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November 28, 2016

Mr.
Appraiser III
Madera County Assessor's Office
200 West 4th Street
Madera, CA 93637

Re: Assessment Appeals – Findings of Fact
Assignment No.: 16-215

Dear Mr. :

This is in response to your request for our opinion answering three questions regarding assessment appeals.[1] Your questions are quoted below, followed by our response.

> *1. Is the Assessment Appeals Board required to write findings of fact when the applicant checks the box on the appeals application stating that he does not request them. Can the same applicant then go into court claiming that a remand is needed because the Assessment Appeals Board failed to write the findings even though they were waived and the agent did not pay the $100 fee required by the code.*

Revenue and Taxation Code[2] section 1611.5 provides that written findings of fact of the county board shall be made if requested in writing by a party up to or at the commencement of the hearing, and if payment of any fee or deposit which may be required to cover the expense of preparing the findings is made by the party prior to the conclusion of the hearing. A reasonable fee may be imposed by the county to cover the expense of preparing findings and conclusions. (Rev. & Tax. Code, § 1611.5.) Because section 1611.5 expressly provides that written findings of fact shall be made *if* the taxpayer requests such findings in writing and pays a required fee to cover the expense of preparing such findings, it follows that a taxpayer's failure to request written findings from the local board constitutes an implied waiver of written findings.

In *Westlake Farms, Inc. v. County of Kings* (1974) 39 Cal.App.3d 179, the appellant-taxpayers filed suit with the Court of Appeal to challenge the superior court's decision in favor of the Kings County Board of Supervisors. The Kings County Board of Supervisors did not issue written findings and the court noted that the taxpayers "made no attempt to pursue their request

[1] We understand this request arose from litigation in which your office is currently engaged with LLC. While you provided us with some of the litigation documents, as you may know, we do not opine on matters in litigation. Therefore, this opinion should not be construed as comment on this specific case, but rather merely answers to the general legal issues raised in your questions.

[2] All further statutory references are to the California Revenue and Taxation Code, unless otherwise indicated.

[for written findings] before commencing this action in superior court." (*Id.* at 188.) By failing to raise the issue of the lack of written findings requested under section 1611.5 (formerly section 1605.5), the "Appellants' request for findings was abandoned by implication." (*Ibid.*)[3] Thus, the Court of Appeal, in considering the taxpayers' contention that the Kings County Board of Supervisors adopted erroneous valuation methods, affirmed the decision of the superior court, stating that, "In the absence of written findings to guide us, we are reluctant to resort to the obscure statements of the board members to impeach their decision or to hold that the board acted arbitrarily, abused its discretion or failed to follow the standards prescribed by the Legislature." (*Ibid*.) The Court of Appeal described the value of written findings to delineate the basis for an administrative agency's decision and noted that "inadequate findings impede the parties' recourse of the courts and thwart the latter in the performance of their review obligations." (*Ibid.*)

Because section 1611.5 is clear on its face, there is no need to resort to legislative history. (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.) However, the legislative history makes clear that written findings are, in fact, an option for taxpayers who request them and pay a fee as required by the statute. Senate Bill No. 285 (1977-1987 Reg. Sess.) (SB 285), when introduced on February 10, 1977, amended section 1611.6 to provide that when a county board fails to issue written findings upon request or when such findings are found by a reviewing court to be deficient, reasonable attorneys' fees may be levied against the county. A Legislative Analyst's Analysis of SB 285, dated August 18, 1977, affirms that existing law requires the local board make its findings in writing, *if requested to do so.* (Emphasis added.)

We are aware that Code of Civil Procedure section 1094.5, subdivisions (a) and (b) provide that where a writ of mandate is issued to inquire into the validity of any final administrative order following a proceeding required by law, the inquiry shall extend to whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by evidence. (Code Civ. Proc., § 1094.5, subd. (b).)

