



September 23, 1996

Honorable Dick Frank
San Luis Obispo County Assessor
County Government Center, Room 100
San Luis Obispo, CA 93408

Dear Mr. Frank:

This letter is in response to your September 3, 1996 letter, in which you describe a situation concerning a documented vessel – as per Section 130 of the California Revenue and Taxation Code (unless otherwise stated all statutory references are to the California Revenue and Taxation Code). The taxpayer owned a documented vessel on the March 1, 1996 lien date and in late March attempted to file an *Affidavit for 4 Percent Assessment of Certain Vessels*, as they had timely and consistently done for all the previous years the vessel has been reported to your county. Although on March 8, 1996, the taxpayer had sold the vessel. Because they owned it on the lien date, they appeared personally to file a *Form 576-D* timely at your office. While there, the taxpayer alleges that she was told by the counter staff that she did not have to file the 4 percent affidavit for the 1996 lien date, and that but for this particular advice she would have done so. Such information was in error, and the taxpayer has subsequently been assessed for the full value of the vessel. Although your staff cannot confirm the incident at the counter, you "... have no dispute with the owner's recollection." You asked is there any way that a correction can be made (based on the fact that erroneous information was given to the taxpayer by the county) so that the taxpayer may still benefit from the 4 percent assessment?

As you know, the 4 percent affidavit must be filed by April 1, in order to benefit from the full exemption (§ 255(e)) and by August 1 in order to receive 80 percent of the exemption (§ 275.5). There is no provision granting the assessor authority to overrule the due dates of the affidavit. The language stated in Section 260 clearly provides that the failure of any person claiming any exemption to comply with the procedural requirements constitutes a **waiver** of the exemption.

There are two possible alternatives suggested as a possible solution to the situation described.

1. Correction Due to Assessor's Error

Section 4831 provides:

"(a) Any error resulting in incorrect entries on the roll may be corrected under this article... the correction may be made at any time after the roll is delivered to the auditor but... shall be made within four years after the making of the assessment that is being corrected. This section does not apply to either of the following:

- (1) ... Errors involving the exercise of value judgments.
- (2) ... Escape assessments caused by the assessee's failure to report the information required by [Section 441 and on].

Implicit in the language of this section is the requirement that two findings can be made with regard to the described fact situation: 1) that the assessment to be corrected was the result of a clerical error of

the assessor's office and not the exercise of a value judgment, and 2) that that the value enrolled is in fact an "incorrect entry."

As you are aware, this office has, in many instances, criticized assessor's offices for over-use of Section 4831 to "correct errors" that are not authorized by that section. Most commonly, these criticisms involve reductions of assessed values due to valuation judgments (which are specifically prohibited by Section 4831 except for Section 51(b) situations).

Although Section 4831 is intended to be used to correct a wide variety of clerical errors where there is no other alternative, there are several reasons why it is not available in this case. First, the failure to file a claim for exemption does not result in an "incorrect assessment." The rule of strict construction of the provisions exempting property from taxation is that the **burden is on the taxpayer** to establish that the property is entitled to the exemption, and all reasonable doubts must be resolved in favor of the taxability of the property. (Pasadena v. County of Los Angeles, 1925) 197 Cal.479.) If the taxpayer fails to file a claim for exemption in any year in the manner required at the time, the exemption is **deemed waived** for that year. (Cal. Const. Art. XIII, Sec. 6). Thus, the "correct" assessment of the property is the full cash value on the lien date.

Secondly, the failure to file an exemption claim due to erroneous advice from the assessor's staff is not a clerical error, because such advice is **not** an "assessment error." Advice from the assessor's office about exemption procedures and exemption filing requirements is not part of property assessment and is not the type of "clerical error" referred to in Section 4831. ⁹See U.S. Borax & Chemical Corp. v. Mitchell, (1980) 27 Cal.3d 84.

Thirdly, the assessor's application of section 4831 to "fix" late-filed or non-filed exemption claims would be tantamount to the **unilateral grant** of an exemption by the assessor to a claimant whose exemption was already waived. Obviously, such action is contrary to both constitutional and statutory authority.

2. Claim for Refund

Section 5096 et seq. of the Revenue and Taxation Code provides the board of supervisor's relatively broad authority to approve refunds of taxes that were illegally or erroneously collected. If the taxes have not been paid, Section 4985 et seq. provides similar authority. Although there are some limitations on such refunds (and cancellations), if the board of supervisors finds that 1) the taxpayer did file a claim for exemption under Section 227, albeit after the late filing date, 2) the assessor determined that the taxpayer was, in fact, eligible for the exemption, and 3) the taxpayer would have filed the claim timely **but for** the incorrect advice from the assessor's office, it may well be within the authority of the board of supervisors to grant a refund based on the difference between the taxes paid and the taxes that would have been assessed had the exemption claim been filed timely.

In evaluating this matter, the board of supervisors may wish to consider a declaration or other documentation from your office, in addition to information from the taxpayer, as evidence that the taxpayer attempted to comply and timely file the claim on the date that she was discouraged/prevented from doing so by the clerical staff. Certainly, there is a strong likelihood that such evidence might be highly persuasive in a court of law, were the taxpayer to pursue that as a course of action. It is not

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unreasonable to expect that a court might, upon evaluating all of the evidence, determine that the taxpayer "constructively complied" with the procedural requirements, and thus, extend the taxpayer an equitable remedy. We have no doubt that had the taxpayer attempted to mail the claim form, rather than personally deliver it to the assessor, a court would apply the provisions of Revenue and Taxation code Section 166 and deem it to have some possibility that a court or the board of supervisors may choose to extend the theory underlying Section 166 to the circumstances in the instant case. The weighing the evidence, of course, and the ultimate conclusion to which it leads are questions of fact entirely within the purview of the board or a court of proper jurisdiction.

As a final note, we wish to point out that the last paragraph in Section 227 states that "The controller shall audit all claims for reimbursement to determine whether those claims comply with the requirements of this section." Therefore, in the event that such audits were to occur, the controller's office might possibly conclude that the exemption in question was deemed to have been waived per Section 260. The Controller's office may or may not agree with the board of supervisors' determination on this issue. We merely advise that in a worst case scenario, any monies previously subvented to the county as reimbursement for this particular exemption for this year may be subject to repayment. (While such a result may be less burdensome than the cost of litigation by the taxpayer, you may need your county counsel's opinion in these regards).

The views expressed in this letter are, of course, advisory only and are not binding upon the county. It would be appropriate for you to confer with your board of supervisors and the county counsel in this matter.

If we can be of any further assistance, please contact our Business Property Technical Services Section 15 (916) 445-4982.

Sincerely,



Richard C. Johnson, Chief
Assessment Standards Division
Property Taxes Department

CK:jm