

Issue Paper Number 04-008



- Board Meeting
- Business Taxes Committee
- Customer Services and  
Administrative Efficiency  
Committee
- Legislative Committee
- Property Tax Committee
- Other

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## AMENDMENTS TO RULES OF PRACTICE 5041, 5073, 5076, AND 5082.2

### I. Issue

Should the Board authorize publication of amendments to Board of Equalization Rules of Practice 5041, 5073, 5076, and 5082.2?

### II. Staff Recommendation

Staff recommends that the attached amendments to Rules of Practice 5041, 5073, 5076, and 5082.2 be adopted and authorized for publication (Attachment A).

### III. Other Alternative(s) Considered

None

## **IV. Background**

The Rules of Practice are the appeals process procedures applicable to the various tax and fee programs administered by the Board. Title 18 of the California Code of Regulations, Division 2, Chapter 10, Articles 4 and 7, contain the following Rules of Practice for Board appeals applicable to state assesses and private railroad car companies.

- Regulation 5041, *Filing and Contents of Petition*
- Regulation 5073, *Representation at Hearings and Powers of Attorney*
- Regulation 5076, *Notice of Board Hearing; Waiver or Postponement of Hearing; Failure to Respond to Hearing Notice or to Appear for Hearing; Place of Hearing*
- Regulation 5082.2, *Property Tax Petitions: Finality of Decision; Petition for Rehearing*

On May 6, 2004, interested parties were advised that the Board was initiating the Property Tax Committee interested parties process to review the Rules of Practice pertinent to state assesses and private railroad car companies. Interested parties were provided with a draft of proposed amendments to Regulations 5041, 5073, 5076, and 5082.2 and a copy of a proposed new Regulation 5073.1. Comments and suggestions regarding the proposed amendments were solicited.

On July 15, 2004, staff met with interested parties in Sacramento to discuss the proposed amendments to the regulations and alternative language proposed by other interested parties. Preliminary consensus was reached at the meeting on all issues. Final consensus on revised proposed language transmitted to all parties was reached on July 26, 2004.

## **V. Staff Recommendation**

Staff recommends that the attached amendments to Rules of Practice 5041, 5073, 5076, and 5082.2 be adopted and authorized for publication (Attachment A).

### **A. Description of the Staff Recommendation**

Property and Special Taxes Department, Board Proceedings Division, and Legal Department staff drafted proposed amendments to Regulations 5041, 5073, 5076, and 5082.2 and drafted language for new Regulation 5073.1. The draft language was sent to all active state assesses, and industry representatives who file petitions before the Board on behalf of state assesses and private railroad car companies.

After receiving comments and requests from interested parties to make additional changes to the proposed regulations, the attached language was redrafted (Attachment A). The redrafting efforts resulted in the elimination of proposed new Regulation 5073.1. The procedures contained in the final draft of the proposed regulation were incorporated into existing Regulation 5041. Agreement was reached on all items in the attached regulations either at the meeting or during subsequent contact with interested parties.

**B. Pros of the Staff Recommendation**

The proposed amendments to Regulations 5041, 5073, 5076, and 5082.2 represent the efforts of property tax practitioners and Board staff. This revision process involved an extensive endeavor to include all interested parties.

The proposed language incorporates staff's position, interested parties' concerns, and current procedural practices. Enactment of the proposed amendments will promote uniformity for state assesses and private railroad car companies filing petitions before the Board, and will clarify and streamline the petition processing procedures for Board staff.

**C. Cons of the Staff Recommendation**

No negative comments were received from interested parties on the final proposed regulation language.

**D. Statutory or Regulatory Change**

Action by the Board to amend the attached Rules of Practice will amend Title 18 of the California Code of Regulations, Division 2, Chapter 10, Sections 5041, 5073, 5076, and 5082.2.

**E. Administrative Impact**

None

**F. Fiscal Impact**

**1. Cost Impact**

Regulation amendments are routinely prepared by the Board, and any associated costs are accommodated within the Board's existing budget. There are no other costs.

**2. Revenue Impact**

None

**G. Taxpayer/Customer Impact**

None

**H. Critical Time Frames**

None

**VI. Alternative 1**

**A. Description of the Alternative**

Not applicable

Prepared by: Property and Special Taxes Department; Assessment Policy and Standards Division; Valuation  
Division  
Board Proceedings Division  
Legal Department; Property Tax Division

Current as of: August 3, 2004

**RULES OF PRACTICE**  
of the  
**STATE BOARD OF EQUALIZATION**  
California Code of Regulations  
Title 18. Public Revenues  
Division 2. State Board of Equalization  
Chapter 10. Petition and Hearing Procedures

**ARTICLE 4. STATE ASSESSEES AND PRIVATE RAILROAD CAR COMPANIES**

**5041. FILING AND CONTENTS OF PETITION; REQUEST FOR ORAL HEARING; WRITTEN ONLY PETITIONS; STAFF RESPONSE; EXTENSION OF TIME.**

(a) Board Staff shall send a notice to each assessee setting forth the amount of assessed value and the date by which a petition for reassessment may be filed.

