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Taxation

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Taxation

Taxation; assessment hearing—exchange of information

Revenue and Taxation Code §1608.7 (amended).

AB 609 (Kapiloff); STATS 1973, Ch 782

Section 1608.7 was added to the Revenue and Taxation Code in 1969 [CAL. STATS. 1969, c. 1306, §1, at 2639] to allow an applicant for an assessment reduction to initiate an exchange of information with the assessor relating to the method used to arrive at the assessed values. Once the taxpayer initiates the exchange, he is required to provide the assessor with information relating to the method he used to arrive at his opinion of assessed value. Chapter 782 has amended Section 1608.7 to allow *either* the taxpayer or the assessor to initiate the exchange of information relating to methods used to determine an opinion of value. However, the assessor may initiate such an exchange only in cases where the assessed value of the property involved exceeds \$25,000 without regard to any exemption.

See Generally:

- 1) CAL. REV. & TAX. CODE §408(6) (inspection of information and records relating to appraisal and assessment of property).
- 2) CAL. ADMIN. CODE tit. 18, §305.1 (procedures when requesting information from the other party).

Taxation; classification for inheritance and gift taxes

Revenue and Taxation Code §§13310, 15113 (amended).

SB 182 (Marler); STATS 1973, Ch 637

(Effective September 21, 1973)

Sections 13310 (relating to inheritance tax) and 15113 (relating to gift tax) of the Revenue and Taxation Code have been amended to provide that persons adopted when over the age of 18 years shall be deemed to retain their relationship to their natural parents and to be unrelated to their adoptive parents for the purpose of determining their classification as a transferee unless: (1) a period of five years has elapsed from the date of adoption; or (2) a stepparent-stepchild relationship existed between the decedent or donor and the transferee for at least five years prior to the date of death or gift. Upon occur-

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rence of either (1) or (2) above the adopted person shall be deemed to be the natural child of the adoptive parents and unrelated to their natural parents. Prior to amendment, when persons over the age of 18 years were adopted, the adoptive parents were deemed to be the natural parents only if the adoptive parents were the stepparents at the time of adoption and the stepparent-stepchild relationship existed for at least ten years prior to the date of death or gift.

See Generally:

- 1) *Williams v. Ward*, 15 Cal. App. 3d 381, 93 Cal. Rptr. 107 (1971).

Taxation; comparative market values as evidence at equalization hearings

Revenue and Taxation Code §1609.2 (amended).
AB 500 (Kapiloff); STATS 1973, Ch 1009

Section 1603 of the Revenue and Taxation Code requires the local board of equalization to meet annually to consider taxpayers' applications for a reduction in their assessment. Section 1609.2 states that these hearings need not be conducted according to the technical rules of evidence. This section was amended in 1972 to require the board to consider the market value of comparable properties in the vicinity, as established by the assessor [CAL. STATS. 1972, c. 1070], and to admit the evidence upon request of the party requesting reduction. This mandatory provision has now been deleted.

See Generally:

- 1) 4 PAC. L.J., REVIEW OF SELECTED 1972 CALIFORNIA LEGISLATION 643 (1973).

Taxation; equalization hearing

Revenue and Taxation Code §1624.4 (new).
AB 621 (Kapiloff); STATS 1973, Ch 608

Section 1601 *et seq.* of the Revenue and Taxation Code gives each taxpayer the privilege of protesting the assessment on his property and filing an application for a reduction of the assessment. The taxpayer can have the assessment reviewed by the board of supervisors sitting as a board of equalization or by the assessment appeals board. Section 1624.3 allows a party affected by the equalization proceeding, his agent, or the assessor the right to one preemptory challenge of a member of the assessment appeals board. Chapter 608 has added Section 1624.4 to the Revenue and Taxation Code to permit a party

affected, his agent, or the assessor to additionally challenge a member of the board for cause. The party objecting to the member of the appeals board must set forth the facts constituting the reason for disqualification and file the statement with the clerk of the assessment appeals board. The objecting party must also serve the statement on each party to the proceeding and to the board member alleged to be disqualified. The board member alleged to be disqualified has ten days from the filing of the objection or service of the statement, whichever is later, to file a consent that the action be tried before another member or to file a written answer admitting or denying the allegations and setting forth additional facts relevant to the question of his disqualification. A copy of the consent or answer shall be transmitted to each party who has appeared in the proceeding. If the parties fail to agree upon a member to determine the disqualification, the board of supervisors shall assign a member to hear and determine the question.

