STATE OF CALIFORNIA

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May 26, 2010

Honorable Charles W. Leonhardt
Plumas County Assessor
1 Crescent Street
Quincy, CA 95971

Re: Assessability of Unpatented Mining Claims
Assignment No.: 10-009

Dear Mr. Leonhardt:

This is in response to your letter dated January 5, 2010, requesting our opinion on the taxability of certain mining claims the taxpayer states that it abandoned. As discussed herein, it is our opinion that your office may reasonably conclude that the taxpayer did not effectively abandon those mining claims for which he signed, but did not file, recording forms entitled "Notice of Abandonment of Mining Claim" (Notice of Abandonment) prior to the January 1, 2009 lien date. For that reason, the taxpayer owned those claims on the lien date and therefore they were properly assessable. In addition, it is our opinion that even if the taxpayer's execution of the unrecorded Notices of Abandonment prior to the lien date operated as a successful abandonment of the claims, those claims for which he filed new Location Notices in 2009 were properly assessable as recurring taxable possessory interests. Finally, because the taxpayer failed to timely file Applications for Changed Assessment, he has no legal recourse if you deny his claims for refund.

FACTS

The taxpayer, of Inc., a Nevada corporation,[1] is in the business of marketing placer mining claims[2] on the Internet through his website. The taxpayer maintains inventories of mining claims by filing Placer Mining Claim Location Notices (Location Notices) with the Plumas County recorder's office (the Recorder) and paying recording fees to the Recorder.

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[1] All documents that we have reviewed include *and* the corporation, , Inc., in the "Recording Requested By:" box, with a parenthetical which reads: "(On behalf of the association of persons listed on the attached page.)". The Location Notices, part 11, list the "locators" as , , , and , and also indicate that the locators are " placer mining claim/ , Inc." We refer to the "owner" of the mining claims at issue as the "taxpayer" here, without deciding whether the taxpayer is Mr. , the corporation, or any of the other locators.

[2] "Placer mining" involves mining precious metal deposits, particularly gold and gemstones, found in alluvial deposits, which are deposits of sand and gravel in modern or ancient stream beds.

At issue in your opinion request are certain transactions that occurred in 2008 and 2009, which we have summarized on the exhibit to this letter (Exhibit). In particular, the issue is that the taxpayer signed a Notice of Abandonment on a series of mining claims at various dates at the end of 2008, but did not file them with the Recorder until the following January 6 or 12, 2009. On all of the claims where the taxpayer filed the Notices of Abandonment on these dates, the taxpayer subsequently filed identical new Location Notices on the exact same day (either January 6 or 12, 2009).

Except for a couple instances, the taxpayer failed to file copies of the Location Notices with the Bureau of Land Management (BLM) and pay the associated fees as required by the General Mining Act of 1872, as amended, 30 U.S.C. §§ 21-54 (the Mining Act). As indicated on the Exhibit, the taxpayer failed to file copies of the Location Notices presumably on the theory that he effectively abandoned all of those claims prior to the due date of the filings with the BLM and payment of associated fees.

An example of a claim for which the taxpayer did not file with or pay the associated fees to the BLM is the claim known as "Stars #1," for which the taxpayer did the following:

1. Signed and dated a Location Notice on September 1, 2008;
2. Filed the Location Notice with the Recorder on September 11, 2008;
3. Signed and dated a Notice of Abandonment on November 30, 2008;
4. Filed the Notice of Abandonment with the Recorder on January 6, 2009; and
5. Filed a new Location Notice for the same claim on the same day, January 6, 2009.

The two claims for which the taxpayer *did* file with and pay the associated fees to the BLM are the claims known as "Fortune #1" and "Fortune #2," for which the taxpayer did the following:

1. Signed and dated Location Notices on October 1, 2008;
2. Filed the Location Notices with the Recorder on December 19, 2008;
3. Signed and dated Notices of Abandonment on December 31, 2008;
4. Filed the Notices of Abandonment with the Recorder on January 12, 2009;
5. Signed and dated two new Location Notices for the same claims on January 2, 2009 and filed them with the Recorder on January 12, 2009; and
6. Filed new Location Notices with the BLM on January 27, 2009, and paid the associated maintenance fee on both claims.

Your office treated the Notice of Abandonment recording dates, January 6 and 12, 2009, to be the effective dates of the abandonments of the claims in question, as applicable. Therefore, your office levied assessments on those claims in accordance with Revenue and Taxation Code[3] section 405 under the rationale that all such claims owned on the January 1 lien date were assessable. The taxpayer paid all assessments under protest.

