



STATE OF CALIFORNIA

390.0065

STATE BOARD OF EQUALIZATION

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E L SORENSEN, JR.
Executive Director

October 13, 1998

Re: Necessity of Notice of Proposed Escape Assessment

Dear Mr. Redacted:

This is in reply to your letter of September 14, 1998 in which you request a legal opinion as to the effect of the failure by the assessor's office to send a Notice of Proposed Escape Assessment prior to making an escape assessment. The assessor's office conducted a mandatory four-year audit of your client for the years 1994 through 1997. The assessor made the 1994 escape assessment prior to June 30, 1998, within the four-year limitations period provided for in Revenue and Taxation Code section 532. However, you later discovered that the assessor's office had not issued a Notice of Proposed Escape Assessment prior to making the 1994 escape assessment. Based on these facts you ask:

"Can the 1994 escape assessment be invalidated because the Notice of Proposed Escape Assessment per R&T Code section 531.8 was never issued prior to the reception of the tax bill, and to reissue would be a violation of the four year statute of limitations?"

For the reasons set forth below, it is our opinion that a Notice of Proposed Escape Assessment is a mandatory legal prerequisite to making an escape assessment. Absent such notice, no escape assessment may be levied and if levied is invalid. In this case, the failure to send the required notice prior to the expiration of the four year statute of limitations completely bars the levying of the 1994 escape assessment.

Law and Analysis

Pursuant to Revenue and Taxation Code section 531.8, and assessor is required to provide notice prior to making a escape assessment. That section provides in pertinent part that

No escape assessment shall be levied under this article before 10 days after the assessor has mailed or otherwise delivered to the affected taxpayer a "Notice of Proposed Escape Assessment" with respect to one or more specified tax years.

In view of the mandatory language of section 531.8, an assessor has no authority to make an escape assessment if the notice required by that section has not first been sent to the taxpayer.

For purposes relevant to this discussion, the other applicable statutory requirement is the time limitations period within which an escape assessment must be made. Except under circumstances not at issue here, Revenue and Taxation Code section 532 prescribes a statute of limitations for escape assessments which "shall be made within four years after July 1 of the assessment year in which the property escaped taxation or was underassessed." As with the notice provision of section 531.8, the language of section 532 imposes a mandatory duty on the assessor to make an escape assessment within the required four-year period. An assessor has no authority to make an assessment beyond the four-year limitations period.

In this instance, the assessor's office failed to send the Notice of Proposed Escape Assessment prior to making the escape assessment for 1994. Because section 531.8 is mandatory and there exists no other controlling statutory authority, the escape assessment already made is invalid. Furthermore, the four-year limitations period for making an escape assessment for 1994 expired on June 30, 1998. At this point, therefore, the levying of an escape assessment for 1994 would be in violation of the statute and invalid.

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,

Louis Ambrose
Tax Counsel

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cc:

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Mr. Rudy Bischof (MIC:64)
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