

State of California

Board of Equalization
Legal Division

Memorandum

To: Mr. (redacted)
(redacted)

Date: May 11, 1998

From: Daniel G. Nauman
Tax Counsel

Subject: Eligibility for Welfare Exemption When Articles of Incorporation Amended in Later Years

Your April 14, 1998 Memorandum to (redacted) the above subject has been assigned to me for response. You ask whether a claimant organization can qualify for the welfare exemption when it amends its deficient Articles of Incorporation and then back files for four or more years for the exemption. The short answer is, yes it can, although the process would be somewhat different from and more involved than that laid out in your Memorandum.

Late filing for the *exemption* is governed by Revenue & Taxation Code section 270. Section 214.01, to which you refer, provides for the late filing of compliant articles of incorporation or other documents containing the organization's irrevocable dedication clause, not the late filing of the claim itself.

Section 270 provides in part:

(a) With respect to property as to which the ... welfare exemption was available but for which a timely application for exemption was not filed:

(1) Ninety percent of any tax or penalty or interest thereon shall be canceled or refunded provided an appropriate application for exemption is filed on or before the lien date in the calendar year next succeeding the calendar year in which the exemption was not claimed by a timely application.

(2) If the application is filed after the date specified in paragraph (1), 85 percent of any tax or penalty or interest thereon shall be canceled or refunded provided an appropriate application for exemption is filed and relief is not authorized under Section 214.01 or 271.

(b) Notwithstanding the provisions of subdivision (a), any tax or penalty or interest thereon exceeding two hundred fifty dollars (\$250) in total amount shall be canceled or refunded provided it is imposed upon property entitled to relief under subdivision (a) for which an appropriate claim for exemption has been filed.

(c) With respect to property as to which the welfare exemption or veterans' organization exemption was available, all provisions of Section 254.5, other than the specified dates for the filing of affidavits and other acts, are applicable to this section.

Thus, if an organization is otherwise qualified for the exemption, it may file its application late and still receive the exemption for the tax year in question. If the application is filed by the lien date in the next calendar year, it may receive a ninety percent (90%) exemption. If the application is filed later than such lien date, an eighty five percent (85%) exemption is available.¹ There is no time limit in Section 270 for this 85% exemption.

The question, therefore, is how many years late may an organization otherwise qualifying for the exemption file its claims therefor? The answer to this question is, Section 270 of itself does not limit the number of years past for which an organization may file late claims for exemption. Revenue and Taxation Code section 5097, subd. (a)(2), however, limits relief in the form of refund of taxes: filing of a claim for refund is necessary within four years of the date of payment.

Revenue & Taxation Code section 272 provides:

Notwithstanding any other provision of law, whenever a valid application for exemption is filed pursuant to Section 270 or 271 and the assessor receives the board finding pursuant to Section 254.5 prior to the completion of the roll for the year for which the exemption is claimed, the assessor shall enroll the property so as to provide for the amount of exemption on the property's assessed value as provided by the applicable section.

When the application for exemption or the finding of the board for that application is received after completion of the roll. *the assessor shall initiate an action to correct the roll* by addition of the appropriate amount of exemption on the property. Upon notification by the assessor, the auditor shall make the appropriate adjustment on the roll.

¹ Note, however, notwithstanding the 90% and 85% formulas, pursuant to subdivision (b), the tax may not exceed \$250 once an appropriate claim for exemption has been filed.

Where authorized under the provisions of this article. the tax, penalty or interest thereon subject to cancellation or refund be made *shall be canceled pursuant to Article 1 (commencing with Section 4985) of Chapter 4 of Part 9, as if it had been levied or charged erroneously, and, if paid, a refund thereof shall be made pursuant to Article 1 (commencing with Section 5096) of Chapter 5 of Part 9*, as if it had been erroneously collected. The amount of tax, penalty or interest which is not canceled or refunded under this article with respect to property tax exemptions covered by this article and filed late may be paid in installments as provided in Chapter 3 (commencing with Section 4186) of Part 7. [Emphasis added.]

Article 1 (commencing with Section 4985) of Chapter 4 of Part 9 of the Revenue & Taxation Code ("Cancellations - Generally") contains no limitation on time for the cancellation of an erroneously levied tax. See section 4986, subd. (a) (2). Article 1 (commencing with Section 5096) of Chapter 5 of Part 9 ("Refunds Generally") does provide a time limitation (generally four years), but it is tied to the date of payment of the tax Section 5097, subd. (a)(2). Thus, where taxes have been paid, we have been of the opinion that while late claims for exemption may be filed, relief in the form of refund of taxes may only be granted, upon the filing of a claim or claims for refund, for the past four years. On the other hand, where taxes have not been paid, we have been of the opinion that late claims for exemption may be filed and relief in the form of cancellation of taxes, if appropriate, may be allowed if the claims are granted.

Turning to the second paragraph of Section 272, it provides that, upon the filing of the exemption and approval by the Board pursuant to Section 254.5, "the assessor shall initiate an action to correct the roll ... " Correction of the local roll is provided for in Article 1 (commencing with Section 4831) of Chapter 2 of Part 9 of the Code. There, subdivision (a) of Section 4831 provides that "any error resulting in incorrect entries on the roll may be corrected under this article. The correction may be made at any time after the roll is delivered to the auditor but, except as provided in subdivision (b), *shall be made within four years after the making of the assessment that is being corrected.* " Therefore, the argument can be made that, since the assessor is prohibited after four years by Section 4831 from doing what is instructed to be done in Section 272, the Legislature must have intended the application of this four year limitation to Section 272, which application would limit the availability of the cancellation provisions, supra, also to four years. The first paragraph of section 272 commences with the clause "notwithstanding any other provision of law," however, which clause just as logically could be applied to the limitation period of Section 4831. Moreover, the timing of the act of the assessor actually correcting the roll is not necessarily controllable by the taxpayer or related to when the taxpayer's activities occurred or even when it filed its claim for exemption. Therefore, there is not a logically compelling nexus between this limitation formula and anything directly applicable to the taxpayer which urges its application in this circumstance.

Thus, historically, we have not so construed section 4831 to limit the applicability of section 272 and its cancellation provisions.

In sum, in our opinion, there is no effective statute of limitation on the filing of such claims, other than the four year claim for refund limitation following the payment of the tax, if that is applicable.

Please note, however, whenever is the deadline for filing the claim for exemption, Section 214.01 may apply to any timely-filed claim, if the conditions set forth therein exist. That is, if the irrevocable dedication clause is not properly in place, the claimant would have until the next succeeding lien date to amend its governing document and still be considered to have filed a complete and timely claim. If the irrevocable dedication clause is not corrected until after the next succeeding lien date, the claim is incomplete until such time as the clause is corrected, at which time the claim is treated as a late-filed claim pursuant to section 270, subd. (b). See pages 26 and 27 of the AH 267, Welfare Exemption (1985), copies attached. See also Situation 9 on page 55 thereof.

If you have any questions, or would like to discuss any of the above, do not hesitate to call me.

DGN:jd

<h:/property/precednt/welexqa/1998/98012.dgn>

Attachments

cc: Mr. Dick Johnson, MIC:63
Mr. David Gau, MIC:64
Ms. Jennifer Willis, MIC:70