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May 12, 1998



Ms. Darlene J. Bloom
Clerk of the Board of Supervisors
County of Orange
10 Civic Center Plaza, Suite 465
Santa Ana, California 92701

Re: Interpretation of Revenue and Taxation Code Section 1605(f)

Dear Ms. Bloom:

This is in reply to your letter of March 17, 1998 in which you request a legal opinion on the correct interpretation of subdivision (f) of section 1605 of the Revenue and Taxation Code¹ which reads:

(f) For purposes of subdivision (a), "regular assessment period" means January 1 to and including July 1 of the calendar year in which the assessment, other than escape assessments, should have been enrolled if it had been timely made.

As you note, one interpretation is that assessments made during the "regular assessment period", for purposes of subdivision (a) of section 1605, are only those made from January 1 to July 1 which, if timely made, should be enrolled during that period; escape assessments are specifically excluded. In accordance with this interpretation, pursuant to subdivision (b) of section 1605, an escape assessment must be appealed within 60 days of the date on which the assessee is notified of the escape assessment.

The other interpretation which is followed by the Orange County Assessor's office is that all assessments, including escape assessments, made during the period from January 1 to July 1 are considered to be assessments made during the "regular assessment period". The exception "other than escape assessments" is intended only to clarify that escape assessments are not limited to the calendar year in which they should have been enrolled. Therefore, the time limitations periods for appealing escape assessments depend upon the date that the escape assessment was made.

¹ All section references are to the Revenue and Taxation Code unless stated otherwise.

If made within the regular assessment period, the appeals period is from July 2 through September 15 as provided in section 1603, and if made outside the regular assessment period, as stated above, an application for appeal must be filed within 60 days of the date on which the assessee is notified. Subdivision (a) of section 1605 provides that an assessment is not effective for any purpose until the assessee has been notified. Accordingly, the Orange County Assessor's "Notice of Proposed Escape Assessment" form informs assessees that the filing periods for appealing an escape assessment depend upon the date of the notice. A member of the Assessor's staff informed you that these appeals periods were adopted to conform with the holding in *Pacific Mutual Life Insurance Co. v. County of Orange* (1985) 187 Cal.App.3d 1141.

For the reasons set forth below, it is our opinion that subdivision (f) was added to reverse the decision in *Pacific Mutual Life Insurance Co.* and expressly excludes escape assessments as assessments made during the "regular assessment period" for purposes of subdivision (a). An escape assessment, by definition, is not made within the regular assessment period. Thus, an application for appeal of an escape assessment must be filed within 60 days of the date on which the assessee is notified of the escape assessment, regardless of the month in which the escape assessment was made or the notice was mailed.

Furthermore, it is our view that it is incorrect to state that the notice of proposed escape assessment is the notice upon which they must file applications for appeal of those escape assessments. It is our view that an appeals board has no jurisdiction to hear such an application until the escape assessment has been enrolled and the assessee has received the notice required by section 534, and notice of proposed escape assessment does not qualify as notice required by section 534.

LAW AND ANALYSIS

For the purpose of establishing time limitations periods for filing assessment appeals, a distinction exists between assessments made during the regular assessment period and assessments made outside the regular assessment period. An assessment made during the regular assessment period is a lien date value assessment and is enrolled between January 1 and July 1 of the year in which the assessment is made. An assessment made outside the regular assessment period does not satisfy both of the foregoing conditions; thus, it is either not a lien date value assessment, such as a supplemental assessment², or it is an assessment, such as an escape assessment, which is not enrolled between January 1 and July 1 of the year for which the assessment is made.

² Subdivision (c), section 75.31 provides that "for purposes of equalization proceedings, the supplemental assessment shall be considered an assessment made outside of the regular period as provided in Section 1605."

The court of appeal, in the *Pacific Mutual Life Insurance Co* decision, indicated that assessments made during the regular period included all assessments made during the period between the lien date and July 1. Thus, the court held that an application appealing escape assessments for which notice was received on June 20 was timely if filed during the succeeding regular equalization period from July 1 through September 15.

As you noted in your letter, subdivision (f) was added to section 1605 by a bill sponsored by the State Board of Equalization (Stats. 1990, Ch. 124), in response to the court of appeal's decision in *Pacific Mutual Life Insurance Co*. The Board's Legislative Bill Analysis states that the amendment of section 1605

clarifies the definition of "regular assessment period" . . . to mean March 1³ to July 1 of the same calendar year in which the assessment should have been made (excluding escape assessments). This clarification eliminates the conflict between Section 1603 and Section 1605, which specify the different appeal provisions for assessments made within and outside the regular assessment period, respectively. Under current law, since restriction to the current calendar year exists, some assessments may fall under the jurisdiction of both Sections 1603 and 1605, causing conflict for taxpayers and assessors alike.

Based on this analysis, subdivision (f) was intended to, and was added to explain the distinction between assessments made within and those made outside the regular assessment period: "March 1 to July 1 of the same calendar year in which the assessment should have been made", "This clarification eliminates the conflict between Section 1603 and Section 1605", and "Under current law, . . ., some assessments may fall under the jurisdiction of both Sections 1603 and 1605." The interpretation that escape assessments are assessments made "outside the regular assessment period" and, therefore, the filing limitations periods for applications appealing escape assessments are governed exclusively by section 1605 is consistent with the analysis. The interpretation that escape assessments may be made within or without the regular assessment period is not. Thus, your understanding that section 1605, subdivision (f) was intended to reverse the *Pacific Mutual Life Insurance Co*. decision is correct.

In addition to the timely filing of an application, an appeals board's jurisdiction to hear an appeal of an escape assessment is also predicated on the assessee's proper notification of the escape assessment. In this respect, section 534 provides, in pertinent part:

No such assessment shall be effective for any purpose, including its review, equalization and adjustment by the Board of Equalization, until the assessee has been notified thereof personally or by United States mail at his address as

³ Since subdivision (f) was added in 1990, the lien date has been changed to January 1 and, thus, the regular assessment period is now January 1 to July 1.

contained in the official records of the county assessor. For purposes of Section 532, such assessment shall be deemed made on the date on which it is entered on the roll pursuant to Section 533 if the assessee is notified of the assessment within 60 days after the statute of limitations or the placing of the escape assessment on the assessment roll; otherwise, such assessment shall be deemed made only on the date the assessee is so notified. Receipt of the assessee of a tax bill based on such assessment shall suffice as such notice.

Pursuant to these provisions, the notice that confers jurisdiction to hear an application appealing the escape assessment also validates an escape assessment that has already been made and enrolled by the assessor.

Unlike the notice required by section 534, a notice of proposed escape assessment pursuant to Section 531.8 must be sent at least 10 days prior to the time of levying an escape assessment. While the notice pursuant to section 531.8 is a form of notice, it is not the notice required by section 534, and the express terms of the latter section make the date of notice the effective date of the escape enrollment for all purposes, including equalization. Therefore, an appeals board has no jurisdiction to hear an application filed in response to the notice of proposed assessment required by section 531.8 since such an application is filed prior to the enrollment and the date of the notice of the assessment and prior to the date the tax bill has been received.

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,



Louis Ambrose
Tax Counsel

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- cc: Honorable Bradley Jacobs, Orange County Assessor
- Ms. Jan Martin, Deputy County Counsel
- Mr. Dick Johnson (MIC:63)
- Mr. Rudy Bischof (MIC:64)
- Mr. David J. Gau (MIC:64)
- Ms. Jennifer L. Willis (MIC:70)

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MAY 13 1998

DEPUTY DIRECTOR
PROPERTY TAXES