(916) 445-5047

September 20, 1979

You ask us in your September 4, 1979, letter if, under Section 107.3 of the Revenue and Taxation Code, the assessor can legally deny the benefits under that law if an assessee fails to file an application for equalization.

Important is whether the question is one of value or of law. If the question is one of value, the assessee must exhaust his administrative remedies by timely filing for an equalization hearing for reduction in assessment as provided for under Sections 1603 and 1604 of the Revenue and Taxation Code. The assessee's rights to equalization are waived unless the equalization hearing is requested in the year of the assessment as set forth in Section 1603.

If the question is one of law (see Rev. & Tax. Code § 5096) where value is not at issue, the assessee may file suit in superior court provided the filing is within four years after making of payment sought to be refunded (§ 5097) but no more than six months after the rejection of a claim for refund in whole or in part by the county board of supervisors or city counsel (§ 5141), and:

a. The claimant filed for refund before the county board of supervisors and the claim was denied (§ 5140), or

b. A reduction in assessment was requested under section 1603 and the assessee states in the application that the application is intended to constitute a claim for refund (§ 5097).

equalization

Whether the issue is a question of law or a question of value is often difficult to determine. When the correct valuation process is used but it is applied incorrectly, then the question is one of value. But when the validity of the valuation method is at issue, then the question is one of law (Inn v. City and County of San Francisco, 16 Cal. 3d 14 at p. 23). Where facts are undisputed and the property is tax-exempt, outside the jurisdiction, or non-existent, or where the assessment is void for failure to follow statutory procedure, the assessee may proceed directly to court (Westinghouse Elect. Corp. v. County of Los Angeles, 42 Cal. App. 3d 32 at p. 36; Gaumer v. County of Tehama, 247 Cal. App. 2d 548). And claim for refund is an adequate substitute for a request for equalization in those cases wherein the assessment is totally void as an attempt to tax property not subject to taxation, rather than merely an inaccurate assessment of the value of taxable property (Stenocord Corp. v. San Francisco, 2 Cal. 3d 984 at p. 990).

Considering the applicability of Sections 107.2 and 107.3 herein discussed, it appears factual issues are not in dispute; that the appraisal process used to find value is not contested. The validity of the method of appraisal is the issue contested, in that the dispute is whether the law permits the assessment of the property by the method used by the assessor; that is, whether the assessment is void for the assessor's failure to follow statutory procedure.

As I understand the facts in your case, it appears the question at issue is one of law because the dispute is over whether statutory procedure set forth in Sections 107.2 and 107.3 was correctly followed. If my interpretation is correct, you need only file claim for refund, and if denied, proceed directly to court. You would be correct in neglecting to file application for equalization.

Some claimants do not wish to take the chance of failing in court for want of exhaustion of administrative remedies. For that reason they file for equalization proceedings to avoid that legal pitfall since the tendency of the court is to hold that in almost every case the litigant must first seek administrative relief. "If prior recourse to the board on the question of valuation might have avoided the necessity of deciding the constitutional issue, or modified its nature, the plaintiff's action was properly dismissed...." (Emphasis added.) (Taxing California Property, Ehrman & Flavin, 1976 supplement, § 493, citing Stenocord Corp. v. San Francisco, supra; Stenocord Corp. v. San Francisco, supra, at p. 988, citing Star-Kist Foods v. Quinn, 54 Cal. 2d 507, p. 509-511.) "The necessity of recourse to the board is properly determined by the nature of the issues in dispute...." (Star-Kist Foods, supra.)

In summary, we are not aware of any provision by which the assessor can legally deny your clients the legal benefits of the law. The big question appears to be the choice of legal process by which you seek legal remedies.

Very truly yours,

Robert R. Keeling
Tax Counsel

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cc: Honorable Ernest J. Dronenburg, Jr.
Mr. Joseph A. Vinatieri