S224476

IN THE SUPREME COURT OF CALIFORNIA

WILLIAMS & FICKETT,

Plaintiff, Appellant, and Respondent

vs.

COUNTY OF FRESNO,

Defendant, Respondent, and Petitioner;

SUPREME COURT
FILED

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Frank A. McGuire Clerk

Deputy

REPLY TO ANSWER TO 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

DANIEL C. CEDERBORG
FRESNO COUNTY COUNSEL
MICHAEL R. LINDEN, Deputy
State Bar No. 192485
2220 Tulare Street, Suite 500
Fresno, CA 93721-2128
Telephone: (559) 600-3479

Attorneys for Defendant, Respondent, and Petitioner
COUNTY OF FRESNO

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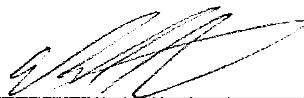
Fresno, CA 93721-2128
Telephone: (559) 600-3479

Attorneys for Defendant, Respondent, and Petitioner
COUNTY OF FRESNO

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: March 13, 2015



Michael R. Linden
Deputy County Counsel
Attorney for Petitioner

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REPLY TO ANSWER TO PETITION FOR REVIEW

INTRODUCTION

In its Answer to the Petition for Review filed by petitioner COUNTY OF FRESNO (hereinafter "Petitioner"), respondent WILLIAMS & FICKETT (hereinafter "Respondent") makes several arguments in an effort to persuade this Court to not review the published opinion of the Court of Appeal. Most of Respondent's arguments are irrelevant to the issues in this case, and some of the arguments are raised for the first time in the Answer. As discussed below, Respondent's arguments only serve to counsel in favor of review.

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LEGAL DISCUSSION

A. Petitioner Has Raised Important Questions of Law

Initially, Respondent argues that "(t)he Petition fails to show the necessity of this Court's consideration of the decision of the Court of Appeal ..." *Answer*, p. 2. That argument is incorrect. This Court may grant review in order "to settle an important question of law." *Cal. Rules Ct.*, 8.500, subd. (b)(1). The Petition raised two such questions.

The first question concerns a property taxpayer's obligation to exhaust administrative remedies. In *Steinhart v. County of Los Angeles* (2010) 47 Cal.4th 1298, 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,' ..." *Id.,* 1312, quoting *Rev. & Tax. Code* § 5142, subd. (b). Even if the issue does not involve the value of the property, "[n]othing shall be construed to deprive the county board of equalization of jurisdiction over nonvaluation issues" unless the parties stipulate to by-pass the Assessment Appeals Board (hereinafter "AAB"). *Rev. & Tax. Code* § 5142, subd. (c).

However, the Court of Appeal created an exception to the exhaustion requirement for those taxpayers who allege that they did not own the property on the lien date. The Court of Appeal based this exception on a wrongful interpretation of subdivision (f) of Revenue & Taxation Code §

1603 (hereinafter "Section 1603"). Specifically, the Court of Appeal held that a taxpayer, even if actually affected by the Assessor's determination, is nonetheless required to own the property on the lien date in order to file a valid application for changed assessment with the AAB. That wrongful determination is a significant question of law that needs to be reviewed by this Court.

Another important question of law raised by Petitioner concerns the limitation periods contained in Revenue & Taxation Code § 5097 (hereinafter "Section 5097"). The Court of Appeal held, despite plain statutory language to the contrary, that the limitation period between an application to the AAB and a claim for refund may be disregarded if the assesse chooses not to pay the taxes during that period. Under this holding, the time between the filing with the AAB, and a subsequent claim for tax refund, *can be an indefinite period that is solely within the control of the taxpayer.* By reading the exceptions to the general rule out of Section 5097, the court's opinion undermines the intent of the statute, and subjects counties to fiscal uncertainty. This Court should review this important question of law.

B. Respondent's Due Process Arguments Are Meritless

In neither the trial court, nor the Court of Appeal, did Respondent raise a due process issue with respect to administrative remedies. However,

Respondent now argues that this case involves the "significant" issue of "*due process* in personal property taxation, ..." *Answer*, p. 3 (footnote omitted, italics in original). According to Respondent, "*(d)ue process* establishes that the Assessor can only assess a party who has *some* minimal connection to the property sought to be taxed." *Answer*, p. 4 (italics in original). Respondent also questions whether the Assessor "has the power to create its own jurisdiction to assess ..." *Answer,* p. 7. Respondent's due process arguments are without merit, and also irrelevant to the Court of Appeal's opinion.

When considering a due process claim, a court balances (1) the private interest affected by the official action, (2) the risk of an erroneous deprivation of that interest, and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. See *Mathews* v. *Eldridge* (1976) 424 U.S. 319, 335. Here, Respondent has not shown any risk of an erroneous deprivation by having to file an application with the AAB, pursuant to Section 1603. Also, Respondent has not considered the additional burdens on counties if taxpayers are able to by-pass the AAB and proceed straight to litigation. The rule suggested by Respondent would defeat the strong public policy in the resolution of property tax issues at the administrative level.

