Opinion No. CV 76-208—June 30, 1977

SUBJECT: TAX ASSESSMENT BY FIRE PROTECTION DISTRICT ON PROPERTY WITHIN UNDETACHED ANNEXED TERRITORY—Taxes assessed by fire protection district on property within territory annexed to a city, but not yet detached from fire protection district, were not erroneously or illegally assessed or collected within meaning of Revenue and Taxation Code section 5096, in absence of application of section 5096.1 regarding a finding by resolution of fire protection district or annexing agency that detachment proceedings were not commenced due to excusable neglect. Section 5096.1 applies to taxes which may have been collected prior to its enactment, subject to applicable statute of limitation. Section 5097 is the controlling statute of limitations pertaining to refunds under sections 5096 and 5096.1, which allow a claim for refund to be filed within four years after making the payment or within one year after mailing of notice to taxpayer as prescribed in section 2635, whichever is later. The fire protection district is responsible for the refund, not the annexing city, if the section 5096.1 resolution states that the fire protection district is the entity which erroneously received the tax revenues.

Requested by: COUNTY COUNSEL, SANTA CRUZ COUNTY

Opinion by: EVELLE J. YOUNGER, Attorney General
Derry L. Knight, Deputy

The Honorable Clair A. Carlson, County Counsel of the County of Santa Cruz, has requested an opinion from this office on questions which we have restated as follows:

1. In cases where a city or other agency failed to detach annexed territory from a fire protection district and the territory was subsequently detached pursuant to the District Reorganization Act of 1965, may any of the taxes paid for fire protection purposes during the interim period be refunded in the absence of a resolution adopted as provided in section 5096.1, Revenue and Taxation Code?

2. Once such a resolution has been passed, must any taxes collected on behalf of the fire protection district after annexation and prior to the time section 5096.1 was enacted (1974) be refunded?

3. If the answer to question No. 2 is yes, does the four year statute of limitations of section 5097 apply or does the statute of limitations commence to run only after a notice to the taxpayer has been served as provided in section 2635?

4. Does any or all of the obligation to refund taxes collected by the fire protection district after annexation and before detachment fall on the city or upon the district?

5. Does section 5096.1 create a new state-mandated charge for affected agencies in spite of the disclaimer thereof by the Legislature?

Our conclusions are as follows:

1. Taxes assessed by a fire protection district on property within territory annexed to a city, but not detached from the fire protection district, were not erroneously or illegally assessed or collected within the meaning of section 5096, in the absence of the application of section 5096.1, Revenue and Taxation Code. A finding by resolution of the fire protection district or the annexing agency that detachment proceedings were not commenced due to excusable neglect is a prerequisite to the applicability of section 5096.1.

2. Section 5096.1 applies to taxes which may have been collected prior to its enactment, subject to the applicable statute of limitation discussed in question No. 3.

3. Section 5097, Revenue and Taxation Code, is the controlling statute of limitations pertaining to refunds under sections 5096 and 5096.1, which section allows a claim to be filed within four years after making the payment or within one year after the mailing of notice as prescribed in section 2635, whichever is later.

4. Provided the 5096.1 resolution states that the fire protection district is the entity which erroneously received the tax revenues, the fire protection district is responsible for the refund, not the annexing city.

5. Since this office is currently involved in litigation concerning the effect of the Legislature's disclaimer of liability pursuant to section 2231, in accordance with the usual policy of this office, no opinion will therefore be given on that issue.

FACTS

In 1967 and 1972 parts of the Live Oak Fire Protection District (hereinafter LOFPD), territories within the Santa Cruz Port District, were annexed to the City of Santa Cruz. The 1967 annexation pertained to the "Lower Harbor" (Small Craft

Harbor) and was initiated by City of Santa Cruz Resolution No. 2302 on August 14, 1956, and completed in 1967. The 1972 annexation pertained to the "Upper Harbor" (Port District No. 257) and was initiated in January, 1971 by a petition of the Port District and concluded on May 25, 1972, by final resolution of the Council of the City of Santa Cruz.

With respect to the "Lower Harbor," a petition for withdrawal (or detachment) was approved pursuant to Government Code section 56270 (District Reorganization Act) by Resolution No. 111-FAFC dated June 21, 1967, of the Local Agency Formation Commission of the County of Santa Cruz (hereinafter LAFCO). The LAFCO resolution designated LOFPD the conducting district and directed its Board of Directors to initiate withdrawal proceedings in compliance with said resolution. Although "it shall be mandatory for the board of directors of the conducting district . . . to take proceedings for the change of organization" (Gov. Code § 56274; *Simi Valley Recreation & Park Dist.* v. *Local Agency Formation Com.*, 51 Cal. App. 3d 648, 681-683 (1975)), we are informed that no withdrawal proceedings were initiated with respect to the "Lower Harbor" until 1975, as discussed below.[1] Neither of the annexed areas were detached until 1975, as discussed below.

