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No. 2002/040

TO COUNTY ASSESSORS:

LEGISLATIVE CHANGES REGARDING PROPERTY TAX APPEALS

The Governor signed two bills relating to assessment appeals: AB 645 (Chapter 238, Statutes of 2001) amended sections 469 and 1603 of the Revenue and Taxation Code,<sup>1</sup> and SB 1181 (Chapter 407, Statutes of 2001), in part, amended sections 170 and 1606.

Below is a summary of the amendments, which became effective on January 1, 2002. In the more detailed discussion of each that follows, we will first describe the law prior to the amendments and then describe the changes. Briefly, the amendments:

- Change the assessment appeals filing period from 14 days to 6 months for property that has sustained a misfortune or calamity (section 170);
- Provide all taxpayers with equivalent assessment appeal rights after a property tax audit (section 469);
- Extend the final date to file an appeal during the annual assessment filing period from September 15 to November 30 in certain instances (section 1603); and
- Extend the time periods in the assessment appeals exchange of information process (section 1606).

**MISFORTUNE OR CALAMITY**

Subdivision (c) of section 170 contains the provisions for filing an assessment appeal for a proposed reassessment following a misfortune or calamity. Previously, a taxpayer was advised on the reassessment notice that he or she had 14 days from the date of mailing of the notice to appeal the proposed reassessment to the local board of equalization or assessment appeals board.

Chapter 407 amends section 170(c) to extend the assessment appeal filing period from 14 days to six months for property that has sustained a misfortune or calamity.

Property Tax Rule 305, *Application*, will be amended to reflect this change in the filing period.

<sup>1</sup> All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

**PROPERTY TAX AUDITS**

Section 469 requires county assessors to audit, at least once every four years, the books and records of any taxpayer engaged in a profession, trade, or business, if the taxpayer has assessable trade fixtures and business tangible personal property valued at \$400,000 or more. Such audits are commonly referred to as “mandatory audits.” Additionally, the assessor may audit the books and records of taxpayers with holdings below \$400,000 in value under sections 441 and 470. Such audits are commonly referred to as “nonmandatory audits.”

Section 469, in addition to requiring the periodic audit of specified taxpayers, provides that when a mandatory audit has been conducted and the audit has “disclosed property subject to an escape assessment,” then the original assessment of all the property of the assessee at that location (real and personal property) is open to appeal for the year of the escape, except property for which the value has been previously equalized (i.e., a previous assessment appeal on the property was heard and decided).<sup>2</sup> In contrast, prior to January 1, 2002, when a *nonmandatory audit* was conducted and an escape assessment was made as a result of the audit, the taxpayer could appeal only the property subject to escape assessment.

Chapter 238 amends section 469 to provide taxpayers subject to nonmandatory audits the same equalization rights currently provided to taxpayers after mandatory audits.

Property Tax Rule 305, *Application*, will be amended to reflect this change in the equalization process.

**ASSESSMENT APPEAL APPLICATION FILING PERIOD**

Chapter 238 amends subdivision (b) of section 1603 to extend the last day of the application filing period in those situations where assesseees are not notified of the value of their real property on the secured roll by August 1. Since the enactment of these changes, further points needing clarification have surfaced due to inadvertent drafting errors. Legislation is currently pending (SB 2092, Senate Revenue and Taxation Committee) to clarify that the filing period extension to November 30 made by Chapter 238 applies to all property (real and personal) on either assessment roll (secured or unsecured) if the assessor has not sent value notices as described in section 619 to all assesseees of real property on the local secured roll.

**EXCHANGE OF INFORMATION**

Section 1606 contains the provisions for exchange of information in the assessment appeals process. The exchange of information allows each party to ascertain the basis of the other party’s opinion of value. Previously, the initiating party had to submit to the non-initiating party the information supporting that party’s opinion of value more than 20 days in advance of the assessment appeal hearing date; the non-initiating party had to submit responsive information at least 10 days prior to the hearing. The Board promulgated Property Tax Rule 305.1, *Exchange of Information*, which reads in part as follows:

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<sup>2</sup> See Letter To Assessors No. 2001/031, *Heavenly Valley v. El Dorado County Board of Equalization* (2000) 84 Cal.App.4<sup>th</sup> 1323 (opn. mod. 86 Cal.App.4<sup>th</sup> 25d).

