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IN THE SUPREME COURT OF CALIFORNIA

WILLIAMS & FICKETT,

Plaintiff, Appellant, and Respondent

vs.

COUNTY OF FRESNO,

Defendant, Respondent, and Petitioner;

PETITION FOR REVIEW

From the Opinion of the Court of Appeal,
Fifth Appellate District (Case No. F068652)

Appeal from Order of the Superior Court,
State of California, County of Fresno

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COUNTY OF FRESNO

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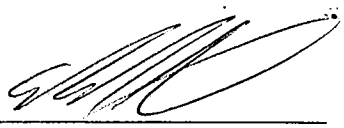
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS
(Cal. Rules of Court, Rule 8.208)

There are no interested entities or persons to list in this certificate (Cal. Rules of Court, Rule 8.208(e)(3)).

Dated: February 17, 2015



Michael R. Linden
Deputy County Counsel
Attorney for Petitioner

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IN THE
SUPREME COURT OF CALIFORNIA

WILLIAMS & FICKETT,

Plaintiff, Appellant, and Respondent

vs.

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Defendant, Respondent, and Petitioner;

PETITION FOR REVIEW

ISSUES PRESENTED

1. Is a taxpayer required to exhaust the remedy of applying to the county board of equalization if the issue does not involve valuation of property?

2. May a taxpayer who files an application for changed assessment with a county board of equalization wait until longer than the period under Revenue and Taxation Code § 5097(a)(3), after the conclusion of that proceeding, before paying the property taxes and seeking a refund?

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INTRODUCTION: WHY REVIEW SHOULD BE GRANTED

This action presents two significant issues of statewide importance with respect to property taxes. The first issue concerns a taxpayer's obligation to exhaust administrative remedies. In its decision, the court of appeal, created an exception contrary to the Legislature's express exhaustion requirement. The second issue concerns limitation periods for tax refund claims. Here, the Court of Appeal ignored a statutory exception to the general rule of requiring tax refund claims to be filed within four years of payment.

As for the exhaustion issue, this action concerns property tax assessments on pieces of farm equipment. Those assessments were made between 1997 and 2001. Respondent alleges that due to prior sales or trade-ins, it did not own the equipment on the lien dates. With "nonvaluation issues," unless there is a stipulation with the assessor, a taxpayer is required to apply to the county board of equalization for assessment reduction. Respondent did not file any such application until June 16, 2007, several years past the sixty-day limitation period. On this record, the trial court sustained Petitioner's demurrer. However, the Court of Appeal reversed, reasoning that because Respondent allegedly did not own the property, it could not make a valid certification under subdivision (f) Revenue & Taxation Code § 1603 for an application for reduction. This

is a clear error of law because a taxpayer applying for a reduction need only have an economic interest in the outcome. As such, review should be granted.

The second issue concerns the limitation periods set forth in Revenue & Taxation Code § 5097. Because Appellant filed applications for changed assessment on June 16, 2007, Petitioner argued that the limitations period set forth in subdivision (a)(3)(A)(ii) of this section required Respondent to file a tax refund claim no later than June 16, 2010. However, the court of appeal held that Respondent never had any obligation to seek a tax refund until after the subject taxes were paid in 2011 and 2012. This decision effectively reads the exceptions to the general rule out of Section 5097, which undermines the intent of the statute. As such, review should be granted.

BACKGROUND

On February 13, 2013, Respondent brought suit against Petitioner, seeking a refund of personal property taxes that were assessed in 1997 through 2001, and eventually paid in 2011 and 2012. On April 26, 2013, Petitioner demurred to Respondent's amended complaint, arguing that Respondent failed to properly exhaust its administrative remedy of filing a timely application of changed assessment with the County Assessment Appeals Board (hereinafter "AAB"), as required by Revenue & Taxation

Code § 5142 (hereinafter "Section 5142"), subd. (c). Petitioner also argued that since Respondent made such filings (albeit untimely), their action is barred by the one-year limitations period set forth in Revenue & Taxation Code § 5097 (hereinafter "Section 5097"), subdivision (a)(3)(A)(ii). On September 13, 2013, the trial court sustained Petitioner's demurrer without leave to amend, based on Respondent's failure to exhaust its administrative remedy.