Without citing any legal authority, Respondent also argues that "(due) process is compromised, along with the intent and structure of the Revenue and Taxation Code, if an assessment by the Assessor can make someone, with no taxable connection, a 'party affected.'" *Answer*, p. 7. Respondent contends that "the Assessor has no jurisdiction to assess the non-owner." *Answer*, p. 4. However, the Assessor has both a constitutional and statutory duty to assess all property in the county. *Cal. Const.*, Art. XIII , §§ 1, 2, 14; *Rev. & Tax. Code* § 405. Here, the Assessor had the <u>authority</u> to assess the property in question, as it was "taxable property in (the) county." *Rev. & Tax. Code* § 405, subd. (a). The fact that the Assessor allegedly assessed the property to the wrong person is no different than a change-in-ownership issue, which the AAB can consider. See *Steinhart v. County of Los Angeles* (2010) 47 Cal.4th 1298, 1311-1312. As such, this case does not involve the Assessor's "jurisdiction."

Respondent's due process arguments are meritless because the AAB is an administrative remedy that provides due process to a taxpayer. It defies common sense to conclude that the presence of an administrative remedy would somehow deny a taxpayer due process. Without any pertinent legal authority in support, Respondent's arguments should not persuade this Court to deny review in this case.

///

C. <u>Respondent's Definition of "Party Affected" Is Wrong</u>

As set forth in the opening Petition, a "party affected" by an assessment is required to exhaust his or her administrative remedy before the AAB. *Rev. & Tax. Code* § 1603, subd. (a). Respondent argues that the determination of who an affected party is "will depend on the existence of a 'direct economic interest' of a party at a specific time." *Answer*, pp. 6-7. Respondent argues that Property Tax Rule 301 (hereinafter "Rule 301"), subdivision (g) "states it is solely by the taxable connection *as of the lien date* or by a contractual obligation to pay such taxes. *Answer*, p. 7 (italics in original). Respondent's conclusion is that only the actual owner of the property at the time of the lien can be a "party affected," and consequently be required to exhaust with the AAB. Neither the law nor the facts support this conclusion, which is why review should be granted.

Respondent argues that a lack of actual ownership at the time of the lien is a lack of "taxable connection," obviating the need to file with the AAB. *Answer*, p. 7. However, neither Section 1603 nor Rule 301 contains the words "taxable connection." All that matters is whether a party is "affected" by an assessment that was made.

In this case, there is no dispute that Respondent was assessed, and thus was charged with an obligation to pay property taxes or suffer the consequences of penalties and interest. Respondent was provided adequate

notice of its administrative remedy with the AAB for all of the disputed assessments. In 2007, Respondent made nine separate applications for changed assessment with the AAB, on forms containing the same certification language that Respondent later argued prevented a valid AAB application. In 2011 and 2012, Respondent paid the subject property taxes, and then filed claims for tax refunds. Therefore, by any reasonable definition, Respondent was "affected" by the assessments in this case.

Respondent's narrow, result-driven interpretation of "party affected" is unacceptable, especially in light of its own experience of filing applications with the AAB. If Section 1603 contained an actual ownership requirement for AAB applicants, the statutory language would be clear and unambiguous. However, the statute contains no such requirement, but instead only requires that an applicant be a party that is "affected" by the assessment at issue. Since the tax bills came to Respondent, it had a direct economic interest in the outcome, and thus the statutory authority to file an application for changed assessment. As the Court of Appeal incorrectly held otherwise, review should be granted

D. The "Nullity Exception" is Not Applicable

Taking a position that assumes it was a "party affected" by the assessments, Respondent argues that "(a) 'party affected', who qualifies for the nullity exception to the exhaustion requirement, is not required to file

with the board and therefore is not barred by failing to exhaust if he chooses not to file." *Answer*, pp. 7-8, citing *Stenocord Corp. v. City and County of San Francisco* (1970) 2 Cal.3d 984, and *Star-Kist Foods, Inc. v. Quinn* (1960) 54 Cal.2d 507. However, the "nullity exception" was not raised in the Petition for Review, and thus there is no need for this Court to consider this issue in determining whether review should be granted. Nevertheless, as discussed below, Respondent's arguments on this issue do not counsel in favor of denying review.

Initially, Respondent argues that "it is unclear from the opinion of the Court of Appeal" whether the "nullity exception" was considered. *Answer*, p. 8. The opinion is not unclear on this issue. See *Williams & Fickett v. County of Fresno* (2015) 232 Cal.App.4th 1250, 1255-1257. After reviewing the statutory and case authority cited by both sides, and the arguments made, the Court of Appeal conceded 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." *Id.*, at 1257. It was only after the Court of Appeal considered Respondent's argument concerning the certification language in subdivision (f) of Section 1603 did the court find a basis to reverse the trial court.

Respondent also argues that "(t)o an unexplored degree, the nullity exception to exhaustion and failing to qualify as a 'party affected' are two

sides of the same coin regarding the board." *Answer*, p. 8. This statement is a misguided attempt to equate two different areas property tax law, and only serves to confuse the issues in this case.

