

Notice of Proposed Regulatory Action
The State Board of Equalization Proposes to Amend
California Code of Regulations, Title 18,
Section 192, *Audit Selection*

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Government Code section 15606, proposes to amend California Code of Regulations, title 18, section (Rule or Property Tax Rule) 192, *Audit Selection*. This Rule implements, interprets, and makes specific certain audit provisions provided in section 469 of the Revenue and Taxation Code.¹

PUBLIC HEARING

The Board will conduct a meeting on January 23-24, 2024, in-person and via teleconference. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 10:00 a.m. on January 23, 2024, or as soon thereafter as the matter may be heard at the Board's January 23-24, 2024, meeting. Until the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendment to Property Tax Rule 192.

This notice updates and replaces a previous notice, published in the OAL notice registry on September 8, 2023, stating the public hearing would be held during the Board's November meeting. As a result, the public hearing will only appear on the January Board meeting agenda as noted above.

AUTHORITY

Government Code section 15606, subdivision (c).

REFERENCE

Revenue and Taxation Code sections 106, 469, and 470.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current Law

Under existing property tax law, an annual ad valorem tax is imposed on assessable property used in a trade or business. Taxpayers typically self-report the cost of such property to the local

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

County Assessor on a "business property statement", as provided for by section 441. The business property statement shows all taxable business property, both real and personal, which is owned, claimed, possessed, controlled, or managed by the person filing the property statement.

To encourage the accurate and proper reporting of such property, section 469 requires County Assessors to annually audit a certain number of taxpayers, with the number varying by county.

Effective January 1, 2019, Senate Bill (SB) 1498 (Stats. 2018, Ch. 467) amended section 469 to provide County Assessors flexibility in meeting annual audit requirements. Beginning with the 2019-20 fiscal year, County Assessors may meet the requirements of section 469 by completing four years' worth of required annual audits anytime within a set four-year period.

Effects, Objectives, and Benefits of the Amendment to the Property Tax Rule

Under the authority of Government Code section 15606, subdivision (c), which authorizes the Board to prescribe rules and regulations to govern local boards of equalization and assessment appeals boards when equalizing and County Assessors when assessing, the Board adopted Property Tax Rule 192, *Audit Selection*, to implement, interpret, and make specific the audit requirements of section 469.

Following the enactment of SB 1498, an additional amendment was deemed necessary to further implement, interpret, and make specific certain provisions in section 469 (the Proposed Amendment).

The amendment to Rule 192 makes the following change:

- Subdivision (c)(4) was added. It clarifies that a County Assessor meets the section 469 requirements if they complete four years' worth of audits anytime within a set four-year period. This subdivision also clarifies that the first four-year period begins with the 2019-2020 fiscal year.

The above amendment is reasonably necessary for the efficient and fair administration of the audit selection provisions under section 469. The Board anticipates that the Proposed Amendment will increase openness and transparency in government and benefit the public, local boards of equalization and assessment appeals boards, County Assessors, and owners of property subject to the audit selection provisions under section 469. Portions of the Proposed Amendment may duplicate or overlap language found in section 469; however, the "nonduplication" standard found at Government Code section 11349.1, subdivision (a)(6) is met because, pursuant to Code of California Regulations, title 1, section 12, subdivision (b)(1), the duplication or overlap is necessary to satisfy the "clarity" standard of Government Code section 11349.1, subdivision (a)(3). Without the duplication or overlap, the rule would be incomplete or unclear.