In a letter dated November 13, 2009 from the taxpayer's counsel, the taxpayer asserts that all of his claims were effectively abandoned on the dates the Notices of Abandonment were signed (and witnessed) because such action evidenced an intent on the locators' parts to

[3] All further "section" references are to the Revenue and Taxation Code, unless otherwise indicated.

immediately abandon them. Because all of the Notices of Abandonment at issue were signed prior to the January 1 lien date, the letter argues that none of the claims are assessable. The letter makes a claim for refund of all taxes paid. In addition, that letter asserts that several of the claims had Notices of Abandonment filed well in advance of the January 1 lien date, so these claims were not assessable even under the county's legal theory.

The taxpayer did not file Applications for Changed Assessment on any of the claims at issue in your letter.

LAW AND ANALYSIS

Mining Claims

The Mining Act provides that certain United States mineral deposits are open to exploration and purchase by citizens. The locators of the deposits obtain the exclusive right of possession and enjoyment of all the surface land and all subsurface ores ("all veins, lodes, and ledges throughout their entire depth"). (30 U.S.C. § 26.) The Mining Act provides that the exploration, location, and purchase of valuable mineral deposits shall be "under regulations prescribed by law" (30 U.S.C. § 22), which are set forth at 43 C.F.R. §§ 3830 et seq.

A mining claim is the right to explore for and extract minerals from a tract of land.[4] To validly locate a mining claim, a locator must prospect for minerals on the land, discover some minerals, stake the corners of the claim, post the Location Notice on it, and comply with state laws regarding recording the Location Notice with the county recorder's office. (43 C.F.R. § 3831.1.)[5]

Within 90 days after posting a Location Notice upon a placer mining claim, the locator must record with the county recorder's office a copy of the Location Notice together with a statement of the markings of the boundaries as required by the Public Resources Code. (Pub. Res. Code, § 3911.) California law provides that the amount of work to be done on the claim, improvements to be made, and maintenance fees to be paid to the BLM each year in order to continue holding possession of a mining claim shall be governed by federal law. (Pub. Res. Code, § 3912.)

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[4] All mining claims are first *unpatented mining claims*, which give the claimant the rights to explore and mine, so long as the claim is worked every year or a fee is paid. The owner of a *patented* mining claim can put the land to any legal use, as he is the fee owner of the property.[4] (See Assessors' Handbook Section 560, p. 3-4.) The federal regulations define an *unpatented mining claim* as "a lode mining claim or a placer mining claim located and held under the General Mining Law of 1872, as amended … for which a patent … has not been issued." (43 C.F.R. § 3833.0-5(b).) Placer mining claims, at issue in this opinion, are one category of mining claims.

[5] Under California law, staking a placer mining claim requires defining the boundaries of the claim by erecting at the point of discovery a conspicuous and substantial monument and then posting the Location Notice in or on the monument. The locator must also mark the boundaries so that they may be readily traced and then erect conspicuous and substantial corner monuments. (Pub. Res. Code, §§ 3900, 3902, 3915.) The failure or neglect of a locator to comply with the requirements of Pubic Resources Code § 3900 makes the location null and void. (Pub. Res. Code, § 3905.)

The owner[6] of an unpatented mining claim must file a copy of the Location Notice with the BLM that was filed with the county recorder's office within 90 days after the date of location of that claim. (43 C.F.R. § 3833.1-2(a).) When the owner records the Location Notice with the BLM, the owner must pay a service charge (processing fee) and a location fee per claim. (30 U.S.C. § 28g; 43 C.F.R. §§ 3000.12, 3833.1-4(a) and (b), and 3830.21). The location fee is due no later than 90 days after the date of location. (30 U.S.C. § 28f(b).) These are one-time fees.

In addition, on or before September of each year, the owner of each mining claim must pay an annual claim maintenance fee of $140[7] per claim or site, in lieu of the assessment work requirement contained in 30 U.S.C. §§ 28-28e. (30 U.S.C. § 28f(a); 43 C.F.R. § 3833.1-5.) For the first assessment year in which the location is made, the maintenance fee is due when the locator files the Location Notice with the BLM. (30 U.S.C. § 28f(b).) Thus, because the Location Notice must be filed with the BLM within 90 days of location, the initial year maintenance fee is due within 90 days of a claim's location.