(a) ... The request may be filed with the clerk at the time an application for hearing is filed or may be submitted to the other party and the clerk at any time prior to twenty days before the commencement of the hearing.

(b) ... the other party shall submit a response to the initiating party and to the clerk at least 10 days prior to the hearing ...

Under the rule, it was unclear whether the information had to be in the physical possession of the non-initiating party or if it just had to be mailed more than 20 days prior to the hearing date. It was also unclear whether the response to the initiating party had to be in their physical possession at least ten days prior to the hearing date or if it just had to be mailed at least 10 days prior to the hearing date.

Chapter 407 renumbered and relettered section 1606 and made amendments that:

- require the initiating party to submit the required data at least 30 days, rather than 20 days, before an appeal hearing;
- require the other party to respond at least 15 days, rather than 10 days, before an appeal hearing;
- specify that the U.S. Postal Service postmark date, or date certified by a bona fide private courier service, will be used to determine the date of initiation or response; and
- specify that the parties use adequate means of delivery to complete the exchange process at least 10 days before the hearing.

Rule 305.1, *Exchange of Information*, will be updated to reflect these changes in the exchange of information process.

## CONCLUSION

The most recent revisions of the Board's Publication 30, *Residential Property Assessment Appeals*, and the Board-prescribed form, *Application for Changed Assessment* (BOE-305-AH), include these legislative changes.

Enclosed are the affected code sections with the changes in strikeout/underline format. If you have any questions regarding assessment appeals, please contact our Technical Services Unit at (916) 445-4982.

Sincerely,

/s/ David J. Gau

David J. Gau  
Deputy Director  
Property Taxes Department

DJG:grs  
Enclosure

**2001 STATUTORY CHANGES RELATING TO APPEALS**  
**Effective January 1, 2002**

*Chapter 407 amended section 170 to read:*

170. (a) Notwithstanding any provision of law to the contrary, the board of supervisors may, by ordinance, provide that every assessee of any taxable property, or any person liable for the taxes thereon, whose property was damaged or destroyed without his or her fault, may apply for reassessment of that property as provided herein. The ordinance may also specify that the assessor may initiate the reassessment where the assessor determines that within the preceding 12 months taxable property located in the county was damaged or destroyed.

To be eligible for reassessment the damage or destruction to the property shall have been caused by any of the following:

(1) A major misfortune or calamity, in an area or region subsequently proclaimed by the Governor to be in a state of disaster, if that property was damaged or destroyed by the major misfortune or calamity that caused the Governor to proclaim the area or region to be in a state of disaster. As used in this paragraph, "damage" includes a diminution in the value of property as a result of restricted access to the property where that restricted access was caused by the major misfortune or calamity.

(2) A misfortune or calamity.

(3) A misfortune or calamity that, with respect to a possessory interest in land owned by the state or federal government, has caused the permit or other right to enter upon the land to be suspended or restricted. As used in this paragraph, "misfortune or calamity" includes a drought condition such as existed in this state in 1976 and 1977.

The application for reassessment may be filed within the time specified in the ordinance, ~~or, if no time is specified, or~~ or within 60 days 12 months of the misfortune or calamity, whichever is later, by delivering to the assessor a written application requesting reassessment showing the condition and value, if any, of the property immediately after the damage or destruction, and the dollar amount of the damage. The application shall be executed under penalty of perjury, or if executed outside the State of California, verified by affidavit.

An ordinance may be made applicable to a major misfortune or calamity specified in paragraph (1) or to any misfortune or calamity specified in paragraph (2), or to both, as the board of supervisors determines. An ordinance may not be made applicable to a misfortune or calamity specified in paragraph (3), unless an ordinance making paragraph (2) applicable is operative in the county. The ordinance may specify a period of time within which the ordinance shall be effective, and, if no period of time is specified, it shall remain in effect until repealed.