In *Respers v. University of California Retirement System* (1985) 171 Cal.App.3d 864, 871, the court held that although the University of California Retirement System (UCRS) regulations did not expressly require the UCRS Board to make findings, "the need for findings is implicit in Code of Civil Procedure section 1094.5." The *Respers* court reached this conclusion because, "In part, the need for findings is a product of judge-made law; findings by an adjudicative agency are necessary as a practical matter in order to permit judicial review of agency action." By contrast, however, the Revenue and Taxation Code is *not* silent with regards to the procedure for obtaining findings in local property tax assessment appeals; section 1611.5 expressly provides a means by which the taxpayer may obtain written findings. Furthermore, in *Hansen v. Civil Service Bd. of City of Alameda* (1957) 147 Cal.App.2d 732, 735, the Court of Appeal stated:

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[3] Case law in other contexts have held similarly. For example, in juvenile dependency proceedings, generally, specific findings of fact are required only if requested by a party; the failure to request a finding constitutes an implied waiver. (*In re Aurora P.* (2015) 241 Cal.App.4th 1142, 1165.) Additionally, in civil actions, when a trial court denies a motion to compel arbitration, a party may request the court to provide a statement of decision. (Code Civ. Proc., §§ 632 and 1291.) Courts have found that no statement of decision is required if parties fail to request one. (*Carbajal v. CWPSC, Inc.* (2016) 245 Cal.App.4th 227, 237, citing *Acquire II, Ltd. v. Colton Real Estate Group* (2013) 213 Cal.App.4th 959, 970.)

> [Code of Civil Procedure 1094.5] does not read like a mandate that every administrative agency, state or local, must formulate specific findings of fact and record them in writing. It merely assumes, naturally, that an administrative agency makes findings of fact in the process of conducting a hearing, receiving evidence and rendering a decision. It does not lay down any formal requirements as to the making of such findings; e.g., it does not say that they need be in writing or, if in writing, that they must be separately stated.

Finally, Code of Civil Procedure section 1094.5 applies only to writs of mandate. And as explained in the answer to your second question, writs of mandate are not available in a dispute to prevent or enjoin the collection of any tax.

2. Is the [taxpayer's] agent allowed to challenge the opinion of the Assessment Appeals Board even though the property taxes have not been paid. The taxpayer has never paid the supplemental assessments or the subsequent taxes.

When a taxpayer wishes to challenge an assessment of property taxes, section 1603, subdivision (a) requires the taxpayer apply for a reduction of assessment with the local assessment appeals board. The taxpayer may subsequently appeal an adverse decision by the assessment appeals board by paying the tax under protest and filing a claim for refund with the county board of supervisors.[4] (Rev. & Tax. Code, §§ 5097, 5140; *Steinhart v. County of Los Angeles* (2010) 47 Cal.4th 1298, 1307.) The taxpayer may thereafter file an action in superior court pursuant to section 5140, which provides that a person who paid the property tax may bring an action against a county to recover a tax which the board of supervisors of the county has refused to refund on a claim filed pursuant to section 5096 et seq. A court action may not be commenced or maintained unless a claim for refund has first been filed. (Rev. & Tax. Code, § 5142, subd. (a), *Steinhart, supra*, 47 Cal.4th at p. 1307.) A taxpayer may not go into court and obtain adjudication of the validity of a tax which is due but not yet paid. (*State Bd. of Equalization v. Superior Court* (1985) 39 Cal.3d 633, 638.)

We note that Code of Civil Procedure 1094.5 authorizes courts to issues writs of mandate to inquire into the validity of any final administrative order or decision made as the result of a hearing required by law. However, although a local assessment appeals board decision arises from an administrative hearing process, the mechanism for seeking judicial review of the decision is significantly different from that of other administrative agency decisions, as ordinarily the aggrieved taxpayer's remedy is not to seek administrative mandate, but to pay the tax and file suit in superior court for a refund. (*William Jefferson & Co., Inc. v. Assessment Appeals Board* (2014) 228 Cal.App.4th 1.) This is because writs of mandate are not available in a dispute to prevent or enjoin the collection of property taxes. Revenue and Taxation Code section 4807 provides:

> No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against any county, municipality, or district, or any officer thereof, to prevent or enjoin the collection of property taxes sought to be collected.

[4] When filing an application for a reduction in assessment, taxpayers can designate that the application also be considered a claim for refund. (Rev. & Tax. Code, § 5097, subd. (b).)

(Rev. & Tax Code, § 4807.)