Failure to pay the claim maintenance fee as required under 30 U.S.C. § 28f "shall conclusively constitute a forfeiture of the unpatented mining claim . . . by the claimant and the claim shall be deemed null and void by operation of law. (30 U.S.C. § 28i; 43 C.F.R. § 3833.4(a)(2).) In addition, failure to record the Location Notice with the BLM within 90 days of location as required under 43 C.F.R. § 3833.1-2(a), "shall be deemed conclusively to constitute a forfeiture of the mining claim."

Abandonment of a Mining Claim

The rights of a locator are terminated upon abandonment. (*Hardrader v. Carroll* (D.C. Alas. 1896) 76 Fed. 474.) To abandon a mining claim, the locator must relinquish all rights with the intention never to return, and with the purpose of surrendering the location to another party (the next comer) who may wish to locate the claim himself (or "relocate" in mining claim terminology[8]). (*Peachy v. Frisco Gold Mines Co.* (D.C. Ariz. 1913) 204 Fed. 659.)

We are not aware of any federal or state law that addresses specifically the effectiveness of claim abandonment through the use of a Notice of Abandonment. You have suggested that we apply the law on the effectiveness of deeds, including the requirement that a deed be *delivered* to the grantee before its effectiveness (*see* 12 Witkin, Sum. Cal. Law Real Property § 291 (2009)), because the Notice of Abandonment is akin to a quitclaim deed. While we agree that the Notice of Abandonment has some similarities to a quitclaim deed, and we find the law on deeds to be helpful in this regard, we are not aware of any authority that would impose deed requirements on a Notice of Abandonment.

In our opinion, however, it is reasonable to conclude that claim abandonment effectuated through use of Notices of Abandonment is not effective until the notice is recorded. The Notice of Abandonment's layout and the language used on it make clear that the form is a document

[6] The federal regulations define "owner" or "claimant" as "the person who is, under State or Federal law, the holder of the right to sell or transfer all or any part of an unpatented mining claim." (43 C.F.R. § 3833.0-5(e).)
[7] The statute and regulations provide for a fee of $100, to be adjusted for inflation from 1993, which is currently $140. (30 U.S.C. §§ 28f(a) and 28j(c); 43 C.F.R. § 3833.1-5(h).)
[8] "Relocation" under the federal regulations means the establishment of a new mining claim, which requires a new original Location Notice be filed in accordance with state law. (43 C.F.R. § 3833.0-5(q).)

prepared expressly for recording.[9] Also, the form is called a *Notice* of Abandonment of Mining Claim, and since *notice* of property rights are made through recording, it seems self-evident that the form must be recorded to be effective. If the purpose of the form's use is for the locator to relinquish his rights and effectively surrender the location to the government and any next comers, then the form must put all relevant parties on notice; without the actual recordation, there is no communication and hence no notice is given.

Taxpayer's counsel points out that the case law on abandonment hold that the issue is a matter of the locator's intention, and we agree but find the cases distinguishable. Under the case law, California law is clear that the abandonment of a mining claim is a question of intention, which is a factual matter to be determined by the jury or trial court, in view of all the facts and circumstances of the case. (*Myers v. Spooner* (1880) 55 Cal. 257.) In *Myers*, the California Supreme Court dealt with the issue of abandonment after a claim had been physically abandoned and not worked for 15 years after being located. The jury found that, despite the claimant's testimony that he did not intend to abandon the claim, that in light of all of the facts and circumstances, his intention appeared otherwise. Failing to find reason to overturn the jury verdict, the Court held that a claimant's testimony of his intention is not conclusive upon the jury, because if it were, "it would follow that all any party would have to do in order to defeat the defense of abandonment, would be to *say* he did not intend to abandon." (*Id*. at 260.) In *Wiltsee v. Utley* (1947) 79 Cal.App.2d 71, 77-78, the Court of Appeal held further that the intent to abandon must be established by clear proof, and the burden is upon the party asserting it.

In our opinion, these cases are distinguishable from your situation because in the cases, the physical abandonment itself puts the next comers on constructive notice that a claim has been surrendered and is available for relocation, whereas there is no such notice given where a Notice of Abandonment is merely executed but not recorded. Further, no evidence has been offered that that the claims were physically abandoned. Indeed, taxpayer's counsel has offered no proof of the taxpayer's intention other than the potential testimony of the taxpayer (and his co-locators). Because the taxpayer markets the claims for sale through his website, proof that he de-listed the claims from the website at the time of the purported abandonments should be proffered to bolster the taxpayer's testimony.