The "nullity exception" focuses on the property itself, and concerns whether an assessment is "beyond the power of the taxing officials to impose." *El Tejon Cattle Co. v. San Diego County* (1967) 252 Cal.App.2d 449, 458. As discussed above, the Assessor had the "power" to make the assessments because the property was taxable property within the county. The fact that Respondent alleges it had disposed of the property by the lien date does not change this authority.

However, the determination of a "party affected" by an assessment is a different analysis, as it does not focus on the "power" to tax. A party can be "affected" by an assessment that is ultimately be found to be beyond the Assessor's "power" to impose. However, if the Assessor had the "power" to impose the assessment, and a party is "affected" by through an obligation to pay taxes, then even if ownership is disputed, that party is required to exhaust this "nonvaluation" issue before the AAB unless a stipulation is reached. *Rev. & Tax. Code* § 5142, subd. (b)-(c).

By Respondent's own definition, none of the tax assessments were a "nullity" because the property was not tax exempt, outside of the County's jurisdiction, or nonexistent. See *Answer*, p. 8, fn. 12. Thus, both the trial

court and the Court of Appeal correctly concluded that the "nullity exception" did not apply. There is no need for this issue to be considered any further. Instead, the Court should grant review based on the issues raised in the Petition.

E. Respondent Misreads Revenue & Taxation Code § 5097

With respect to the statute of limitations, Respondent argues that "Revenue and Taxation Code section 5097(a)(3)(A) is still subject to subdivision (a)(2), not the other way around." This is not correct. The prefatory clause of subdivision (a)(2) states "(e)xcept as provided in paragraph (3)..." The word "except" provides for an exception to the general rule in subdivision (a)(2). To conclude otherwise is to give the word "except" a meaning that is different than its ordinary meaning. See *People v. Amwest Surety Ins. Co.* (1997) 56 Cal.App.4th 915, 919.

Respondent then argues that "(t)he intent of the statute is to shorten what was a four year statute of limitations *after payment* to a one year or six month period after the board determination *where payment has been made*." *Answer*, p. 11 (Italics in original). However, subdivision (3)(A) applies when "the applicant does not state in the application that the application is intended to constitute a claim for a refund." If an applicant to the AAB is a "party affected," but is not yet seeking a refund, there is no reason to assume that the applicant has already paid the taxes. Thus,

Respondent's interpretation is wrong because subdivision (3)(A) addresses a situation where the taxes might not been paid.

Respondent also makes a hardship argument, contending that the exceptions contained in subdivision (a)(3)(A) of Section 5097 force a taxpayer to pay taxes immediately, and some taxpayers will not be able to afford this expense. However, there is no hardship exception. Furthermore, the limitation periods set forth in subdivision (a)(3)(A) recognize that property taxpayers are obligated to exhaust their administrative remedy with the AAB, which does not require the pre-payment of taxes. In this case, since the AAB made no determinations, Respondent had three years after the date of their AAB filings to pay the taxes and seek a refund. *Rev. & Tax. Code* § 5097, subd. (a)(3)(A)(ii).

Actions to recover tax payments may only be maintained "in such manner as may be provided by the Legislature." *Cal. Const*, Art. XIII, § 32. If the Legislature intended to allow property taxpayers to wait an indefinite period after the AAB's determination (or failure to make a determination) before paying disputed taxes and seeking a refund, subdivision (a)(2) of Section 5097 would not contain its prefatory clause. Just because some taxpayers may not be able to pay the property taxes immediately does not mean the limitations period for a tax refund claim

runs indefinitely. Review should be granted Section 5097 was drafted to prevent such a result.

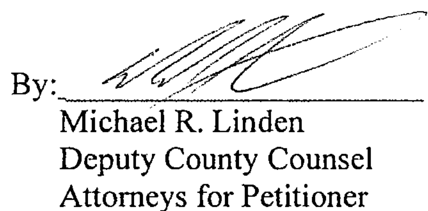
CONCLUSION

Based on the foregoing, as well as the original Petition for Review, Petitioner respectfully requests that this Court grant the instant petition and review the opinion issued by the Court of Appeal.

Dated: March 13, 2015

Respectfully submitted,

DANIEL C. CEDERBORG
FRESNO COUNTY COUNSEL

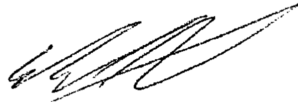
By: 

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 3,148 words.

Executed on **March 13, 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 March 13, 2015, I served a copy of the attached

REPLY TO ANSWER TO 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

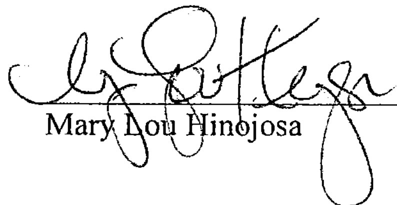
Fresno County Superior Court
Appeals Department
100 Van Ness Avenue
Fresno, CA 93724

Fifth District Court of Appeal
2424 Ventura Street
Fresno, CA 93721
(also by electronic transmission)

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 March 13, 2015.



Mary Lou Hinojosa