No. S224476

IN THE

SUPREME COURT OF CALIFORNIA

WILLIAMS & FICKETT, a California General Partnership,
Plaintiff and Appellant,

vs.

COUNTY OF FRESNO,
Defendant and Respondent

After a Decision by the Court of Appeal of the State of California
Fifth Appellate District
Case No. F068652

Reversing a Judgment the Superior Court of the County of Fresno
The Hon. Donald S. Black
Case No. 13 CE CG 00461 DSB

APPELLANT'S ANSWER BRIEF ON THE MERITS

Ronald A. Henderson – No. 095116
Lynne Thaxter Brown – No. 104958
DOWLING AARON INCORPORATED
8080 N. Palm Avenue, Third Floor
P.O. Box 28902
Fresno, California 93729-8902
Telephone: (559) 432-4500/Fax: (559) 432-4590

Attorneys for Plaintiff/Appellant
WILLIAMS & FICKETT, a California General Partnership

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INTRODUCTION

Plaintiff Williams & Fickett sued to recover more than $350,000 in taxes, penalties and interest the County of Fresno assessed on personal property plaintiff did not own, claim, possess or control on the tax dates. (1AA 1; 2AA 170.) The Court of Appeal held plaintiff was not required to first exhaust administrative remedies by filing an application for assessment reduction pursuant to subdivision (a) of section 1603 of the Revenue and Taxation Code. The Court of Appeal also held the four-year statute of limitations on plaintiff's refund claim did not begin to run until plaintiff paid the taxes, and its claim was timely filed within that period.

In granting the County of Fresno's petition for review, the Court posed two specific questions:

1. Must a taxpayer against whom an escape assessment on personal property has been made exhaust administrative remedies by filing an application with the county's board of equalization to reduce the assessment if the taxpayer claims that it does not own and has no interest in the assessed property, or does the taxpayer fall within the "nullity" exception to the exhaustion requirement?

2. Is a taxpayer who files an application for changed assessment with the county's board of equalization subject to a one-year limitations period for paying the assessment and filing an action

challenging the assessment, or does the period within which the taxpayer may file such an action begin to run only after the taxpayer has paid the disputed taxes?

FACTS AND PROCEDURAL HISTORY

Plaintiff Williams & Fickett is a California general partnership engaged in the business of farming. (1AA 1, 49; 2AA 170, 223.)

The Fresno County Assessor assessed taxes against plaintiff for nine pieces of farm equipment that plaintiff did not own, claim, possess or control on the relevant lien dates for the tax roll years in question. (1AA 1, 2, 8, 12-14, 66-70; 2AA 170, 172-173, 186-188, 237-241.) The assessor later determined that plaintiff had disposed of the farm equipment and it did not own or possess the equipment on the lien dates in question. (2AA 173-174, 310, 323.)[1]

In 2007, plaintiff filed applications under Revenue and Taxation Code section 4986[2] to cancel the assessments for the previous

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[1] The audit report for tax roll year 2001 indicates the auditor did not have authority to correct prior periods (i.e., 1998, 1999, 2000) outside that audit. (3AA 173:20-174:1, 310, 315-316.)

[2] Revenue and Taxation Code section 4986 provides, as relevant: "(a) All or any portion of any tax, penalty, or costs, heretofore or hereafter levied, shall, on satisfactory proof, be canceled by the auditor if it was levied or charged: ... (2) Erroneously or illegally. ... (4) On property that did not exist on the lien date. ..."

years because plaintiff did not own the farm equipment on the lien dates in question. (2AA 175, 339-374.) The Fresno County assessment appeals board summarily rejected the applications on the grounds they were not timely filed. (2AA 175, 332.)

Plaintiff then filed a complaint for declaratory relief against the County, the assessment appeals board and the assessor, seeking a declaration that Revenue and Taxation Code section 4986[3] required cancellation of the additional taxes, *Mark A. Fickett and Frank C. Williams v. County of Fresno et al.*, Fresno County Superior Court Case No. 10CECG04118. (2AA 175; 3AA 392.) The trial court sustained defendants' demurrer to the declaratory relief complaint without leave to amend on the ground that plaintiff had an adequate remedy at law by paying the tax and filing a claim for refund. (2AA 175; 3AA 399.)

After that, plaintiff paid (under protest) the taxes, statutory penalties, and interest for the tax roll years in question in full by June 27, 2012. (1AA 2; 2AA 175.) Plaintiff sought a tax refund of approximately $86,852, plus a corresponding reduction in penalties and interest, by filing verified claims on May 30 and November 7, 2012, with the Fresno County Auditor Controller and the Board of Supervisors. (1AA 2-3, 6, 66; 2AA

[3] Unless otherwise noted, all further unlabeled statutory references are to the Revenue and Taxation Code.

175-176, 180, 237.) The County rejected plaintiff's refund claims on November 27, 2012. (1AA 3, 2AA 176.)

Plaintiff then filed this action on February 13, 2012 against the County of Fresno for refund of personal property taxes, plus interest charges and penalties. (1AA 1.) In the operative verified first amended complaint, plaintiff alleges the County assessed taxes and recorded liens against plaintiff for tax roll years 1994 through 2001 on nine pieces of farm equipment that plaintiff did not own on the lien dates for each year. (2AA 170-174.) Plaintiff alleges it filed verified claims for refund, which the County rejected. (2AA 175-176.) Plaintiff alleges it did not file an application for a reduction in or equalization of the assessment pursuant to section 1603, subdivision (a). (2AA 171.)

The County demurred to all causes of action on the following grounds: (1) plaintiff did not exhaust its administrative remedies before filing suit because section 1603, subdivision (a), required plaintiff to file an application for assessment reduction with the County board of equalization; and (2) even if plaintiff was not required to exhaust its administrative remedies, the action was barred by the one-year statute of limitations set forth in section 5097, subdivision (a)(3)(A)(ii). (2AA 376; 3AA 379.)

Plaintiff contended the assessments were "nullities" and void and illegal as a matter of law because it did not own or possess the property on which the assessments were made, and no factual questions exist

regarding valuation of the property which must be presented to the county board of equalization. Consequently, under the judicially recognized "nullity exception" to the exhaustion requirement, plaintiff was not required to file an application for assessment reduction under section 1603, subdivision (a). (3AA 416, 419; RT 4:22-6:8.) Plaintiff argued its refund claims were timely filed under the four-year statute of limitations in section 5097, subdivision (a)(2) and the one-year statute of limitations in subdivision (a)(3)(A)(ii) did not apply. (3AA 424-427.)

The County argued the nullity exception was eliminated by amendments to the Revenue and Taxation Code and the 2010 decision from this Court in *Steinhart v. County of Los Angeles* (2010) 47 Cal.4th 1298. (3AA 430-433; RT 9:1-10:5.) The trial court agreed, and found that plaintiff was required to first file an application for reduction of the assessment with the board of equalization. (3AA 437, 443.) Plaintiff having not done so, the trial court sustained the County's demurrer without leave to amend without reaching the question whether plaintiff's tax refund claims were filed within the statute of limitations. (3AA 443.)

The Court of Appeal reversed. (Opn. 2, 8.) The Court of Appeal held plaintiff was not required to file an application for reduction in assessment before pursuing a refund claim because the application requires a declaration under penalty of perjury that the applicant is the owner of the property or has a direct economic interest in the payment of taxes on the

property, and plaintiff could not make such a declaration since it was not the owner. (Opn. 7.) The Court of Appeal did not decide whether the nullity exception was eliminated, as the County contended, or if still in existence, whether it applied in this case.

The Court of Appeal also held plaintiff's refund claims were timely filed under the four-year statute of limitations in section 5097, subdivision (a)(2), and the limitations period did not begin to run until plaintiff paid the disputed taxes. (Opn. 8.)

ARGUMENT

I. A Taxpayer Against Whom an Escape Assessment on Personal Property Has Been Made, Who Does Not Own and Has No Interest in the Assessed Property, is not Required to Exhaust Administrative Remedies by Filing an Application with the County's Board of Equalization

A taxpayer who claims that a property tax assessment is based on an incorrect valuation of property must exhaust its administrative remedies by first presenting questions regarding the property's value to the board of equalization for correction before seeking judicial relief. On the other hand, where, as here, the taxpayer does not own, claim, possess or control the property that is taxed, the assessment by the assessor is illegal and void – a "nullity" as a matter of law – and there are no valuation questions for the board to consider. Under this judicially recognized and long-standing "nullity exception," the taxpayer is not subject to the exhaustion requirement.

