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Executive Director

November 25, 2002

**RE: *Offsetting Against Escape Assessments Beyond the Statute of Limitations***

Dear Mr. \_\_\_\_\_ :

This is in response to your fax request dated November 16, 2002, in which you ask whether the Assessor may offset tax refunds resulting from incorrect assessments against tax liabilities resulting from escaped assessments for tax years where the escaped assessments are beyond the statute of limitations. Your request is specifically directed to the actions of the

Assessor's office following an audit of \_\_\_\_\_ (taxpayer). You indicated that at the conclusion of the audit, the assessor netted audit years that resulted in refunds, against audit years that resulted in escape assessments. You further stated that some of the audit years were past the statute of limitations, and that the taxpayer had not provided the assessor with a waiver. For the reasons set forth below, escape assessments that were not timely enrolled within the statute of limitations may not be used for purposes of offsetting against proposed refunds.

Revenue and Taxation Code section 532 establishes statutes of limitations on the assessor for escape assessments or underassessments. Although a property itself is not exempt, an escape assessment must be made timely to be valid. Unless the assessee intentionally evades taxation, an escape assessment must be made within four years of the assessment period in which the property escaped assessment or was underassessed. Section 532 states in part:

- (a) Except as provided in subdivision (b), any assessment made pursuant to either article 3 (commencing with section 501) or this article shall be made within four years after July 1 of the assessment year in which the property escaped taxation or was underassessed.

Roll changes are the final step in the audit process. Escape assessments or corrections must normally be completed, that is, delivered to the auditor and enrolled, within four years after July 1 of the assessment year the property escaped assessment. Where they are not timely entered on the roll, the assessment is not permitted.<sup>1</sup> (See Letters to Assessors Nos. 94/32 and 94/46 for further analysis.)

<sup>1</sup> *City of Los Angeles v. County of Inyo* (1959) 167 Cal.App.2d 736, *Montgomery Ward & Co., Inc. v. Santa Clara County* (1995) 47 Cal.App.4th 1122.

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From the documents provided, it is uncertain when the audit results were enrolled. The letter from the assessor's office, dated March 18, 2002, indicates that they conducted the audit of the taxpayer for the years 2000, 1999, 1998, 1997, and 1996, during their 2001 audit period. Accordingly, it does appear that some of the audited years may be beyond the statute of limitations. For example, the statute of limitations expired for 1996 assessments on July 1, 2000; for 1997 assessments on July 1, 2001; and for 1998 assessments on July 1, 2002. If the escape assessments for these years were not enrolled timely, they are not valid.

Revenue and Taxation Code section 532.1 allows for the extension of time when the assessee and the assessor have agreed in writing to extend the time allowed for making an escape assessment. Section 532.1 reads in part:

(a) If, before the expiration of the period specified in section 532 for making an escape assessment, the taxpayer and the assessor have agreed in writing to extend the time for making an assessment, correction, or claim for refund, the assessment may be made at any time prior to the expiration of the period agreed upon. The period may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

If, however, the taxpayer did not provide a written waiver to the assessor, no extension of time is authorized. The statute of limitations as provided in section 532 prevails in such cases.

A refund of the overpayment of taxes is possible when the results of an audit for any year decreases the amount of taxes due. Section 533 states:

If the assessments are made as a result of an audit which discloses that property assessed to the party audited has been incorrectly assessed either for a past tax year for which taxes have been paid and a claim for refund is not barred by section 5097 or for any tax year for which the taxes are unpaid, the tax refunds resulting from the incorrect assessment shall be an offset against proposed tax liabilities, including accumulated penalties and interest resulting from escaped assessment for any tax year covered by the audit.

Assessors' Handbook Section 504, *Assessment of Personal Property and Fixtures* (June 2000), provides a discussion regarding refunds. AH 504 states at page 180:

. . . it is important to note that it is the assessor's duty to deliver the corrected entry to the auditor, who is required by section 4834 to implement correction procedures. The tax collector is required to notify the assessee of the right to file a refund claim.

It may be appropriate for taxes to be offset by the *auditor* and the *tax collector* pursuant to section 533. (Emphasis added.)

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It is not appropriate for the assessor to offset or net audit results among the years covered by the audit, since this is the duty of the auditor and tax collector.

Based on the documents provided, there may be some years of the audit conducted by the assessor that are outside the statute of limitations pursuant to section 532. If so, such escape assessments are not valid for any purpose, including offsetting refunds. In addition, at the conclusion of the audit, the assessor is required to enroll the results for each year of the audit. If offsetting or netting of overassessments and escape assessments is appropriate, it is the responsibility of the auditor and/or the tax collector to make that determination.

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 as you described to us. Accordingly, these views are not binding on any person or public entity including the County Assessor.

Sincerely,

*/s/ Kristine Cazadd*

Kristine Cazadd  
Assistant Chief Counsel

KEC:tr  
prop/prec/escapeas/02/04kec

Attachments

cc:

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Ms. Jennifer Willis, MIC: 70