(b) Upon receiving a proper application, the assessor shall appraise the property and determine separately the full cash value of land, improvements and personalty immediately before and after the damage or destruction. If the sum of the full cash values of the land, improvements and personalty before the damage or destruction exceeds the sum of the values after the damage by ~~five thousand dollars (\$5,000)~~ ten thousand dollars (\$10,000) or more, the assessor shall also separately determine the percentage reductions in value of land, improvements and personalty due to the damage or destruction. The assessor shall reduce the values appearing on the assessment roll by the percentages of damage or destruction computed pursuant to this subdivision, and the taxes due on the property shall be adjusted as provided in subdivision (e). However, the amount of the reduction shall not exceed the actual loss.

(c) The assessor shall notify the applicant in writing of the amount of the proposed reassessment. The notice shall state that the applicant may appeal the proposed reassessment to

the local board of equalization within ~~14 days~~ six months of the date of mailing the notice. If an appeal is requested within the ~~14-day~~ six-month period, the board shall hear and decide the matter as if the proposed reassessment had been entered on the roll as an assessment made outside the regular assessment period. The decision of the board regarding the damaged value of the property shall be final, provided that a decision of the local board of equalization regarding any reassessment made pursuant to this section shall create no presumption as regards the value of the affected property subsequent to the date of the damage.

Those reassessed values resulting from reductions in full cash value of amounts, as determined above, shall be forwarded to the auditor by the assessor or the clerk of the local equalization board, as the case may be. The auditor shall enter the reassessed values on the roll. After being entered on the roll, those reassessed values shall not be subject to review, except by a court of competent jurisdiction.

(d) (1) If no application is made and the assessor determines that within the preceding ~~six~~ 12 months a property has suffered damage caused by misfortune or calamity that may qualify the property owner for relief under an ordinance adopted under this section, the assessor shall provide the last known owner of the property with an application for reassessment. The property owner shall file the completed application within ~~30~~ 60 days of the date of mailing on notification by the assessor but in no case more than ~~six~~ 12 months after the occurrence of said damage. Upon receipt of a properly completed, timely filed application, the property shall be reassessed in the same manner as required in subdivision (b).

(2) This subdivision does not apply where the assessor initiated reassessment as provided in subdivision (a) or (l).

(e) The tax rate fixed for property on the roll on which the property so reassessed appeared at the time of the misfortune or calamity, shall be applied to the amount of the reassessment as determined in accordance with this section and the assessee shall be liable for: (1) a prorated portion of the taxes that would have been due on the property for the current fiscal year had the misfortune or calamity not occurred, to be determined on the basis of the number of months in the current fiscal year prior to the misfortune or calamity; plus, (2) a proration of the tax due on the property as reassessed in its damaged or destroyed condition, to be determined on the basis of the number of months in the fiscal year after the damage or destruction, including the month in which the damage was incurred. For purposes of applying the preceding calculation in prorating supplemental taxes, the term "fiscal year" means that portion of the tax year used to determine the adjusted amount of taxes due pursuant to subdivision (b) of Section 75.41. If the damage or destruction occurred after January 1 and before the beginning of the next fiscal year, the reassessment shall be utilized to determine the tax liability for the next fiscal year. However, if the property is fully restored during the next fiscal year, taxes due for that year shall be prorated based on the number of months in the year before and after the completion of restoration.

(f) Any tax paid in excess of the total tax due shall be refunded to the taxpayer pursuant to Chapter 5 (commencing with Section 5096) of Part 9, as an erroneously collected tax or by order of the board of supervisors without the necessity of a claim being filed pursuant to Chapter 5.

(g) The assessed value of the property in its damaged condition, as determined pursuant to subdivision (b) compounded annually by the inflation factor specified in subdivision (a) of Section 51, shall be the taxable value of the property until it is restored, repaired, reconstructed or other provisions of the law require the establishment of a new base year value. If partial reconstruction, restoration, or repair has occurred on any subsequent lien date, the taxable value shall be increased by an amount determined by multiplying the difference between its factored

base year value immediately before the calamity and its assessed value in its damaged condition by the percentage of the repair, reconstruction, or restoration completed on that lien date.