A. Overview of Principles Governing Local Property Taxation and Exhaustion of Administrative Remedies

To assist the Court in its analysis, we begin with an overview of the applicable legal framework.

1. Local Property Taxation – Assessment and Equalization

The county assessor is responsible for preparing the local tax roll and assessing all taxable property[4] in the county, except for state-assessed property, to the person, business, or legal entity owning, claiming, possessing, or controlling the property on the lien date.[5] (Sections 108, 110, 110.1, 110.5, 401, 405(a); see also Cal. Const., Art. XIII, § 1, Art. XIII A, §§ 1, 2.)

The county board of equalization is responsible for "equalizing" property assessments on the local roll, i.e., increasing or lowering an assessment in order to make the assessment conform to the true value of the property. (Cal. Const., Art. XIII, § 16; sections 1601-1615;

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[4] Unless otherwise provided by the California Constitution or by federal law, all property is taxable and must be taxed in proportion to its full value ("ad valorem" tax). (Cal. Const., Art. XIII, §§ 1(b), 2; section 201; *Bigge Crane Rental Co. v. Alameda* (1972) 7 Cal.3d 414, 416.) Property is defined as all matters and things – real, personal, and mixed – that a private party can own. (Section 103.)

[5] The lien date currently is the first day of January preceding the fiscal year for which the taxes are levied. Prior to 1997 it was March. (Section 2192 [amended Stats 1995 ch 499 § 18 (SB 327)].)

Flying Tiger Line, Inc. v. County of Los Angeles (1958) 51 Cal.2d 314, 320; *Universal Consol. Oil Co. v. Byram* (1944) 25 Cal.2d 353, 356.)

"The purpose of an equalization board ... 'is to see that all properties in the county are "equalized"; that is to say that the assessor appraise all properties in the county at a constant level of opinion as to market value and to keep all properties in their proper relationship one to the other.'" (*Schoenberg v. County of Los Angeles Assessment Appeals Bd.* (2009) 179 Cal. App. 4th 1347, 1353-1354 quoting *Eastern-Columbia, Inc. v. County of L.A.* (1943) 61 Cal.App.2d 734, 743.)

2. Taxpayer Challenges and Refunds

Taxpayers have the right to challenge an inaccurate or illegal tax assessment and to claim a refund of taxes inaccurately or illegally assessed.

a. Valuation Disputes – Application for Reduction of Assessment (Section 1603(a))

A taxpayer who disagrees with the assessor's valuation of its property may seek a reduction of assessment through a formal appeal before the county board of equalization or assessment appeals board. (Sections 1601 through 1615.) In Fresno County, an assessment appeals board serves as the county board of equalization. (Fresno County Ord. Code § 2.64.020; see Cal. Const., Art. XIII, § 16; Rev. & Tax. Code § 1620.) Membership on the assessment appeals board requires special

expertise in property appraisal and taxation. (Section 1624.05.)[6] Additionally, all newly appointed members are required to complete specific training regarding the assessment process and assessment appeals within one year of appointment. (Section 1624.02.)

The assessment appeal process is initiated by the taxpayer's filing of an application for reduction of assessment under subdivision (a) of section 1603, which provides: "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[7] showing the facts claimed to require the reduction and the applicant's opinion of the full value of the property." Subdivision (f) of section 1603 requires the applicant to certify or declare under penalty of perjury on the application that he or she is "the owner of the property or the person affected (i.e., a

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[6] Section 1624.05, subdivision (a) provides that no person shall be eligible for nomination for membership on an assessment appeals board unless he or she "has a minimum of five years' professional experience in this state as one of the following: certified public accountant or public accountant, licensed real estate broker, attorney, property appraiser accredited by a nationally recognized professional organization, property appraiser certified by the Office of Real Estate Appraisers, or property appraiser certified by the State Board of Equalization."

[7] As provided in section 1603(a) and Government Code section 15606(d), the State Board of Equalization prescribes the assessment appeal application. Currently, this form is titled *Application for Changed Assessment*, form BOE-305-AH.

person having a direct economic interest in the payment of the taxes on that property," or an agent of the applicant, or an attorney.

b. Erroneous, Illegal or Void Assessments – Request to Cancel (Section 4985 et seq.)

A taxpayer who does not dispute valuation, but rather, claims an assessment is erroneous, illegal or void (for example, the property is exempt from taxation or outside the jurisdiction, or, as in this case, the taxpayer does not own the property being taxed) may request that the county auditor cancel the assessment before payment of the tax. (Sections 4985 through 4992; see *Los Angeles v. Board of Supervisors of Mono County* (1930) 108 Cal.App. 655, 666 [under former Pol. Code § 3405a, if an assessment is invalid, cancellation is mandatory].)

Section 4986 provides in relevant part, "(a) All or any portion of any tax, penalty, or costs, heretofore or hereafter levied, shall, on satisfactory proof, be canceled by the auditor if it was levied or charged: [¶] (1) More than once. [¶] (2) Erroneously or illegally. [¶] (3) On the canceled portion of an assessment that has been decreased pursuant to a correction .... [¶] (4) On property that did not exist in the lien date. [¶] (5) On property annexed after the lien date by the public entity owning it. [¶] (6) On property acquired by the United States, the state, or by any county, city, school district or other public entity .... [¶] (7) On that portion of an

assessment in excess of the value of the property as determined by the assessor ...."

c. Refunds

Taxpayers may obtain a refund of taxes after they are paid by filing a verified claim with the county board of supervisors within 4 years after payment of the taxes. (Sections 5096, 5097, subd. (a) .)

Section 5096 states: "Any taxes paid before or after delinquency shall be refunded if they were: [¶] (a) Paid more than once. [¶] (b) Erroneously or illegally collected. [¶] (c) Illegally assessed or levied. [¶] (d) Paid on an assessment in excess of the ratio 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 the assesse. [¶] (e) Paid on an assessment of improvements when the improvements did not exist on the lien date. [¶] (f) Paid on an assessment in excess of the equalized value of the property as determined pursuant to Section 1613 by the county board of equalization. [¶] (g) Paid on an assessment in excess of the value of the property as determined by the assessor pursuant to Section 469."

If the board of supervisors denies the refund claim, the taxpayer may then file an action in superior court. (Section 5140.)

However, a court action may not be "commenced or maintained ... unless a claim for refund has first been filed pursuant to Article 1 (commencing with Section 5096)." (Section 5142, subdivision (a); see *JPMorgan Chase Bank, N.A. v. City and County of San Francisco* (2009) 174 Cal.App.4th 1201, 1210 [failure to file a refund claim within the four-year period deprives a court of jurisdiction to consider the issue].)

3. Valuation Disputes Require Exhaustion of Administrative Remedies before the Board of Equalization

As stated, taxpayers who dispute the assessor's valuation of their property may file an application for reduction of the assessment with the county board of equalization or assessment appeals board pursuant to subdivision (a) of section 1603. It has long been held that taxpayers who claim overvaluation of property *must* exhaust this administrative remedy before resorting to the courts. (*Luce v. San Diego* (1926) 198 Cal. 405, 406-407; *Dawson v. County of Los Angeles* (1940) 15 Cal.2d 77, 81; *City and County of San Francisco v. County of San Mateo* (1950) 36 Cal.2d 196, 201; *Stenocord Corp. v. City and County of San Francisco* (1970) 2 Cal.3d 984, 987; *Steinhart v. County of Los Angeles*, *supra*, 47 Cal.4th 1298, 1310-1311.)

This rule is consistent with the primary purpose of the exhaustion requirement, i.e., to allow property valuation questions to be decided by board members possessing special expertise in such matters.

(See, *Stenocord Corp.*, *supra*, 2 Cal.3d at 988 ["[D]isputes regarding valuation are within the special competence of the board of equalization."]; *Plaza Hollister Ltd. Partnership v. County of San Benito* (1999) 72 Cal.App.4th 1, 23 ["The county boards of equalization, rather than the courts, are the proper tribunal for exercising judgment on valuation questions concerning individual assessments on the local roll."].)

