



## STATE BOARD OF EQUALIZATION

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December 30, 2014

Mr.

**Re: *Burden of Proof***  
***Assignment No.: 14-337***

Dear Mr. :

This is in response to your email dated September 26, 2014 to Ms. Kristine Cazadd, in which you asked how the burden of proof should be assigned in a local Assessment Appeals Board (AAB) hearing on an application for reassessment of a single family dwelling when, as of the subject lien date, the owner has been temporarily and involuntarily ousted from occupancy due to partial damage to the dwelling resulting from natural or man-made disaster. As explained more fully below, our opinion is that the taxpayer will have the benefit of the burden of proof in his favor pursuant to Revenue and Taxation Code section<sup>1</sup> 167 if the dwelling is deemed an owner-occupied principal place of residence that qualifies for the homeowners' property tax exemption under section 218, provided that the taxpayer provides all required information to the assessor.

### **Law and Analysis**

The general rule regarding the burden of proof<sup>2</sup> in an AAB hearing, as provided in Property Tax Rule<sup>3</sup> 321, subdivision (a), is as follows:

Subject to exceptions set by law, it is presumed that the assessor has properly performed his or her duties. The effect of this presumption is to impose upon the applicant the burden of proving that the value on the assessment roll is not correct, or, where applicable, the property in question has not been otherwise correctly assessed. The law requires that the applicant present independent evidence relevant to the full value of the property or other issue presented by the application.

(See also, Evid. Code, § 664.)

<sup>1</sup> All subsequent statutory references are to the Revenue and Taxation Code, unless otherwise indicated.

<sup>2</sup> Evidence Code section 115 defines "burden of proof" as the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court.

<sup>3</sup> Cal. Code Regs., tit. 18, §321. All further "Rule" references are to sections of Title 18 of the California Code of Regulations.

Section 167 and Rule 321, subdivision (d) provide an exception to this rule for owner-occupied single-family dwellings. Section 167, subdivision (a) states:

Notwithstanding any other provision of law to the contrary, and except as provided in subdivision (b), there shall be a rebuttable presumption affecting the burden of proof in favor of the taxpayer or assessee who has supplied all information as required by law to the assessor in any administrative hearing involving the imposition of a tax on an owner-occupied single-family dwelling, the assessment of an owner-occupied single-family dwelling pursuant to this division, or the appeal of an escape assessment.

Rule 321, subdivision (d) provides in relevant part:

Exceptions to sub[division] (a) apply in any hearing involving the assessment of an owner-occupied single-family dwelling or an escape assessment . . . In such instances, the presumption in section 167 of the Revenue and Taxation Code affecting the burden of proof in favor of the applicant who has supplied all information to the assessor as required by law imposes upon the assessor the duty of rebutting the presumption by the submission of evidence supporting the assessment.

Therefore, if a dwelling qualifies as an "owner-occupied single-family dwelling" under these provisions, the burden of proof will be in favor of the taxpayer who has provided all required information to the assessor.<sup>4</sup> Section 167, subdivision (c) defines an "owner-occupied single family dwelling" as a single-family dwelling that is: (1) the owner's principal place of residence; and (2) qualifies for a homeowners' property tax exemption.<sup>5</sup>

Generally, the homeowners' exemption, found at section 218, is an exemption from taxation of \$7,000 of the full value of a dwelling, when occupied by an owner as his or her principal residence. Section 218, subdivision (b)(1) states that the exemption generally does not extend to property that is vacant or under construction on the lien date. However, section 218, subdivision (b)(2) provides the following exception:

Notwithstanding paragraph (1), if a person receiving the exemption is not occupying the dwelling on the lien date because the dwelling was damaged in a misfortune or calamity, the person shall be deemed to occupy that same dwelling as his or her principal place of residence on the lien date, provided the person's absence from the dwelling is temporary and the person intends to return to the dwelling when possible to do so.

Thus, a partially damaged dwelling<sup>6</sup> is eligible for the homeowners' exemption if the owner was receiving the exemption prior to the damage, that person's absence from the dwelling is temporary, and the person intends to return to the dwelling when possible to do so. If those conditions are met, because section 218, subdivision (b)(1) deems the owner to occupy the

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<sup>4</sup> If the applicant fails to supply all the information required by law to the assessor, the assessor maintains the presumption of correctness and the burden remains on the taxpayer to prove that the property has not been correctly assessed. (Rev. & Tax. Code, § 167; Rule 313, subd. (f); Assessment Appeals Manual (May 2003), at p. 88-89.)

<sup>5</sup> See also Rule 321, subd. (d).

<sup>6</sup> For property that was totally damaged, please see Rev. & Tax. Code § 218, subs. (b)(2) and (b)(3).

dwelling as his principal place of residence, section 167, subdivision (c) is satisfied, and the taxpayer will have the benefit of the burden of proof in his favor pursuant to section 167, subdivision (a).

The views expressed in this letter are only advisory in nature. They represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely,

/s/ Mengjun He

Mengjun He  
Tax Counsel III (Specialist)

MH:yg

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cc: Honorable Larry W. Ward  
President, California Assessors' Association  
Riverside County Assessor

Mr. David Gau	MIC:73
Mr. Dean Kinnee	MIC:64
Mr. Todd Gilman	MIC:70