On appeal, Respondent argued in its Reply brief that it could not have legitimately filed applications for reduction in assessment because Revenue & Taxation Code § 1603 (hereinafter "Section 1603"), subd. (f) requires that anyone who files such an application "certify under penalty of perjury that he or she is 'the owner of the property or the person affected (i.e., a person having a direct economic interest in the payment of the taxes on that property ...)," or an agent or attorney for the applicant. Relying on this previously-unmade argument, on January 9, 2015, the Court of Appeal reversed the trial court's decision. *Williams & Fickett v. County of Fresno* (2015) 232 Cal.App.4th 1250. In doing so, the court of appeal made the following analysis:

> "However, unlike the situation in *Steinhart* [*v. County of Los Angeles* (2010) 47 Cal.4th 1298], appellant claims it does not own the assessed property. An application for a reduction in an assessment requires the applicant to declare or certify, under penalty of perjury, that the applicant is the owner of the property or has a direct economic interest in the payment of the taxes on the property.

(§ 1603, subd. (f).) Appellant, not being the owner of the subject property, cannot make such a declaration. Therefore, appellant cannot file a valid application for reduction." *Id.*, at 234.

With respect to the statute of limitations set forth in subdivision (a)(3)(A)(ii) of Section 5097, the court of appeal made the following analysis in determining that this limitation period was not applicable:

> "First, appellant did not file an application for an assessment reduction under section 1603. More importantly, a refund claim cannot be made until after the disputed taxes have been paid. Any 'claim filed before the payment of the disputed taxes is "inherently flawed as untimely."' (*JPMorgan Chase Bank, N.A. v. City and County of San Francisco* (2009) 174 Cal.App.4th 1201, 1210.) Therefore, appellant could not have filed its refund claims in June 2010. Rather, those claims were not viable until the taxes were paid in 2011 and 2012. Thus, appellant's refund claims filed in May and November 2012 were timely." *Id.*

On January 21, 2015, Petitioner filed a Petition for Rehearing in the court of appeal. However, this petition was denied.

LEGAL DISCUSSION

A. A Person Need Only Have an Economic Interest in the Outcome to Apply for a Changed Assessment

In reversing the trial court's ruling, the court concluded that Respondent could not have made a valid application to the AAB because it allegedly did not own the subject property at the time of the lien. As discussed below, the statutory provision relied upon by the court of appeal does not stand for this proposition. Since the Respondent partners stood to

be affected by the county assessor's determinations, they had the statutory authority make a valid AAB application.

Section 5142, subdivision (b), requires taxpayers to apply for assessment reduction "in order to exhaust administrative remedies." While the parties can stipulate that the issues in dispute do not involve questions of valuation, "[n]othing shall be construed to deprive the county board of equalization of jurisdiction over nonvaluation issues in the absence of a contrary stipulation.'" *Rev. & Tax. Code* § 5142, subd. (c). In its opinion, the court of appeal, citing this Court's decision in *Steinhart v. County of Los Angeles* (2010) 47 Cal.4th 1298, recognized that "the absence of a valuation issue does not necessarily eliminate the need for the taxpayer to apply for an assessment reduction before pursuing a tax refund claim." *Williams & Fickett v. County of Fresno*, *supra*, 232 Cal.App.4th at 233.

However, the Court of Appeal then cited subdivision (f) of Section 1603, which provides the language for a certification on an AAB application. Replying on this subdivision, the court held that "Appellant, not being the owner of the subject property, cannot make" a supporting declaration, and thus "cannot file a valid application for reduction." *Id.*, at 234. This conclusion is in error because there is no ownership requirement. A person or entity applying for a reduction need only have an economic interest in the outcome.