4. Under the "Nullity" Exception, Erroneous, Illegal, or Void Assessments Do Not Require Exhaustion of Administrative Remedies

However, a taxpayer who claims an assessment is erroneous, illegal, or void is not required to file an application for assessment reduction with the local board of equalization. The erroneous and void assessment is a "nullity" as a matter of law, there is no question of valuation involved which requires the local board of equalization's expertise, and the board has no function to perform. This is the well-known "nullity exception," which this Court recognized more than 100 years ago and has been consistently applied by this and other California courts since then.

a. Key Decisions Regarding the Nullity Exception

While not all-inclusive or exhaustive, the following chronologically highlights key decisions from this Court and the Courts of Appeal in the development and application of the nullity exception.

Brenner v. City of Los Angeles

The nullity exception is traceable at least as far back as 1911, with this Court's decision in *Brenner v. City of Los Angeles* (1911) 160 Cal. 72, in which the taxpayer sought a refund of taxes he paid because of an erroneous assessment. The Court drew the distinction there between "the mere over-valuation of property" and "an assessment of property not taxable at all," and overruled its former decision in *Henne v. County of Los Angeles* (1900) 129 Cal. 297 in so far as it required exhaustion of administrative remedies for the latter: "[W]e think it is time to renounce the doctrine that money paid under protest for taxes on property not liable to assessment cannot be recovered unless application is made for correction of the assessor's error" to the local board of equalization. (*Id.* at 76.)

Luce v. City of San Diego

Fifteen years later, in *Luce v. City of San Diego* (1926) 198 Cal. 405, this Court reiterated the distinction "between the wrongful assessment of property not subject to taxation and the wrongful valuation of taxable property" and the rule it announced in *Brenner* that a taxpayer challenging a wrongful assessment of nontaxable property is not required to first exhaust remedies before the board of equalization. (*Id.* at 406.) The Court did not apply the nullity exception in that case, however, because the taxpayers' challenge involved valuation questions. (*Id.* at 407.)

Associated Oil Co. v. County of Orange

In *Associated Oil Co. v. County of Orange* (1935) 4 Cal.App.2d 5, the taxpayer sought a refund of excessive taxes he paid as a result of erroneously overstating the amount of property he owned. The county contended this presented a question of overvaluation and the only relief available had to be obtained from the board of equalization. (*Id.* at 7-8.) The Court of Appeal, citing the distinction recognized by this Court in *Brenner*, disagreed: "While in one sense it is true that almost any mistake which results in an excessive assessment amounts to an overvaluation of the property of a taxpayer, we think there is a real and distinct difference between those cases in which it may properly be said that the error is one of overvaluation and those cases in which the overvaluation is a mere incidental result of an *erroneous assessment of property which should not have been assessed.*" (*Id.* at 9 [italics added].)

Los Angeles Shipbuilding and Dry Dock Corp. v. County of Los Angeles

The first specific reference to the "nullity exception," as such, appears in another Court of Appeal decision, *Los Angeles Shipbuilding and Dry Dock Corp. v. County of Los Angeles* (1937) 22 Cal.App.2d 418, in which the plaintiff taxpayer sought to recover property taxes paid on certain leased premises. Plaintiff claimed its leasehold interest had no taxable value and should have been assessed at zero, and relying on *Associated Oil*

Co. v. County of Orange, *supra*, 4 Cal.App.2d 5, argued it was therefore not required to appeal to the board of equalization. (*Id.* at 421, 423.)

The Court of Appeal rejected the taxpayer's argument, but in doing so, articulated the nullity exception as follows: "[H]erein must be observed the distinction between property not properly the subject of taxation, and property which is of a character properly subject to taxation but without taxable value. If the property placed on the assessment roll is not subject to taxation in any event, e.g., exempt, out of the jurisdiction, etc., *the attempted assessment is a nullity*. If the property is the proper subject of taxation, as here, but not taxable because it possesses no taxable value an appeal to the board of equalization would still lie even though the board might reduce its assessed value to zero. The question would still be 'what is the taxable value'? ...." (*Id.* at 422 [italics added].)

Security-First National Bank v. County of Los Angeles

This Court expressly recognized the existence of the "nullity exception" by name in *Security-First National Bank v. County of Los Angeles* (1950) 35 Cal.2d 319: "It is the general rule that a taxpayer seeking judicial relief from an erroneous assessment must have exhausted his remedies before the administrative body empowered initially to correct the error. [Citations.] An *exception* is made when the attempted assessment is a *nullity* because the property is either tax exempt or outside the jurisdiction. [Citing *Brenner* and other cases]." (*Id.* at 321 [italics

added].) The Court held in that case that the nullity exception did not include errors in classification of property, and therefore did not apply. (*Id.* at 321-322.)

City and County of San Francisco v. County of San Mateo

This Court again recognized the nullity exception in *City and County of San Francisco v. County of San Mateo* (1950) 36 Cal.2d 196 by quoting with approval from its decision in *Security-First National Bank*: "'An exception is made when the attempted assessment is a nullity ...." (*Id.* at 201.) However, the Court held the facts there did not bring the challenged assessment within the nullity exception and plaintiff was required to exhaust its administrative remedies. (*Ibid.*)

Parr-Richmond Industrial Corp. v. Boyd

In *Parr-Richmond Industrial Corp. v. Boyd* (1954) 43 Cal.2d 157 (*Parr-Richmond*), taxes were levied against plaintiff on the premise that it held fee title to the real property, when it actually held only a qualified and contingent possessory interest in the property. Plaintiff sued to recover the taxes paid under protest, claiming the assessments should have been made only against its possessory right, and not as if it held fee title. (*Id.* at 159.)

This Court held the nullity exception applied and plaintiff was not required to apply for reduction of assessment with the board of equalization before seeking judicial review. (*Id.* at 164-165.) Citing its

decision in *Brenner*, the Court held that "[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." (*Id.* at 165 [italics added].)

Parrott and Company v. City and County of San Francisco

In *Parrott and Company v. City and County of San Francisco* (1955) 131 Cal.App.2d 332, taxpayers sued to recover taxes paid under protest on personal property that was exempt from taxation. The Court of Appeal, relying on *Parr-Richmond*, applied the nullity exception and held the taxpayers were not required to exhaust their remedies before the county board of equalization: "There was nothing for the administrative board to adjudicate. The function of the County Board of Equalization, as its name implies, is to increase or lower an assessment in order to equalize property assessments on the local rolls, and to make the assessment conform with the true value of the property. [Citations.] In the instant case evaluation or revaluation is not involved at all. ... The taxpayers claim, and properly so, that *this total assessment was a nullity* – beyond the power of the taxing officials to impose. In such a case there is no question of valuation that must be presented to the Board of Equalization for correction before judicial review may be sought. (Citation.)" (*Id.* at 342 [italics added].)

Star-Kist Foods, Inc. v. Quinn

This Court applied the nullity exception again in *Star-Kist Foods, Inc. v. Quinn* (1960) 54 Cal.2d 507 (*Star-Kist*). There, in assessing the taxpayer's leasehold interests, the county assessor refused to apply section 107.1, which required certain deductions, believing the statute was unconstitutional. (*Id.* at 509.) The taxpayer petitioned the superior court for a writ of mandate ordering the assessor to cancel the assessments and reassess the leasehold interests in accordance with section 107.1, without first applying for assessment reduction before the county board of equalization. (*Ibid.*)

This Court held that recourse to the board of equalization was not required. It cited the *Brenner* and *Parrott and Co.* decisions, among others, in noting that assessment reduction applications had "not been required ... in certain cases where the facts were undisputed and the property was tax-exempt [citations], outside the jurisdiction [citation], or nonexistent [citations]." (*Id.* at 510.) The Court also reiterated its observation from *Parr-Richmond* that a "real and distinct difference" exists between cases involving an overvaluation of property and those in which the overvaluation is merely an "incidental result of an erroneous assessment of property *which should not have been assessed.*" (*Ibid.* [italics added].) Because the only substantive issue in *Star-Kist* was the constitutionality of section 107.1 (a legal question), the Court held there was "no question of

valuation that the local board of equalization had special competence to decide" and plaintiff was not required to apply for relief with the board before filing suit. (*Id.* at 511.)[8]

Stenocord Corporation v. City and County of San Francisco

In *Stenocord Corporation v. City and County of San Francisco* (1970) 2 Cal.3d 984 (*Stenocord*), the taxpayer sought a refund of taxes and penalties paid on inventory and equipment. The assessor had found the taxpayer understated the values and costs of its goods, reassessed the property, and notified the taxpayer of a tax deficiency. The taxpayer filed a claim for refund with the board of supervisors, which was rejected, but had not sought review before the board of equalization of the reassessed values and costs of its goods. (*Id.* at 987.) The taxpayer claimed it was excused from exhausting administrative remedies on the grounds the assessor had no authority to reassess the property and the reassessment was arbitrary and unconstitutional, i.e., a "nullity." (*Id.* at 987.)