See Generally:

- 1) 3 WITKIN, SUMMARY OF CALIFORNIA LAW, *Taxation* §§75, 76 (7th ed. 1960), (Supp. 1969).
- 2) Early, *Local Equalization Practice in California*, 4 SANTA CLARA LAW. 147 (1964).

Taxation; escape assessments

Revenue and Taxation Code §4986.9 (new); §§456, 531.2, 532, 4831, 4834, 4836.5, 4837, 4840, 4986 (amended).
 AB 1172 (Kapiloff); STATS 1973, Ch 1190

Modifies the requirements pertaining to the imposition of a lien on real property resulting from penal or escape assessments; allows for the correction of assessor errors with respect to non-existent improvements on real property; allows the cancellation of illegal assessments resulting from taxes which have been entered on the secured roll as a lien on real property.

Article 3 (commencing with §501) and Article 4 (commencing with §531) of the Revenue and Taxation Code provide for penal and escape tax assessments on property which has not been assessed either as the result of the intentional or fraudulent concealment by the assessee or an improperly allowed exemption. Prior to the enactment of Chapter 1190, Section 531.2 provided that an escape assessment could only be levied against real property if: (1) the property was owned or controlled by the same person who owned or controlled it for the year in which it escaped assessment; or (2) the only transfers made of the property since the lien date for the year in which the

property escaped assessment were transfers by gift, descent, bequest, or devise. Section 532 provided that any penal assessment made pursuant to Article 3 (commencing with §501) could not become a lien on the real property if: (1) the real property has been transferred or conveyed to a bona fide purchaser for value prior to the date of assessment and the showing thereof on the secured roll with the date of entry specified thereon; or (2) such real property was subject to a lien of a bona fide encumbrance for value created and attaching prior to the date of such assessment and the showing thereof on the secured roll with the date of entry specified thereon. Sections 531.2 and 532 have been amended to create a new rule respecting the imposition of tax liens and to provide that this rule shall apply to both penal assessments and escape assessments. Section 531.2 now provides that if the real property has either been transferred to a bona fide purchaser for value or becomes subject to a lien of a bona fide encumbrance, within specified time limitations, then the assessment cannot create or impose a lien or charge on such real property. In order to fall within the purview of this rule, the encumbrance or purchase must have occurred subsequent to July 1 of the year of escape for the purposes of escape assessments, or subsequent to July 1 of the year in which the property should have been lawfully assessed for the purposes of penal assessments, and prior to the date of the assessment and the showing thereof on the secured roll. Any assessment which cannot be secured by a lien pursuant to Section 532.1 must be collected in either of the following manners. The assessor or tax collector may record with the county recorder of any county a certificate which must set forth the name of the person who would have been the assessee in the year in which the real property escaped assessment and the amount of any such assessments and penalties. From the date of the recording of this certificate, a lien shall be created and shall attach against any real property owned by such person in the county or counties in which the certificate was recorded, and the lien shall have the force, effect, and priority of a judgment lien. Alternatively, when in the opinion of the assessor there is no real property sufficient to secure the taxes levied on the escape assessment, said escape assessment shall be entered on the unsecured roll in the name of the person who would have been the assessee in the year in which it escaped assessment and shall thereafter be treated and collected like other taxes on the unsecured roll. Under either method, the tax rate applicable shall be the secured tax rate of the year in which the property escaped assessment.