(h) (1) When the property is fully repaired, restored, or reconstructed, the assessor shall make an additional assessment or assessments in accordance with subparagraph (A) or (B) upon completion of the repair, restoration, or reconstruction:

(A) If the completion of the repair, restoration, or reconstruction occurs on or after January 1, but on or before May 31, then there shall be two additional assessments. The first additional assessment shall be the difference between the new taxable value as of the date of completion and the taxable value on the current roll. The second additional assessment shall be the difference between the new taxable value as of the date of completion and the taxable value to be enrolled on the roll being prepared.

(B) If the completion of the repair, restoration, or reconstruction occurs on or after June 1, but before the succeeding January 1, then the additional assessment shall be the difference between the new taxable value as of the date of completion and the taxable value on the current roll.

(2) On the lien date following completion of the repair, restoration, or reconstruction, the assessor shall enroll the new taxable value of the property as of that lien date.

(3) For purposes of this subdivision, "new taxable value" shall mean the lesser of the property's (A) full cash value, or (B) factored base year value or its factored base year value as adjusted pursuant to subdivision (c) of Section 70.

(i) The assessor may apply Chapter 3.5 (commencing with Section 75) of Part 0.5 in implementing this section, to the extent that chapter is consistent with this section.

(j) This section applies to all counties, whether operating under a charter or under the general laws of this state.

(k) Any ordinance in effect pursuant to Section 155.1, 155.13, or 155.14 shall remain in effect according to its terms as if that ordinance was adopted pursuant to this section, subject to the limitations of subdivision (b).

~~(l) In lieu of subdivision (d),~~ When the assessor does not have the general authority pursuant to subdivision (a) to initiate reassessments, if no application is made and the assessor determines that within the preceding ~~six~~ 12 months a property has suffered damage caused by misfortune or calamity, that may qualify the property owner for relief under an ordinance adopted under this section, the assessor may, with the approval of the board of supervisors, reassess the particular property for which approval was granted as provided in subdivision (b) and notify the last known owner of the property of the reassessment.

*Chapter 238 amended section 469 to read:*

(a) In any case in which locally assessable trade fixtures and business tangible personal property owned, claimed, possessed, or controlled by a taxpayer engaged in a profession, trade, or business has a full value of four hundred thousand dollars (\$400,000) or more, the assessor shall audit the books and records of that profession, trade, or business at least once each four years. If the board determines the value of property pursuant to Section 15640 of the Government Code, that determination may be deemed an audit by the assessor for purposes of this section.

~~Upon~~

(b) With respect to any audit of the books of a profession, trade, or business, regardless of the full value of the trade fixtures and business tangible personal property owned, claimed, possessed, or controlled by the taxpayer, the following shall apply:

(1) Upon completion of an audit of the taxpayer's books and records, the taxpayer shall be given the assessor's findings in writing with respect to data that would alter any previously enrolled assessment.

Equalization

(2) Equalization of the property by a county board of equalization or assessment appeals board pursuant to Chapter 1 (commencing with Section 1601) of Part 3 of this division shall not preclude a subsequent audit and shall not preclude the assessor from levying an escape assessment in appropriate instances, but shall preclude an escape assessment being levied on that portion of the assessment that was the subject of the equalization hearing.

¶

(3) If the result of an audit for any year discloses property subject to an escape assessment, then the original assessment of all property of the assessee at the location of the profession, trade, or business for that year shall be subject to review, equalization and adjustment by the county board of equalization or assessment appeals board pursuant to Chapter 1 (commencing with Section 1601) of Part 3 of this division, except in those instances when the property had previously been equalized for the year in question.

¶

(4) If the audit for any particular tax year discloses that the property of the taxpayer was incorrectly valued or misclassified for any cause, to the extent that this error caused the property to be assessed at a higher value than the assessor would have entered on the roll had the incorrect valuation or misclassification not occurred, then the assessor shall notify the taxpayer of the amount of the excess valuation or misclassification, and the fact that a claim for cancellation or refund may be filed with the county as provided by Sections 4986 and 5096.