In addressing that argument, this Court expressly recognized the continued existence of the nullity exception. Citing the *Parr-Richmond, Parrott and Co.*, *Star-Kist*, and *Security-First Nat. Bank v. County of Los*

[8] However, the Court ruled that mandate was not available because the taxpayer had a plain, speedy, and adequate remedy in the ordinary course of law because it could have paid the tax under protest and sued for recovery under section 5136 et seq. (54 Cal.2d at 511.)

Angeles decisions discussed above, the Court acknowledged that "[a]n exception" to the exhaustion requirement "is made when the assessment is *a nullity as a matter of law* because, for example, 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]." (*Id.* at 987 [italics added].)[9]

This Court thus articulated two prongs to application of the nullity exception, both of which must be satisfied: (1) the assessment is void or illegal, i.e., "a nullity as a matter of law;" and (2) there are no factual questions regarding valuation of the property involved. "If any question of valuation exists, it would be irrelevant that plaintiff also challenges the assessment as 'arbitrary' or void on constitutional grounds. [Citations.] If prior recourse to the board on the question of valuation might have avoided the necessity of deciding the constitutional issue, or

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[9] The Court cited these three circumstances as *examples*; it did not declare that an assessment is a nullity as a matter of law *only* when property is tax exempt, nonexistent or outside the jurisdiction. As discussed, this Court had previously held in *Parr-Richmond* that an assessment is a nullity as a matter of law when it is imposed on property the taxpayer does not own. (*Parr-Richmond Industrial Corp. v. Boyd, supra*, 43 Cal.2d at 165.)

modified its nature, plaintiff's action was property dismissed. [Citations.]" (*Id.* at 988.)

This Court found the nullity exception did not apply in *Stenocord*, notwithstanding the taxpayer's allegation that the reassessment on its property was "illegal" (the first prong), because the second part of the test was not also satisfied: "It is evident from the face of the complaint that *the dispute herein involved a question of valuation* which, if submitted to the board of equalization, might have obviated plaintiff's action." (*Ibid.* [italics added].)

b. This Court's Decision in *Steinhart v. County of Los Angeles* Did Not Eliminate the Nullity Exception

The Court's most recent decision reaffirming the nullity exception is *Steinhart v. County of Los Angeles* (2010) 47 Cal.4th 1298. The County argued in the Court of Appeal that *Steinhart* eliminated the nullity exception. Although the Court of Appeal did not address the continued viability of the nullity exception in its opinion, as we show below, this Court left no doubt in *Steinhart* that the exception continues to exist and apply in appropriate circumstances, including this case.

(1) The Facts in *Steinhart*

In *Steinhart*, a trust settlor transferred her residence to a revocable living trust. The trust became irrevocable upon her death, at which time the settlor's sister, plaintiff Steinhart, received the right to

occupy the residence during her lifetime with the remainder to their siblings and issue. (*Steinhart v. County of Los Angeles*, *supra*, 47 Cal.4th at 1303.) The County of Los Angeles reassessed the residence when the trust settlor died based on a "change in ownership" and significantly increased its valuation for tax purposes.[10] Plaintiff paid the tax bills and then sought a refund on the grounds no change in ownership occurred to trigger reassessment. Plaintiff did not file an application for assessment reduction under section 1603, subdivision (a), with the County's assessment appeals board before filing a refund claim. (*Id.* at 1309.)

The substantive issue presented for this Court's review was whether there was a "change in ownership" within the meaning of Cal. Const., art. XIII A, § 2, subd. (a), on the settlor's death so as to trigger reassessment of the residence for tax purposes. (*Id.* at 1303.) Because that question has no relevance to the issues on review, we will focus only on the

[10] Under Article XIII A of the California Constitution, which the voters adopted in June 1978 as Proposition 13, property tax is limited to one percent of the property's "full cash value." (Art. XIII A, § 1, subd. (a).) "Full cash value" is defined as the 1975-1976 assessed value of the property adjusted for inflation, or the appraised value of the property upon a "change in ownership" occurring after the 1975-1976 assessment. (Art. XIII A, § 2, subd. (a).)

preliminary procedural issue of whether the nullity exception applied and plaintiff was not required to exhaust her administrative remedies.[11]

(2) The Court's Discussion of the Nullity Exception

This Court began by examining its previous decisions in *Stenocord* and *Star-Kist* (both discussed above) and reiterating the nullity exception, as articulated in those decisions: "'[a]n exception' to the exhaustion requirement 'is made when the assessment is a nullity as a matter of law because, for example, the property is tax exempt, nonexistent or outside the jurisdiction, 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.'" (*Id.* at 1310 [quoting from *Stenocord*, *supra*, 2 Cal.3d at 988].)

Plaintiff Steinhart argued the assessment was a nullity as a matter of law and she was not required to exhaust administrative remedies because there was no change in ownership (a pure legal question) of the residence on the settlor's death to trigger reassessment, and there was no

[11] The Court held a "change in ownership" occurred, because the entire equitable estate in the property was transferred upon the trustor's death. (*Id.* at 1318, 1320, 1325.)

dispute regarding valuation. (*Id.* at 1309, 1311.)[12] The County of Los Angeles argued that under *Stenocord*, the nullity exception only applied to property that is "tax exempt, nonexistent, or outside the jurisdiction." (*Id.* at 1311.)

The Court did not decide which of "these divergent interpretations" of the precedential cases involving the nullity exception was correct. (*Ibid.*) It found that legislative developments since *Stenocord* and *Star-Kist* "expressly and definitively settled the exhaustion question *insofar as it involves a challenge to a change in ownership determination.*" (*Id.* at 1311 [italics added].)

(3) By Statute, Change in Ownership Disputes Are Subject to the Exhaustion Requirement

The legislative developments the Court was referring to in *Steinhart* were the enactment of section 1605.5(a) in 1986 and amendments to section 5142 in 1993, both discussed more fully below. The Court found these statutes and their legislative history "show that the Legislature had made an express and considered decision *not* to eliminate the requirement that taxpayers wanting to contest change in ownership determinations *first* apply for assessment reduction to exhaust their administrative remedies."

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[12]Plaintiff Steinhart asserted two other reasons why she could proceed with her lawsuit notwithstanding her failure to exhaust administrative remedies – the "futility exception" and estoppel – neither of which is relevant to the issues on review. (*Steinhart, supra*, 47 Cal.4th at 1313-1318.)

(*Id.* at 1312 [italics in original].) The Court held that by failing to apply for reassessment reduction, plaintiff Steinhart failed to exhaust her administrative remedies. (*Id.* at 1313.)

(4) ***Steinhart*** **Did Not Eliminate the Nullity Exception**

The Court did not eliminate the nullity exception in *Steinhart.* It held only that when a taxpayer's dispute concerns a *change in ownership* determination, the judicially declared nullity exception is irrelevant because the Legislature has expressly declared that the taxpayer must first apply for assessment reduction with the local board in order to exhaust administrative remedies. (*Steinhart v. County of Los Angeles*, *supra*, 47 Cal.4th at 1311 [Legislature "settled the exhaustion question *insofar as it involves a challenge to a change in ownership question.*"].) The Court was not required to determine "whether a *judicially* declared exception to the exhaustion requirement is warranted under *Star-Kist* or *Stenocord*, ..." (*Id.* at 1312 [italics in original].)

c. Sections 1605.5 and 5142 Do Not Eliminate the Nullity Exception

The County also argued in the Court of Appeal that sections 1605.5 and 5142 eliminated the nullity exception.[13] Although the Court of

[13] The County switches gears slightly in this Court and now argues sections 1605.5 and 5142 "empower" local boards to decide "nonvaluation" questions, and therefore, all taxpayers should be required to exhaust [continued]

Appeal did not address this issue in its opinion, we show that the nullity exception has not been eliminated by these statutes.