Section 4831 provides for the correction of errors committed by the assessor, other than those involving the exercise of judgment, concerning the value of real property. Prior to amendment, only those errors which were ascertained from the roll or any papers in the assessor's office could be corrected. Now, if it can be determined what the assessor intended, or what should have been assessed, from an inspection of the property, then the error may be corrected. This section as amended also applies in the case of the assessment of improvements or personal property which are subsequently determined not to have existed on the lien date, notwithstanding the fact that some improvements or personal property were in existence and were assessed relative to a particular parcel or account. Section 4840 provides for the cancellation of a lien on real property which has been illegally imposed. Prior to amendment, this section provided for cancellation only when the lien resulted from the assessment of taxes on personal property or possessory interests. This section now allows the cancellation of illegally imposed liens which result from any taxes which have been entered on the secured roll as a lien on real property.

Taxation; escape assessments on tangible personal business property

Revenue and Taxation Code §469 (amended).
AB 710 (Kapiloff); STATS 1973, Ch 678

Section 469 of the Revenue and Taxation Code requires the assessor to audit at least once every four years the books of any business with locally assessable tangible personal business property with a full cash value of \$50,000 or more. Section 531.4 authorizes the assessor to levy an escape assessment on tangible property used in a trade or business which was not accurately appraised due to an error in reporting by the assessee. The escape assessment is equal to the amount of property not assessed at the rate it would have been assessed if properly reported.

Chapter 678 has amended Section 469 to provide that when the county board of equalization or the assessment appeals board has considered a taxpayer's application for a reduction in their assessment, such equalization shall not preclude the assessor from subsequently conducting an audit and levying an escape assessment. However, no escape assessment can be levied on the portion of an assessment that was the subject of an equalization hearing.

See Generally:

- 1) *Bauer-Schweitzer Malting Co. v. City and County of San Francisco*, 8 Cal. 3d 942, 506 P.2d 1019, 106 Cal. Rptr. 643 (1973).
- 2) 3 WITKIN, SUMMARY OF CALIFORNIA LAW, *Taxation* §71(b) (7th ed. 1960), (Supp. 1969) (procedures for an escape assessment).
- 3) Ehrman, *Administrative Appeal and Judicial Review of Property Tax Assessments in California—The New Look*, 22 HAST. L.J. 1 (1971).

Taxation; exemption from attachment of liens

Government Code §§25210.77a, 25210.77d, 25210.77f, 25828, 25831, 25845, 38744, 50247 (amended); Health and Safety Code §§5473.5, 5473.8, 5474.5, 5474.6, 14912 (amended); Water Code §§31701.5, 37212, 55501, 55501.5, 55507, 72100 (amended). AB 1342 (Knox); STATS 1973, Ch 861

Sections 25210.77a, 25210.77d, 25210.77f, and 38744 of the Government Code and Sections 31701.5, 37212, 55501, 55501.5, and 72100 of the Water Code relate to the assessment of charges against property owners by the city or county for water services. Sections 25828 and 25831 of the Government Code, Sections 5473.5, 5473.8, 5474.5, and 5474.6 of the Health and Safety Code, and Section 55507 of the Water Code relate to sewer and waste disposal services and city and county assessments therefor. Sections 25845 and 50247 of the Government Code and Section 14912 of the Health and Safety Code relate to a city's or county's abatement of a nuisance and the assessment against property owners for the costs incurred. All of the above provisions also indicate that such assessments may be levied against and collected from property owners in the same manner as *ad valorem* property taxes are levied and collected, which includes the establishment of a lien against the real property of the assessee to secure payment of such taxes [CAL. REV. & TAX. CODE §2187].

Chapter 861 has amended the above listed sections to exempt from the above collection and enforcement provisions any real property to which a lien would attach or to which such charges relate if it has been transferred or conveyed to a bona fide purchaser for value or if it has become subject to a lien of a bona fide encumbrancer for value prior to the date when the first installment of such taxes would become delinquent. Charges relating to the above real properties shall be transferred to the unsecured roll for collection.

