

**STATE ASSESSMENT MANUAL
ALTERNATIVE LANGUAGE/COMMENTS**

| No. | PAGE/LINE REFERENCE | SOURCE | PROPOSED LANGUAGE/COMMENTS | SBE STAFF POSITION |
|-----|---------------------|------------------------------|--|--------------------|
| 1 | i Fn 1 | Law Office of Peter Michaels | <p>Revise Fn 1: ¹ <i>Coca-Cola v. State Board of Equalization</i> (1945) 25 Cal.2d 918; <i>Prudential Ins. Co. v. City and County of San Francisco</i> (1987) 191 Cal.App.3d 1142; <i>Hunt Wesson Foods, Inc. v. County of Alameda</i> (1974) 41 Cal.App.3d 163.</p> <p>Comments: <i>Coca-Cola Co. v. State Board of Equalization</i> is a sales tax case addressing recognition of a Board regulation, not a Board-adopted manual.</p> <p>In <i>Elk Hills Power, LLC v. Board of Equalization</i> (2013) 57 Cal.4th 593, the California Supreme Court cited, with approval, a Board-adopted property tax manual, Assessors' Handbook Section 501 (Advanced Appraisal).</p> <p>"Further, the Board's own assessment manual states: "Sections 110(e) and 212(c) do not authorize <i>adding an increment</i> to the value of taxable property to reflect <i>the value</i> of intangible assets...." (Bd. of Equalization, Assessor's (sic) Handbook, Section 502; Advanced Appraisal (Dec. 1998) ch. 6, p. 152, italics added (Assessor's (sic) Handbook).) Thus, assuming the presence of intangibles is permitted. [citations omitted] However, including the fair market value of an intangible asset within the unit whole amounts to the direct taxation of those assets." [citation omitted] <i>Elk Hills Power</i> at pp. 616-617</p> <p>". . . But the portion of the Board's manual on unitary valuation placed in the record pertains to income from intangibles related to enterprise activity, such as "customer base" and "patents and copyrights," which may not be ascribed to taxable property." [citations omitted] <i>Elk Hills Power</i> at pp. 619-620</p> <p><i>SHC Half Moon Bay, LLC v. County of San Mateo</i> (2014) 226 Cal.App.4th 471 reinforces the validity of Board-adopted manuals: "Tax assessors use the Assessors' Handbook "as a basic guide." (<i>Exxon Mobil Corp. v. County of Santa Barbara</i> (2001) 92 Cal.App.4th 1347, 1353 & fn. 2.) "[A]ssessors' handbooks are not regulations and do not possess the force of law ..., " but "they serve as a primary reference and basic guide for assessors, and have been relied upon and accorded great weight in interpreting valuation questions. [Citation.]" (<i>Sky River, supra</i>, 214 Cal.App.4th at p. 735; see <i>Watson Cogeneration Co. v. County of Los Angeles</i> (2002) 98 Cal.App.4th 1066, 1070, fn. 2.) The California Supreme Court cited the Assessors' Handbook with approval in <i>Elk Hills, supra</i>, 57 Cal.4th at pages 616, and 620 through 621. [<i>SHC Half Moon Bay</i>, p. 491]</p> | See SBE Rewrite |