(1) Section 1605.5 Does not Eliminate the Nullity Exception

Section 1605.5 states, as relevant: "(a)(1) 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, as defined in Chapter 2 (commencing with Section 60) of Part 0.5, or has been newly constructed, as defined in Chapter 3 (commencing with Section 70) of Part 0.5." (Section 1605.5, subdivision (a), subpart (1); added by Stats. 1986, ch. 1457, § 21, p. 5232.)

By its express terms, and as the County agrees (OMB 26), section 1605.5(a)(1) applies only to taxpayer challenges involving *real property*. Section 60 defines a "change in ownership" as a "transfer of a present interest in *real property*, ..." Section 70 defines "newly constructed" as "(1) Any addition to *real property*, ... since the last lien date; ....." (Italics added.)

As discussed in *Steinhart*, the legislative history explains that until the enactment of section 1605.5, it was not clear whether local boards

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administrative remedies with the local boards, regardless of whether valuation questions are involved. (Opening Merits Brief (OMB) 24-26.) We address that argument below.

had authority to hear and decide real property change in ownership disputes between assessors and taxpayers. (*Steinhart*, *supra*, 47 Cal.4th at 1311, citing Assem. Com. On Revenue and Taxation, Analysis of Assem. Bill No. 2890 (1985-1986 Reg. Sess.) as amended Mar. 19, 1986, p.7.) Section 1605.5(a) expressly vests local boards with such jurisdiction. (*Ibid.*) However, nothing in the legislative history of section 1605.5(a) shows any intent to eliminate or modify the long-recognized nullity exception. (Exhibit A to Motion for Judicial Notice filed in the Court of Appeal ["MJN"].)

There is no change in ownership dispute in this case. Rather, the dispute here, as in *Parr-Richmond*, concerns the assessment of taxes on property *not owned by the taxpayer*. Moreover, the farming equipment at issue in this case is personal property, not real property.

Section 1605.5 does not eliminate or modify the nullity exception for personal property and has no application in this case.

(2) The 1993 Amendments to Section 5142 Do Not Eliminate the Nullity Exception

As discussed above, section 5142, subdivision (a), provides that the timely filing of a refund claim is a prerequisite to filing a lawsuit for a refund. The statute was amended in 1993 to add subdivision (b). (Stats 1993 ch 387 § 8 [SB 143].) Subdivision (b) provides:

> (b) When the person affected or his or her agent and the assessor stipulate that an application involves only

> nonvaluation issues, they may file a stipulation with the county board of equalization stating that issues in dispute do not involve valuation questions. To the extent possible, the stipulation shall also indicate the parties' agreement as to the assessment amounts that would result under their respective positions on the issue or issues in dispute. The board shall accept or reject the stipulation, with or without conducting a hearing on the stipulation. The filing of, and the acceptance by the board of, a stipulation shall be deemed compliance with the requirement that the person affected file and prosecute an application for reduction under Chapter 1 (commencing with Section 1601) of Part 3 in order to exhaust administrative remedies. However, the filing of, and the acceptance by the board of, a stipulation under this subdivision shall not excuse or waive the requirement of a timely filing of a claim for refund.

The County argued in the Court of Appeal that subdivision (b) *eliminated* the nullity exception, and *all* taxpayer challenges are subject to the exhaustion requirement unless the taxpayer and assessor have stipulated that the dispute only involves nonvaluation issues. This is wrong. The plain language of the statute does not support such an interpretation, nor does the legislative history.

(a) The Statute's Plain Language

When engaging in statutory construction, the Court "begin[s] with the statutory language because it is generally the most reliable indication of legislative intent." (*Shirk v. Vista Unified School Dist.* (2007) 42 Cal.4th 201, 211 [citation omitted].) If the statutory language is unambiguous, the Court "presume[s] the Legislature meant what it said, and the plain meaning of the statute controls." (*Ibid.*)

The language in subdivision (b) of section 5142 is unambiguous. It shows that the Legislature intended subdivision (b) only to apply to taxpayers who are required to file an application for reduction in assessment pursuant to section 1603, and has no application to taxpayers who are not required to apply for reduction in assessment.[14]

Subdivision (b) begins: "When the person affected ... and the assessor stipulate that *an application* involves only nonvaluation issues, they may file a stipulation ...." (Italics added.) This sentence contemplates that the taxpayer has *already filed an application*, because he or she was *required* to do so; otherwise, the sentence would have referred to a "potential application" or an "application to be filed." Taxpayers who challenge illegal and void assessments, like plaintiff here, are not required to file an application.

Subdivision (b) goes on to state: "The filing of, and the acceptance by the board of, a stipulation shall be deemed compliance with the requirement that the person affected file *and prosecute* an application for reduction ... in order to exhaust administrative remedies." (Italics added.) Because the first sentence already assumes that an application has

[14] More specifically, as confirmed by the legislative history discussed below, the Legislature intended subdivision (b) only to address taxpayers who are required by section 1605.5 to apply for reduction in assessment because their dispute involves a *change in ownership* issue.

been timely *filed*, this sentence insures that the board's acceptance of the stipulation and termination of the timely filed application cannot later support an allegation that the taxpayer failed to *prosecute* the required application.

Subdivision (c) was added to section 5142 at the same time as subdivision (b). It confirms that local boards have authority to hear nonvaluation issues *if* such issues are brought before them:

> "Nothing in this subdivision shall be construed to deprive the county board of equalization of jurisdiction over nonvaluation issues in the absence of a contrary stipulation.

If subdivision (b) requires *all* property tax challenges to comply with the exhaustion requirement, including erroneous or void assessments involving no valuation issues, subdivision (c) would be unnecessary and surplusage. Courts avoid constructions that render statutory language surplusage. (*Dept. of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board* (2006) 40 Cal.4th 1, 14.)

(b) <u>The Statute's Legislative History</u>

The legislative histories of sections 1605.5 and 5142 (set out in part by this Court in *Steinhart* and more fully in the legislative materials attached to plaintiff's MJN), also confirm that subdivision (b) in section 5142 was intended to apply only to taxpayers who are required to file an application for assessment reduction because of valuation issues, and in

addition, those required by section 1605.5 to apply for an assessment reduction because their dispute involves a *change in ownership issue*.

After reviewing the legislative history of section 1605.5, the Court in *Steinhart* noted there was an attempt in 1992 to modify the requirement that *change in ownership* disputes must be presented to local boards of equalization. (Sen. Bill No. 1557, 1991-1992 Reg. Sess. [Exhibit B to MJN].) The bill would have specified that to exhaust administrative remedies with respect to *change in ownership disputes*, taxpayers merely had to file a refund claim and did not have to apply for assessment reduction, i.e., the two-step approach applicable to nullity assessments. (MJN 14, 27, 37, 38.) Counties objected, however, complaining that taxpayers should not be able to "jump over the assessment appeals board and go directly to court." (*Steinhart, supra*, 47 Cal.4th at 1312 [citing and quoting from legislative history]; MJN 25, 32, 37, 38, 43.) The bill did not pass. (*Steinhart, supra*, 47 Cal.4th at 1312.)

This Court continued, "*Instead*, the next year, the Legislature passed a *new provision* expressly *confirming* 'the requirement' that a taxpayer must apply for assessment reduction 'in order to exhaust administrative remedies,' but specifying that the filing ... of a stipulation... 'stating that issues in dispute do not involve valuation questions,' and the board's 'acceptance' of the stipulation ... 'shall be deemed compliance with [this] requirement.'" (*Steinhart, supra, 47 Cal.4th at* 1312 [italics

added]; Exhibit C to MJN.) The "new provision" the Court was referring to is subdivision (b) in Section 5142. The Court concluded, "These statutes and their legislative history show that the Legislature has made an express and considered decision *not* to eliminate the requirement that taxpayers wanting to contest change in ownership determinations *first* apply for assessment reduction to exhaust their administrative remedies." (*Id.* at 1312 [italics in original; underscoring added]; see MJN 45, 58, 64, 72.)