(b) The appropriate Board Staff capitalization rate study and final calculations of the value indicators shall be made available, between the time that the Board values the subject property and the deadline for filing a petition, to any petitioner submitting a written request therefor to the Chief, Valuation Division, State Board of Equalization.

~~(c) The petition shall be in writing and shall state the name of the petitioner, the petitioner's opinion of value, and the precise elements of the Board's valuation to be contested, and shall include petitioner's appraisal reports, financial studies and other materials relevant to value. Petitioner's appraisal reports, financial studies and other materials relevant to value shall not be presented as evidence at the hearing unless provided to the Chief, Board Proceedings Division at the time of filing of the petition.~~

~~(d) The petition shall also indicate whether an oral hearing is desired and whether written findings and decision are requested. If requested in the petition, the Board shall issue written findings and decision. The petition shall be signed by the petitioner or petitioner's authorized representative and shall be addressed and mailed to the Chief, Board Proceedings Division, State Board of Equalization at Sacramento, or shall be deposited personally at the headquarters office of the Board in Sacramento.~~

(c) Petition; Oral Hearing; Written Only.

(1) The petition shall be in writing and shall provide the following information:

(A) The name and address of the petitioner.

(B) The name and address of the petitioner's agent, if any. If the petitioner is represented by an agent, both the petitioner's actual mailing address and the agent's mailing address shall be provided on the petition.

(C) The petitioner's opinion of value.

(D) The Board adopted value.

(E) The facts relied upon to support the requested change in value.

(F) For nonunitary property, the property identification information and location.

(G) Whether the petition constitutes a claim for refund under Revenue and Taxation Code section 5148, subdivision (f).

(H) Whether an oral hearing is requested.

(I) A statement of the precise elements of the Board's valuation being contested.

(J) Petitioner's appraisal reports, financial studies, and other supporting documents relevant to value.

(K) The signature of the petitioner or petitioner's agent. If a petition is signed by an agent, including an attorney licensed to practice law in the State of California, the agent must be authorized by the petitioner prior to the time the petition is filed. The following language shall be contained in the signature block of the petition:

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing and all information herein, including any accompanying statements or documents, is true, correct, and complete to the best of my knowledge and belief and that I am: (i) an officer, partner, or employee of the petitioner authorized to sign this petition; (ii) an agent authorized by the petitioner; or (iii) an agent who is an attorney licensed to practice law in the State of California, State Bar No. \_\_\_\_\_, who has been retained by the petitioner and has been authorized by the petitioner to file this petition.

(L) A statement of authorization, if required as specified herein or under subdivision (c)(2) below. If the petition is signed by an agent, other than an attorney licensed to practice law in the State of California, a statement of authorization, as described herein, or a power of attorney, as defined in Regulation 5073, subdivision (d), shall be filed with the petition. A statement of authorization shall be in writing and shall include the following information:

(i) The name and address of the petitioner.

(ii) The petitioner's State Board of Equalization company identification number.

(iii) The name, address, and telephone and fax numbers of the agent(s).

(iv) A statement that the agent(s) is authorized to file the petition and represent the petitioner in the appeal that is the subject of the petition.

(v) The signature of an officer, partner, or an employee who has been designated by petitioner in writing to sign such a statement on behalf of the petitioner.

(2) In the event duplicate petitions are filed with the Chief of Board Proceedings, the Chief of Board Proceedings shall determine which petition was authorized by the petitioner. The Chief of Board Proceedings may require a statement of authorization, as defined in subdivision (c)(1)(L) above, or a power of attorney, as defined in Regulation 5073, subdivision (d). The Chief of Board Proceedings shall contact the petitioner and/or the agent(s) who filed the duplicate petitions by telephone, electronic mail, or facsimile machine and by registered or certified mail with return receipt, and shall allow 10 days for a written response. In the event no written response is received after 10 days, the first petition received will be accepted and all other petitions will be rejected as duplicate petitions. For purposes of this regulation, "duplicate petition" means a petition filed by the petitioner, or its agent on its behalf, subsequent to the petition previously filed by or on behalf of the same petitioner for the same assessment year at issue. A subsequent petition that seeks to amend a previously filed petition shall not be considered a duplicate petition for purposes of this regulation.