Under subdivision (a) of Section 1603, "(a) reduction in an assessment on the local roll shall not be made unless *the party affected* or his or her agent makes and files with the county board a verified, written application showing the facts claimed to require the reduction and the applicant's opinion of the full value of the property." (Italics added). Subdivision (f) of this section states that an AAB application is required to be signed under penalty of perjury by "(1) the owner of the property or the person affected (i.e., a person having a direct economic interest in the payment of the taxes on that property – 'The Applicant,' ..." Under the State Board of Equalization's regulations for AAB proceedings, 18 C.C.R. § 301(g) (also known as "Property Tax Rule 301(g)"):

> "Person affected" or "party affected" is any person or entity having a *direct economic interest in the payment of property taxes* on the property for the valuation date *that is the subject of the proceedings under this subchapter*, including the property owner, a lessee required by the property lease to pay the property taxes, and a property owner who acquires an ownership interest after the lien date if the new owner is also responsible for payment of property taxes for the lien date that is the subject of the application. (Italics added).

There is no indication that the Legislature, or the State Board of Equalization, meant to impose an actual ownership requirement for those persons or entities making AAB applications. By use of the words "the owner of the property or the person affected," the Legislature contemplated a situation where a party affected by an assessor's tax determination, but

not necessarily the owner of the subject property. The State Board of Equalization made that distinction explicit in its regulations. Here, Respondent was "affected," as the partners were being charged with the obligation of paying property taxes on the subject farm equipment. See *El Tejon Cattle Co. v. County of San Diego* (1967) 252 Cal.App.2d 449, 456-457. In fact, one function of the AAB is to determine the classification of property, which "may result in the property so classified being exempt from property taxation." *18 C.C.R. § 302(a)(4).* For all of these reasons, the Court of Appeal's interpretation is at odds with the plain language of Section 1603.

The Court of Appeal's decision is especially problematic because it judicially creates an exception to the exhaustion requirement that is not found in Section 5142, or any other statute. Article 13, section 32 of the California Constitution provides that actions to recover tax payments may only be maintained "in such manner as may be provided by the Legislature." In *Steinhart v. County of Los Angeles*, *supra*, this Court recognized the Legislature's express intent in "confirming 'the requirement' that a taxpayer apply for assessment reduction 'in order to exhaust administrative remedies,' ..." *Steinhart v. County of Los Angeles*, *supra*, 47 Cal.4th at 1312, quoting *Rev. & Tax. Code* § 5142, subd. (b). The Legislature could have made an exception for the ownership issues that

Respondent raised; however, the Legislature did not do so, with intent that must be presumed. See *DiCampli-Mintz v. County of Santa Clara* (2012) 55 Cal.4th 983, 992. Therefore, the Court of Appeal had no authority to create an exception to the exhaustion requirement where the Legislature chose not do so.

From the standpoint of public policy, the Court of Appeal's decision undermines the goal of resolution of tax disputes at the administrative level, without the necessity of court intervention. The decision will likely encourage taxpayers to simply allege non-ownership of the subject property in order to avoid the requirement of exhausting before the AAB. There is no indication that this was the Legislature's intent when Section 5142 was amended in 1993. Therefore, this Court should grant the instant petition, and review the Court of Appeal's decision

B. Allowing a Taxpayer to Wait Until After the Period in Section 5097(a)(3) Before Paying Taxes Defeats the Purpose of That Section

With respect to the limitation periods contained in Section 5097, the Court of Appeal's decision allows a tax claimant to wait an indeterminate amount of time before any limitations period is triggered. This holding is contrary to the plain language of the statute, and in fact defeats the entire purpose of having a statute of limitations.

Subdivision (a)(3)(A)(ii) of Section 5097 provides that if a claimant previously filed "an application for equalization of an assessment" with the AAB (and the application did not state that it was also intended as a claim for refund), if the AAB "fails to hear evidence and fails to make a final determination on the application for reduction in assessment or on the application for equalization of an escape assessment of the property," the time limit is one year "(a)fter the expiration of the time period specified in subdivision (c) of Section 1604." However, the Court of Appeal, citing *JPMorgan Chase Bank, N.A. v. City and County of San Francisco* (2009) 174 Cal.App.4th 1201, held that because "a refund claim cannot be made until after the disputed taxes have been paid," no limitations period was triggered until Appellants paid their taxes in 2011-2012. *Williams & Fickett v. County of Fresno*, *supra*, 232 Cal.App.4th at 234. As discussed below, this opinion is problematic from both a legal perspective and a policy perspective