*Chapter 238 amended section 1603 to read:*

(a) A reduction in an assessment on the local roll shall not be made unless the party affected or his or her agent makes and files with the county board a verified, written application showing the facts claimed to require the reduction and the applicant's opinion of the full value of the property. The form for the application shall be prescribed by the State Board of Equalization.

(b) (1) The application shall be filed within the time period from July 2 to September 15, inclusive. An application that is mailed and postmarked September 15 or earlier within that period shall be deemed to have been filed within the time period beginning July 2 and continuing through and including September 15.

~~(2) If September 15 falls on Saturday, Sunday, or a legal holiday, an application that is mailed and postmarked on the next business day shall be deemed to have been filed within "the time period beginning July 2 and continuing through and including September 15." If on the dates specified in this paragraph, the county's offices are closed for business prior to 5 p.m. or for that entire day, that day shall be considered a legal holiday for purposes of this section.~~

~~(3) If Notwithstanding paragraph (1), if the taxpayer does not receive the notice of assessment described in Section 619 at least 15 calendar days prior to the deadline to file the application described in this subdivision, the party affected, or his or her agent, may file an application within 60 days of receipt of the notice of assessment or within 60 days of the mailing of the tax bill, whichever is earlier, along with an affidavit declaring under penalty of perjury that the notice was not timely received.~~

(3) Notwithstanding paragraph (1), the last day of the filing period shall be extended to November 30 in the case of an assessee with respect to real property on the local secured roll, if both of the following are true:

(A) A notice is not required to be provided to that assessee with respect to that real property under Section 619.

(B) The county assessor does not provide, by August 1, notice to that assessee of the assessed value of the assessee's real property as it shall appear, or does appear, on the completed local secured roll.

(4) If a final filing date specified in this subdivision falls on Saturday, Sunday, or a legal holiday, an application that is mailed and postmarked on the next business day shall be deemed to have been filed within the requisite time period specified in this subdivision. If on any final filing date specified in this subdivision, the county's offices are closed for business prior to 5 p.m. or for that entire day, that day shall be considered a legal holiday for purposes of this section.

(c) ~~However, the~~ The application may be filed within 12 months following the month in which the assessee is notified of the assessment, if the party affected or his or her agent and the assessor stipulate that there is an error in the assessment as the result of the exercise of the assessor's judgment in determining the full cash value of the property and a written stipulation as to the full cash value and assessed value is filed in accordance with Section 1607.

(d) Upon the recommendation of the assessor and the clerk of the county board of equalization, the board of supervisors may adopt a resolution providing that an application may be filed within 60 days of the mailing of the notice of the assessor's response to a request for reassessment pursuant to paragraph (2) of subdivision (a) of Section 51, if all of the following conditions are met:

(1) The request for reassessment was submitted in writing to the assessor in the form prescribed by the State Board of Equalization and includes all information that is prescribed by the State Board of Equalization.

(2) The request for reassessment was made on or before the immediately preceding March 15.

(3) The assessor's response to the request for reassessment was mailed on or after September 1 of the calendar year in which the request for reassessment was made.

(4) The assessor did not reduce the assessment in question in the full amount as requested.

(5) The application for changed assessment is filed on or before December 31 of the year in which the request for reassessment was filed.

(6) The application for reduction in assessment is accompanied by a copy of the assessor's response to the request for reassessment.

(e) In the form provided for making application pursuant to this section, there shall be a notice that written findings of facts of the local equalization hearing will be available upon written request at the requester's expense and, if not so requested, the right to those written findings is waived. The form shall provide appropriate space for the applicant to request written findings of facts as provided by Section 1611.5.

(f) The form provided for making an application pursuant to this section shall 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 the foregoing and all information hereon, including any accompanying statements or documents, is true, correct, and complete to the best of my knowledge and belief and 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—“The Applicant,” (2) an agent authorized by the applicant under Item 2 of this application, or (3) an attorney licensed to practice law in the State of California, State Bar No. \_\_\_\_\_, who has been retained by the applicant and has been authorized by that person to file this application.