(3) Petitioner is required to submit to the Chief of Board Proceedings 10 copies of the petition and supporting documents at the time the original petition and supporting documents are filed. The petition and supporting documents, with the required 10 copies, shall be accepted for filing if addressed and transmitted to the Chief of Board Proceedings, State Board of Equalization, at Sacramento, or if deposited personally at the headquarters office of the Board in Sacramento no later than the deadline set forth in Revenue and Taxation Code sections 731, 732, 11338, and 11339. For purposes of this subdivision, transmitted means (i) posted for delivery by the United States Postal Service or a bona fide courier service; (ii) sent by a facsimile machine; or (iii) sent by electronic mail. If transmitted by facsimile machine or electronic mail, all original documents must be forwarded to the Chief of Board Proceedings within a reasonable period of time.

(4) Written findings and decision may be requested at the time of filing the petition, or at any time prior to the commencement of the hearing.

~~(e)~~(d) The Board Staff shall submit an analysis of the petition, the related supporting documents and a staff recommendation for Board Action no later than 30 days prior to the date set for hearing or other action on the petition. The analysis and recommendation shall be submitted to the Chief, of Board Proceedings Division, and a copy shall be sent to the petitioner.

~~(f)~~(e) The petitioner may file a written response to the staff analysis and recommendation no later than 15 days before the date set for hearing or other action on the petition. The response shall be submitted to the Chief, of Board Proceedings Division.

(f) The Chief of Board Proceedings, upon a showing of reasonable cause, may grant an extension for a reasonable period of time under (c), (d), or (e) above. The request for an extension of time shall be submitted in writing no later than 5 p.m. on the last business day set for filing the materials.

(g) The ~~Chief~~, Board Proceedings Division shall distribute the petition and related supporting documents, the staff analysis and recommendation, and the petitioner's response, if any, to the Board, the petitioner and the staff at the time agenda materials are distributed for the Board meeting at which the petition is ~~to be considered scheduled for hearing or other action.~~

~~(h) A reasonable extension of time for filing materials under (c), (e) or (f) above may be granted by the Chief, Board Proceedings Division for reasonable cause. The request for an extension of time shall be submitted in writing no later than 5 o'clock p.m. of the last business day before the date set for filing the materials.~~

~~(i)~~(h) The petition and related documents, the staff analysis and recommendation and related supporting documents, and the petitioner's response to the staff analysis and recommendation, shall be the only documents accepted for filing and distribution prior to a scheduled hearing. Any other documents received shall be returned by the Chief, Board Proceedings Division to the person submitting the documents. The petition and related supporting documents, the staff analysis and recommendation and related supporting documents, and the petitioner's response to the staff analysis and recommendation which petitioner timely submitted to the Chief of Board Proceedings shall be the only documents accepted for filing and distribution by Board Proceeding Division prior to the date the petition is scheduled for hearing or other action; and any documents not timely submitted to the Chief of Board Proceedings shall not be accepted for filing and shall be returned to the party submitting them.

Note: Authority: Section 15606(a), Government Code; and Section 11651, Revenue and Taxation Code.

Reference: Sections 731, 732, 733, 741, 742, 743, 744, 746, 747, 748, 11338, 11339, 11340 and 11353, Revenue and Taxation Code.

## **ARTICLE 7. GENERAL BOARD HEARING PROCEDURES**

### **5073. REPRESENTATION AT HEARINGS AND POWERS OF ATTORNEY.**

(a) Taxpayers may be represented at all levels of review by any person of the taxpayer's choosing, including, but not limited to an attorney, appraiser, accountant, bookkeeper, employee or business associate.

(b) Except as provided in subsection (c) below, the Board shall recognize all representatives who are identified in writing or orally by the taxpayer, and all those who advise the Board in writing that they represent the taxpayer. Recognized representatives shall be permitted to receive confidential information relating to the taxpayer they represent, and to perform on behalf of the taxpayer all acts that the taxpayer may perform with respect to the review of the matter.

(c) The Board, or Board Staff, may require a party to complete a Power of Attorney on a form provided by the Board. Such Power of Attorney shall be a standard form adopted in conjunction with the Franchise Tax Board to be used in either Board of Equalization or Franchise Tax Board matters.