Finally, if taxpayer's argument that the Notices of Abandonment were effective upon execution were correct, such position would allow him, on the one hand, to avoid liability for any location fees due to the BLM, while at the same time allowing him to still sell the claims to prospective purchasers because he could merely dispose of the executed but unrecorded Notices of Abandonment.

In sum, in our opinion, you may reasonably conclude that the taxpayer's attempted abandonments of the claims at issue were not effective until the Notices of Abandonment were actually filed with the Recorder, or the government and next comers were otherwise put on constructive notice that the locator has relinquished his rights, and the claim has been surrendered and is available. However, even if the claims were deemed abandoned prior to the lien date, as explained below, those claims that were relocated after January 1 are subject to property tax.

[9] The box on the upper left corner of the first page of the notice reads "RECORDING REQUESTED BY: (Mail recording to:)," and the box on the upper right corner of the first page reads "RECORDER'S USE ONLY," which is clearly intended to be used for a county recorder's office date and time stamp.

Property Taxation of Mining Claims

In California, the lien date for property is January 1. (Rev. & Tax. Code, §§ 117, 2192.) On the lien date, the assessor must assess all taxable property as provided in Articles XIII and XIII A of the California Constitution. (Rev & Tax. Code, § 401.3.) The assessor is to annually assess all taxable property to the persons owning, claiming, possessing, or controlling it on the lien date. (Rev. & Tax. Code, § 405, subd. (a).)

All real property in California is taxable unless specifically exempted under California law or made immune by federal law. (Cal. Const., art. XIII, § 1, subd. (a); Rev. & Tax. Code, § 201.) Federal property is exempt from property tax because the United States is immune from direct local and state taxation. (*United States v. California* (1993) 507 U.S. 746, 753.) But a private leasehold or other private possessory interest in such property may be taxable.[10] Section 107, subdivision (a) defines a "possessory interest" as:

> Possession of, claim to, or right to the possession of land or improvements that is independent, durable, and exclusive of rights held by others in the property, except when coupled with ownership of the land or improvements in the same person.

Under Property Tax Rule 20, subdivision (a)(1), a possessory interest will be found if such interest is:

1. durable;
2. exclusive of the rights held by others in the real property;
3. a private benefit to the possessor; and
4. independent.

Rule 28, subdivision (e) gives examples of taxable possessory interests, including land subject to the ultimate grant of a United States patent, which includes unpatented mining claims. (See Property Tax Annotation 590.0018 (December 13, 1989).) Thus, it is clear that the placer mining claims at issue are taxable possessory interests and are therefore subject to California property tax.[11]

Since there is no doubt that mining claims are taxable possessory interests, we understand the sole issue to be the assessability of such claims if they are not owned on the lien date, January 1. As discussed above, we think that the claims at issue were not effectively abandoned prior to the lien date and therefore they were owned on the lien date. However, if there were a finding that the claims were effectively abandoned prior to the lien date, most of the claims may still be assessed as recurring possessory interests.

California law is clear that exclusive rights to possession or exclusive use on even short-term bases may be taxable possessory interests, and that one need not have such right to possession or exclusive use on the lien date for the interest to be assessable. This concept is addressed directly by Rule 22, subdivision (b)(2), which provides, in relevant part, that a taxable

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[10] Property Tax Rule 20, subdivision (b). Property Tax Rules are promulgated under title 18 of the California Code of Regulations. See also *Kaiser Co. v. Reid* (1947) 30 Cal.2d 610.

[11] See *State v. Moore* (1859) 12 Cal. 56; see also *Bakersfield & Fresno Oil Co. v. Kern County* (1904) 144 Cal. 148.

possessory interest may be determined to exist by "[r]ecurrent possession or exclusive use, whether or not the period extends through the lien date, when there is a history on the lien date of recurring use by the present or former possessors making a similar use of the property." This provision makes it clear that a period of possession or exclusive use need not cover the lien date for the interest to be taxable, as long as the possession or exclusive use is "recurrent" as evidenced by a "history" of similar use on the lien date.

There is a well-developed body of case law in California that approves the application of this rule. In *City of San Jose v. Carlson* (1997) 57 Cal.App.4th 1348, the city sued the assessor for refunds of property taxes paid on users who occupied the convention center in San Jose, which the City owned and operated, when the users obtained permits upon more than one occasion. Hundreds of different users rent space in the convention center for short-term programs such as conventions, trade shows and parties, for an average of one to six days. Some use the facilities only once, while others use the facilities two or more times a year, once a year for successive years, or once and then a second time after an absence of multiple years. The assessor levied escape assessments on all users who occupied the facilities in 1990, 1991 and 1992.

