

**STATE BOARD OF EQUALIZATION**

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No. 94/30

May 18, 1994

TO COUNTY ASSESSORS:**SUPPLEMENTAL ASSESSMENTS - LATE-FILED EXEMPTION CLAIMS**

In letter to assessors 93/78, we discussed Chapter 855 (Assembly Bill 1699), Statutes of 1993, which amended Revenue and Taxation Code Section 75.21. Section 75.21 now provides when a late claim for the college, cemetery, church, religious, exhibition, veterans' organization, free public libraries, free museums, public schools, community colleges, state colleges, state universities, or welfare exemption is filed after the date the first installment of taxes on the supplemental tax bill becomes delinquent, 85 percent of any tax or penalty or interest thereon or any amount of tax, penalty, or interest thereon exceeding a total of \$250, whichever is greater, shall be canceled or refunded.

We incorrectly advised in the letter that the statute applies only to exemption claims for supplemental assessments where the date of the change in ownership or completion of new construction occurs on or after January 1, 1994. On review, we note the statute makes no reference to the year of the supplemental assessment event. Thus, the late filing provisions of Chapter 855 (relief for the greater of 85 percent or \$250) now apply, without limitation, to any late exemption claim filed after the first installment of taxes on the supplemental assessment became delinquent. Accordingly, a refund required by this section is subject only to the normal four-year statute of limitations (four years from date of payment of the taxes). There is no statute of limitations for cancellations, since there would be no purpose in collecting taxes that may be refunded within four years after making the payments. The practical significance of the effective date of the amendment -- January 1, 1994 -- is that it was the first day a refund or cancellation of supplemental taxes could be made pursuant to the statute.

There is, of course, a theory that extension of these provisions to a prior assessment year is limited by section 6 of Article XIII of the California Constitution. That section provides: "The failure in any year to claim, in a manner required by the laws in effect at the time the claim is required to be made, an exemption or classification which reduces a property tax shall be deemed a waiver of the exemption or classification for that year."

The question of whether section 6 prohibits application of Chapter 855 to taxes lawfully due prior to the effective date of the statute is only a legal theory. Section 3.5 of Article III of the California Constitution provides that an administrative agency, including an administrative agency created by the constitution (such as the State Board of Equalization), has no power either to declare

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a statute unconstitutional or refuse to enforce a statute as unenforceable on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional. Accordingly, this Board and its staff will accord the provisions of Chapter 855 full faith and credit until the law is changed or an appellate court has ruled the statute invalid, in whole or in part.

If there are organizations in your county of the type listed above that were previously denied an exemption on their supplemental assessments due to late filing (the claim was filed after the first installment became delinquent), we encourage you to inform them they may be eligible for a partial refund or cancellation of the supplemental taxes.

Sincerely,



Verne Walton, Chief
Assessment Standards Division