

AMENDED IN ASSEMBLY MARCH 18, 2024

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL

No. 2895

Introduced by Assembly Member Gipson

February 15, 2024

An act to amend ~~Section 107.7 of the Revenue and Taxation Code, relating to taxation. Sections 12803.2, 15570, 15570.20, and 15670 of the Government Code, relating to state government.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2895, as amended, Gipson. ~~Cable and video possessory interests: valuation method. Tax administration.~~

Existing law establishes the California Department of Tax and Fee Administration (CDTFA) in the Government Operations Agency to administer specified taxes. Existing law establishes in state government the Office of Tax Appeals (OTA) to conduct tax appeals hearings. Existing law requires that the director of the OTA administer and direct the day-to-day operations of the office, including that each hearing office is sufficiently staffed and that appeals hearings are heard and resolved in a timely and efficient manner. Existing law prohibits the director from being involved in the decisionmaking process of tax appeals panels.

This bill would establish in the Government Operations Agency the California Department of Tax and Fee Board and the Office of Tax Appeals Board to control the CDTFA and the OTA, respectively, as specified. The bill would require each board to consist of the Controller, Director of Finance, and Chairperson of the State Board of Equalization.

This bill would require the boards to appoint a director, subject to confirmation by the Senate.

This bill would specify that the OTA is in the Government Operations Agency and prohibit the Office of Tax Appeals Board from interfering with the decisionmaking process of the tax appeals panels.

~~Existing property tax law specifies the manner that local tax assessors use to determine the value of cable television possessory interests that are created in a cable television franchise or license that is granted by a local government. Under existing law, this valuation method also applies to possessory interests created in a cable franchise or license or a franchise to provide video services that is granted by the state.~~

~~This bill would make nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 12803.2 of the Government Code is
- 2 amended to read:
- 3 12803.2. (a) The Government Operations Agency shall consist
- 4 of all of the following:
- 5 (1) The Office of Administrative Law.
- 6 (2) The Public Employees' Retirement System.
- 7 (3) The State Teachers' Retirement System.
- 8 (4) The State Personnel Board.
- 9 (5) The California Victim Compensation Board.
- 10 (6) The Department of General Services.
- 11 (7) The Department of Technology.
- 12 (8) The Franchise Tax Board.
- 13 (9) The Department of Human Resources.
- 14 (10) The California Department of Tax and Fee Administration.
- 15 (11) The Office of Data and Innovation, effective July 1, 2023.
- 16 (12) *The Office of Tax Appeals.*
- 17 (b) The Government Operations Agency shall include the
- 18 Department of FISCAl upon the acceptance of the Financial
- 19 Information System for California (FISCAl) by the state, as
- 20 determined by the Director of Finance, pursuant to Section 11890.
- 21 (c) The Government Operations Agency shall be governed by
- 22 the Secretary of Government Operations pursuant to Section 12801.

1 However, the Director of Human Resources shall report directly
2 to the Governor on issues relating to labor relations.

3 (d) The Governor, upon the recommendation of the Secretary
4 of Government Operations, may appoint up to three deputies for
5 the secretary.

6 *SEC. 2. Section 15570 of the Government Code is amended to*
7 *read:*

8 15570. (a) There shall be established within state government,
9 in the Government Operations Agency, the California Department
10 of Tax and Fee Administration. The department's headquarters
11 shall be in Sacramento.

12 (b) ~~(1) The department is under the control of a director. The~~
13 ~~Governor shall appoint the director, a chief deputy director, and a~~
14 ~~chief counsel, and these appointees shall hold office at the pleasure~~
15 ~~of the Governor. The appointment of the director shall be subject~~
16 ~~to confirmation by the Senate. the California Department of Tax~~
17 ~~and Fee Administration Board, which is hereby established. The~~
18 ~~board shall be composed of three members consisting of the~~
19 ~~Controller, the Director of Finance, and the Chairperson of the~~
20 ~~State Board of Equalization. The CDTFA Board, with the consent~~
21 ~~and approval of two-thirds of the membership of the Senate, shall~~
22 ~~appoint a director, who shall be a civil executive officer and shall~~
23 ~~perform those duties as are delegated by the CDTFA Board. The~~
24 ~~director may be removed by a two-thirds vote of the CDTFA Board.~~

