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August 8, 2013

Honorable Lawrence E. Stone
Santa Clara County Assessor
ATTN:
County Government Center, East Wing
70 West Hedding Street, 5th Floor
San Jose, CA 95110-1705

**Re: *Application of Penalty for Failure to File Aircraft Owner's Statement
Assignment No.: 13-090***

Dear Mr. :

This is in response to your request for our opinion on whether the assessor may impose a penalty on an aircraft owner pursuant to Revenue and Taxation Code¹ section 463, even though the assessor did not request a property statement pursuant to section 5365. As hereinafter discussed, we believe the assessor may impose such a penalty pursuant to section 463, and in fact is required to do so.

Facts

According to your letter, your office audited a corporation that owns an aircraft which is habitually situated within Santa Clara County. This is the corporation's only property known to be located in Santa Clara County, and its cost is well over \$100,000. The taxpayer filed the Aircraft Property Statement (BOE Form 577) for lien dates 2011 and 2012. During the audit, it was discovered that this aircraft escaped assessment for lien dates 2009 and 2010, during which time it had also been situated in Santa Clara County. Your office had not requested that the taxpayer file a property statement for lien dates 2009 and 2010.

Law and Analysis

Section 441, subdivision (a), states the following:

Each person owning taxable personal property, other than a manufactured home subject to Part 13 (commencing with Section 5800), having an aggregate cost of one hundred thousand dollars (\$100,000) or more for any assessment year *shall file* a signed property statement with the assessor. Every person owning personal property that does not require the filing of a property statement or real property shall, upon request of the assessor, file a signed property statement. Failure of the

¹ All statutory references are to the California Revenue and Taxation Code unless otherwise indicated.

assessor to request or secure the property statement does not render any assessment invalid. (Emphasis added.)

According to Assessors' Handbook 577, general aircraft are classified as personal property for purposes of property taxation. (Assessor's Handbook section 577, *Assessment of General Aircraft* (AH 577) (November 2003) at p. 1.) Aircraft are included on the local unsecured roll as personal property and are assessable to the owner. (*Id.* at p. 3.)

In this case, the aircraft at issue is taxable² personal property having an aggregate cost of over \$100,000. Therefore, the owner of the aircraft is required to file a signed property statement with the assessor, regardless of whether or not the assessor makes a request for such a statement. (Rev. & Tax. Code, § 441, subd. (a).) The statute makes a distinction between property owners who are required to file a property statement and those who are not required to file such a statement unless requested to do so by the assessor. Therefore, the assessor is not required to request property statements for any taxable personal property having an aggregate cost of one hundred thousand dollars or more, in order for an assessment to be valid (assuming that all other aspects of the assessment are, in fact, valid).

Further, section 463 states that "[i]f any person who is required by law . . . to make an annual property statement fails to file an annual property statement within the time limit specified by section 441 . . . a penalty of 10 percent of the assessed value of the unreported taxable tangible property of that person placed on the current roll *shall be added* to the assessment made on the current roll." (Emphasis added.)

In this case, if the taxpayer failed to file a property statement pursuant to section 441 for lien dates 2009 and 2010, the assessor is required to add a 10 percent penalty to the assessed value. Section 463 states that a 10 percent penalty "shall" be added to the assessment, which indicates that the penalty is mandatory in such circumstances. The fact that the assessor did not request a property statement for lien dates 2009 and 2010 will not render any assessment invalid.

Your letter also asks whether sections 5365 and 5367 apply to this situation. Section 5365 states that "[u]pon request of the assessor of the county in which an aircraft is habitually based, the owner shall file with the assessor a statement setting forth information about the aircraft that is necessary to ascertain the full value of the aircraft . . ." AH 577 states that assessors use these section 5365 statements "to gather information and to ultimately determine an assessable value for aircraft. Furthermore, if the assessor requires that these forms be completed by aircraft owners annually, they are often very useful in a timely determination of when owners have installed new avionics on an aircraft or when an aircraft has undergone an overhaul. (AH 577, *supra*, at p. 10.) Section 5367 then sets forth a penalty for failure to comply with section 5365: "If any person who is requested to file a statement pursuant to Section 5365 fails to file such statement by the time specified by the assessor, a penalty of 10 percent of the market value of the unreported aircraft shall be added to the value of the aircraft of such person which is placed on the current roll."

² Since you have not indicated otherwise, we are assuming the aircraft at issue is, in fact, a taxable aircraft as defined in section 5303 and not subject to exemption.

Since section 5365 only requires a statement to be filed upon request of the assessor, this section does not apply in this case because here, the assessor did not make such a request. Rather, section 441 applies because of the cost and nature of the aircraft, and section 463 requires a penalty for failure to comply with section 441. We note, however, that section 463 also provides for abatement of the penalty if the assessee timely files a claim and establishes to the satisfaction of the county board of equalization or the assessment appeals board that the failure to file the property statement within the time required by section 441 was due to reasonable cause and not due to willful neglect.

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. Therefore, they are not binding on any person or public entity.

Sincerely,

/s/ Sonya Yim

Sonya S. Yim
Tax Counsel III (Specialist)

SSY:yg

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cc: Mr. David Gau (MIC:63)
Mr. Dean Kinnee (MIC:64)
Mr. Todd Gilman (MIC:70)