Thus, the plain language of section 5142 and its legislative history confirm that the amendments were intended to apply to taxpayers who are required to file applications for reduction in assessment because their dispute involves *change in ownership* issues. It makes sense to require such disputes to first go before the local board of equalization. Even though the question whether a *change in ownership* has occurred may itself be a purely legal question (as plaintiff Steinhart argued), when a change in ownership *has* occurred, there is a new base year value established for the property (sections 60 and 110.1), and the local board of equalization has exclusive authority, as well as the expertise, to decide valuation questions. But if no valuation questions are involved, subdivision (b) of section 5142 allows the taxpayer and local board to so stipulate and go directly to court (after filing a refund claim).

Nothing in the language of section 5142 or its legislative history supports an interpretation of subdivision (b) that eliminates the

nullity exception, or requires *all* taxpayer challenges to proceed first before the local board of equalization. (See Exhibit C to MJN.)

B. Application of These Principles Shows that the Nullity Exception Applies and a Taxpayer Who Does Not Own and Has No Interest In the Assessed Property Is Not Required to Exhaust Administrative Remedies

A taxpayer (like plaintiff in this case) who does not own and has no taxable connection to the assessed property is not protesting an erroneous valuation of its property or requesting "reduction in an assessment on the local roll" (section 1603). There are no factual questions regarding valuation that the local board has special competence to decide in such a case. Indeed, the assessment may well be for the proper amount, but it has been assessed to the *wrong taxpayer*.

This is precisely the circumstance in which the nullity exception applies. It is exactly what happened in *Parr-Richmond Industrial Corp. v. Boyd*, *supra*, 43 Cal.2d 157, where taxes were levied against the plaintiff for real property it did not own. This Court held the assessments were illegal and void and the taxpayer was not required to first seek relief before the board of equalization. (*Id.* at 165.)

Here, plaintiff had no interest of any kind in the farm equipment on the applicable lien dates. A subsequent auditor for the County determined when examining the later years that plaintiff *did not* own, claim, possess or control the property during the tax roll years in

question. (3AA 173, 174, 310, 323.) There is no question of valuation which requires the special expertise of the board. The assessments against plaintiff are illegal and void as a matter of law, and fit squarely within the nullity exception as announced by this Court in *Parr-Richmond.*

C. None of the County's Arguments Requires a Change in the Law

The County nevertheless urges this Court to adopt a new rule, which would require plaintiff – and essentially *all* taxpayers – to exhaust administrative remedies by filing an application for reduction in assessment with the local board under subdivision (a) of section 1603 before seeking judicial relief. The County argues that "a remedy is available" at the local board because the "equalization" function of the board includes more than just "valuation," the board is "competent" to decide "nonvaluation" factual questions, and two statutes allow local boards to decide "nonvaluation" issues. The County also argues the nullity exception only applies to pure questions of law with undisputed facts.

None of these arguments is compelling.

1. Only an Owner or Someone With an Interest in Paying Taxes on the Property Can File a Valid Application for Assessment Reduction

The plain language of section 1603 makes clear the legislature's intent that only the owner of the property, or someone having a direct economic interest in the payment of taxes on the property, is required – even *permitted* – to file an application for reduction in assessment.

Subdivision (a) of section 1603 requires that an application for a reduction in an assessment must include, among other things, "the facts claimed to require the reduction and *the applicant's opinion of the full value of the property.*" (Italics added.) Obviously, only someone with a taxable connection to the property, i.e., ownership, claim, possession, or control (section 405) would be in a position to form an opinion of the value of the property.

Moreover, subdivision (f) of section 1603 requires the application to contain the following language in the signature block: "I certify (or declare) under penalty of perjury under the laws of the State of California that I am (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 ...." (Italics added.) Had the Legislature intended to require *all* taxpayers to file an application under subdivision (a) of section 1603, including those without an ownership interest or any other interest in paying taxes on the property, this declaration would not be necessary. Or the Legislature would have simply required the declaration to say something along the lines of, "I certify...I am the individual or entity who challenges the assessment...."

Here, plaintiff was not the "owner." The County's assessor determined that plaintiff had disposed of the farm equipment and did not

own or possess the equipment for the tax years in question. (2 AA 173, 174, 310, 323.)

Nor was plaintiff "the person affected." Property Tax Rule 301, subdivision (g),[15] defines the term "person affected" as "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.) Plaintiff was none of these.

In short, plaintiff had no direct (or even indirect) economic interest in paying taxes on property it no longer owned on the valuation dates in question, any more than anyone else would have an interest in paying the property taxes of his neighbor or a stranger. Likewise, plaintiff would have no incentive to challenge or defend a valuation issue before the assessment appeals board with respect to property it no longer owned.

[15] The Property Tax Rules relating to local equalization (Rules 301-369) are set forth in Title 18 of the California Code of Regulations, Division 1, Chapter 3, Article 1.

Under the plain language of section 1603, plaintiff was not required to – and *could not* – file an application for reduction in assessment, as the Court of Appeal correctly held.

2. The Function of the Local Boards is "Equalization"

The County urges this Court to adopt a new rule requiring essentially all taxpayers to exhaust administrative remedies before the local board because, it argues, the function of local boards has "expanded" to include disputes such as the instant one. Not so. The role of the local board has always been limited. "The function of a County Board of Equalization, as its name implies, is to increase or lower an assessment in order to equalize property assessments on the local rolls, and to make the assessment conform with the true value of the property." (*Parrott and Company v. City and County of San Francisco, supra*, 131 Cal.App.2d at 342.)

The California Constitution defines the role of local boards: "[T]he county board of equalization, under such rules of notice as the county board may prescribe, shall equalize the value of all property on the local assessment roll by adjusting individual assessments." (Cal. Const. art. XIII, § 16.)

Section 1610.8 likewise states, "the county board shall equalize the assessment of property on the local roll by determining the full

value of an individual property, by assessing any taxable property that has escaped assessment...."

Property Tax Rules 301 and 302 also specifically define the function of local boards. Subdivision (k) of Property Tax Rule 301 defines "equalization" as "the determination by the board of the correct full value for the property that is the subject of the hearing." (18 CCR § 301(k).) Property Tax Rule 302, "The Board's Function and Jurisdiction," details the specific functions of the county board of equalization as follows:

> "(1) To lower, sustain, or increase upon application, or to increase after giving notice when no application has been filed, individual assessments in order to equalize assessments on the local tax assessment roll,
>
> (2) To determine the full value and, where appealed, the base year value of the property that is the subject of the hearing,
>
> (3) To hear and decide penalty assessments, and to review, equalize and adjust escaped assessments on that roll except escaped assessments made pursuant to Revenue and Taxation Code section 531.1,
>
> (4) To determine the classification of the property that is the subject of the hearing, including classifications within the general classifications of real property, improvements, and personal property. Such classifications may result in the property so classified being exempt from property taxation.
>
> (5) To determine the allocation of value to property that is the subject of the hearing, and
>
> (6) To exercise the powers specified in section 1605.5 of the Revenue and Taxation Code." (18 CCR § 302(a).)

The County nevertheless cites two decisions from this Court, (both discussed above in connection with the nullity exception) *Security-First National Bank v. County of Los Angeles, supra,* 35 Cal.2d 319 and *City and County of San Francisco v. County of San Mateo, supra,* 36 Cal. 196, in support of its assertion that "equalization" means more than "just valuation." (OMB 22-24.) Neither case involved an erroneous, illegal and void tax assessed against someone who was not the owner of the property, as we have in the instant case. Rather, both cases involved disputes over the assessor's *classification* of property that was owned by the taxpayer. Contrary to the County's claim, classification relates to the board's equalization/valuation function because property tax law requires that land, improvements, possessory interests, personal property, and other classes of property, must have separately assessed values on the tax roll. (Sections 602, 607; 18 CCR § 252(a)(8).)

The County cites no authority, and we are aware of none, that gives the local board of equalization broad, general jurisdiction to hear and decide any and all factual disputes, regardless of whether the dispute relates in some way to equalization. Moreover, regardless of whether local boards are "competent" to hear such disputes, as the County claims, this is not the issue. The issue is whether taxpayers *must* bring such disputes to the local board before pursuing judicial relief, and the County has offered no compelling reason why they must.