| NO. | PAGE/LINE REFERENCE | | SOURCE | PROPOSED LANGUAGE/COMMENTS | SBE STAFF POSITION |
|-----------|---------------------|----|------------------------------|---|---|
| 1 Cont | | | | SBE Rewrite: ¹ <i>Coca-Cola v. State Board of Equalization</i> (1945) 25 Cal.2d918; <i>Prudential Ins. Co. v. City and County of San Francisco</i> (1987) 191 Cal.App.3d 1142; <i>Hunt Wesson Foods, Inc. v. County of Alameda</i> (1974) 41 Cal.App.3d 163; <i>Elk Hills Power, LLC v. Board of Equalization</i> (2013) 57 Cal.4 th 593; <i>SHC Half Moon Bay, LLC v. County of San Mateo</i> (2014) 226 Cal.App.4 th 471. | |
| 2 | 3 | 7 | Law Office of Peter Michaels | Revise sentence: Several historical reasons led to central state assessment by the Board most of which derived from perceived problems associated with the assessment of railroad property during the 1870's, shortly after California's statehood. Comment: Commercial air carrier personal property is "centrally" assessed by county assessors. | Not accepted Suggestion does not add clarity |
| 3 | 3 | 21 | Law Office of Peter Michaels | Text: Finally, there was a concern that the "true value" of railroad property as part of an operating unit, was not being reflected in the separate assessments of local assessors. Comment: If "true value" is a quote, source should be cited. Otherwise, "fair market value" or "full cash value" should be substituted. SBE Rewrite: Finally, there was a concern that the "true value" of railroad property as part of an operating unit, was not being reflected in the separate assessments of local assessors. | See SBE rewrite |
| 4 | 3 | 33 | Law Office of Peter Michaels | Revise sentence: Second, the Board's assessment jurisdiction over property owned <u>or used</u> by various types of common carrier (i.e., transportation) and public utility companies extends both to those that are "regulated" and those that are "unregulated." | Accepted |
| 5 | 4 | 9 | Law Office of Peter Michaels | Revise sentence: The majority of companies whose property the Board has historically assessed have been regulated in the sense that they hold Certificates of Public Convenience and Necessity (CPCN) from the California Public Utilities Commission (CPUC), or in the sense that many communications <u>telephone</u> companies are regulated by the Common Carrier Bureau of the Federal Communications Commission (FCC). | Accepted |

| NO. | PAGE/LINE REFERENCE | | SOURCE | PROPOSED LANGUAGE/COMMENTS | SBE STAFF POSITION |
|-----|---------------------|----|------------------------------|--|--------------------|
| | | | | | |
| 6 | 4 | 24 | Law Office of Peter Michaels | <p>Text: Third, while the Board historically has assumed jurisdiction of all investor-owned "public utilities," some state assessees are not public utilities in the common meaning of that term.</p> <p>Comment regarding "all": Some regulated investor-owned "public utilities", including water and sewer utilities, are locally assessed.</p> <p>SBE Rewrite: Third, while the Board historically has assumed jurisdiction of all investor-owned "public utilities," some state assessees are not public utilities in the common meaning of that term.</p> | See SBE Rewrite |
| 7 | 5 | 26 | Law Office of Peter Michaels | <p>Revise punctuation: As previously discussed, intercounty pipelines are subject to Board assessment because of property type, if located within two or more counties, not because of the nature of their ownership.</p> <p>SBE Rewrite: As previously discussed, intercounty pipelines are subject to Board assessment because of property type <u>and location</u> if located within two or more counties, not because of the nature of their ownership.</p> | See SBE Rewrite |
| 8 | 6 | 13 | Law Office of Peter Michaels | <p>Revise sentence: As with other state assessees, the Board has interpreted section 19 of article XIII as requiring Board jurisdiction of only telephone companies regulated as public utilities by the California Public Utilities Commission (CPUC) or by a comparable federal commission or board—for example, the Common Carrier Bureau of the Federal Communications Commission (FCC).</p> | Accepted |
| 9 | 6 | 13 | SBE Staff | <p>Revise paragraph: As with other state assessees, the Board has interpreted section 19 of article XIII as requiring Board jurisdiction of only telephone companies regulated as public utilities by the California Public Utilities Commission (CPUC) or by a comparable federal commission or board—for example, the Common Carrier <u>Wireline Competition</u> Bureau of the Federal Communications Commission (FCC). The Board has treated as "public utilities" telephone companies that have been granted a CPCN from the CPUC or that have been classified as communications common carriers by the Common Carrier Wireline Competition Bureau under federal law.⁸</p> | Accepted |
| 10 | 6 | 21 | SBE Staff | <p>Revise sentence: Long distance resellers and alternative operator services <u>competitive local exchange carriers</u> doing business in this state are generally regulated by the CPUS; if they own or lease property in California, the property is subject to Board assessment (e.g., some resellers have their own switching systems in California).</p> | Accepted |

