

Issue Paper Number 99-045



- Board Meeting
- Business Taxes Committee
- Customer Services Committee
- Legislative Committee
- Property Tax Committee
- Technology & Administration Committee
- Other

PROPERTY TAX RULES 301, 305.1, 305.2, AND 309

I. Issue

Should the Board authorize publication of amendments to the California Code of Regulations, Property Tax Rules 301, 305.1, and 309, and language for proposed new Property Tax Rule 305.2?

II. Staff Recommendation

Staff recommends that the attached proposed amendments of Property Tax Rules 301, 305.1, and 309, and proposed language for new Property Tax Rule 305.2, be authorized for publication and submitted to the Office of Administrative Law for publication in the California Regulatory Notice Register.

III. Other Alternative(s) Considered

None

IV. Background

Under Government Code section 15606, subdivision (c), the Board is given authority to prescribe rules and regulations to govern local boards of equalization and assessment appeals boards when equalizing and county assessors when assessing. Pursuant to that authority, the Board directed staff to review and revise sections of Title 18 of the California Code of Regulations, Subchapter 3, Local Equalization Property Tax Rules 301 through 326. Many of these rules have not been amended since their adoption in 1967.

Consistent with this direction, staff divided the rules into two groups and first drafted revisions to group 1, Property Tax Rules 302, 305.5, 307, 308, 308.5, 308.6, 310, 311, 312, 316, 318, 319, 320, 322, 323, 324, 325, and 326. On July 1, 1999, the Board authorized publication of the amendments to these rules.

In completing the revision process, staff drafted revisions to the rules in group 2. Group 2 includes the Property Tax Rules that are the subject of this issue paper—existing rules 301, 305.1, and 309, and proposed new rule 305.2. These drafts were disseminated to interested parties for comments and suggestions. There were no remaining issues so there is no issues matrix.

V. Staff Recommendation

A. Description of the Staff Recommendation

Property Taxes Department and Legal Division staff drafted the attached proposed amendments of Property Tax Rules 301, 305.1, 309, and drafted the attached language for new Property Tax Rule 305.2. Board staff received input from the California Association of Clerks and Election Officials, the California Clerk of the Board of Supervisors Association, California Assessors' Association, County Counsels' Association of California, Los Angeles County Bar Association's State & Local Taxation Committee, the California Taxpayers' Association (Cal Tax), industry representatives, Eagle's Lodge West, and the Taxpayers' Rights Advocate. Board staff attended the Summer Tax Conference of the California Manufacturers Association and the Institute for Professionals in Taxation Conference to participate in discussions concerning the proposed amendments to these rules.

After receiving comments and requests from interested parties to make additional changes to the proposed revisions, a second draft was prepared. On August 5, 1999, staff held a meeting in Sacramento with interested parties to reach an agreement on the language and issues of the proposed revisions. Agreement was reached on all items in the attached rules either at the meeting or during subsequent discussions with interested parties.

B. Pros of the Staff Recommendation

The proposed amendments of Property Tax Rules 301, 305.1, 309 and addition of Property Tax Rule 305.2 represent the efforts of property tax practitioners, clerks of the board, county assessors, and county counsels. This revisions process involved an extensive endeavor to include all interested parties. The drafts incorporate staff's position, interested parties' concerns, recent statutory changes, and applicable judicial rulings. Enactment of the proposed amendments and adoption of the new rule will promote uniformity within the assessment appeals process throughout California.

FORMAL ISSUE PAPER

C. Cons of the Staff Recommendation

No negative comments were received from interested parties during the process.

D. Statutory or Regulatory Change

Action by the Board on the attached Property Tax Rules will amend Title 18 of the California Code of Regulations, Subchapter 3, sections 301, 305.1, 309 and add section 305.2.

E. Administrative Impact

None

F. Fiscal Impact

1. Cost Impact

None

2. Revenue Impact

None

G. Taxpayer/Customer Impact

Amendments of Property Tax Rules 301, 305.1, 309 and addition of Property Tax Rule 305.2 will affect administrative procedures for the assessment appeals process at the county level and the functions of the clerks of the appeals boards, appeals board members, county assessors, county counsels, and each taxpayer seeking a reduction in assessment of his or her property's value.