From the standpoint of statutory construction, the court of appeal's opinion is in error. The Legislature, by the plain and unambiguous meaning of subdivision (a)(3)(A), and the prefatory clause of subdivision (a)(2) ("Except as provided in paragraph (3) or (4), ..."), imposed a requirement that if a taxpayer files with the AAB, and then wants to file a claim for refund, the taxpayer is required to pay the taxes within the

specified period in order file a timely refund claim. By relying on the general proposition that claims filed before payment are "inherently flawed as untimely," the court of appeal improperly read out of Section 5097 the prefatory clause of subdivision (a)(2). While Section 5097 provides a four-year period as a general rule, the exceptions are clearly stated, and "[a] court may not, 'under the guise of construction, rewrite the law or give the words an effect different from the plain and direct import of the terms used.'" *DiCampli-Mintz v. County of Santa Clara, supra,* 55 Cal.4th at 992, quoting *California Fed. Savings & Loan Assn. v. City of Los Angeles* (1995) 11 Cal.4th 342, 349. As such, the decision should be reviewed.

The Court of Appeal's opinion is also problematic from the standpoint of public policy. On the argument of Respondent in this case, and surely other taxpayers to follow, there will be no need for any timing between a filing with the AAB, and a later claim for refund. These two events can now be separated by an indefinite period, subjecting counties to an extraordinary amount of uncertainty, both fiscally and with respect to litigation. With the passage of time, information is lost, the memories of witnesses fade, and sometimes the witnesses are not available at all. This is the very reason statutes of limitations exist. Therefore, this Court should grant this petition so it can examine the policy implications of the Court of Appeal's decision.

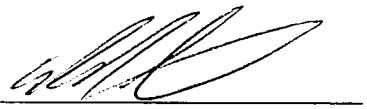
CONCLUSION

Based on the foregoing, Petitioner respectfully requests that this Court grant this petition and review the decision issued by the Court of Appeal.

Dated: February 17, 2015

Respectfully submitted,

DANIEL C. CEDERBORG
FRESNO COUNTY COUNSEL

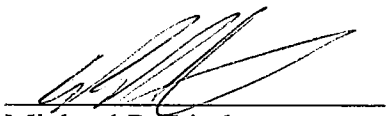
By: 

Michael R. Linden
Deputy County Counsel
Attorneys for Petitioner

CERTIFICATE REGARDING LENGTH OF BRIEF
(Rule 8.204(c)(1))

I, Michael R. Linden, Deputy County Counsel, certify under penalty of perjury that, according to the computer program on which this brief was produced, this brief contains approximately 3,161 words.

Executed on **February 17, 2015**, at Fresno, California.



Michael R. Linden

PROOF OF SERVICE

I, Mary Lou Hinojosa, declare that I am a citizen of the United States of America and a resident of the County of Fresno, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 2220 Tulare Street, Suite 500, Fresno, California 93721-2128.

On February 17, 2015, I served a copy of the attached

PETITION FOR REVIEW

by first-class mail on the following interested parties in said action:

Lynne Thaxter Brown, Esq.
Ronald A. Henderson, Esq.
Dowling Aaron Incorporated
8080 N. Palm Avenue, 3rd Floor
Fresno, CA 93729

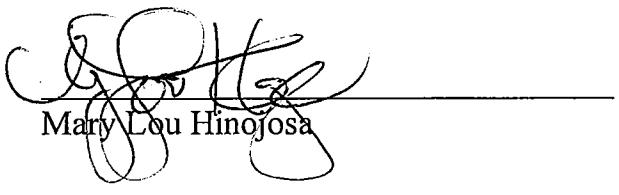
Fresno County Superior Court
Appeals Department
100 Van Ness Avenue
Fresno, CA 93724

Fifth District Court of Appeal
2424 Ventura Street
Fresno, CA 93721

by placing the document listed above for mailing in the United States mail at Fresno, California in accordance with my employer's ordinary practice for collection and processing of mail, and addressed as set forth above.

I hereby certify under penalty of perjury under the law of the State of California that the above is a true and correct statement.

Executed at Fresno, California on February 17, 2015.



