

STATE BOARD OF EQUALIZATION

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February 6, 1995

Mr. Claude F. Kolm
Deputy City Attorney
Office of the San Francisco City Attorney
1390 Market Street, 6th Floor
San Francisco, CA 94102-5408

Dear Claude:

This is in response to your letter of January 18, 1995, requesting our views on two questions relating to Chapter 544 of the Statutes of 1994 (SB 1726). You indicate that the San Francisco assessor would appreciate our views on the application of law to two situations which are described below, followed by our comments.

"1. Under prior law, the statute of limitations had run by December 31, 1994, but no change in ownership form has been filed. Is the Assessor's ability to reassess the property revived back to the original change of ownership?"

As you know, Chapter 544 amended Revenue and Taxation Code sections 75.11 and 532 relative to the statute of limitations for placing an assessment on the supplemental roll or making an escape assessment following a change in ownership. The amendments made by Chapter 544 were effective commencing on January 1, 1995. As amended, these provisions provide that the statute of limitations for making the subject assessments shall not commence until a statement reporting the change in ownership is filed per Revenue and Taxation Code sections 480, 480.1 or 480.2.

As I understand your question, you are asking whether the amended time limits apply even though a supplemental assessment or an escape assessment might have been barred under the previous language of these sections. For example, an unreported 1984 change in ownership could have resulted in the underassessment of

the subject property for 1984 and each year thereafter. Under the prior eight-year statute of limitations for assessing unreported changes in ownership, the assessor would have been required to make the escape assessment for 1984 by 1992. If the property remained unreported, however, the language as amended by Chapter 544 provides that the statute of limitations for making such an assessment has not yet commenced to run. Thus, while an assessment made in 1994, subject to the previous statute of limitations, might have been barred, the same assessment would not be barred in 1995 by the amended language.

I find nothing in the amendments made by Chapter 544 which indicates that the Legislature intended the amended language to only apply to assessments which might not previously have been barred by the prior language. As I read the amended language of the statute, it appears that it applies to all supplemental or escape assessments (based on a change in ownership) made on or after January 1, 1995. Since the language of the statute seems to be plain and definite in this respect, we are prohibited from adding language to the provision which would impose an additional limitation. See *Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798 - 800.

It should also be recognized that section 3.5 of Article III of the California Constitution prohibits an administrative agency from declaring a statute unenforceable or unconstitutional unless an appellate court has made such a determination with respect to that specific statute. Thus, neither the Board nor a county assessor has authority to conclude that the amendments are invalid to the extent that they authorize assessments which might previously have been barred.

In short, it is my understanding that the limitations period applicable to supplemental or escape assessments arising from a change in ownership which are made on or after January 1, 1995, is as specified in the amended provisions contained in Chapter 544.

"2. Prior to January 1, 1995, the Assessor asserted a 25% fraud penalty. No statute of limitations would have run for the transaction before June 30, 1995. Can the Assessor now increase the fraud penalty asserted to 75%?"

Under prior law, Revenue and Taxation Code section 504 required that the assessor add to any assessment made pursuant to section 503 a penalty of 25% of the additional assessed value. Section 503 provides that the assessor shall assess the property in the lawful amount and impose the section 504 penalty if it

escapes assessment or is underassessed as a result of fraud or collusion. Chapter 544 amended section 504 to increase this fraud or collusion penalty from 25% to 75%. This amendment was also effective on January 1, 1995.

As amended by Chapter 544, section 504 provides, in part, "(b) There shall be added to any assessment made pursuant to section 503...a penalty of 75% of the additional assessed value so assessed." This language mandates that the assessor add the penalty to any assessment for fraud or collusion made pursuant to section 503. Although not expressly stated, the implication is that the assessor is required to add the penalty at the time of making the section 503 assessment.

This is supported by the language of 503 which states, in part, that if property escaped assessment or was underassessed due to fraud or collusion, "the assessor shall assess the property in the lawful amount and impose the penalty provided for in Section 504." Again, the language is mandatory and the implication of the language is that the Legislature intended that the assessor apply the penalty at the same time that the assessment is made.

If the Legislature intended that the penalty be imposed at the time that the section 503 assessment is made, then the amount of the penalty would be determined by the law applicable at the time that the assessment was made. Thus, if the section 503 assessment was made in 1994, the applicable penalty rate would be 25%. For section 503 assessments made on or after January 1, 1995, the penalty assessment rate would be 75%. I find nothing in the language of Chapters 544 which indicates a legislative intent to increase from 25 to 75 percent all penalties imposed prior to January 1, 1995. Such an interpretation is not, in my view, consistent with the plain meaning of the provisions cited above.

Further, an interpretation suggesting that previously imposed penalties are subject to increase from 25 to 75 percent, raises the immediate question of which penalties would be subject to this increase. Would they only be those penalties which have not yet been paid or would they include all previously imposed penalties? How far back would this go? Is there a statute of limitations applicable just to penalties? If there is to be a distinction between penalties paid and penalties unpaid, what statutory language can be relied upon for making this distinction? In light of these obvious problems and the fact that the courts generally take the view that penalties should be strictly construed, I do not believe that section 503 penalties imposed prior to January 1, 1995, should now be increased to 75

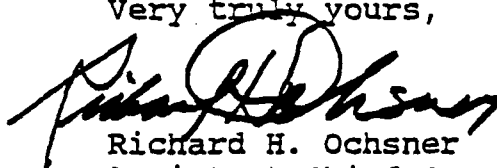
percent.

The foregoing views reflect my analysis of Chapter 544 but they do not necessarily reflect the views of the Board. I have discussed these questions with the staff of the Assessment Standards Division which is presently developing an assessor's letter on this subject. Since such a letter is subject to further review and might even be presented to the Board for approval, it is possible that some difference of view could be expressed in that assessor's letter by the time it is finally released.

Finally, the views expressed in this letter are, of course, advisory only and are not binding upon the assessor of any county.

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,



Richard H. Ochsner
Assistant Chief Counsel

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cc: Mr. John Hagerty - MIC:63
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