25 (2) Any power granted to, or duty imposed on, the CDTFA
26 Board may be exercised or performed by any officer or employee
27 of the CDTFA Board as authorized by the CDTFA Board unless
28 it is expressly provided that the power or duty shall be exercised
29 only by the CDTFA Board itself. Notwithstanding any other law,
30 if a person requests in writing to the director or the CDTFA Board
31 that a specific proposed regulation be considered by the CDTFA
32 Board itself, then any delegated authority to an officer or employee
33 of the CDTFA Board to adopt that regulation is rescinded.

34 (c) The director shall be solely responsible for selecting persons
35 for career executive assignment positions and other noncivil service
36 managers for the department.

37 *SEC. 3. Section 15570.20 of the Government Code is amended*
38 *to read:*

39 15570.20. For the purposes of this part, the following terms
40 shall have the following meanings:

1 (a) “Board” means the State Board of Equalization.

2 (b) “CDTFA Board” means the California Department of Tax
3 and Fee Administration Board.

4 ~~(b)~~

5 (c) “Department” means the California Department of Tax and
6 Fee Administration.

7 SEC. 4. Section 15670 of the Government Code is amended to
8 read:

9 15670. (a) There shall be established in state ~~government~~
10 ~~government, within the Government Operations Agency,~~ the Office
11 of Tax Appeals. ~~The office headquarters shall be in Sacramento.~~

12 (b) (1) The office is under the control of ~~a director. The~~
13 ~~Governor shall appoint the director, chief deputy director, and~~
14 ~~chief counsel of the office. The appointment of the director is~~
15 ~~subject to confirmation by the Senate. the Office of Tax Appeals~~
16 ~~Board, which is hereby established. The board shall be composed~~
17 ~~of three members consisting of the Controller, the Director of~~
18 ~~Finance, and the Chairperson of the State Board of Equalization.~~
19 ~~The board, with the consent and approval of two-thirds of the~~
20 ~~membership of the Senate, shall appoint a director, who shall be~~
21 ~~a civil executive officer and shall perform those duties as are~~
22 ~~delegated by the CDTFA Board. The director may be removed by~~
23 ~~a two-thirds vote of the board.~~

24 (2) The director shall administer and direct the day-to-day
25 operations of the office, including, but not limited to, ensuring that
26 each hearing office is sufficiently staffed and that appeals hearings
27 are heard and resolved in a timely and efficient manner. ~~The board~~
28 ~~and the director shall not direct, oversee, supervise, or be otherwise~~
29 ~~involved in the decisionmaking process of the tax appeals panels.~~

30 (c) Within the office, there shall be tax appeals panels. Each tax
31 appeals panel shall consist of three members designated by the
32 director of the office. Each member shall be a person who satisfies
33 all of the following criteria:

34 (1) The person agrees to adhere to the ethics standards adopted
35 by the office pursuant to subdivision (d).

36 (2) The person has knowledge and experience with regard to
37 the administration and operation of the tax and fee laws of the
38 United States and California.

39 (3) Either of the following is true:

1 (A) The person maintained an active membership in the State
2 Bar of California for at least five years immediately preceding
3 designation to a tax appeals panel and meets the qualifications for
4 a state employee classification as an administrative law judge.

5 (B) The person is employed under either of the following state
6 employee classifications:

7 (i) The Business Taxes Specialist, California Department of
8 Tax and Fee Administration series.

9 (ii) The Program Specialist, Franchise Tax Board series.

10 (d) The office shall adopt by rule, pursuant to Section 15679,
11 ethics standards, including rules governing conflicts of interest
12 and ex parte communication. The office shall, to the extent
13 applicable, model the rules upon the Code of Judicial Ethics
14 adopted by the Supreme Court pursuant to subdivision (m) of
15 Section 18 of Article VI of the California Constitution.

16 (e) The hiring of members for tax appeals panels shall be
17 conducted by the office in compliance with state civil service
18 requirements.

19 (f) It is the intent of the Legislature that the changes made to
20 this section by the act adding this subdivision authorizing the office
21 to hire specified tax specialists to serve as members of tax appeals
22 panels shall be implemented by the office in a manner that will
23 not directly cause a reduction in the number of administrative law
24 judges currently employed by the office.