| NO. | PAGE/LINE REFERENCE | | SOURCE | PROPOSED LANGUAGE/COMMENTS | SBE STAFF POSITION |
|-----|---------------------|------|------------------------------|--|--------------------|
| 11 | 6 | 28 | Law Office of Peter Michaels | <p>Revise sentence: To the extent that the companies own <u>or use</u> property in California, that the property of these companies is under the Board's assessment jurisdiction, consistent with the Board's position that telephone companies are "regulated" if their permits or operating rights are prescribed by either state or federal law.</p> <p>SBE Rewrite: To the extent that the companies own <u>or use</u> property in California, that property is under the Board's assessment jurisdiction, consistent with the Board's position that telephone companies are "regulated" if their permits or operating rights are prescribed by either state or federal law.</p> | See SBE Rewrite |
| 12 | 6 | Fn 9 | Law Office of Peter Michaels | <p>Text: ⁹Long distance resellers and alternative operator companies obtain a CPCN to offer telecommunication services over the facilities of the local exchange carrier. The certificate grants resellers and alternative operator companies the right to do business with a local exchange carrier at a discounted rate, which frequently enables them to offer less expensive long-distance service. The CPUC grants certificates to such companies because the public interest is served by promoting effective competition among telecommunications service suppliers. Whether or not resellers actually lease or purchase the use of a switch or any of the facilities of the local exchange carrier is a matter of agreement between the companies involved in each case.</p> <p>Comment regarding Fn 9: Since "telecommunication" companies are not subject to state assessment under Article XIII, section 19, those companies should be referred to as "telephone" companies OR the manual should include an explanation clarifying usage of "telecommunication".</p> <p>"Alternate operator companies" appears to be outdated. Note that Board assessment jurisdiction extends to competitive local exchange companies, including fiber network companies. Not all resellers use facilities of local exchange carriers. "Less expensive long-distance service" also appears to be outdated.</p> <p>SBE Rewrite: ⁹Long distance resellers and <u>competitive local exchange carriers must</u> alternative operator companies obtain a CPCN to offer <u>telecommunication telephone services</u> over the facilities of the local exchange carrier. The certificate grants resellers and alternative operator companies <u>those companies</u> the right to do business with a local exchange carrier at a discounted rate, which frequently enables them to offer less expensive long-distance service. The CPUC grants certificates to such companies because the public interest is served by promoting effective competition among <u>telecommunications telephone</u> service suppliers. Whether or not resellers actually lease or purchase the use of a switch or any of the facilities of the local exchange carrier is a matter of agreement between the companies involved in each case.</p> | See SBE Rewrite |

| NO. | PAGE/LINE REFERENCE | | SOURCE | PROPOSED LANGUAGE/COMMENTS | SBE STAFF POSITION |
|-----|---------------------|----|------------------------------|--|--------------------|
| | | | | | |
| 13 | 8 | 6 | Law Office of Peter Michaels | Revise sentence: Until 1996, property owned <u>or used</u> by all gas and electric companies was subject to Board assessment. | Accepted |
| 14 | 8 | 17 | Law Office of Peter Michaels | Revise sentence: To address the jurisdictional implications of electric industry restructuring, legislation <u>the Legislature</u> enacted section 721.5 and the Board adopted Rule 905. ¹⁴ | Accepted |
| 15 | 10 | 4 | Law Office of Peter Michaels | <p>Text: As these companies are assessed as gas transmission companies rather than pipelines, the assessment jurisdiction of the Board extends to all property owned or used for gas transmission including land.</p> <p>Comment: Add brief discussion about state assessment of gas storage companies.</p> <p>SBE Rewrite: As these companies are assessed as gas transmission companies rather than pipelines, the assessment jurisdiction of the Board extends to all property owned or used for gas transmission including land.</p> <p><u>Additionally, gas storage facilities not owned by gas distribution companies were granted permits by the CPUC and are subject to Board jurisdiction.</u></p> | See SBE Rewrite |
| 16 | 10 | 8 | Law Office of Peter Michaels | <p>Revise paragraph: An important statutory distinction made in regard to property types assessed by the Board is that found in sections 723 and 723.1, the distinction between unitary and nonunitary property. Unitary property is property used in the primary function of an assessee; nonunitary property is property owned by the assessee but not used in the assessee's primary function. The distinction between unitary and nonunitary is discussed in more detail in a later chapter. For the purpose here, suffice it to say that <u>present purposes</u>, section 19 of article XIII requires the Board to assess property that is "owned or used" by a state assessee.</p> <p>SBE Rewrite: An important statutory distinction made in regard to property types assessed by the Board is that found in sections 723 and 723.1, the distinction between unitary and nonunitary property. Unitary property is property used in the primary function of an assessee; nonunitary property is property owned by the assessee but not used in the assessee's primary function. The distinction between unitary and nonunitary is discussed in more detail in a later chapter. For the purpose here, suffice it to say that <u>section 19 of article XIII requires the Board to assess property that is "owned or used" by a state assessee.</u></p> | See SBE Rewrite |