Since the portions of the LOFPD which were annexed to the City of Santa Cruz were not detached within two years after completion of the respective annexations, withdrawal was only possible through proceedings taken pursuant to the provisions of the District Reorganization Act of 1965 (Gov. Code § 56000 *et seq.*). Health & Saf. Code § 13952. Accordingly, by Santa Cruz Port District Resolution No. 75-9, dated June 23, 1975, proceedings were initiated under the District Reorganization Act of 1965, *supra*, to detach the two annexed areas from LOFPD. Detachment was completed on July 23, 1975, by the filing of a certificate of completion (Gov. Code § 56452) with the Secretary of State on behalf of LOFPD.

Subsequent to the annexations, LOFPD has continued to provide automatic first-in fire protection on a portion of the "Upper Harbor" and, if requested by the City, to the "Lower Harbor" on a mutual aid basis.[2]

It is the period of time that territories within LOFPD were annexed to the City of Santa Cruz, but not yet withdrawn or detached from LOFPD, that the questions discussed in this opinion relate.

ANALYSIS

1. Refund Without Resolution As Provided In Section 5096.1

Preliminarily, it is to be noted that a right to a refund of taxes is purely statutory, and taxes voluntarily paid[3] may not be recovered by the taxpayer in the

[1] Health and Safety Code section 13952 also authorized withdrawal by resolution of the City of Santa Cruz within one year after annexation proceedings were complete. Such procedure was not followed.

[2] Subsequent to the 1975 detachment, the LOFPD would appear to have no authority to furnish fire protection services to the detached territory. Gov. Code § 54915.

[3] See section 5136 *et seq.*, Revenue and Taxation Code regarding refund of taxes paid under protest. For purposes of this opinion we have assumed that the taxes were paid voluntarily and not under protest.

absence of a statute permitting the refund. *Southern Service Co., Ltd. v. Los Angeles,* 15 Cal. 2d 1, 7, 11 (1940); 12 Ops. Cal. Atty. Gen. 76, 77 (1948).

Section 5096 *et seq.*, Revenue and Taxation Code, [4]authorizes the refund of certain taxes voluntarily paid. Section 5096 (successor to Political Code section 3804), as it read with respect to taxes, which became due and payable prior to the lien date in 1977, provided as follows:

"On order of the board of supervisors, any taxes paid before or after delinquency shall be refunded if they were:

"(a) Paid more than once.

"(b) Erroneously or illegally collected.

"(c) Paid on an assessment in excess of the ration of assessed value to the full value of the property as provided in Section 401 by reason of the assessor's clerical error or excessive or improper assessments attributable to erroneous property information supplied by assessee.

"(d) Paid on an assessment of improvements when the improvements did not exist on the lien date.

"(e) Paid on an assessment in excess of the equalized value of the property as determined pursuant to Section 1611 or Section 1760 by the county board of equalization."[5]

Section 5096.1, which was enacted effective September 6, 1976 (Stats. 1974, ch. 707), and amended effective May 12, 1976 (Stats. 1976, ch. 707), and amended effective May 12, 1976 (Stats. 1976, ch. 164), is particularly pertinent to this opinion request, currently providing as follows:

"Except as hereinafter provided, taxes collected on behalf of a local agency from a taxpayer whose property has been annexed to a second local agency but was not detached from the first local agency due to error or inadvertence shall be deemed to have been erroneously collected for purposes of Section 5096 if the governing board of the first local agency makes a finding by resolution that detachment proceedings were not commenced due to excusable neglect. If the first local agency is a fire protection district the governing body of the annexing agency may make the finding by resolution that detachment proceedings were not commenced following annexation due to excusable neglect. For purposes of determining the amount of the refund the property shall be deemed to have been detached from the first local agency on the date annexation proceedings were completed.

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[4] Hereinafter all references are to the Revenue and Taxation Code unless otherwise specified.