H. Critical Time Frames

The normal assessment appeals filing period is from July 2 through September 15 of each year. In order for the amendments of Property Tax Rules 301, 305.1, 309, and addition of Property Tax Rule 305.2 to be adopted and effective for the filing period beginning July 2, 2000, the Board should authorize publication of amendments to the rules at its meeting on October 7, 1999.

VI. Alternative 1

Not applicable

Prepared by: Property Taxes Department; Policy, Planning, and Standards Division

Current as of: September 17, 1999

State of California
BOARD OF EQUALIZATION

PROPERTY TAX RULES

Chapter 1. State Board of Equalization — Property Tax
Subchapter 3. Local Equalization
Article 1. Hearing by County Board

Rule 301. DEFINITIONS AND GENERAL PROVISIONS.

Reference: Sections 110, 110.1, 110.5, 1601-~~1614~~, 1603 et seq. ~~1620-1630~~, Revenue and Taxation Code.
Section 31000.6, Government Code.

The provisions set forth in this ~~section~~ regulation govern the construction of this subchapter.

- (a) "County" is the county or city and county wherein the property is located ~~which~~ that is the subject of the proceedings under this subchapter.
- (b) "Assessor" is the assessor of the county.
- (c) "Auditor" is the auditor of the county.
- (d) "Board" is the board of equalization or assessment appeals board of the county.
- (e) "~~Chairman~~ Chair" is the ~~chairman~~ chair of the county board of equalization or assessment appeals board.
- (f) "Clerk" is the clerk of the county board of equalization or assessment appeals board.
- (g) "Person affected" or "party affected" is any person or entity having a direct economic interest in the payment of property taxes on the property for the valuation date ~~one who owns an interest in property which~~ 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.
- (h) "Full cash value" or "fair market value" ~~Except as otherwise is the value provided in sections 110 and 110.1 of the Revenue and Taxation Code "full cash value" and "market value", means the amount of cash or its equivalent the property would bring if exposed for sale in an open market.~~
- (i) "Restricted value" is a value standard other than full cash value prescribed by the Constitution or by statute authorized by the Constitution.
- (j) "Full value" is either the full cash value or the restricted value.
- ~~(k) Taxable value is the base year full value adjusted for any given lien date as required by law or the full cash value for the same lien date, whichever is less. "Equalization" is the determination by the board of the correct full value for the property that is the subject of the hearing.~~
- (l) "County legal advisor" is the county counsel of the county, or the district attorney of the county if there is no county counsel, and the City Attorney of the City and County of San Francisco, or outside counsel specifically retained to advise the county board of equalization or assessment appeals board.
- (m) "Authorized agent" is one who is directly authorized by the applicant to represent the applicant in an assessment appeals proceeding.

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Rule 305.1. EXCHANGE OF INFORMATION.

Reference: Sections 408, 441, 1606, 1609.4, Revenue and Taxation Code.

(a) REQUEST FOR INFORMATION. When the assessed value of the property involved, before deduction of any exemption accorded the property, is \$100,000 or less, the applicant may file a written request for an exchange of information with the assessor; and when the assessed value before deduction of any exemption exceeds \$100,000, either the applicant or the assessor may request such an exchange. 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 20 days before the commencement of the hearing. The clerk shall ~~immediately,~~ at the earliest opportunity, forward any request filed with ~~his office~~ the application or a copy thereof to the other party. The request shall contain the basis of the requesting party's opinion of value for each valuation date at issue and the following data:

(1) **COMPARABLE SALES DATA.** If the opinion of value is to be supported with evidence of comparable sales, the properties sold shall be described by the assessor's parcel number, street address or legal description sufficient to identify them. With regard to each property sold there shall be presented the approximate date of sale, the price paid, the terms of sale (if known), and the zoning of the property.

(2) **INCOME DATA.** If the opinion of value is to be supported with evidence based on an income study, there shall be presented: the gross income, the allowable expenses, ~~and~~ the capitalization method (direct capitalization or discounted cash flow analysis), and rate or rates employed.