| NO. | PAGE/LINE REFERENCE | | SOURCE | PROPOSED LANGUAGE/COMMENTS | SBE STAFF POSITION |
|-----|---------------------|-------|--|--|---|
| | | | | | |
| 17 | 12 | Fn 18 | Law Office of Peter Michaels | Revise footnote: ¹⁸ Several terms are used synonymously with "fair market value" in property tax statutes and regulations. These include "full cash value," "cash value," "actual value," " <u>true value</u> ," and "market value." | Not accepted Suggestion does not add clarity |
| 18 | 13 | 32 | Law Office of Peter Michaels | Add sentence: Subdivision (e) states: "Taxable property may be assessed and valued by assuming the presence of intangible assets or rights necessary to put the property to beneficial or productive use." <u>Appellate courts have distinguished between "assuming the presence" of intangibles and adding a value component for such intangible assets or rights.</u> | Not accepted Suggestion does not add clarity |
| 19 | 13 | 32 | Cahill-Davis & O'Neill, LLP (C. O'Neill) | Add sentences: Subdivision (e) states: "Taxable property may be assessed and valued by assuming the presence of intangible assets or rights necessary to put the property to beneficial or productive use." <u>This provision means that the appraiser assumes intangible assets and rights are in use as part of a going concern, but the value of those intangibles are not to be included in the final value of the taxable property. Elk Hills Power, LLC v. Board of Equalization (2013) 57 Cal.4th 593 at ____.</u> | Not accepted Suggestion does not add clarity |
| 20 | 13 | 34 | Tobias & Associates, Inc. (D. Tobias) | Add paragraphs: Finally, subdivision (f) of section 110 provides that for the purpose of determining "full cash value" or "fair market value," any intangible attributes of real property shall be reflected in the value of the real property, and that these attributes include zoning, location, and other such attributes that relate directly to the real property involved. <u>Although assessors can assume the presence of intangible assets and rights necessary to put taxable property to beneficial or productive use, such intangibles cannot be taxed directly. The Board's appraisers must do their constitutional duty to assess taxable property at fair market value while making sure that the value of intangible assets is not improperly subsumed within the value of taxable property.</u> ^{Fn 1} <u>In Elk Hills Power, the California State Board of Equalization was required to remove the replacement cost for applied emission reduction credits that it added to the Board's replacement cost value indicator for the assessment of a power plant.</u> ^{Fn 2} <u>The value of intangible assets and rights cannot be removed by merely deducting the related expense from the income stream to be capitalized. Allowing a deduction for the associated expense does not allow for a return on the capital expenditure. For example, allowing the deduction of wages paid to a skilled work force does not remove the value of the work force in place from the income indicator, because the amount of the wages</u> | Not accepted Recommended text is unnecessarily long and issues are addressed in other handbooks. |