See Generally:

- 1) CAL. REV. & TAX. CODE ch. 4 (commencing with §2901).
- 2) 3 WITKIN, SUMMARY OF CALIFORNIA LAW, *Taxation* §88 (7th ed. 1960), (Supp. 1969) (unsecured tax roll).

Taxation; joint assessment of lessee and lessor

Revenue and Taxation Code §405 (amended).
AB 709 (Kapiloff); STATS 1973, Ch 786

Section 405 of the Revenue and Taxation Code provides that an assessor shall assess all taxable property in his county (except state-assessed property as defined in CAL. REV. & TAX. CODE §108) to the persons owning, claiming, possessing, or controlling it on the lien date. This section has been amended to provide that taxable property on the unsecured roll [CAL. REV. & TAX. CODE §109] which is subject to a lease may be assessed jointly to both the lessee and lessor of the property. Notices of assessment and tax bills must be mailed to both the lessee and lessor at their latest known addresses.

See Generally:

- 1) Keesling, *Property Taxation of Leases and Other Limited Interests*, 47 CAL. L. REV. 470 (1959).

Taxation; liability of innocent spouse on joint return

Revenue and Taxation Code §18402.9 (amended).
SB 21 (Grunsky); STATS 1973, Ch 52
(Effective May 23, 1973)

Section 18402.9 of the Revenue and Taxation Code was enacted in 1971 [A.B. 1, CAL. STATS. 1971, c. 1, §121, at 5005] to relieve an innocent spouse from liability, under specified circumstances, for any tax, interest, or penalty caused by the other spouse's omission of gross income on a joint return. The section was made applicable to tax years beginning after December 31, 1970. Chapter 52 has amended Section 18402.9 to make it applicable to all taxable years that have not been closed by a statute of limitations, *res judicata*, or other limitation. Thus potential liability of an innocent spouse for years prior to 1971 would be canceled by the retroactive effect of the amendment.

COMMENT

Since Chapter 52 is in effect canceling a tax liability legally owed by an innocent spouse for prior years, the courts may construe such cancellation as a gift of public money. Article XIII, Section 25 of the California Constitution states in part, "The Legislature shall have no power . . . to make any gift or authorize the making of any gift, of any public money or thing of value to any individual . . . what-

ever.” The California Supreme Court has said, “[W]here a tax has become due, a subsequent act of the Legislature reducing the tax by reason of a change in the exemptions, tax rates, or . . . in any way, is held to be a gift of state monies prohibited by . . . the Constitution. . . . Retroactive effect of such legislation is therefore prohibited.” [Estate of Skinner, 47 Cal. 2d 290, 296, 303 P.2d 745, 748 (1956) (emphasis added)]. However, “funds directed toward a public purpose are not within the constitutional prohibition against gift of public funds merely because of incidental benefits to individuals.” [Central Basin Muni. Water Dist. v. Fossette, 235 Cal. App. 2d 689, 702, 45 Cal. Rptr. 651, 658 (1965).]. The legislature has attempted to show a public purpose for the amendment to Section 18402.9 by declaring that its purpose was to eliminate a grave injustice in the tax laws [S.B. 21, CAL. STATS. 1973, c. 53, §2]. The courts allow the legislature large discretion in determining what is for the public good and what are public purposes [Central Basin Muni. Water Dist. v. Fossette, 235 Cal. App. 2d at 702, 45 Cal. Rptr. at 659]. If the court should find no public purpose in canceling the tax liability of an innocent spouse, the amendment would clearly be held unconstitutional.

See Generally:

- 1) Central Basin Muni. Water Dist. v. Fossette, 235 Cal. App. 2d 689, 45 Cal. Rptr. 651 (1965).
- 2) INT. REV. CODE OF 1954, §6013(c) (similar federal provision).
- 3) 34 OPS. ATT’Y GEN. 166 (1959) (a county may refuse to cancel property taxes notwithstanding authority to do so from the legislature if the cancellation involves a constitutionally prohibited gift).
- 4) 30 OPS. ATT’Y GEN. 63 (1957) (insurance provided for students’ participation in school activities is not a gift of public funds).