(3) **COST DATA.** If the opinion of value is to be supported with evidence of replacement cost, there shall be presented:

(A) With regard to improvements to real property: the date of construction, type of construction, and replacement cost of construction.

(B) With regard to machinery and equipment: the date of installation, replacement cost, and any history of extraordinary use.

(C) With regard to both improvements and machinery and equipment: facts relating to depreciation, including any functional or economic obsolescence, and remaining economic life.

The information exchanged shall provide reasonable notice to the other party concerning the subject matter of the evidence or testimony to be presented at the hearing. There is no requirement that the details of the evidence or testimony to be introduced must be exchanged.

(b) TRANSMITTAL OF DATA TO OTHER PARTY. If the party requesting an exchange of data under the preceding subsection has submitted the data required therein within the specified time, the other party shall ~~and~~ submit a response to the initiating party and to the clerk at least

Attachment 1

10 days prior to the hearing. The response shall be supported with the same type of data required of the requesting party. When the assessor is the respondent, he or she shall ~~mail~~ submit his the response to the address shown on the application ~~for hearing~~ or on the request for exchange of information, whichever is filed later.

(c) PROHIBITED EVIDENCE; NEW MATERIAL; CONTINUANCE. Whenever information has been exchanged pursuant to this ~~section~~ regulation, the parties may introduce evidence only on matters pertaining to the information so exchanged unless the other party consents to introduction of other evidence. However, at the hearing, each party may introduce new material relating to the information received from the other party. If a party introduces such new material at the hearing, the other party, upon request, shall be granted a continuance for a reasonable period of time.

(d) NONRESPONSE TO REQUEST FOR INFORMATION. If one party initiates a request for information and the other party does not comply within the time specified in subsection (b), the board may grant a postponement for a reasonable period of time. The postponement shall extend the time for responding to the request. If the board finds willful noncompliance on the part of the noncomplying party, the hearing will be convened as originally scheduled and the noncomplying party may comment on evidence presented by the other party but shall not be permitted to introduce other evidence unless the other party consents to such introduction.

State of California
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Subchapter 3. Local Equalization
Article 1. Hearing by County Board

Rule 305.2. PREHEARING CONFERENCE.

Reference: Article XIII, Section 16, California Constitution.
Section 1601 et seq., Revenue and Taxation Code.

(a) A county board of supervisors may establish prehearing conferences. If prehearing conferences are established, the county board of supervisors shall adopt rules of procedure for prehearing conferences. A prehearing conference may be set by the clerk at the request of the applicant or the applicant's agent, the assessor, or at the direction of the appeals board. The purpose of a prehearing conference is to resolve issues such as, but not limited to, clarifying and defining the issues, determining the status of exchange of information requests, stipulating to matters on which agreement has been reached, combining applications into a single hearing, bifurcating the hearing issues, and scheduling a date for a hearing officer or the board to consider evidence on the merits of the application.

(b) The clerk of the board shall set the matter for a prehearing conference and notify the applicant or the applicant's agent and the assessor of the time and date of the conference. Notice of the time, date, and place of the conference shall be given not less than 30 days prior to the conference, unless the assessor and the applicant stipulate orally or in writing to a shorter notice period.

State of California
BOARD OF EQUALIZATION

PROPERTY TAX RULES

Chapter 1. State Board of Equalization — Property Tax
Subchapter 3. Local Equalization
Article 1. Hearing by County Board

Rule 309. HEARING.

Reference: Sections 441, 1603, 1604, 1606, 1624.4, 1641.1, 1641.2, Revenue and Taxation Code.

(a) In counties having a population in excess of 4,000,000, on the fourth Monday in September of each year, the board shall meet to equalize the assessment of property on the local roll and shall continue to meet for that purpose from time to time until the business of equalization is disposed of. In all other counties, the board shall meet on the third Monday in July and shall continue to meet until the business of equalization is disposed of. All hearings before the board shall be conducted in the manner provided in this ~~article~~ subchapter. Nothing herein requires the board to conduct hearings prior to the final day for filing applications.