| NO. | PAGE/LINE REFERENCE | SOURCE | PROPOSED LANGUAGE/COMMENTS | SBE STAFF POSITION |
|------------|---------------------|--------|--|--------------------|
| 20 Cont | | | <p><u>paid does not necessarily represent a return of and on the work force in place, and further bears no relationship to the costs associated with locating, interviewing, training, and otherwise acquiring the work force. Similarly, the deduction of a management fee from the income stream does not recognize or remove the value attributable to the business enterprise.</u>^{Fn 3}</p> <p><u>There are a list of California cases in conjunction with Rule 8, Income Approach to Value, that recognize established, enterprise intangibles, e.g.: (1) name recognition (customer base, relationships with local advertisers/vendors, subscriber list, systems/internal procedures, business and technical procedures, accounting and billing systems, programming contracts, and procedures for operating its business); (2) trained and experienced workforce (competent management, a large cadre of employees, substantial experience, trained workforce in place, and assembled workforce); (3) favorable contracts (favorable franchise terms, operating contracts, franchise operating rights, lease, non-competition agreement, and exclusive rights); (4) working capital; (5) goodwill (goodwill of a business, a going concern, and enterprise value); (6) licenses; and (7) right to do business.</u>^{Fn 4} Each of these enterprise intangibles shall be considered and cannot be taxed directly or included in the value.</p> <p><u>Assessor's Handbook Section 502, Advanced Appraisal:</u></p> <p><u>Income Approach: If the income stream used by the appraiser is in part generated by intangible assets and rights, the appraiser must either (1) attribute sufficient income to provide a return of and on the intangible assets and rights, or (2) remove the value of the intangible assets and rights from the income indicator (using any acceptable valuation method) after the income stream has been capitalized or discounted to present value. A business may have valuable intangible assets and rights (e.g. customized computer software, patents, copyrights, customer base, vendor relationship, name recognition, name reputation, etc.) even though the business may not generate sufficient income to produce an adequate rate of return of and on the subject property.</u>²⁴</p> <p><u>Service Company of America:</u></p> <p><u>A final factor importance is the recognition that the gross income of Service America is derived not only from its use of property but from its performance of a service. Service America is a going business concern with (apparently) competent management, a large cadre of employees, and substantial experience and "goodwill" in the area of food service. The prices paid by its customers for its ware obviously</u></p> | |

| NO. | PAGE/LINE REFERENCE | SOURCE | PROPOSED LANGUAGE/COMMENTS | SBE STAFF POSITION |
|------------|---------------------|--------|---|--------------------|
| 20 Cont | | | <p><u>bear a high relationship to the ability of Service America to please the customers by the quality of comestibles and the acceptability of personal service – factors which have little or no bearing upon the use or occupancy of the property.</u></p> <p><u>The conclusion, in applying the learning of these authorities to the facts of our case, is that the assessor and the board were in error when they utilized Service America's entire income flow (even as adjusted for certain expense factors) as the basis for valuation. Clearly, some "large part" of the income earned by Service America was based on its "enterprise value" as distinguished from the value of its use of property.</u>²⁵</p> <p>In any given market, the variables that determine supply and demand, and hence market value, are subject to change—sometimes rapid change. An important consideration regarding market value, therefore, is that it is something that exists as of a given point in time. It is, therefore, necessary to specify a date of valuation in any consideration of market value. Accordingly, section 722 specifies that state-assessed property is valued as of 12:01 a.m. on January 1, the lien date for property tax purposes.</p> <p>^{Fn 1} <u>SHC Half Moon Bay, LLC v. County of San Mateo (2014) 226 Cal.App.4th 471.</u></p> <p>^{Fn 2} <u>Elk Hills Power, LLC v. Board of Equalization (2013) 57 Cal.4th 593.</u></p> <p>^{Fn 3} <u>SHC Half Moon Bay, LLC v. County of San Mateo (2014) 226 Cal.App. 4th 471, AH Section 502, Chapter 6, page 162.</u></p> <p>^{Fn 4} <u>California Portland Cement Co. v. State Bd of Equalization (1967) 67 Cal.2d 578; County of Stanislaus v. Assessment Appeals Bd. (1989) 213 Cal.App.3d 1445; De Luz Homes, Inc. v County of San Diego (1955) 45 Cal.2d 546; Elk Hills Power LLC v. Board of Equalization (2013) 57 Cal.4th 593; GTE Sprint Communications Corp. v. County of Alameda (1994) 26 Cal.App.4th 992; Kaiser Co. v. Reid (1947) 30 Cal.2d 610; Service America Corporation v. County of San Diego (1993) 15 Cal.App.4th 1232; SHC Half Moon Bay v. County of San Mateo (2014) 226 Cal.App.4th 471; Shubat v. Sutter County Assessment Appeals Board (1993) 13 Cal.App.4th 794; Sky River LLC v. County of Kern (2013) 214 Cal.App.4th 720.</u></p> | |

