



STATE OF CALIFORNIA

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June 21, 1996

Ms. Nancy Wells, Clerk
Board of Supervisors of Mono County
P.O. Box 715
Bridgeport, CA 93517

Dear Ms. Wells:

This letter is in response to your request for an opinion on the question of whether a local assessment appeals board has the sole authority and discretion to postpone indefinitely an appeals hearing pursuant to a request by the assessee. To summarize the information that you provided by telephone, you, as clerk of the Mono County assessment appeals board, had scheduled hearings on applications for appeals filed by a taxpayer in August and September of 1995 for the 1995-96 assessment year. The taxpayer then requested that the hearings be postponed indefinitely, but there were some question as to whether the assessment appeals board as the authority to agree to such a postponement.

Section 1604 of the Revenue and Taxation Code, in part, imposes guidelines for the time within which a local assessment appeals board hears evidence and makes findings on applications for assessment appeal. Subdivision (c) of section 1604 provides:

If the county assessment appeals board fails to hear evidence and fails to make a final determination on the application for reduction in assessment of property within two years of the timely filing of the application, the taxpayer's opinion of market value as reflected on the application for reduction in assessment shall be the value upon which taxes are to be levied for the tax year covered by the application, unless either of the following occurs:

(1) The taxpayer and the county assessment appeals board mutually agree in writing, or on the record, to an extension of the time for the hearing.

Enrolling the taxpayer's opinion of value for failure to make a final determination within two years is a mandatory requirement for an assessment appeals board. Compelling an assessment appeals board to enroll the taxpayer's opinion of value was intended as a disincentive for a taxing authority to delay resolution of appeals. The two year time limitation and extension by mutual agreement provisions of section 1604 parallel those same provisions of Property Tax Rule 309.

Section 1604(c)(1) clearly allows the taxpayer and board to extend the two year limitation period by mutual agreement. However, neither party is under an obligation to agree to such an extension. For example, in cases where a taxpayer refused to agree to an extension, an assessment appeals board was required to accept the taxpayer's opinion of value as the assessed value. See, e.g., Shell Western E. & P. Inc. v. County of Lake, 224 Cal.App.3d 974 (1990).

Because section 1604(c)(1) does not restrict the length of an extension, there is no prohibition against a taxpayer and a county board agreeing to postpone an appeals hearing to some undetermined date. Shell Western E. & P. Inc. v. County of Lake, cited above, lends support to this position. In that case, the court of appeal held that a lessee was not bound by a stipulated extension of the two-year limitation period entered into by its lessor and the county board of equalization. Although the court found that the lessee was not a party to the agreement, it did not question the validity of the agreement as between the lessor and the county. The agreement extended the time for hearing on the applications for reduction in assessments submitted by the lessor pursuant to the extension provision of section 1604(c), the predecessor of the current statute, which contained substantially the same language as section 1604(c)(1). The agreement further provided that a hearing would be held within 60 days of either party giving 30 days written notice to the other party requesting a hearing. Therefore, the stipulation indefinitely postponed the appeals hearing as is being requested by the taxpayer in Mono County.

Pursuant to Article XIII, section 16 of the California Constitution, a county board of supervisors has the authority to adopt rules and regulations relative to applications for reductions in assessments. Williamson v. Payne, 25 Cal.App. 2d 497 (1938). That section specifically provides that "[c]ounty boards of supervisors shall... adopt rules of notice and procedures for those [assessment appeals] boards as may be required to facilitate their work and insure uniformity in the processing and decision of equalization petitions..."

The authority conferred by Article XIII, section 16, includes the right of an assessment appeals board to pass on its own jurisdiction in the first instance and that right may not be usurped by the county assessor or county counsel. Midstate Theatres, Inc. v. Board of Supervisors, 46 Cal.App. 3d 204 (1975). Given the breadth of its constitutional authority, as well as the specific language of section 1604(c)(1), it would appear that the assessment appeals board, despite an objection by a county assessor, has the power to decide whether to extend the time period for hearing an assessment appeal.

For the foregoing reasons, we conclude that the assessment appeals board may, but is not required to, postpone indefinitely the date of hearing for an assessment appeal by mutual agreement in writing, or on the record, with the taxpayer. However, if the assessment appeals board does not make a final determination on the application for reduction of assessment within two years of the timely filing of the application and the taxpayer and the assessment appeals board do not mutually agree to extend the time for hearing, then the taxpayer's opinion of market value will be the assessed value for the tax year covered by the application.

The views express in this letter are, of course, only advisory in nature. Our intention is to provide courteous, helpful, and timely responses to inquiries such as yours. Suggestions that help us to accomplish this objective are appreciated.

Very truly yours,

Louis Ambrose
Tax Counsel

LA:ba

cc: Honorable R. Glenn Barnes,
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