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JAMES E. SPEED
Executive Director

July 11, 2001

Subject: *Appeal of Mandatory Audit*

Dear Ms. _____ :

This is in reply to your letter of June 18, 2001 in which you request our opinion concerning the appeal of the original assessment based on the result of a mandatory audit which disclosed property subject to escape assessment. Based on the information provided in your letter and in our telephone conversation, the _____ County Assessor's office performed a four-year mandatory audit of your client ("Company") and made an escape assessment. The Company filed an application to appeal the escape assessment and intended to include the original assessment of all property at the business location for that year as provided in section 469. At the time of filing, however, the application form did not include a section to specify an appeal of the original assessment. The assessor's office has taken the position that the Company is barred from appealing the original assessment because the application requested relief only for the escape assessment.

As explained further below, you may submit to the appeals board a written request to amend the application to state the additional fact that a reduction is requested on the original assessment. The appeals board may, in its discretion, grant your request to amend the application but, as a condition of allowing the amendment, may require that you waive the two-year time limit for hearing and deciding the application.

Law and Analysis

An appeals board may grant a property value reduction only upon the timely filing of a valid application. Revenue and Taxation Code section 1603, subdivision (a) provides in relevant part that:

A reduction in an assessment on the local roll shall not be made unless the party affected or his or her agent makes and files with the county board a verified, written application showing the facts claimed to require the reduction and the applicant's opinion of the full value of the property. The form for the application shall be prescribed by the State Board of Equalization.

Property Tax Rule 305 (section 305, Title 18 of the California Code of Regulations) interprets and implements section 1603 by setting forth detailed application filing procedures and content requirements. Subsection (e) of rule 305 governs the procedures for amendments and

corrections of applications and provides, in relevant part, that an application may be amended after the final filing date to request relief additional to or different in nature from that originally requested, as follows:

- (e)(2)(C)(i) Upon request of the applicant or the applicant's agent, the board, in its discretion, may allow the applicant or the applicant's agent to make amendments to the application in addition to those specified in subdivisions (A) and (B) to state additional facts claimed to require a reduction of the assessment that is the subject of the application.
- (ii) The applicant or the applicant's agent shall state the reasons for the request, which shall be made in writing and filed with the clerk of the board prior to any scheduled hearing, or may be made orally at the hearing. If made in writing, the clerk shall provide a copy to the assessor upon receipt of the request.
- (iii) As a condition to granting a request to amend an application, the board may require the applicant to sign a written agreement extending the two-year period provided in section 1604 of the Revenue and Taxation Code.
- (iv) If a request to amend is granted, and upon the request of the assessor, the hearing on the matter shall be continued by the board for no less than 45 days, unless the parties mutually agree to a different period of time.

The foregoing provision was added to Rule 305, effective June 25, 2000, to grant a local appeals board the discretion to allow an applicant's request to amend an application to seek any relief that could have been sought when the application was originally filed. Under former subsection (e), an applicant was denied any opportunity to amend an application "after 5:00 p.m. on the last day upon which the application might have been filed if the effect of the amendment is to request relief additional to or different in nature from that originally requested." By promulgating this provision, the Board liberalized former subsection (e) under its statutory authority to interpret the Revenue and Taxation Code sections governing assessment appeal application procedures.

The plain language of subsection (e)(2)(C) provides that an appeals board may grant a request for an amendment that requests relief additional to or different in nature from that originally requested in the application, such as the addition of a class of property that could have been appealed at the time the application was filed. The phrase "*additional facts claimed to require a reduction*" corresponds to "the facts" stated in Section 6 of the application (enclosed) which the applicant claims are relied upon to support the requested change in value. The applicant states the "facts", i.e. relief requested, by checking one or more of the boxes in section 6, and section 6 includes boxes for personal property and real property. In this case, the request for real property value reduction could have been stated in the original application for the year of the escape assessment. Thus, the "additional facts" referred to in subsection (e)(2)(C) includes the type of relief requested by the Company.

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Furthermore, the rulemaking record discloses that this provision was intended to allow the type of amendment under discussion. The amendment of subsection (e) was proposed by staff to the Board Property Tax Committee in Formal Issue Paper 99-065 (copy attached) and the Board adopted the amendment based upon that recommendation. In the Issue Paper, the Description of Staff Recommendation sets forth the reasons for the addition of the subsection and makes clear that the language was added so that,

Under this authority, the local board may accept amendments to consider any request for relief that could have been made part of the original Application for the property and the assessment year that is the subject of the Application.

Under former subsection (e), the court of appeal held in *Helene Curtis, Inc. v. Assessment Appeals Bd.* (1999) 76 Cal.App.4th 124 that an applicant was not permitted to amend an application to include the real property at the business location, if the application had appealed only the escape assessment of the personal property. To illustrate the application of subsection (e)(2)(C), the Issue Paper states that:

For example, this change would now permit the amendments that were not permitted in the *Helene Curtis* case, viz. Requesting a change in assessment of the real property at the location where the original Application challenged only the personal property and fixtures.

Thus, the Issue Paper clearly shows that the Board's language in subsection (e)(2)(C) was intended to allow an amendment to request a reduction of real property value which is exactly the type of relief at issue here.

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.

Very truly yours,

/s/ Louis Ambrose

Louis Ambrose
Tax Counsel

LA:eb

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cc:

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