

## LATE FILING PENALTIES, JUST GOT MORE DIFFICULT TO ABATE!

Albert Zammaripa, VP Northern CA

If you have been one of the unfortunate souls to have filed a Business Property Statement after May 7th, you are certainly familiar with the sting of a 10% late filing penalty. For a business with a \$10 Million dollar taxable value, it will easily add \$10,000 in additional taxes. The penalty increases with the value of a business.

The legislature, under Revenue and Taxation (R&T) Code 463, allows an entity which filed a late return to apply for an abatement. Former Section (§) 463 provided that if a taxpayer, establishes to the satisfaction of a County Board, that the late filing was due to "reasonable cause" as opposed to "willful neglect" then the Board may order the penalty abated. Under the former §463, penalty cases appeared to be somewhat routine, the Board would require a valid reason for the late filing and would usually order the penalty abated. Unless, the Board was convinced that the taxpayer did not intend to file on time or perhaps the Board was having an extremely bad day, a first time late filer would typically have their penalty abated by the Board.

Times have changed, as described in AB 571, which became effective January 1, 2016, reads as follow:

AB 571 (Brown), Chapter 501  
Amends sections 463 and 483 of the Revenue and Taxation Code.

Late Filing Penalty Abatement. Modifies the "reasonable cause" standard that authorizes the penalty to be abated for failure to file the property statement or change in ownership statement within the specified time period. Provides that an assessee must establish that the failure was due to reasonable cause and circumstances beyond the assessee's control, and occurred notwithstanding the exercise of ordinary care in the absence of willful neglect.

The rewriting specifically adds that "circumstances beyond the assessee's control", need to exist in order for a Board to abate the penalty. In reading this new regulation, it is much like a late payment penalty. The few cases I have witnessed for late payment penalty abatements have all resulted in denial of the application.

In essence, the bar has been placed very high for a late filing penalty to be abated. Therefore, we recommend to all our readers that the 571L be filed timely in order to avoid having to appear before an AAB, under the new regulations. Although I have not had to represent any late filing penalty cases under the new §463, I forecast that Boards will have very little sympathy.



# OBSOLESCENCE FACTS

Vanita Bansal, Tax Consultant

How many of you know that relief is available in property tax if a business is suffering from obsolescence or loss of business.

Yes, the value of the personal property can be reduced if business/industry suffered from loss of demand. If actual number of units produced/sold is significantly less than the rated/ optimum capacity, then property values should be adjusted to reflect fair market value.

Typically a taxpayer reports cost of all equipment on 571-L Property Tax Statement, and an assessor derives reproduction cost or replacement cost new by applying index factors. Index factors are used to adjust property's original cost for price level changes since the property was acquired then the cost new is multiplied by a percent good factors (complement of depreciation) to provide an estimate of the depreciated cost of the property. The reproduction or replacement cost new less depreciation represents the fair market value of the property. Percent good factors are developed for use in mass appraisals and to promote uniformity in appraisal practices and in assessed values throughout the state.

These factors are developed taking into account ordinary changes in the property. By definition, extraordinary changes are not applicable to all property and its inclusion in the general application factors would be counterproductive.

In some situations a business may be suffering from such causes which are not anticipated in normal business course, like change in technology or low demand of the product, etc. In those situations property values should be adjusted for those extraordinary changes which are not accounted in mass appraisal techniques.

The taxpayer has to notify an assessor to account for those changes which are obsolescence. Obsolescence could be physical, functional or economic.

Obsolescence is defined as a decrease in utility resulting in a loss in property value. Adjustments should be made to reproduction cost to account for obsolescence when determining market value for property taxation purposes

Obsolescence can be either temporary (for example, an oversupplied market) or permanent (for example, a change in regulatory requirements). Temporary obsolescence will have to be quantified not only as to the degree of the loss in value, but must also reflect the duration of the loss. Permanent obsolescence will be assumed to last for the remaining economic life of the property.