Section 4807 conforms to the state Constitutional provision which provides that "No legal or equitable process shall issue in any proceeding in any court against this State or any office thereof to prevent or enjoin the collection of any tax." (Cal. Const., art. XIII, 32; *Connolly v. County of Orange* (1992) 1 Cal.4th 1105, 1114.) The policy behind these provisions is "[t]o allow revenue collection to continue during litigation so that essential public services dependent on the funds are not unnecessarily interrupted." (*Merced County Taxpayers' Assn. v. Cardella* (1990) 218 Cal.App.3d 396, 400.)

Because a tax refund action provides property owners with an adequate remedy at law, equitable actions for mandamus, injunctive, and declaratory relief generally are unavailable to obtain judicial review of a local assessment appeals board decision. (*William Jefferson & Co., Inc., supra,* 228 Cal.App.4th 1; *Little v. Los Angeles County Assessment Appeals Board* (2007) 155 Cal.App.4th 915, 923; *Schoenberg v. County of Los Angeles Assessment Appeals Board* (2009) 179 Cal.App.4th 1347.)[5] Even when a taxpayer expressly disclaims any right to tax refunds, an action to lower the taxpayer's taxes by challenging an assessor's base year value determination must be brought as a tax refund action. (*William Jefferson & Co., Inc., supra,* 228 Cal.App.4th at p. 13, citing *Merced County Taxpayers' Assn. v. Cardella* (1990) 218 Cal.App.3d 396.)

In sum, the proper remedy for a taxpayer to challenge the decision of the assessment appeals board requires the taxpayer to pay the property taxes and file a suit for refund with the county board of supervisors. (Rev. & Tax. Code, § 5096 et seq.) If the county board of supervisors denies the taxpayer's claim for refund, the taxpayer may file an action in superior court to recover taxes based on an erroneous base year value determination. (Rev. & Tax. Code, § 5140 et seq.)

3. The taxpayer and the taxpayer's agent missed the 60 day window for the appeal of the window period supplemental assessment, does this also apply to the base year value set by the 2010 supplemental or does the taxpayer have a longer period to appeal the base year value.

Applicants who wish to appeal a property's base year value have two filing periods. (Assessment Appeals Manual (May 2003), at pp. 29-30.) Generally, an application to appeal a supplemental assessment must be filed within 60 days of the later of the date of mailing or postmark printed on the notice of assessment. (Rev. & Tax. Code, § 1605, subd. (b).) If the applicant misses the 60-day supplemental assessment filing period, the base year value may be appealed during the regular filing period in the year that the base year value is enrolled by the assessor or the following three years. (Rev. & Tax. Code, § 80.) If the appeals board reduces the base year value, the reduction is effective in the year in which the application was filed and any future years, but is not retroactive. (Rev. & Tax. Code, § 80, subd. (a)(5); Property Tax Rule (Rule)[6] 305.5.)

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[5] However, examples where mandamus has been found proper include: as a means for a *county assessor* to challenge the decision by local board following an administrative hearing (*County of San Diego v. Assessment Appeals Bd. No. 2* (1983) 148 Cal.App.3d 548, 551); to compel a board of equalization to hear a case for which it claims it has no jurisdiction or which it refuses to hear (*Sunrise Retirement Villa v. Dear* (1997) 58 Cal.App.4th 948); and to enforce compliance with the local board's own decisions (*Board of Supervisors v. Archer* (1971) 18 Cal.App.3d 717).

[6] All references to Property Tax Rule or Rules are to sections of title 18 of the California Code of Regulations.

Thus, a taxpayer or taxpayer's agent's appeal of a supplemental assessment is considered untimely if it is not filed within 60 days of the date of mailing or postmark printed on the notice of assessment. However, an appeal of the new base year value that resulted in the supplemental assessment may be timely filed during the regular filing period in the year the base year value is enrolled, or the following three years. (Rev. & Tax. Code, § 80, subd. (a)(5); Rule 305.5.)

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/ *Leslie Ang*

Leslie Ang
Tax Counsel

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cc: Honorable Gary L. Svanda
Madera County Assessor

Mr. Dean Kinnee (MIC:63)
Mr. David Yeung (MIC:61)
Mr. Todd Gilman (MIC:70)