The Board has performed an evaluation of whether the amendment to proposed Property Tax Rule 192 is inconsistent or incompatible with existing state regulations. The Board has determined that the Proposed Amendment is not inconsistent or incompatible with existing state regulations because there are no other Property Tax Rules that prescribe the provisions that

would be adopted by the amendment to the Rule. In addition, there is no comparable federal regulation or statute to Property Tax Rule 192.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

Section 64 of SB 1498 provides an optional timeline for completion of already required audits and the Proposed Amendment clarifies and implements this optional timeline. County Assessors' offices are already required to audit a certain number of businesses annually and this optional timeline does not increase or decrease the number of required audits. As such, the Proposed Amendment is not anticipated to impose any significant costs on local agencies, i.e., the County Assessors, or school districts. Thus, they do not impose a mandate on a local agency or school district that is reimbursable under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

ONE-TIME COST TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

Board staff estimated that the amendment to this rule will result in an absorbable one-time cost of \$922 for the Board to communicate with interested parties and update its website after the rule amendment is completed assuming that the average hourly compensation costs are \$57.60 per hour² and that it will take approximately 16 hours. There will be no savings. The Board has determined that the adoption of the Proposed Amendment will result in no other direct or indirect cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, no other non-discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that the adoption of the Proposed Amendment will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The adoption of the Proposed Amendment is not expected to affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

² Source: Hourly compensation costs are from the U.S. Bureau of Labor Statistics. Hourly compensation costs are for State and Local Government Workers. *Employer Costs for Employee Compensation – December 2022: Table 3. Employer Costs for Employee Compensation for state and local government workers by occupational and industry group*, <https://www.bls.gov/news.release/ecec.htm>.

The Board assessed the economic impact of the Proposed Amendment to Property Tax Rule 192 on California businesses and individuals and determined that the amendment does not constitute a major regulation as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Board has prepared the economic impact assessment (EIA) required by Government Code section 11346.3, subdivision (b)(1), for the Proposed Amendment and included it in the initial statement of reasons. In the EIA, the Board has determined that the adoption of the Proposed Amendment will neither create nor eliminate jobs in the State of California, nor create new businesses or eliminate existing businesses within the state, nor expand businesses currently doing business in the State of California. Furthermore, the Board has determined that the adoption of the Proposed Amendment will not affect the benefits of the rule to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of the Proposed Amendment to Property Tax Rule 192 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons that the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the Proposed Amendment should be directed to Mr. Henry Nanjo, Chief Counsel, by telephone at (916) 274-3520, by e-mail at henry.nanjo@boe.ca.gov, or by mail at State Board of Equalization, Attn: Henry Nanjo, MIC: 121, P.O. Box 942879, Sacramento, CA 94279-0121.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. David Lujan, Attorney, by telephone at (916) 274-3530, by e-mail at david.lujan@boe.ca.gov, or by mail at State Board of Equalization, Attn: David Lujan, MIC: 121, P.O. Box 942879, Sacramento, CA 94279-0121. Mr. Lujan is the designated backup contact person to Mr. Nanjo.

WRITTEN COMMENT PERIOD

The written comment period ends at 10:00 a.m. on January 23, 2024, or as soon thereafter as the Board holds the public hearing regarding the Proposed Amendment during the January 23-24,

2024, Board meeting. Written comments received by Mr. David Lujan at the postal address or email address provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the Proposed Amendment. The Board will only consider written comments received by that time.

This notice updates and replaces a previous notice, published in the OAL notice registry on September 8, 2023, stating the public comment period would end when the Board holds the public hearing regarding the Proposed Amendment during the November 14-15, 2023, Board meeting. As a result, the public comment period for this Proposed Amendment will now close when the Board holds the public hearing during its January Board meeting as noted above.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared a version of the Proposed Amendment to Property Tax Rule 192 illustrating the express terms of the Proposed Amendment and an initial statement of reasons for the adoption of the Proposed Amendment, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the Proposed Amendment is based are available to the public upon request. The rulemaking file is available for public inspection at 160 Promenade Circle, Sacramento, California. The express terms of the Proposed Amendment and the Initial Statement of Reasons are also available on the Board's website at www.boe.ca.gov.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the Proposed Amendment with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the resulting regulation, with the change clearly indicated, available to the public for at least 15 days prior to adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the Proposed Amendment orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be made available to the public by Mr. Lujan. The Board will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the Proposed Amendment, the Board will prepare a final statement of reasons, which will be made available for inspection at 160 Promenade Circle, Suite 200, Sacramento, CA 95834, and available on the Board's website at www.boe.ca.gov.