[5] A new subparagraph (c) relating to taxes illegally assessed or levied was added by Statues 1976, chapter 499, operative with respect to taxes which became due and payable on or after the lien date in 1977. Section 5096, as quoted above, was otherwise unchanged in substance.

under authority of Government Code Section 56492 even though the annexed property had been detached from the special district."[6]

Section 5096.1 is quite clear regarding the requisites for its applicability, namely: (1) property was annexed to a second local agency (city) but not detached from the first local agency (LOFPD); *and* (2) the first local agency (LOFPD) *or* annexing agency (city) (since LOFPD is fire protection district) must make a finding by resolution that detachment proceedings were not commenced due to excusable neglect.

Absent both the failure to detach and resolution it is quite clear that section 5096.1 does not apply and, by definition, does not render the taxes paid to LOFPD pertaining to the annexed territory "erroneously collected for purposes of Section 5096." Accordingly, absent the requisite resolution, section 5096.1 has no impact.

Absent the application of section 5096.1, our research has revealed no authority suggesting that the taxes collected by a revenue district from taxpayers owning otherwise taxable property within an annexed (but not detached) territory should be treated as erroneously or illegally collected within the meaning of section 5096.[7] Although section 5096 has been interpreted as providing a remedy for taxes erroneously or illegally collected in a number of situations, none of the authorities reviewed appear to mandate relief under the present facts. *See generally, Sierra Investment Corp.* v. *County of Sacramento,* 252 Cal. App. 2d 339, 343-344 (1967); *Stenocord Corp.* v. *City etc. of San Francisco,* 2 Cal. 3d 984, 987 (1970); *City of Long Beach* v. *Bd. of Supervisors,* 50 Cal. 2d 674, 679 (1958). The following cases are representative of what the courts have found to be wrongful or erroneous assessments of property not subject to taxation.

In *Parr-Richmond Industrial Corp.* v. *Boyd,* 43 Cal. 2d 157 (1954); *Third & Broadway B. Co.* v. *Los Angeles Co.,* 220 Cal. 660 (1934); *Brenner* v. *Los Angeles,* 160 Cal. 72 (1911); *Parrott & Co.* v. *City & County of S.F.,* 131 Cal. App. 2d 332 (1955); and *Los Angeles* v. *Board of Supervisors,* 108 Cal. App. 655 (1930), the assessor assessed property which was wholly or partially exempt. In *Pacific Coast Co.* v. *Wells,* 134 Cal. 471 (1901), and *Associated Oil Co.* v. *County of Orange,* 4 Cal. App. 2d 5 (1935), the assessor, through error, assumed the existence of property which did not in fact exist. In *Star-Kist Foods, Inc.* v. *Quinn,* 54 Cal. 2d 507 (1960), it appeared from the assessor's admission that in valuing a possessory interest he had refused to deduct rental values, as required by a statute which the assessor erroneously thought to be unconstitutional.

Another instance of erroneous or illegal collection is where the tax rate has been fixed upon an assessed valuation that excludes from the levy a material portion

[6] Section 5096.1 was amended by Statutes 1976, chapter 164, effective May 11, 1976, by inserting the phrases "local agency" or "first local agency" in place of the phrase "special district" and "second local agency" or "agency" in place of the term "city". This amendment is of no significance for purposes of this opinion.

[7] Inasmuch as there was no detachment, the taxes likewise could not be said to have been "paid more than once." *Cf. Hayes* v. *County of Los Angeles,* 99 Cal. 74, 81 (1893); *Morgan Adams, Inc.* v. *Los Angeles,* 209 Cal. 696, 702-703 (1930).

of the property on the tax rolls. *Otis* v. *Los Angeles County,* 9 Cal. 2d 366, 377 (1937); *Redman* v. *Warden,* 92 Cal. App. 636 (1928). In *Stewart etc. Co.* v. *County of Alameda,* 142 Cal. 660 (1904), and *Kern River Co.* v. *County of Los Angeles,* 164 Cal. 751 (1913), the assessor included property which was physically outside the boundaries of the taxing district, and such taxes were found to have been wrongfully or illegally collected. See also *Signal Oil & Gas Co.* v. *Bradbury,* 183 Cal. App. 2d 40 (1960).

In none of the many reported cases reviewed applying section 5096 (or its predecessor, Political Code § 3804), however, has an erroneous assessment been found where the assessed property was, as here, in fact still within the boundaries of the assessing body. Compare letter to Hon. John B. Heinrich, County Counsel of Sacramento County, Sacramento, March 10, 1961, I.L. 61-14. In the case of LOFPD, although certain of its territory was annexed to the City of Santa Cruz, such annexed territory was nevertheless still within the boundaries of LOFPD until 1975 when the territory was ultimately detached. It is therefore the opinion of this office that the taxes assessed by LOFPD on property within territory annexed to the City of Santa Cruz, but not detached from LOFPD, were not erroneously or illegally assessed or collected within the meaning of section 5096, in the absence of the application of section 5096.1. This conclusion is particularly compelled in this instance since fire protection services were actually performed by LOFPD within the territory which had been annexed to the city. Accordingly, absent the resolution required in section 5096.1, no taxes may be refunded under the facts presented.