(d) The Power of Attorney form shall include the following information: taxpayer's name, telephone number, taxpayer identification number(s), account or permit number(s) and mailing address; the name, address, and telephone and FAX number of the appointed representative(s); the tax matters in which the representative is authorized to represent the taxpayer; the extent of the representative's authority; the tax period(s) for which the authorization is granted; a statement that the Power of Attorney revokes all prior Powers of Attorney with any exceptions to the revocation; the time period during which the Power of Attorney shall be in effect; the signature(s) and title of all affected taxpayers and the date of signature.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

#### **5076. NOTICE OF BOARD HEARING; WAIVER OR POSTPONEMENT OF HEARING; FAILURE TO RESPOND TO HEARING NOTICE OR TO APPEAR FOR HEARING; PLACE OF HEARING**

(a) This regulation applies to all Board hearings, except that the more specific provisions of Regulation 5076.1 apply to appeals from actions of the Franchise Tax Board.

(b) Notice of Board Hearing; and Waiver—General Procedure. Board Proceedings Staff shall send notice of the Board hearing to the taxpayer and the Department at least 60 days in advance of the hearing date, giving the parties 15 days to respond to the hearing notice. The 60-day notice period may be waived upon agreement among the parties and the Chief of Board Proceedings. If the 60-day notice period is waived, the Chief of Board Proceedings shall modify the briefing schedule set forth in Regulation 5075. The taxpayer shall respond to the hearing notice by indicating: that the taxpayer will appear at the time and place noted; or, that the taxpayer waives oral hearing and requests that the case be submitted to the Board for decision without oral hearing and based upon the written record; or, that the taxpayer requests that the hearing be postponed, stating the reason the postponement is requested.

(c) Notice of Board Hearing and Waiver—State Assessee and Private Railroad Cars Matters. Board staff shall send notice of the Board hearing to the taxpayer and the department at least 45 days in advance of the hearing date, giving the parties 15 days to respond to the hearing notice. The 45-day notice period may be waived upon agreement among the parties and the Chief of Board Proceedings. If the 45-day notice period is waived, the Chief of Board Proceedings shall modify the briefing schedule set forth in Regulation 5041. The taxpayer shall respond to the hearing notice by indicating: (i) that the taxpayer will appear at the time and place noted; or, (ii) that the taxpayer waives oral hearing and requests that the case be submitted to the Board for decision without oral hearing and based upon the written record; or, (iii) that the taxpayer requests that the hearing be postponed, stating the reason the postponement is requested.

~~(c)~~(d) Postponement Of Board Hearing. The Chief of Board Proceedings may grant one postponement of a hearing upon agreement of the parties if the request for postponement is made by the deadline stated in the hearing notice, provides sufficient justification for the postponement, and if the parties commit to a specific subsequent hearing date. The Chief of Board Proceedings may grant a postponement requested after response to the hearing notice upon agreement of the parties and a showing of extreme hardship. A postponement of a hearing may also be granted at the discretion of the Board.

~~(d)~~(e) Removal From Calendar. The Chief of Board Proceedings may remove hearings or related proceedings from the hearing calendar upon a showing of reasonable cause.

~~(e)~~(f) Failure To Respond Or Appear. If the taxpayer fails to respond to the hearing notice by the deadline stated in the notice, or responds to the hearing notice but fails to appear for the hearing on the date and time stated in the notice, the case shall be submitted to the Board for decision without oral hearing and on the basis of the written record. At the discretion of the Chief of Board Proceedings, exceptions may be made upon a showing of extreme hardship.

**FORMAL ISSUE PAPER**

(f)(g) Place of Hearing. Except for a hearing on a property tax petition, a hearing involving a taxpayer or taxpayer's representative residing in the Southern part of the State shall ordinarily be held in the Los Angeles area. Other hearings and hearings on property tax petitions shall ordinarily be held in Sacramento. At its discretion, the Board may hold hearings at other locations.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 892, Public Utilities Code; and Sections 7051, 7202, 7203, 7261, 7262, 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

**5082.2. PROPERTY TAX PETITIONS: FINALITY OF DECISION; PETITION FOR REHEARING.**

(a) Property tax petitions include petitions filed pursuant to Article 4 (State Assesseees and Private Railroad Car Companies), Article 5 (Taxable Property of a County, City, or Municipal Corporation), and Article 6 (Property Tax Welfare Exemptions).

(b) The decision of the Board upon a property tax petition is final. The Board shall not reconsider or rehear a petition. The Board may modify a decision on a petition to correct a clerical error no later than December 31 of the year of the notice.

Note: Authority: Section 15606(a), Government Code; and Section 11651, Revenue and Taxation Code.

Reference: Sections 254.5, 270, 744, 1841 and 11341, Revenue and Taxation Code.