3. Sections 5142 and 1605.5 Do Not Compel a Change in the Law

The County also urges the Court to require all taxpayers to exhaust administrative remedies because the Legislature gave local boards authority to hear "nonvaluation" issues in sections 1605.5 and 5142. (OMB 24-26.) However, as discussed above, both statutes are limited in application, and do not apply here. Neither statute, *nor any other*, requires all taxpayers to exhaust administrative remedies by filing an application for assessment reduction under subdivision (a) of section 1603, or eliminates the judicially created nullity exception for assessments that are erroneous, illegal and void.

The nullity exception has existed and been applied for more than 100 years. If the Legislature wanted to eliminate it, or require all taxpayers to exhaust administrative remedies, it knows how to do so.

4. Section 1605 (e) Does Not Eliminate the Nullity Exception

The County also argues that section 1605, subdivision (e) "empowered" the assessment appeals board to hear plaintiff's challenge because the assessment concerned business personal property that was subject to escape assessment. (OMB 26-27.) However, section 1605 only applies when a taxpayer is required to file an application for reduction in assessment pursuant to subdivision (a) of section 1603. A taxpayer, like plaintiff, who does not own or have a taxable connection to the business

personal property on which taxes are assessed is not required to file an application pursuant to section 1603(a).

There is nothing in the language of section 1605 that eliminates the nullity exception or requires this Court to adopt a new rule requiring all taxpayers to exhaust administrative remedies.

5. The Facts are Undisputed and the Nullity Exception Applies

Finally, the County contends recent cases have applied the nullity exception only when the facts are undisputed. (OMB 30-30-36.) Having discussed the development and application of the nullity exception above, we will not replow the same ground here. In any event, there is no dispute in this case that plaintiff was not the owner of the property. In a subsequent audit, the assessor determined that plaintiff had disposed of the nine pieces of farm equipment and did not own or possess the equipment for the tax years in question. (2 AA 173-174, 310, 323.)

The case fits squarely within the nullity exception based on nonownership this Court articulated in *Parr-Richmond Industrial Corp. v. Boyd*, *supra*, 43 Cal.2d 157, 165. The most fundamental aspect of property taxation is that whoever is required to pay the tax must possess a taxable connection to the property, i.e., own, claim, possess, or control it on the lien date. (Section 405.) An assessment against a taxpayer who has no such taxable connection to the property is void – a nullity – and the taxpayer is

not required to exhaust administrative remedies. (*Parr-Richmond Industrial Corp. v. Boyd*, *supra*, 43 Cal.2d 157, 165.)

II. The Statute of Limitations to File a Claim for a Tax Refund Begins to Run Only After the Taxpayer Has Paid the Disputed Taxes

The County contends that plaintiff's filing in 2007 of applications to cancel the erroneous, illegal and void assessments triggered not only the statute of limitations on its refund claim, but also the limitations period for paying the taxes.

The County is wrong on both points.

A. There is No Statute of Limitations to *Pay* Property Taxes

The County relies on Section 32 of Article XIII of the California Constitution as the basis for a limitations period within which taxpayer must both pay the disputed tax and seek a refund. (OMB 42.) But there is no statute of limitations to *pay* a tax. The language of section 32 is clear that any time limitation to recover the tax paid cannot begin to run until after the tax is actually paid: "*After payment* of a tax claimed to be illegal, an action may be *maintained to recover the tax paid* [...]." (Italics added.) It is entirely possible, as in fact happened in this case, that a taxpayer who is erroneously and illegally assessed an exorbitant amount of taxes on property to which it has no taxable connection may have no ability to pay the tax then, or anytime soon. Indeed, it may take years for the

taxpayer to be able to raise the funds required to pay a tax it does not even owe.

The County confuses a claim by the government to collect an unpaid tax with a claim by a taxpayer to recover the tax paid. When a tax is unpaid, the government has considerable powers of collection against a taxpayer (i.e., a suit for taxes under section 3003), subject to various limitation periods for collection of such taxes. (See, e.g., Cal. Const., art. XIII, § 30 ["Every tax shall be conclusively presumed to have been paid after 30 years from the time it became a lien unless the property subject to the lien has been sold in the manner provided by the Legislature for the payment of the tax."].)

However, once the taxpayer pays the taxes, any claim for a tax refund is the taxpayer's responsibility. Section 5097 sets forth the applicable limitations period for claims for a refund of property taxes paid.

B. Section 5097 Provides for Four Years After Payment to File a Claim for Refund

Section 5097 sets forth several alternative periods for filing a refund claim, only two of which are at issue in this case: a four-year filing period in subdivision (a)(2), which plaintiff contends applies, that runs from payment of taxes; and a one-year period in subdivision (a)(3)(A)(ii), which the County contends applies, if the taxpayer has filed an application for

reduction in assessment under section 1603(a). Section 5097 states, in pertinent part:

> (a) No order for a refund ... shall be made, except on a claim:
>
> (1) Verified by the person who paid the tax....
>
> (2) Except as provided in paragraph (3), filed within four years after making the payment sought to be refunded, or within one year after the mailing of notice as prescribed in Section 2635, or the period agreed to as provided in Section 532.1, or within 60 days of the date of the notice prescribed by subdivision (a) of Section 4836, whichever is later.
>
> (3)(A) Filed within one year, if an application for a reduction in an assessment or an application for equalization of an assessment has been filed pursuant to Section 1603 and the applicant does not state in the application that the application is intended to constitute a claim for a refund, of either of the following events, whichever occurs first:
>
> (i) After the county assessment appeals Board makes a final determination on the application for reduction in assessment ...
>
> (ii) After the expiration of the time period specified in subdivision (c) of Section 1604 if the county assessment appeals Board 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 County contends the one-year period in subdivision (a)(3)(A)(ii) applies because plaintiff filed a form that is used for applications for assessment reduction with the assessment appeals board

in June 2007 and the board never heard evidence or made a final determination on the applications. (OB 46.) The board has two years to consider an application for assessment reduction, the expiration of which triggers the one-year limitation period. (Section 1604(c).) Thus, argues the County, plaintiff's refund claims were due in June 2010, and because plaintiff filed the claims in 2012, the refunds are time-barred.

This ignores the fact that plaintiff never paid the taxes until 2011 and 2012. (1AA2, 2AA 175.) Because there were no payments to create a refundable "fund," filing the claims in 2010 would have been a meaningless act. And the statute of limitations would have expired before plaintiff's claim for a refund even *accrued.* It is axiomatic that "statutes of limitation do not begin to run until a cause of action accrues." (*Fox v. Ethicon Endo-Surgery* (2005) 35 Cal.App.4th 797, 806.)

The County's assertion that the statute of limitations on a refund claim can expire while the tax remains unpaid is also without logical foundation under California tax law and the requirement of due process.

C. The Limitations Period Under Section 5097 For Refund of Taxes Commences on the Making of the Payment Sought to be Refunded

The language of section 5097 is clear: "the limitation period commences upon 'the making of the payment sought to be refunded.' (*Singer Co. v. County of Kings* (1975) 46 Cal.App.3d 852, 869 [construing

former subdivision (b), renumbered as (a)(2)in 1978 by Stats 1978 ch 732 § 6.5].)

Section 5096 also establishes that payment of the taxes is a prerequisite to the running of the statute of limitations on seeking a refund: "Any taxes *paid* before or after delinquency shall be refunded …. " (Italics added.)

This is the well-established "pay first, litigate later" rule, under which a taxpayer must pay a tax before commencing a court action to challenge the collection of the tax. (*State Board of Equalization v. Superior Court (1985) 39 Cal.3d 633, 638* ["the sole legal avenue for resolving tax disputes is a postpayment refund action"]; *Water Replenishment Dist. of Southern California v. City of Cerritos* (2013) 220 Cal.App.4th 1450, 1465 ["taxpayer may not go into court and obtain adjudication of the validity of a tax which is due but not yet paid"].)

Because a taxpayer must pay the tax prior to challenging it, the right to due process requires some procedure affording a meaningful opportunity for review after payment. (*Batt v. City and County of San Francisco* (2007) 155 Cal.App.4th 65, 72, disapproved on other grounds in *McWilliams v. City of Long Beach* (2013) 56 Cal.4th 613, 626.)