2. Application Of Section 5096.1 To Taxes Collected Prior To Its Enactment

Once a resolution has been passed pursuant to section 5096.1, inquiry has been made whether, subject to the applicable statute of limitation (see question No. 3, *infra*), taxes collected on behalf of LOFPD and prior to enactment of section 5096.1 in 1974, must be refunded. The question is essentially one of determining whether section 5096.1 should be given retrospective effect in its operation. "'A retrospective law is one that relates back to a previous transaction and gives it a different legal effect from that which it had under the law when it occurred.'" *Bear Valley Mut. Wat. Co.* v. *County of San Bernardino,* 242 Cal. App. 2d 68, 72 (1966). In light of the conclusion reached in question No. 1 above, the application of section 5096.1 to the period prior to its enactment would clearly be a "retrospective law."

Although legislative enactments are generally presumed to operate prospectively and not retroactively, (*Interinsurance Exchange* v. *Ohio Cas. Ins. Co.,* 58 Cal. 2d 142, 149 (1962); *DiGenova* v. *State Board of Education,* 57 Cal. 2d 167, 176 (1962)), this presumption does not defy rebuttal. The California Supreme Court has explicitly subordinated the presumption against the retroactive application of statutes to the transcendent canon of statutory construction that the intent of the Legislature be given effect. *Mannheim* v. *Superior Court,* 3 Cal. 3d 678, 686 (1970). The central inquiry, therefore, is whether the Legislature intended the enactment

of section 5096.1 to operate retroactively. See *In re Marriage of Bouquet,* 16 Cal. 3d 583, 587 (1976). *Mannheim* v. *Superior Court, supra,* is instructive regarding such statutory construction, providing in pertinent part as follows:

> "One such rule of construction counsels that 'statutes are not to be given a retrospective operation unless it is clearly made to appear that such was the legislative intent.' [Citations.] Yet that canon expressly subordinates its effect to the most fundamental rule of construction, namely that a statute must be interpreted so as to effectuate legislative intent. [Citations.] The supremacy of legislative intent over the rule of prospectivity has recently been reiterated in *In re Estrada* (1965) 63 Cal. 2d 740, where this court said of the presumption of prospectivity: 'That rule of construction, however, is not a straitjacket. Where the Legislature has not set forth in so many words what it intended, the rule of construction should not be followed blindly in complete disregard of factors that may give a clue to the legislative intent. It is to be applied only after, considering all pertinent factors, it is determined that it is impossible to ascertain the legislative intent.' (63 Cal. 2d at p. 746.)" *Mannheim* v. *Superior Court, supra,* 3 Cal. 3d 678, 686-687.
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> "Consistent with *Estrada's* mandate, we must address 'all pertinent factors' when attempting to divine the legislative purpose. A wide variety of factors may illuminate the legislative design, 'such as context, the object in view, the evils to be remedied, the history of the times and of legislation upon the same subject, public policy, and contemporaneous construction.' [Citations.]" *In re Marriage of Bouquet, supra,* 16 Cal. 3d 583, 587.

Looking to section 5096.1 itself, only the last sentence of the first paragraph appears to provide any insight into legislative intent. It is stated that: "For purposes of determining the amount of the refund the property shall be deemed to have been detached from the first local agency on the date annexation proceedings *were completed.*" (Emphasis added.) This language could be read as suggesting an intent that the statute operate retroactively. The facts constituting the necessity for the statute to be treated as an urgency statute, however, are quite explicit, and clearly reflect the Legislature's intent to have section 5096.1 operate retrospectively. The facts, as set forth in the Act, constituting the necessity that the statute be treated as an urgency statute, are as follows:

> "Because of the failure of special districts or cities to detach territory from special districts upon annexation of the territory to a city, taxpayers *have erroneously paid* property taxes to two public agencies. In order that *such taxes* may be refunded at the earliest possible date it is essential that this act take immediate effect." (Emphasis added.) Stats. 1974, ch. 707, § 3.

It is thus not enough to merely point to the presumption against retroactive application as a counterweight to the language in the urgency finding.

