savings and Loan, the Department of Transportation, or the Department of General Services pursuant to this section, the department shall reimburse the assessor for any costs incurred as a result thereof.

(c) Upon the request of the tax collector, the assessor shall disclose and provide to the tax collector information used in the preparation of that portion of the unsecured roll for which the taxes thereon are delinquent. The tax collector shall certify to the assessor that he or she needs the information requested for the enforcement of the assessor's tax lien in collecting those delinquent taxes. Information requested by the tax collector may include social security numbers, and the assessor shall recover from the tax collector his or her actual and reasonable costs for providing the information. The tax collector shall add the costs described in the preceding sentence to the assessee's delinquent tax lien and collect those costs subject to subdivision (e) of Section 2922.

(d) The assessor shall, upon the request of an assessee or his or her designated representative, permit the assessee or representative to inspect *or copy* any market data in the assessor's possession. For purposes of this subdivision, "market data" means any information in the assessor's possession, whether or not required to be prepared or kept by him or her, relating to the sale of any property comparable to the property of the assessee, if the assessor bases his or her assessment of the assessee's property, in whole or in part, on that comparable sale or sales. The assessor shall provide the names of the seller and buyer of each property on which the comparison is based, the location of that property, the date of the sale, and the consideration paid for the property, whether paid in money or otherwise. However, for purposes of providing market data, the assessor shall not display any document relating to the business affairs or property of another.

(e) With respect to information, documents, and records, other than market data as defined in subdivision (d), the assessor shall, upon request of an assessee of property, or his or her designated representative, permit the assessee or representative to inspect *or copy* all information, documents, and records, *including auditors' narrations and workpapers*, whether or not required to be kept or prepared by the assessor, relating to the appraisal and the assessment of the assessee's property, *and any penalties and interest thereon.* However, except as provided in Section 408.1, an assessee, or his or her designated representative, shall not be permitted to inspect or copy information and records that also relate to the property or business affairs of another, unless that disclosure is ordered by a competent court in a proceeding initiated by a taxpayer seeking to challenge the legality of the assessment of his or her property.

(f) (1) Permission for the inspection or copying requested pursuant to subdivision (d) or (e) shall be granted as soon as reasonably possible to the assessee or his or her designated representative.

(2) If the assessee, or his or her designated representative, requests the assessor to make copies of any of the requested records, the assessee shall reimburse the assessor for the reasonable costs incurred in reproducing and providing the copies.