The assessor has to recognize obsolescence and to measure inutility to lower the value of property. In those situations, specialist can help taxpayer in gathering information and take it up with the assessor.





# Tax Tidbits

**April 1 -**  
**Due date for filing statements**  
**for business personal property (5471L)**

**April 10 -**  
**Secured property tax 2nd installment due**

**May 7 - 10% PENALTY DATE**  
**Last day to file a business personal**  
**property statement (571L) without**  
**incurring a penalty.**



## TOOTING OUR HORN

Although this is an informational newsletter, we would like to take the opportunity to brag about a sampling of our successes, from various industries, in the last quarter. These are a few **examples of the refunds** that our clients have received from the county, due to our work.

### Business Personal Property

Aluminum Production (1)	\$126,392.74
Dairy Product Mfg (2)	\$543,471.21
Data Center (4)	\$1,909,044.95
Fruit and Vegetable Processing (2)	\$369,030.76
Grocery Stores (1)	\$34,071.46
Marine Terminals (2)	\$649,831.19
Mineral Mining and Quarrying (1)	\$247,271.84
Pharmaceutical Manufacturing (1)	\$277,459.83
Semiconductor Manufacturing (1)	\$38,925.83
Warehouse and Storage (4)	\$130,026.01

### Real Property California

Distribution Warehouse - Property - LA County	\$571,901
Industrial Property (2 Prop.) - LA County	\$47,778
Cold Storage Warehouse Property - LA County	\$31,216
Office/Retail Property - LA County	\$196,616
Retail Property - LA County	\$69,402
Industrial Property (2 Prop.) - Riverside County	\$40,802
Multifamily Property (3 Prop.) - San Bern. County	\$288,081
Retail Property - San Bernardino County	\$43,583

# Fixtures

Gilbert Arciba, Senior Tax Accountant

If you are a regular reader of our newsletter, we focus a lot on fixtures. I am currently working an appeals case which involves fixture cost being erroneously assessed.

The subject property is a Research & Development (R&D) facility. Typical of an R&D building, it includes lab space, clean rooms, air systems, piping, electrical, fire suppression, HVAC, etc. For assessment purposes, the owner paid property tax on the land and building and all personal property was declared on their Business Property Statement, Form 571L.

The Assessor performed their mandatory 4-year audit and assessed substantial cost related to the Leasehold Improvement-Fixtures. In general, leasehold improvements are classified as either fixtures or structures. In most cases, structures are valued as real property in accordance with proposition 13 and fixtures are valued as personal property, per section 122.5 of the Revenue & Tax Code (RTC). The assessor performed a coordinated review between the real and business division and determined certain cost was not assessed by the real estate and issued escape assessments via the audit.

The subject property was a built-to-suite facility constructed from the ground up for the specific purposes of the owner. The property was built to the specifications of the user from the type of floor space prerequisites, lab space, clean room types and any manufacturing space that it required. It is important to note that the specifications included specialized piping, flooring, lab specialties and clean room.

The real estate interest was assessed utilizing the cost approach, market approach and income approach. The Price per Square Foot (PSF) on the subject property was greater than the typical commercial or industrial building accounting for the specialty use of the building. In review of the construction costs, we found items that were clearly fixture related, which includes several million dollars, incorporated within the Prop. 13 value. In the audit, the Assessor is assessing Leasehold Improvement-Fixtures claiming they were not captured in the real estate. The economic life of equipment and fixtures in a R&D facility is very short. We typically see an economic life of 5-7 years. In review of the assets being assessed via the audit, the majority of the cost is replacement in nature.

The subject property has specific configurations for clean rooms, lab space, and R&D. Updating the configuration or replacing aged items in the clean rooms and lab space would not add value to the underlying real estate interest. When the Assessor established their base year, they included these build outs in their value and the replacement items would not add value to the real estate.

