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March 14, 1989

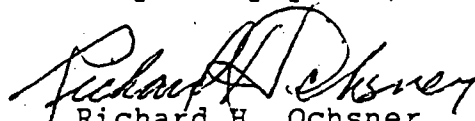
The Honorable William C. Greenwood
Assessor, Fresno County
P.O. Box 1146
Fresno, CA 93715-1146

Dear Bill:

In early January we discussed a question regarding Revenue and Taxation Code section 610, which provides that a person claiming and desiring to be assessed for land may have his name inserted on the roll with that of the assessee. You may recall that I agreed with your interpretation that the language of section 610 is permissive rather than mandatory. After our conversation, however, I requested that Bob Keeling of our staff research the question further. His research has brought to light the attached Attorney General Opinion dated May 29, 1959. The opinion discusses this question and reaches the opposite conclusion. After reviewing the Attorney General's analysis, I have to concede that his appears to be the better view. Note, however, that while the Attorney General concludes that the assessor does not have discretion in determining whether to enroll a person desiring to be assessed for the property, the assessor is not required to insert the claimant's name after a mere request by the claimant. The assessor may disregard the claimant's request unless the claimant has filed a written property statement as required by Revenue and Taxation Code section 441 and following.

I hope this information will be helpful to you.

Very truly yours,


Richard H. Ochsner
Assistant Chief Counsel

RHO:cb/1862D

cc: Mr. John W. Hagerty - w/att.
Mr. Robert H. Gustafson - w/att.
Mr. Verne Walton - w/att.

Opinion No. 59-70—May 29, 1959

SUBJECT: ASSESSMENT ROLL—Person desiring his name to appear on, with respect to parcel of land, has right to have property so assessed to him if he has claimed it in property statement filed pursuant to Revenue and Taxation Code section 441, without showing further proof of interest in land to the assessor.

Requested by: DISTRICT ATTORNEY, VENTURA COUNTY.

Opinion by: STANLEY MOSK, Attorney General.

Walter J. Wiesner, Deputy

The Honorable Roy A. Gustafson, District Attorney of the County of Ventura, has presented the following question:

Does section 610 of the Revenue and Taxation Code give a person an absolute right to have his name placed on the assessment roll with that of the assessee without first showing proof of an interest in the land to the satisfaction of the assessor?

The conclusion may be summarized as follows:

If a person desiring to be assessed for a parcel of land has claimed the parcel of land in the property statement filed pursuant to section 441 of the Revenue and Taxation Code, he has an absolute right to have the parcel assessed to him.

ANALYSIS

The following example illustrates the problem which gives rise to this request for an opinion:

An assessor has assessed a parcel of land to John Doe each year during the period 1940-1958. Prior to the 1959 assessment, Frank Smith demands that the assessor insert his name on the assessment roll along with that of the assessee, John Doe. Mr. Smith does not produce proof of ownership of any interest in the parcel of land and, as a matter of fact, has no proof of such interest.

The claimant probably wishes to acquire title to the parcel of land by adverse possession. Section 325 of the Code of Civil Procedure requires that one claiming title by adverse possession must have paid taxes on the property for a period of five years. Naturally the claimant would wish to have the property assessed to him as

"The fact that one in possession of land does not have it assessed to himself is, of course, strongly persuasive that he does not claim to be the owner" (*Janke v. McMahon*, 21 Cal. App. 781 at 787).

Furthermore, while it seems clear that where there has been a double assessment and a double payment of taxes, the person claiming title by adverse possession has complied with the requirement (*Owsley v. Matson*, 156 Cal. 401; *Cavanaugh v. Jackson*, 99 Cal. 672; and *Kendrick v. Klein*, 65 Cal. App. 2d 491), it is not certain that double payment is sufficient if there has been but a single assessment (*Owsley v. Matson*, *supra*; and *Carpenter v. Lewis*, 119 Cal. 18).

Section 610 of the Revenue and Taxation Code provides:

"Land once described on the roll need not be described a second time, but any person, claiming and desiring to be assessed for it, may have his name inserted with that of the assessee."

Although there does not appear to be any case in which section 610 has been discussed, the phrase "any person, claiming and desiring to be assessed for it, may have his name inserted with that of the assessee," implies that the claimant has an absolute right to have his name placed on the assessment roll along with that of the assessee.

It has been suggested that the use of the word "may" indicates that the assessor is meant to exercise his discretion in determining whether to list the claimant as an assessee. The word "may", however, appears after "any person", indicating that the choice is given to the claimant rather than to the assessor. Furthermore, to interpret section 610 as vesting discretion in the assessor would require him to act in a judicial capacity; to weigh conflicting claims and to determine which of the claimants owns the parcel of land. It is clear that this is not the duty or function of the assessor.

While, for the foregoing reasons, it is concluded that the claimant has a right to have the property assessed to him, this does not mean that the assessor must immediately insert the claimant's name with that of the assessee after a mere request by the claimant. Acting pursuant to section 8 of article XIII of the

California Constitution, the Legislature has enacted section 441, and following, of the Revenue and Taxation Code which requires every person to file a written property statement, under oath (section 441) which must show all property "owned, claimed, possessed, controlled, or managed" (section 442), the situs of the property (section 443) and a description of all real estate (section 444) and personal property (section 445). Where the claimant has failed to comply with the requirements of the above sections, the assessor could properly disregard the request inasmuch as section 610 gives the right only to a person "*claiming* and desiring" to be assessed. (Italics added.) It should also be noted that section 261 of the Revenue and Taxation Code requires that the interest in a parcel of property must be "of record on the lien date" before the veterans' or welfare exemption will be allowed. Therefore, if the claimant desires to be assessed for property already described on the roll and also wishes to claim an exemption, in addition to presenting a sworn property statement attesting his ownership, claim, possession, or control of the property, he must show that his interest in the property is of record on the lien date.
