State of California

Memorandum

Board of Equalization
Legal Division-MIC: 82

To: Mr. Charlie Knudsen
Principal Property Appraiser

Date: October 24, 1996

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Division of Assessment Standard
SACRAMENTO

From: Robert W. Lambert
Senior Tax Counsel

Subject: Shift of Burden of Proof in Escape Assessments

This is in response to your memorandum of April 5, 1996, in which you pose four questions relating to the shift in the burden of proof in assessment appeals hearings involving escape assessments.

As you correctly note, section 167 of the Revenue and Taxation Code[1] was amended in 1995 to provide as follows:

> . . . the rebuttable presumption [in favor of taxpayers who have supplied all required information] shall not apply in the case of an administrative hearing with respect to the appeal of an escape assessment resulting from a taxpayer's failure to file with the assessor a change in ownership statement, business property statement, or permit for new construction.

In answering your questions, you have asked us to assume the following: (1) The taxpayer has supplied to the assessor the information required by law; and (2) The assessor enrolled the escape assessments properly. We will also assume that no escape assessment has resulted from the "taxpayer's failure to file with the assessor a change in ownership statement, business property statement, or permit for new construction."

Question No. 1

1. The taxpayer filed a Business Property Statement for the March 1, 1995 lien date. In early November 1995, the assessor discovered the taxpayer underreported some of the property so the assessor enrolled an escape assessment in late November 1995. The taxpayer filed an appeal on the escape assessment in December 1995. The appeal is heard by the Appeals Board in January 1996. Who has the presumption of correctness?

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[1] Unless otherwise specified, all further section references are to the Revenue and Taxation Code.

a. The assessor, because the assessment was made prior to 1996?
b. The assessor, because the appeal was filed prior to 1996?
c. The taxpayer, because the appeal was heard in 1996 and the appeals board has to operate under current law?

The 1995 amendment to section 167 was included in legislation known as "S.B. 657." (Amended Stats. 1995 ch. 498 § 4.5.) That legislation provided as follows: "Notwithstanding Section 17580 of the Government Code, unless otherwise specified the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution." Under the California Constitution, a statute enacted at a regular session of the legislature generally becomes effective on January 1 of the year following its enactment except where the statute is passed as an urgency measure and becomes effective sooner. (*Public Resources Protection Assn. v. Dept. of Forestry & Fire Protection* (1994) 7 Cal. 4th 111, 121.)[2] Thus, the effective date of the instant amendment to section 167 was January 1, 1996.

But the underlying issue is this: Given the January 1, 1996 effective date, does the 1995 amendment apply to escape assessments for pre-1996 years when the administrative hearing on the escape assessment takes place on or after January 1, 1996? And the answer turns on whether or not section 167, as amended, constitutes a "procedural statute." Amendments to procedural statutes are generally applicable prospectively to hearings on matters that pre-date their effective or operative dates. (*Robertson v. Rodriguez* (1995) 36 Cal.App.4th 347, 356.)

Turning to the present case, the presumption set forth in the instant amendment is not irrebuttable, and the evidentiary requirement is not impossible to satisfy. Furthermore, the amendment only addresses the conduct of hearings, and does not change the legal consequences of "past conduct" (or, for that matter, the value of property on a prior lien date.) As a consequence, the amendment is merely procedural in nature. Thus, in our opinion, the amendment is applicable to administrative hearings that are held on or after January 1, 1996 -- regardless of whether or not either the fiscal year or the protested escape assessment relate to a pre-1996 period. (*Murphy v. Alameda* (1992) 11 Cal.App.4th 406; *Property Taxes Law Guide, Vol. 3*, Property Tax Annotation No. 850.0010, (5/10/89.)[3]

So, given the above, our answer to your first question is "c" -- the taxpayer has the presumption of correctness because the appeal on the escape assessment was heard in 1996.

Question No. 2

2. Same as 1 above, except the appeal was filed in January 1996.

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[2] Under section 17580 of the Government Code, certain bills do not become operative until the July 1 following the date on which they take effect.

[3] Presumably, the amendment -- as a "procedural rule" -- would apply both to administrative hearings commenced after 1995 and those in progress on January 1, 1996. (See *Wood v. McGovern*, 167 Cal.App.3d 772.)

a. The assessor, because the assessment was made prior to 1996?

b. The taxpayer, because the appeal was filed and heard in 1996 and the appeals board has to operate under current law?

For the above reasons, our answer to your second question is (b).

Question No. 3

3. Same as 1 above, except the escape was enrolled and the appeal was filed and heard in 1996.

a. The assessor, because the lien date for which the assessment escaped was prior to 1996?

b. The taxpayer, because the escape assessment and appeal all occurred in 1996?

For the above reasons, our answer to your third question is (b).

Question No. 4

4. The assessor performed a mandatory audit pursuant to Section 469 of the Revenue and Taxation Code, found some property had escaped assessment, and as a consequence enrolled an escape assessment. The taxpayer filed an assessment appeal on the entire property (including an appeal on the original assessment) as permitted by Section 469.

a. The assessor has the presumption of correctness on the original assessment but the taxpayer has the presumption of correctness on the escape.

b. The taxpayer has the presumption of correctness on the entire assessment, including both the original and the escape.