The business division of the Assessor believes if a cost is not picked up by the real estate division, it allows them the opportunity to capture this cost. This thinking creates duplications and are direct violations of property tax laws. For example, all structures include a roof, doors, windows, etc. If the owner replaces and updates these items, they would not be assessable. When the real estate division classifies a building as a specialty use, it includes specific costs in the real estate. A few classifications such as cold storage warehouses, R&D, Hospitals, Data Centers, and biotech would all include several millions in fixturized costs. As the property ages and requires updating these costs would not all be assessable.

We hope the Assessor recognizes the error in their escape assessments and cancels the tax bills; otherwise, we will be ready to present our case to the assessment appeals board. Our approach utilizes a market comparison of the real estate interest and the Fixture assessment to flush out the duplication on a PSF basis. We will keep the readers informed as to the outcome in a future newsletter.



# Quotes

**A good laugh heals a lot of hurts.**  
—Madeleine L'Engle

**Everyone wants to ride with you in the limo, but what you want is someone who will take the bus with you when the limo breaks down.**  
—Oprah Winfrey

**Too many people spend money they haven't earned, to buy things they don't want, to impress people that they don't like.**  
—Will Rogers

**The world is shaped by two things—stories told and the memories they leave behind.**  
—Vera Nazarian

**Management is about arranging and telling. Leadership is about nurturing and enhancing.**  
—Tom Peters

**A little thought and a little kindness are often worth more than a great deal of money.**  
—John Ruskin

**He'd learned long ago: Perfection isn't what families are all about.**  
—Jamie Ford

**There is little success where there is little laughter.**  
—Andrew Carnegie

**So you're afraid? Be afraid. Be scared silly to the point you're trembling and nauseous, but do it anyway!**  
—Richelle E. Goodrich

**Wonder is the seed of knowledge.**  
—Francis Bacon

## Representing Yourself or Not

J.P. Patel Senior Tax Consultant

As a property tax consultant I am frequently faced with the individual or company that is struggling with the idea of whether to outsource it's assessment appeals process or go at it alone and handle it in house. The rational is to save money on the consulting fees. Could you save money? Perhaps. But often, it is a good idea to have an expert look at it. Here are two examples that I encountered in the last year where hiring an experienced professional was justifiable.

Filing requirements are different for each county. In some counties filing an appeal on a audit, challenges the audit findings and the regular assessment. In other counties, one needs to file appeals on both the audit findings and regular assessments to challenge the entire assessment.

I represented a company who disagreed with their audit findings and filed appeals on the audit but not the regular assessment. This company was located in a county where challenging an assessment appeal needed to be filed on both the audit and regular assessment. Fortunately, we were hired within the 60 day appeal filing requirement and were able to amend the audit appeal to include the regular assessments. In the final results, not only we were able to reverse the audit findings but the company received in excess of four hundred thousand dollars in refunds from the regular assessment.

Another client was not aware of a provision which would allowed them to expand the scope of the audit appeals they filed. When property is subject to an escape assessment during a personal property tax audit it allows the taxpayer to file an appeal on both the secured and unsecured assessments. Again, we were retained within the 60 day appeal filing period and we amended the applications to include secured property. As a result, we were able to secure refunds of over three hundred thousand dollars from a decline in secured property value. As an experienced professional this was an easy catch.

Unfortunately, this has been a re-occurring theme over the years. As a practitioner it is difficult to watch a company make a costly mistake, especially one that is irreparable. Over the years, I have seen companies successfully represent themselves, but in most cases they find out that the process is biased in favor of the assessor, bureaucratic, time consuming, it's long, and uses too many company resources, the benefit is far less than anticipated, which left them feeling the effort was not worth it.

### A SIMPLE FAVOR

A man taking a walk one day noticed a small boy trying to use the doorbell on a house across the street.

After watching the boy's efforts for a minute, the man crossed the street to help. "Hello there," he said, ringing the bell. "What do we do now?"

The boy looked up at him. "Run!"

# PTA

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## Property Tax Update



*No matter  
how long the  
winter, spring  
is sure to  
follow.*

*~Proverb*