

## Memorandum

**To:** Honorable Antonio Vazquez, Chairman  
Honorable Mike Schaefer, Vice Chair  
Honorable Ted Gaines, First District  
Honorable Malia M. Cohen, Second District  
Honorable Betty T. Yee, State Controller

**Date:** July 30, 2020

**From:** Henry D. Nanjo  
Chief Counsel  
Legal Department (MIC: 121)

**Subject:** *Board Meeting, August 18, 2020*  
*Chief Counsel Matters – Item G – Rulemaking*  
*Authorization to Readopt Property Tax Rule 202, Allocation of Aircraft of Certificated Air Carriers and Scheduled Air Taxi Operators, as an Emergency Regulation*

We request your readoption of 18 California Code of Regulations section<sup>1</sup> 202, *Allocation of Aircraft of Certificated Air Carriers and Scheduled Air Taxi Operators* as an emergency regulation to allow staff sufficient time to complete the rulemaking process and ensure no lapse in regulatory coverage occurs.

### **I. Procedural History**

Effective September 20, 2019, operative January 1, 2020, [Senate Bill \(SB\) 791](#) (Stats. 2019, ch. 333) amended several sections of the Revenue and Taxation Code relating to certificated air carriers and scheduled air taxi operators. Notably, SB 791 required the BOE to promulgate an emergency regulation that implemented the newly established allocation formula.

At the November 19, 2019 Board Meeting, the Board adopted Property Tax Rule 202 as an emergency regulation regulatory action (hereinafter, emergency Rule 202) under Government Code section 11346.1. Emergency Rule 202 was approved by the Office of Administrative Law (OAL) and became effective on January 1, 2020. Currently, emergency Rule 202 will expire on August 28, 2020<sup>2</sup>, but the regulation may be readopted up to two times by the Board.<sup>3</sup>

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<sup>1</sup> Property Tax Rules are regulations promulgated under title 18 of the California Code of Regulations.

<sup>2</sup> Emergency Rule 202 would ordinarily expire on June 29, 2020; however, Executive Order N-40-20 extended the expiration and readoption deadlines of emergency regulations by 60 days.

<sup>3</sup> OAL may approve two readoptions of the same emergency regulation. Each readoption may extend the emergency regulation's effective period for up to 90 days. Gov. Code, §11346.1, subd. (h).

To make the emergency regulation permanent, staff initiated a project to amend Rule 202 through the “certificate of compliance” rulemaking process.<sup>4</sup> At the Board’s July 22, 2020 meeting, the Board authorized publication of amended Rule 202 so that staff could proceed in filing the certificate of compliance. Staff’s work is ongoing.

## **II. Staff’s Recommendation**

Staff is currently working on filing the certificate of compliance with OAL on emergency Rule 202. There is insufficient time to complete that process prior to emergency Rule 202’s current August 28, 2020 expiration date. Accordingly, to prevent a lapse in regulation coverage and to allow staff to continue the work authorized by the Board on July 22, 2020, staff requests emergency Rule 202 be readopted, extending its effectiveness until January 25, 2021.<sup>5</sup>

HN:ll

cc: Ms. Kari Hammond  
Mr. Gary Gartner  
Mr. Matt Cox  
Ms. Regina Evans  
Ms. Yvette Stowers  
Ms. Brenda Fleming  
Ms. Lisa Renati  
Mr. David Yeung  
Ms. Rose Smith  
Ms. Indhu Srinivasan

Recommended by:

/S/ Henry D. Nanjo  
Henry D. Nanjo, Chief Counsel

Approved:

/S/ David Yeung  
David Yeung, Deputy Director  
Property Tax Department

Approved:

/S/ Brenda Fleming  
Brenda Fleming, Executive Director

BOARD APPROVED on: 8/18/20

/S/ Henry D. Nanjo  
Henry D. Nanjo, Chief Counsel and  
Acting Chief, Board Proceedings Division

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<sup>4</sup> A “certificate of compliance” makes an emergency regulation permanent. Gov. Code, § 11346.1, subd. (e); 1 Cal. Code Regs., § 56.

<sup>5</sup> Ordinarily, if readopted, emergency Rule 202 would expire on November 26, 2020. However, as Executive Order N-40-20 currently extends the expiration date of a readopted emergency regulation by an additional 60 days, this readoption would extend emergency Rule 202’s expiration date to January 25, 2021.