After receiving advice from our office that the determinative question was the continuity of a user's possession or exclusive use, the assessor canceled the assessments on single users of the facilities, but a dispute remained with respect to all other uses. The trial court found that "repeated short-term uses" of the facilities are taxable possessory interests, and thus ruled in favor of the assessor. The City appealed, and the Court of Appeal affirmed. The Court of Appeal decision discussed the issue of "continuity" as "an additional consideration bearing on the establishment of durability" (one of the statutory elements of a taxable possessory interest). (*Carlson*, *supra*, 57 Cal.App.4th at 1354.) The court cited Rule 22, subdivision (b)(2), but found it unhelpful because there was not necessarily a "history" on the lien date of "recurring use." However, the court found that subdivision (b)(2) "invites a continuity finding in a wide range of uses by contemplating a history of recurring use *either* by the possessor or *former* possessors making similar use of the property." (*Id*. at 1355) The court failed to distinguish between second and third time users, finding that this issue was within the purview of the legislature. Thus, the court said, until the legislature makes such a distinction, "there is no ground for insulating the second time user from taxation … [and] differences among users in amount of use should be reflected in the value of the property interests assessed." (*Id*. at 1355-56.) Accordingly, *Carlson* stands for the proposition that even two-time uses of the facilities can meet the durability requirement.

The Court of Appeal in *Board of Supervisors v. Archer* (1971) 18 Cal.App.3d 717, held that grazing permits on federal land are taxable possessory interests even though they are temporary and revocable, but in a footnote noted that if a person did not own the permit on the lien date, he would not be subject to property tax. (*Id*. at p. 725, fn. 1.)

However, in *Dressler v. County of Alpine* (1976) 64 Cal.App.3d 557, the county imposed property taxes on possessory interests of cattle grazing rights on federal Forest Service land for the tax year 1971-1972. At the time of this case, the lien date was March 1. The land for which plaintiffs obtained permits was at higher altitudes that was snowbound and unavailable for grazing until about June. Thus, the Forest Service would not issue annual grazing permits until after the lien date. The Forest Service did issue permits prior to March 1 to other parties for other lands that were not snowbound on the lien date and were available for grazing then. The plaintiffs did not have grazing permits for the parcels at issue on the lien date nor did they have any legally enforceable rights to them. The trial court found that the plaintiffs had been granted the annual permits for the same parcels for many years prior to 1971 and would obtain them in the future as long as they put them to yearly use.

The Court of Appeal found that the plaintiffs' rights were just as durable as those of the persons who obtained permits prior to March 1 for grazing at lower altitudes, and that a "history on March 1 of recurrent use and possession is just as significant as an interval of use and possession which actually embraces the lien date." (*Dressler*, *supra*, 64 Cal.App.3d at 564.) Citing to and upholding Rule 22, subdivision (b)(2), the court held that such a history of recurrent use satisfies the continuity required to satisfy the durability element of a taxable possessory interest. The court said, "the [State Board's] view reinforces our own – that a history on the lien date of recurrent use is just as significant as the annual time span of use." (*Id*. at 565.) The court then rejected the *Archer* court's footnote because it "gave no consideration to the element of annual recurrence," and noted that "it has no application where there is a prior history of annual permits and an expectation of future annual permits." (*Ibid*.)

We think it is clear under these cases that once the taxpayer files a second Location Notice on a claim that he has abandoned, that second filing constitutes sufficient history on the lien date of recurring use so as to constitute a sufficiently durable taxable possessory interest on the lien date. Thus, even if the taxpayer did not own or possess the mining claims on the lien date, the claims may still be properly assessable.

Assessability of Claims at Issue

In our opinion, the taxpayer conclusively forfeited all claims for which, prior to an effective abandonment, he failed to file a copy of the Location Notice with the BLM and pay the associated initial year claim maintenance fee within 90 days of the claim. Thus, as we indicated on the Exhibit, in our opinion the taxpayer forfeited the claims known as Stars #1, Stars #2, and Stars #3 on November 30, 2008 (assuming the date the Location Notices were signed, September 1, 2008, was the claim location date). However, because the taxpayer filed new Location Notices on these claims on January 6, 2009, these claims were all properly assessable on the January 1, 2009 lien date as recurring taxable possessory interests. The period of non-ownership should have been reflected in the claim valuations.