25 ~~SECTION 1. Section 107.7 of the Revenue and Taxation Code~~
26 ~~is amended to read:~~

27 ~~107.7. (a) When valuing possessory interests in real property~~
28 ~~created by the right to place wires, conduits, and appurtenances~~
29 ~~along or across public streets, rights-of-way, or public easements~~
30 ~~contained in either a cable franchise or license granted pursuant~~
31 ~~to Section 53066 of the Government Code (a "cable possessory~~
32 ~~interest") or a state franchise to provide video service pursuant to~~
33 ~~Section 5840 of the Public Utilities Code (a "video possessory~~
34 ~~interest"), the assessor shall value these possessory interests~~
35 ~~consistent with the requirements of Section 401. The methods of~~
36 ~~valuation shall include, but not be limited to, the comparable sales~~
37 ~~method, the income method, including but not limited to,~~
38 ~~capitalizing rent, or the cost method.~~

39 ~~(b) (1) The preferred method of valuation of a cable television~~
40 ~~possessory interest or video service possessory interest by the~~

1 ~~assessor is capitalizing the annual rent, using an appropriate~~
2 ~~capitalization rate.~~

3 ~~(2) For purposes of this section, the annual rent shall be that~~
4 ~~portion of that franchise fee received that is determined to be~~
5 ~~payment for the cable possessory interest or video service~~
6 ~~possessory interest for the actual remaining term or the reasonably~~
7 ~~anticipated term of the franchise or license or the appropriate~~
8 ~~economic rent. If the assessor does not use a portion of the~~
9 ~~franchise fee as the economic rent, the resulting assessments shall~~
10 ~~not benefit from any presumption of correctness.~~

11 ~~(e) If the comparable sales method, which is not the preferred~~
12 ~~method, is used by the assessor to value a cable possessory interest~~
13 ~~or video service possessory interest when sold in combination with~~
14 ~~other property, including, but not limited to, intangible assets or~~
15 ~~rights, the resulting assessments shall not benefit from any~~
16 ~~presumption of correctness.~~

17 ~~(d) (1) Intangible assets or rights of a cable system or the~~
18 ~~provider of video services are not subject to ad valorem property~~
19 ~~taxation. These intangible assets or rights include, but are not~~
20 ~~limited to:~~

21 ~~(A) Franchises or licenses to construct, operate, and maintain~~
22 ~~a cable system or video service system for a specified franchise~~
23 ~~term, excepting therefrom that portion of the franchise or license~~
24 ~~that grants the possessory interest.~~

25 ~~(B) Subscribers, marketing, and programming contracts.~~

26 ~~(C) Nonreal property lease agreements.~~

27 ~~(D) Management and operating systems.~~

28 ~~(E) A workforce in place.~~

29 ~~(F) Going concern value.~~

30 ~~(G) Deferred, startup, or prematurity costs.~~

31 ~~(H) Covenants not to compete.~~

32 ~~(I) Goodwill.~~

33 ~~(2) However, a cable possessory interest or video service~~
34 ~~possessory interest may be assessed and valued by assuming the~~
35 ~~presence of intangible assets or rights necessary to put the cable~~
36 ~~possessory interest or video service possessory interest to beneficial~~
37 ~~or productive use in an operating cable system or video service~~
38 ~~system.~~

39 ~~(e) (1) If a change in ownership of a cable possessory interest~~
40 ~~or video service possessory interest occurs, the person or legal~~

1 ~~entity required to file a statement pursuant to Section 480, 480.1,~~
2 ~~or 480.2 shall, at the request of the assessor, provide as a part of~~
3 ~~that statement the following, if applicable:~~
4 ~~(A) Confirmation of the sales price.~~
5 ~~(B) Allocation of the sales price among the counties.~~
6 ~~(C) Gross revenue and franchise fee expenses of the cable~~
7 ~~system or video service system by county.~~
8 ~~(2) Failure to provide the statement information shall result in~~
9 ~~a penalty as provided in Section 482, except that the maximum~~
10 ~~penalty shall be five thousand dollars (\$5,000).~~