Mary Lou Hinojosa

ATTACHMENT COURT OF APPEAL OPINION

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

WILLIAMS & FICKETT, Plaintiff and Appellant, v. COUNTY OF FRESNO, Defendant and Respondent.	F068652 (Super. Ct. No. 13CECG00461) **OPINION**

APPEAL from a judgment of the Superior Court of Fresno County. Donald S. Black, Judge.

Dowling Aaron Incorporated, Lynne Thaxter Brown and Ronald A. Henderson for Plaintiff and Appellant.

Daniel C. Cederborg, County Counsel, and Michael R. Linden, Deputy County Counsel, for Defendant and Respondent.

-ooOoo-

Appellant Williams & Fickett, a general partnership, challenges the judgment dismissing its complaint against respondent County of Fresno (County) for a refund of personal property taxes. The trial court sustained the County's demurrer to the complaint without leave to amend on the ground that appellant did not exhaust its administrative remedies before filing suit. The trial court ruled that appellant was required to first file

an application for a reduction in assessment with the Fresno County Assessment Appeals Board (Assessment Appeals Board) under Revenue and Taxation Code[1] section 1603.

Appellant contends it did not own the assessed property on the applicable lien dates and thus the assessments were "nullities." Therefore, appellant argues, it was not required to file an application for assessment reduction. Appellant further asserts that its complaint is not barred by the statute of limitations because its refund claims were filed within four years of its having paid the taxes as required by section 5097.

Appellant is correct. Because appellant's refund claims are based on not owning the property in question, it was not required to file an assessment reduction application. Further, appellant's refund claims were timely filed. Accordingly, the judgment dismissing the complaint will be reversed.

BACKGROUND

Since the appeal is from the sustaining of a demurrer without leave to amend, the facts are derived from the complaint. This court must give the complaint a reasonable interpretation and assume the truth of all material facts properly pleaded. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966-967.)

The Fresno County Assessor (Assessor) conducted several audits of appellant regarding personal property for the tax roll years 1994 through 2001. These audits resulted in the assessment of additional taxes for various pieces of farm equipment.

In June 2007, appellant attempted to file applications for changed assessment with the County to cancel the assessment under section 4986 on the ground that appellant did not own that personal property. The Assessment Appeals Board returned the applications to appellant. The Assessment Appeals Board explained that the applications were not timely filed and therefore would not be considered.

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1 All further statutory references are to the Revenue and Taxation Code.

In November 2010, appellant filed a complaint for declaratory relief against the County, the Assessment Appeals Board and the Assessor seeking a declaration that the subject properties did not exist and therefore the assessments should be cancelled. The trial court sustained the defendants' demurrer to that complaint on the ground that appellant was seeking to enjoin the collection of property taxes in violation of article XIII, section 32 of the California Constitution and Revenue and Taxation Code section 4807. The court concluded appellant was required to first pay the tax and then seek a refund under section 5096 et seq.

By checks written in May 2011, February 2012 and June 2012, appellant paid the disputed taxes in full along with penalties and interest. Thereafter, in May 2012 and November 2012, appellant filed claims for refund of those taxes. The claims for refund were rejected on November 27, 2012.

In February 2013, appellant filed the underlying action for refund of personal property taxes. Appellant alleged that it did not file an application for a reduction in the assessment under section 1603, subdivision (a).

The County demurred. The County asserted that the complaint failed to state a cause of action because (1) appellant did not exhaust its administrative remedies as required by section 1603, subdivision (a); and (2) the action was barred by the one-year statute of limitations set forth in section 5097, subdivision (a)(3)(A)(ii).

The trial court sustained the demurrer without leave to amend. The trial court concluded that appellant was required to file an application for reduction of the assessment with the Assessment Appeals Board under section 1603, subdivision (a). Since appellant did not do so, the court ruled that the action was barred.

DISCUSSION

1. *Appellant was not required to apply for an assessment reduction.*

Section 1603, subdivision (a), provides that "[a] reduction in an assessment on the local roll shall not be made unless the party affected ... makes and files with the county

board a verified, written application showing the facts claimed to require the reduction and the applicant's opinion of the full value of the property." The "county board" is the county board of supervisors meeting as a county board of equalization or an assessment appeals board. (§ 1601, subd. (a).)