Likewise, in our opinion, the taxpayer forfeited the claims known as G #3-16 on December 30, 2008, so the taxpayer did not own them on the January 1, 2009 lien date. However, as with the " Stars" claims, because the taxpayer filed new Location Notices on these claims on January 6, 2009, these claims were properly assessable on the January 1, 2009 lien date as recurring taxable possessory interests. The period of non-ownership should have been reflected in the claim valuations.

In addition, if you conclude that the claims were not effectively abandoned until the Notices of Abandonment were filed, in our opinion the following claims were assessable on the January 1, 2009 lien date because the taxpayer owned them on that date: P #1, P #2, Fortune #1, Fortune #2, and E #2. Even if there were a finding that the abandonments were effective prior to the lien date, in our opinion all of these claims were properly assessable on the lien date as recurring taxable possessory interests because the taxpayer filed new Location Notices on them in January 2009. In that case, any period of non-ownership would have had to be reflected in the claim valuations.

As to the claim known as B #1, if you conclude that the claim was not effectively abandoned until the Notice of Abandonment was filed, in our opinion the claim was assessable on the January 1, 2009 lien date because the taxpayer owned the claim on that date. If there were a finding that the abandonment was effective prior to the lien date, in our opinion this claim may not have been properly assessable because it appears that no new Location Notices was filed on this claim in 2009, so there may not have been a history of recurring use on the lien date.

As to the issue raised by taxpayer's counsel in its November 13, 2009 letter that the claims known as B #7, B #8, and B #9 should not have been assessed at all for the January 1, 2009 lien date because the taxpayer forfeited them in September 2008, we agree that these should not have been assessed if the taxpayer did not file new Location Notices on these claims in 2009. In addition, the claim known as E #2 should not have been assessed at all for the January 1, 2009 lien date because it appears that the taxpayer effectively abandoned it in August 2008, so long as he did not file a new Location Notice on the claim in 2009. The fact that the BLM shows this as an active claim in 2009 would not matter since it appears that the taxpayer's filing of the Notice of Abandonment effectively relinquished his rights to the claim prior to the lien date.

Exhaustion of Administrative Remedies

The Legislature has established a three-step process for handling taxpayer challenges to property tax assessments and refund requests. (*Steinhart v. County of Los Angeles* (2010) 47 Cal.4th 1298.) The first step in the process is that a taxpayer must file with the assessment appeals board an Application for Changed Assessment pursuant to section 1603, subdivision (a), which provides as follows:

> A reduction in an assessment on the local roll shall not be made unless the party affected or his or her agent makes and files with the county board a verified, written application showing the facts claimed to require the reduction and the applicant's opinion of the full value of the property.

The Application for Changed Assessment must be filed between July 2 and September 15 (or November 30 in certain counties) of the tax year in question. (Rev. & Tax. Code, § 1603, subd. (b).) Thus, Applications for Changed Assessment for assessments made on July 1, 2009 for the January 1, 2009 lien date are due on September 15, or November 30, 2009, depending on the county.

The second step is the filing of an administrative refund claim under section 5097, subdivision (a), which provides, in relevant part, that "[n]o order for a refund … shall be made, except" after the taxpayer has filed a verified claim for refund.

If the taxpayer still has not obtained relief, the third step is the filing of an action in superior court pursuant to section 5140 against the county or city to recover the tax that the board of supervisors has refused to refund.

Recently, the California Supreme Court in *Steinhart v. County of Los Angeles* held that the exhaustion of administrative remedies principle as applied in the property tax context means that a taxpayer may not file or pursue an action in superior court for a tax refund without having first filed both an Application for Changed Assessment pursuant to section 1603 *and* having made a claim for refund under section 5097. (47 Cal.4th at 1308.) The Court further held that the filing of a refund claim under section 5097 does not excuse a taxpayer from also having to file an Application for Changed Assessment under section 1603. (*Ibid.*) Without filing an Application for Changed Assessment, a taxpayer may not proceed with a claim for refund and may not proceed to sue for a refused refund in superior court.

Here, the taxpayer failed to file by the due date Applications for Changed Assessments on any of the claims that you assessed and for which he seeks a refund. Therefore, in our opinion, the taxpayer is without further recourse.

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.

Sincerely,

/s/ Matthew F. Burke

Matthew F. Burke
Tax Counsel III (Specialist)

MFB:yg
J:/Prop/Prec/Possints/2010/10-009.doc

Attachment: Exhibit

cc:	Mr. David Gau	MIC:63
	Mr. Dean Kinnee	MIC:64
	Mr. Todd Gilman	MIC:70