*Chapter 407 amended section 1606 to read:*

~~(a) At the time of filing the application or at any time prior to 20 days before the commencement of the hearing on the application, any~~ (1) Any applicant for a change of an assessment on the local roll or the assessor, in those cases where the assessed value of the property involved, as shown on the current assessment roll, exceeds one hundred thousand dollars (\$100,000) without regard to any exemptions, may ~~cause~~ initiate an exchange of information ~~between himself and~~ with the other party by submitting the following data to the other party and the clerk in writing:

~~(1)~~

~~(A)~~ Information stating the basis of ~~such~~ the party's opinion of value.

~~(2)~~

~~(B)~~ When the opinion of value is to be supported with evidence of comparable sales, information identifying the properties with sufficient certainty such as by assessor parcel number, street address or legal description of the property, the approximate date of sale, the applicable zoning, the price paid, and the terms of the sale, if known.

~~(3)~~

~~(C)~~ When the opinion of value is to be supported with evidence based on an income study, information relating to income, expenses and the capitalization method.

~~(4)~~

~~(D)~~ When the opinion of value is to be supported with evidence of replacement costs, information relating to date of construction, type of construction, replacement cost of construction, obsolescence, allowance for extraordinary use of machinery and equipment, and depreciation allowances.

(2) To initiate an exchange of information, the initiating party shall submit the data required by paragraph (1) at least 30 days before the commencement of the hearing on the application. For purposes of determining the date upon which the exchange was deemed initiated, the date of postmark as affixed by the United States Postal Service, or the date certified by a bona fide private courier service on the envelope or package containing the information shall control.

~~(b) (1) Notwithstanding any limitation on assessed value contained in subdivision (a), if an applicant for a change of an assessment or the assessor has submitted the data required by subdivision (a) within the specified time, at least 10 days prior to the hearing if the initiating party has submitted the data required by subdivision (a) within the specified time, the other party shall submit to the initiating party who caused the exchange of information in writing and the clerk the following data:~~

~~(1)~~

~~(A)~~ Information stating the basis of ~~such~~ the other party's opinion of value.

~~(2)~~

~~(B)~~ When the opinion of value is to be supported with evidence of comparable sales, information identifying the properties with sufficient certainty such as by assessor parcel number, street address or legal description of the property, the approximate date of sale, the applicable zoning, the price paid, and the terms of the sale, if known.

~~(3)~~

(C) When the opinion of value is to be supported with evidence based on an income study, information relating to income, expenses and the capitalization method.

~~(4)~~

(D) When the opinion of value is to be supported with evidence of replacement cost, information relating to date of construction, type of construction, replacement cost of construction, obsolescence, allowance for extraordinary use of machinery and equipment, and depreciation allowance.

~~The~~

(2) The other party shall submit the data required by this subdivision at least 15 days prior to the hearing. For purposes of determining the date upon which the other party responded to the exchange, the date of postmark as affixed by the United States Postal Service, or the date certified by a bona fide private courier service on the envelope or package containing the information shall control.

(c) (1) The person assigning a hearing date shall provide adequate notice to the parties of such the date, so that the exchange of information permitted by this section can be made without requiring a continuance of the hearing.

~~Whenever~~

(2) The initiating party and the other party shall use adequate methods of submission to ensure to the best of their ability that the exchange of information process is completed at least 10 days prior to the hearing.

(d) Whenever information has been exchanged pursuant to this section the parties may not introduce evidence on matters not so exchanged unless the other party consents to such the introduction. However, at the hearing, each party may introduce new material relating to the information received from the other party. If a party introduces new material at the hearing, the other party, upon his or her request, shall be granted a continuance for a reasonable period of time.

~~Nothing~~

(e) Nothing in this section shall may be construed as an intent of the Legislature to change, alter or modify generally acceptable methods of using the sales approach, income approach, or replacement cost approach to determine full cash value.