While states may have flexibility in fashioning the shortest possible time for a refund claim, a taxpayer must be given at least *some* period of time after paying taxes to contest the legality of the taxes by

seeking a refund. Application of subdivision (a)(3)(A)(ii), as urged by the County, would give plaintiff *no* time to contest the legality of the taxes after payment and would violate plaintiff's due process rights.

Accordingly, whatever the length of the limitations period may be for seeking a refund, it cannot begin *before* the date the taxes are actually paid.

The long refund period, about which the County complains, results from the "pay first-litigate later" tax system established by the California Constitution. The County had no problem asserting the "pay first" rule in the 2007 litigation when it argued, and the trial court agreed, that plaintiff had to pay the taxes before it could litigate the validity of the void assessments. (2AA 175; 3AA399.)

In any event, once the County was alerted to the fact that it assessed the wrong taxpayer, it had ample opportunity to protect its position by assessing the correct taxpayer within any applicable statute of limitations. Any detriment to "the public welfare" from the delayed collection of taxes, the failure to preserve evidence, or anything else the County fears, falls on the County.

D. Subdivision (a)(3)(A) Does Not Shorten The "Four-Year After Making Payment" Limitations Period

The County asserts that subdivision (a)(3) of section 5097 is intended to modify all the refund limitations periods otherwise set out in

subdivision (a)(2). (OMB pp. 36-38.) The legislative history does not support this construction. The legislative history shows the alternative time periods in subdivision (a)(3)(A), subparts (i) and (ii), were not intended to apply to the four-year statute of limitations, or to alter it in any respect. (Exhibit D to MJN.)

As originally enacted and amended in 1967, section 5097 provided for filing refund claims within (1) four years after making the payment sought to be refunded, or (2) one year of mailing section 2635[16] notice, or (3) the period agreed to under section 532.1[17], whichever is later. (Enacted 1939; amended Stats 1967 ch 746 § 2.)

Effective January 1, 2009, section 5097 was amended to add the alternative time periods in subdivision (a)(3) for filing a refund claim. (Stats 2008 ch 329 § 2 [AB 2411].) The legislative history shows this amendment was intended to address a loophole under which taxpayers could use the "one-year after notice" limitations period to circumvent the "four-year-after-payment" period.

In detailing the purpose of AB 2411, the relevant legislative history explained:

---

[16] Section 2635 requires the tax collector to send notice to a taxpayer when the tax paid exceeds the tax by $10.00.

[17] Section 532.1 allows a taxpayer and the assessor to agree to an extension of time for making an assessment, correction, or claim for refund.

> "The proponents of this bill state that, 'In a number of recent instances, where the four-year statute of limitations for property tax requests for refund/appeals has run, taxpayer appellants have taken to the practice of bringing mandate actions in Superior Court, requesting that a court direct a writ to the Tax Collector declaring an overpayment and ordering that the Tax Collector issue an overpayment notice to the aggrieved taxpayer pursuant to R&TC Section 2635. Because R&TC Section 5097(a) defines a timely claim as one filed within four years of the date of payment, or within one year of an overpayment notice, as long as the Tax Collector can be compelled to issue an overpayment notice by the courts, it is possible to thwart the four year statute of limitations.' The proponents also argue that R&TC Section 1635 was originally intended to provide a remedy for overpayment of taxes in the tax collection process, and not as a means to file a long dormant refund claim." (MJN 107 [Assem. Com. on Revenue and Taxation, Analysis of AB 2411 [2007-2008 Reg. Sess.] as introduced February 21, 2008, p. 2]; see also MJN 118-119.)

Thus, as originally introduced, AB 2411 proposed to amend subpart (a)(2) of section 5097 to delete the language, "or within one year after the mailing of notice as prescribed in Section 2635." (MJN 76-77.)

The California Taxpayers' Association, California Chamber of Commerce, and California Business Properties Association objected to the bill, complaining that it would limit taxpayers' rights for a refund to four years after making a property tax overpayment, without delivery of a notice of a right to refund as required by law. (MJN 114, 115, 116.) Committee staff also noted that section 2635 makes sending the notice mandatory, and eliminating the one-year period would render the notice useless. (MJN 107, 110.) Committee staff further noted that the Legislature

amended section 5097 in 1967 to include the very provision AB 2411 intended to eliminate. (*Ibid.*)

To address these concerns, the bill was amended to allow an exception to the *one-year after notice* period when a taxpayer files an application for a reduction in assessment or for equalization of assessment, and the taxpayer does not state that the application is intended to constitute a claim for refund. (MJN 80-81, 88, 94-96, 101, 107-108, 111.) Subdivision (a)(3)(A) was added to set forth the exception. (MJN 80-81, 88, 94-96, 101.)

Nothing in the legislative history of the amendments to section 5097 suggests the Legislature intended to alter or affect the *four-year* statute of limitations. To the contrary, the legislative history and amended and final versions of the bill confirm that the Legislature dealt only with the open-ended one-year statute of limitations.

E. The One Year Limitations Period in Subdivision (a)(3)(A)(ii) Only Applies if a Taxpayer Files a Valid and Timely Application Pursuant to Section 1603

Furthermore, the one-year limitations period in subdivision (a)(3)(A) applies only "if an application for a reduction in an assessment ... has been filed pursuant to section 1603." The one-year limitations period therefore does not apply here because plaintiff did not file an application pursuant to section 1603. Plaintiff specifically stated in the attachments that the forms were filed under *section 4986*, based on non-

ownership of the disputed property. (2AA 175, 339-374.) Section 4986 governs cancellation of unpaid taxes, not reduction in assessment, and is statutorily directed to the auditor, not to the assessment appeals board.

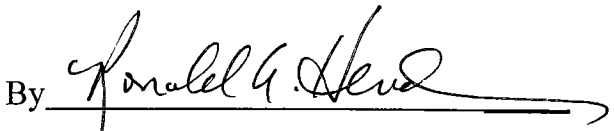
Moreover, assuming for the sake of argument that the applications plaintiff filed in June 2007 were sufficient in form, they were untimely. The County summarily rejected the filings for that very reason. (2AA 175, 132; OB13.) Therefore, the two-year period of section 1604(c) for the board to hear evidence and make a final determination never ran, much less expired, so the one-year period in subsection (ii) does not apply.

CONCLUSION

For all of the above reasons, the Court of Appeal's decision should be affirmed.

Dated: July 22, 2015.

DOWLING AARON INCORPORATED

By 

Ronald A. Henderson
Lynne Thaxter Brown
Attorneys for Plaintiff/Appellant
WILLIAMS & FICKETT, a
California General Partnership

CERTIFICATE OF WORD COUNT

The text in this Appellant's Answer Brief on the Merits is proportionally spaced. The typeface is Times New Roman, 13 point. The word count generated by the Microsoft Word© word processing program used to prepare this Opening Brief, for the portions subject to the restrictions of California Rules of Court, Rule 8.204(c), is 12,100.

Dated: July 22, 2015.

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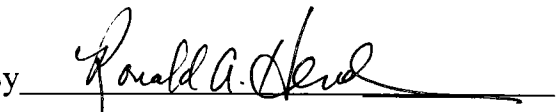
By 

Ronald A. Henderson
Lynne Thaxter Brown
Attorneys for Plaintiff/Appellant
WILLIAMS & FICKETT, a
California General Partnership

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PROOF OF SERVICE

STATE OF CALIFORNIA)
)
) **SS**
COUNTY OF FRESNO)

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen (18) years and not a party to the within-entitled action. My business address is 8080 North Palm Avenue, Third Floor, Fresno, CA 93711. On July 22, 2015, I served the within document(s):

APPELLANT'S ANSWER BRIEF ON THE MERITS

☒ **BY MAIL:** By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Fresno, California, addressed as set forth below.

Daniel C. Cederborg, County Counsel Peter Wall, Deputy Fresno County Counsel 2220 Tulare Street, 5th Floor Fresno, CA 93721 Telephone: (559) 600-3479 Facsimile: (559) 600-3480 *Attorneys for Defendant/Respondent County of Fresno*	Hon. Donald S. Black Fresno County Superior Court Department 502 1130 "O" Street Fresno, CA 93721
Court of Appeal Fifth Appellate District (*via e-service pursuant to California Rules of Court, Rule 8.212, by e-submission to Court of Appeal, Fifth District*)	

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 22, 2015, at Fresno, California.

Helen L. Walton