Generally, filing an assessment reduction application with the county board is the first step in a three-step process for handling challenges to property tax assessments and refund requests. (*Steinhart v. County of Los Angeles* (2010) 47 Cal.4th 1298, 1307 (*Steinhart*).) The second step is filing an administrative claim for refund under section 5097 and the third and final step is filing a superior court action to recover the tax under section 5140. (*Steinhart, supra,* at p. 1307.)

Ordinarily, if a taxpayer fails to apply to the county board for an assessment reduction under section 1603, the taxpayer is barred from pursuing a property tax refund action in the superior court, even if the taxpayer has filed a refund claim with the board of supervisors. (*Steinhart, supra,* 47 Cal.4th at p. 1308.) In other words, the taxpayer must exhaust all available administrative remedies before resorting to the courts. (*Ibid.*) This is because disputes regarding the valuation of property are within the special competence of the county board. (*Stenocord Corp. v. City etc. of San Francisco* (1970) 2 Cal.3d 984, 988 (*Stenocord*).) Thus, if the dispute is submitted to the county board, the need for the taxpayer to file a superior court action might be obviated. (*Ibid.*)

However, the California Supreme Court has recognized an exception to this exhaustion requirement. "[W]here the taxpayer attacks the assessment as void because he does not own the property on which the tax demand was made, there is no question of valuation which must be presented first to the board of equalization for correction as a condition for judicial relief." (*Parr-Richmond Industrial Corp. v. Boyd* (1954) 43 Cal.2d 157, 165.) The assessment is a nullity as a matter of law. (*Stenocord, supra,* 2 Cal.3d at p. 987.) When there is no question of valuation that the local board of equalization has special competence to decide, no dispute as to the facts and no possibility that action by

the board might avoid the necessity of deciding the issue in the courts, recourse to the local board is not required. (*Star-Kist Foods, Inc. v. Quinn* (1960) 54 Cal.2d 507, 511.) Examples of such assessment nullities include when "the property is tax exempt, nonexistent or outside the jurisdiction [citations], and no factual questions exist regarding the valuation of the property which, upon review by the board of equalization, might be resolved in the taxpayer's favor, thereby making further litigation unnecessary [citations]." (*Stenocord, supra,* 2 Cal.3d at p. 987.)

Appellant contends that it did not own the property at issue and therefore the assessment was a nullity. Accordingly, appellant asserts, it was not required to apply to the Assessment Appeals Board for an assessment reduction under section 1603, subdivision (a).

The County responds that the assessments at issue were not a nullity because they were not "beyond the power of the taxing officials to impose." (*Parrott & Co. v. City & County of San Francisco* (1955) 131 Cal.App.2d 332, 342.) The County notes the property was not tax exempt, nonexistent, or outside of the County's jurisdiction. Rather, the County characterizes the situation as involving a change in ownership. Therefore, the County argues, pursuant to section 5142, subdivision (b) and *Steinhart,* appellant was required to apply for an assessment reduction under section 1603 before pursuing its refund claim.

In *Steinhart*, the issue before the court was whether real property was subject to reassessment under Proposition 13. There, the plaintiff was the sister of a trust settlor who died and left the plaintiff a life estate in the settlor's residence. The trust settlor had transferred this residence to a trust that was revocable during the settlor's life but that became irrevocable upon the settlor's death. The county auditor took the position that the settlor's death resulted in a change in ownership that triggered reassessment. The plaintiff filed a claim for refund of the additional property taxes she had paid without first seeking an assessment reduction under section 1603.

The *Steinhart* court held the plaintiff was required to apply for an assessment reduction and therefore her refund claim was barred for failure to exhaust administrative remedies. (*Steinhart, supra,* 47 Cal.4th at p. 1313.) The court noted that the plaintiff and the county each interpreted the "nullity" precedents very differently. The plaintiff argued that exhaustion was unnecessary because there was no question of valuation that the assessment appeals board had special competence to decide and there was no dispute as to the relevant facts. In contrast, the county, citing *Stenocord,* argued the assessment was not a nullity because the property was not "tax exempt, nonexistent, or outside the jurisdiction." (*Steinhart, supra,* 47 Cal.4th at p. 1311.) However, the court did not need to choose between these divergent interpretations of its precedents. Rather, "the Legislature has expressly and definitively settled the exhaustion question insofar as it involves a challenge to a change in ownership determination." (*Ibid.*) Section 1605.5, enacted in 1986, provides that the "county board shall hear applications for a reduction in an assessment in cases in which the issue is whether or not property has been subject to a change in ownership ...." (§ 1605.5, subd. (a).)