(b) ~~For applications filed on or after January 1, 1983, the A~~ hearing must be held and a final determination made on the application within two years of the timely filing of an application for reduction in assessment submitted pursuant to subdivision (a) of ~~§~~section 1603 of the Revenue and Taxation Code, unless the ~~taxpayer~~ applicant or the applicant's agent and the ~~county assessment appeals~~ board mutually agree in writing or on the record to an extension of time.

(c) If the hearing is not held and a determination is not made within the time specified in ~~subdivision~~ subsection (b) of this ~~section~~ regulation, the applicant's opinion of value stated in the application shall be conclusively determined by the board to be the basis upon which property taxes are to be levied, except when:

(1) The applicant has not filed a timely and complete application; or,

(2) The applicant has not submitted a full and complete property statement as required by law with respect to the property which is the subject of the application; or,

(3) The applicant has not complied fully with a request for the exchange of information under ~~Section~~ regulation 305.1 of this subchapter or with the provisions of subdivision (d) of section 441 of the Revenue and Taxation Code; or

(4) Controlling litigation is pending. "Controlling litigation" is litigation which is:

(A) pending in a state or federal court whose jurisdiction includes the county in which the application is filed; and

(B) directly related to an issue involved in the application, the court resolution of which would control the resolution of such issue at the hearing; or,

(5) The applicant has initiated proceedings to disqualify a board member pursuant to Revenue and Taxation Code ~~§~~section 1624.4 within 90 days of the expiration of the two-year period required by Revenue and Taxation Code ~~§~~section 1604; or,

(6) The applicant has requested that the hearing officer's recommendation be heard by the board pursuant to Revenue and Taxation Code ~~§~~section 1641.1, in those counties in which the

Attachment 1

board of supervisors has adopted a resolution implementing section 1641.1, within 90 days of the expiration of the two-year period required by Revenue and Taxation Code §section 1604.

For applications involving base year value appeals that have not been heard and decided by the end of the two-year period provided in section 1604 of the Revenue and Taxation Code and where the two-year period has not been extended pursuant to subsections (b) or (c) of this regulation, the applicant's opinion of value will be entered on the assessment roll for the tax year or years covered by the pending application, and will remain on the roll until the fiscal year in which the board makes a final determination on the application. No increased or escape taxes other than those required by a change in ownership or new construction, or resulting from application of the inflation factor to the applicant's opinion of value shall be levied for the tax years during which the board fails to act.

For applications appealing decline in value and personal property assessments that have not been heard and decided by the end of the two-year period provided in section 1604, the applicant's opinion of value will be enrolled on the assessment roll for the tax year or years covered by the pending application.

(d) If the applicant has initiated proceedings pursuant to ~~subdivision~~ subsection (c)(5), or made a request pursuant to ~~subdivision~~ subsection (c)(6) of this ~~section~~ regulation, the two-year time period described in ~~subdivision~~ subsection (b) shall be extended 90 days.

(e) The applicant shall not be denied a timely hearing and determination pursuant to ~~subdivision~~ subsection (b) of this ~~section~~ regulation, by reason of any of the exceptions enumerated in ~~subdivisions~~ subsection (c)(1), (c)(2), (c)(3), or (c)(4) herein, unless, within two years of the date of the application, the board, or the clerk at the direction of the board, gives the applicant and/or the applicant's agent written notice of such denial. The notice shall indicate the basis for the denial and inform the applicant of his or her right to protest the denial at the time of the hearing on the application. If requested by the applicant or the applicant's agent, the clerk shall schedule a hearing on the validity of the application and shall so notify the applicant, the applicant's agent, and the assessor.

When a hearing is postponed or not scheduled because controlling litigation is pending, the notice to the applicant shall identify the controlling litigation by the name of the case, the court number or the docket number of the case, and the court in which the litigation is pending. If a hearing is postponed because controlling litigation is pending, the hearing must be held and a final determination made within a period of two years after the application is filed, excluding the period of time between the notice of pending litigation and the date that the litigation becomes final.