"As *Estrada* counseled, the presumption should operate only when, looking at all the pertinent factors, we fail to detect the legislative intent.[6] [n.6. In other words, the presumption against retroactivity is dispositive until such time as other evidence permits us to deduce the Legislature's intent, and is completely irrelevant thereafter.]" *In re Marriage of Bouquet, supra,* 16 Cal. 3d 583, 591.

The language of the Legislature clearly shows an intention to have the application of section 5096.1 retrospective. Accordingly, it is our opinion that section 5096.1 applies to taxes which may have been collected prior to its enactment, subject to the applicable statute of limitation discussed below.

3. Applicable Statute Of Limitations

Section 5097, which is part of Article 1 of chapter 5 of part 9, division 1 of the code (§ 5096 *et seq.*), provides in pertinent part as follows:

"No order for a refund under this article shall be made except on a claim:

"(a) Verified by the person who paid the tax, his guardian, executor, or administrator.

"(b) Filed within four years after making of the payment sought to be refunded or within one year after the mailing of notice as prescribed in section 2635, whichever is later.

"* * *"

Section 5097 deals specifically with the refund of taxes pursuant to sections 5096 and 5096.1, and has been found on numerous occasions to be the controlling statute of limitations pertaining to such matters. *McDougall* v. *County of Marin,* 208 Cal. App. 2d 65, 68-69, (1962); *Signal Oil & Gas Co.* v. *Bradbury, supra,* 183 Cal. App. 2d 40, 52-53; *Consolidated Liquidating Corp.* v. *Ford,* 131 Cal. App. 2d 576, 579 (1955). Accordingly, a claim for refund under sections 5096 and 5096.1 may be filed within four years after making the payment *or* within one year after the mailing of notice as prescribed in section 2635, *whichever is later.*

Section 2635 requires the tax collector to give notice to a taxpayer "where his records show that, with respect to particular property, taxes might have been: . . . . [e]rroneously or illegally collected. . . ."

If a resolution were made as authorized by section 5096.1, notice pursuant to section 2635 would appear to be mandated. In such an eventuality, the taxpayer would have one year from such notice to file a claim. In any event, the taxpayer has four years after making of the payment sought to be refunded to file a claim.

4. Entity Obligated To Refund Taxes

Your fourth inquiry is whether any or all of the obligation to refund taxes collected by LOFPD after annexation and before detachment fall upon the City of Santa Cruz or upon LOFPD.

While the board of supervisors makes the order that taxes shall be refunded (§ 5096), the refund order may "include county taxes and taxes collected by county officers for a city or revenue district." § 5099. LOFPD is a "revenue district." Section 122. Section 5101 then provides as follows:

> "Refunds ordered by the board of supervisors under this article in respect of county taxes shall be paid by warrant drawn upon the appropriate fund by the county auditor. *Refunds ordered in respect of revenue districts,* except chartered cities, *may be paid by a warrant drawn by the county auditor, upon such available funds, if any, as the revenue district may have on deposit in the county treasury, or in the event such funds are insufficient, then out of funds subsequently accruing to such revenue district and on deposit in the county treasury.* Refunds ordered in respect of chartered cities shall be paid in the manner provided for their payment in the charter or ordinances of the city. Neither any county nor its officers shall refund amounts on behalf of a revenue district from county funds." (Emphasis added.)

Section 5101 thus makes it clear that provided the 5096.1 resolution states that LOFPD is the entity which erroneously received the tax revenues, and not the City of Santa Cruz, LOFPD is responsible for the refunds.

5. A State-Mandated Cost In Spite Of Legislative Disclaimer?

Your final question is whether the newly enacted section 5096.1 in fact created a new state-mandated charge for affected agencies in spite of the disclaimer thereof by the Legislature. In other words, does the operation of section 5096.1 constitute a cost mandated by the state (§ 2207) requiring state reimbursement (§ 2231) notwithstanding the Legislature's statement contained in section 2 of the Act enacting section 5096.1 which states the following:

> "Notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to this section nor shall there be any appropriation made by this act because the duties, obligations or responsibilities imposed on local government by this act are minor in nature and will not cause any financial burden to local government." Stats. 1974, ch. 707, § 2.

This office is currently involved in litigation concerning that very issue. In *County of San Diego* v. *State of California,* San Diego Superior Court No. 369346, the County of San Diego has requested reimbursement for certain costs allegedly occasioned by legislation which contains similar disclaimer language. In accordance with the usual policy of this office, no opinion will therefore be given on that issue while the litigation is pending.