With regard to the original assessment, if (i) the taxpayer supplied "all information as required by law" and (ii) the property was an "owner-occupied single-family dwelling," then the presumption provided by section 167 would seem to be applicable to the appeal on that assessment. As to the escape assessment, if the conditions of section 167 are satisfied, then, of course, the presumption in favor of the taxpayer would apply to that appeal.

If I understand your question correctly, however, you are inquiring as to what happens when the presumption in favor of the taxpayer under section 167 applies to one matter, but not the other. In our opinion, this should not ordinarily present a serious problem. If the appeals on two assessments -- one, an original assessment and the other, an escape assessment -- are consolidated

for hearing, then the assessment appeals board must simply apply different presumptions to the two discrete matters. In a similar manner, one lawsuit can contain multiple causes of action with varying presumptions and burdens of proof. In this situation, the simplest procedural approach will generally be for the assessment appeals board to simply hear the two consolidated appeals *in seriatim*, one following the other.

I hope the above answers all of your questions. If not, please call me at 324-6593.

RWL/cmm

Robert Lambert

cc: Mr. James E. Speed (MIC:62)
Mr. Richard C. Johnson (MIC:64)
Mr. Gene Palmer (MIC:64)
Mr. Lloyd Allred (MIC:64)
Mr. Larry Augusta (MIC:82)

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STATE OF CALIFORNIA

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Executive Director

October 30, 1996

Mr. James M. Luckey
Senior Manager, Property Tax Services
Deloitte & Touche LLP
2235 Faraday Avenue
Suite O
Carlsbad, California 92008

Re: The Effective Date of the 1995 Amendments to Section 167 of the Revenue and Taxation Code

Dear Mr. Luckey:

This is in response to your letter dated June 7, 1996 in which you request our opinion on the effective date of the 1995 amendment to section 167 of the Revenue and Taxation Code.[1] Section 167 was amended in 1995 to provide a rebuttable presumption in appeals of escape assessments in favor of taxpayers who have supplied all required information. For the reasons stated in this letter, it is our opinion that the amendment is applicable to administrative hearings that are held on or after January 1, 1996 -- regardless of whether or not either the fiscal year or the protested escape assessment relate to a pre-1996 period.

In answering your question, we have assumed the following: (1) the taxpayer has supplied to the assessor the information required by law; and (2) no escape assessment has resulted from the "taxpayer's failure to file with the assessor a change in ownership statement, business property statement, or permit for new construction."

This amendment to section 167 was included in legislation known as "S.B. 657." (Amended Stats. 1995 ch. 498 § 4.5.) That legislation provided as follows: "Notwithstanding Section 17580 of the Government Code, unless otherwise specified the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California

[1] Unless otherwise specified, all further section references are to the Revenue and Taxation Code.

Constitution." Under the California Constitution, a statute enacted at a regular session of the legislature generally becomes effective on January 1 of the year following its enactment except where the statute is passed as an urgency measure and becomes effective sooner. (*Public Resources Protection Assn. v. Dept. of Forestry & Fire Protection* (1994) 7 Cal. 4th 111, 121.)[2] Thus, the effective date of the instant amendment to section 167 was January 1, 1996.

But the underlying issue is this: Given the January 1, 1996 effective date, does the 1995 amendment apply to escape assessments for pre-1996 years when the administrative hearing on the escape assessment takes place on or after January 1, 1996? And the answer turns on whether or not section 167, as amended, constitutes a "procedural statute." Amendments to procedural statutes are generally applicable prospectively to hearings on matters that pre-date their effective or operative dates. (*Robertson v. Rodriguez* (1995) 36 Cal.App.4th 347, 356.)

Turning to the present case, the presumption set forth in the amendment to section 167 is not irrebuttable, and the evidentiary requirement is not impossible to satisfy. Furthermore, the amendment only addresses the conduct of hearings, and does not change the legal consequences of "past conduct" (or, for that matter, the value of property on a prior lien date.) As a consequence, the amendment is merely procedural in nature. Thus, in our opinion, the amendment is applicable to administrative hearings that are held on or after January 1, 1996 -- regardless of whether or not either the fiscal year or the protested escape assessment relate to a pre-1996 period. (*Murphy v. Alameda* (1992) 11 Cal.App.4th 406; *Property Taxes Law Guide, Vol. 3,* Property Tax Annotation No. 850.0010, (5/10/89).[3]

The views expressed in this letter are, of course, advisory only and are not binding upon the assessor of any county. You may wish to consult the appropriate assessor in order to confirm his or her opinion in this matter.

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[2] Under section 17580 of the Government Code, certain bills do not become operative until the July 1 following the date on which they take effect.

[3] Presumably, the amendment -- as a "procedural rule" -- would apply both to administrative hearings commenced after 1995 and those in progress on January 1, 1996. (See *Wood v. McGovern,* 167 Cal.App.3d 772.)

Our intention is to provide courteous and helpful responses to inquiries such as yours. Suggestions that help us accomplish this objective are appreciated.

Sincerely,

Robert W. Lambert
Senior Tax Counsel

RWL/cmm

cc: Honorable Kenneth P. Hahn
Los Angeles County Assessor
Mr. James E. Speed (MIC:63)
Mr. Richard Johnson (MIC:64)
Ms. Jennifer Willis (MIC:70)
Mr. Larry Augusta (MIC:82)

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