The *Steinhart* court also concluded that section 5142, subdivision (b), added in 1993, further confirms that an assessment reduction application under section 1603 is a prerequisite to challenging a change in ownership determination. (*Steinhart, supra,* 47 Cal.4th at p. 1312.) Subdivision (b) of section 5142 specifies that, in the context of a claim for refund, if the taxpayer and the assessor file a stipulation with the county board of equalization "stating that issues in dispute do not involve valuation questions" and the stipulation is accepted, it shall be deemed compliance with section 1603. Section 5142, subdivision (c), provides that nothing in subdivision (b) "shall be construed to deprive the county board of equalization of jurisdiction over nonvaluation issues in the absence of a contrary stipulation." Thus, the absence of a valuation issue does not necessarily eliminate the need for the taxpayer to apply for an assessment reduction before pursuing a tax refund claim.

However, unlike the situation in *Steinhart,* appellant claims it does not own the assessed property. An application for a reduction in an assessment requires the applicant to declare or certify, under penalty of perjury, that the applicant is the owner of the property or has a direct economic interest in the payment of the taxes on the property. (§ 1603, subd. (f).) Appellant, not being the owner of the subject property, cannot make such a declaration. Therefore, appellant cannot file a valid application for reduction.

In construing a statutory scheme, we must apply common sense to the language and interpret the statutes to make them workable and reasonable. (*Wasatch Property Management v. Degrate* (2005) 35 Cal.4th 1111, 1122.) Since appellant cannot file a valid application for an assessment reduction, it is unreasonable to hold that such an application is a prerequisite to pursuing its refund claim. Accordingly, where, as here, the taxpayer claims the assessment is void because the taxpayer does not own the property, the taxpayer is not required to apply for an assessment reduction under section 1603, subdivision (a), to exhaust its administrative remedies.[2]

2. ***Appellant's refund claim is timely.***

Section 5097, subdivision (a)(2), provides that a claim for refund must be "filed within four years after making the payment sought to be refunded ...." Appellant paid the taxes in May 2011, February 2012 and June 2012 and filed claims for refund of those taxes in May and November 2012. Thus, the claims were filed within four years of paying the disputed taxes.

The County argues that section 5097, subdivision (a)(3)(A)(ii), bars appellant's refund claim. That subdivision provides that when a taxpayer has filed an application for an assessment reduction under section 1603, a refund claim must be filed within one year after the expiration of the time period specified in section 1604, subdivision (c), if the

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[2] Appellant's motion for judicial notice is granted.

county assessment appeals board fails to hear evidence and fails to make a final determination on the assessment reduction application. According to the County, when appellant filed the applications for changed assessment seeking to cancel the assessment in June 2007 and the Assessment Appeals Board returned those applications as untimely, the above statute of limitations began to run. Therefore, the County argues, appellant had until June 2010 to file its refund claims.

First, appellant did not file an application for an assessment reduction under section 1603. More importantly, a refund claim cannot be made until after the disputed taxes have been paid. Any "claim filed before the payment of the disputed taxes is 'inherently flawed as untimely.'" (*JPMorgan Chase Bank, N.A. v. City and County of San Francisco* (2009) 174 Cal.App.4th 1201, 1210.) Therefore, appellant could not have filed its refund claims in June 2010. Rather, those claims were not viable until the taxes were paid in 2011 and 2012. Thus, appellant's refund claims filed in May and November 2012 were timely.

DISPOSITION

The judgment is reversed. Costs on appeal are awarded to appellant.

LEVY, Acting P.J.

WE CONCUR:

KANE, J.

FRANSON, J.

JAN 12 2015

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