| NO. | PAGE/LINE REFERENCE | | SOURCE | PROPOSED LANGUAGE/COMMENTS | SBE STAFF POSITION |
|-----|---------------------|-----------------|--|---|---|
| 21 | 15 | Fn 22 and Fn 23 | Law Office of Peter Michaels | <p>Text: ²²As defined in <i>Trailer Train Company v. State Board of Equalization</i> (1983) 697 F.2d 860, commercial and industrial property "means property, other than transportation property and land used primarily for agricultural purposes or timber growing, devoted to a commercial or industrial use and subject to a property tax levy."</p> <p>²³<i>Trailer Train Co. v. State Board of Equalization</i> (1983) 697 F.2d 860.</p> <p>Comment: Combine footnotes 22 and 23.</p> | Not accepted Citations relate to different issues |
| 22 | 16 | 6 | Law Office of Peter Michaels | <p>Text: The second major conceptual problem that must be resolved in any appraisal is a determination of the unit of property to be valued—that is, the property for which a market value estimate is sought. This problem is not limited to the central assessment of public utility property; it appears in every appraisal as the familiar question of the proper appraisal unit. When an appraiser decides on the proper unit of property to be valued, he or she has determined to not add up the values of any smaller units to arrive at the value of the unit.</p> <p>Comment: Concluding sentence should be either clarified or deleted.</p> <p>SBE Rewrite: The second major conceptual problem that must be resolved in any appraisal is a determination of the unit of property to be valued—that is, the property for which a market value estimate is sought. This problem is not limited to the central assessment of public utility property; it appears in every appraisal as the familiar question of the proper appraisal unit. When an appraiser decides on the proper unit of property to be valued, he or she has determined to not add up the values of any smaller units to arrive at the value of the unit.</p> | See SBE Rewrite |
| 23 | 16 | 5 | Cahill-Davis & O'Neill, LLP (C. O'Neill) | <p>Add footnote: This problem is not limited to the central assessment of public utility property; it appears in every appraisal as the familiar question of the proper appraisal unit. ^{Fn}</p> <p>^{Fn} <u>For example, an appraisal of a complex industrial facility, mixed-use development, or other locally-assessed property consisting of different types of property (including possibly intangible assets and rights) also requires determination of the proper appraisal unit.</u></p> | Not accepted Suggestion does not relate to centrally assessed property |

| NO. | PAGE/LINE REFERENCE | | SOURCE | PROPOSED LANGUAGE/COMMENTS | SBE STAFF POSITION |
|-----|---------------------|----|------------------------------|---|---|
| | | | | | |
| 24 | 17 | 1 | Law Office of Peter Michaels | <p>Text: A market situation contains two primary attributes: a sale price <i>and</i> a unit of property that is sold.</p> <p>Comment: "Situation" should be clarified or deleted.</p> <p>SBE Rewrite: A market situation contains <u>real or hypothetical market transaction consists of</u> two primary attributes: a sale price <i>and</i> a unit of property that is sold.</p> | See SBE Rewrite |
| 25 | 18 | 3 | Law Office of Peter Michaels | <p>Text: Thus, from a theoretical perspective, the principle of unit valuation holds that the unit of property appropriate for the estimation of a market value should include all property items that are <i>functionally related</i> and within <i>common ownership</i>.</p> <p>Comment: It is not uncommon for functionally related fixtures to be separately sold. Such fixtures would be separate appraisal units.</p> | Not accepted Suggestion does not relate to centrally assessed property |
| 26 | 19 | 14 | Law Office of Peter Michaels | <p>Revise sentence: Noted here, however, is that several adjustments may be required to the initial preliminary unitary value indicator prior to arriving at the final unitary value indicator and the allocation of the unit value.</p> | Accepted |
| 27 | 19 | 19 | Law Office of Peter Michaels | <p>Revise sentence: The second type is required to adjust the unit value indicator so that it does not contain nontaxable property—either nontaxable tangible property or <u>nontaxable</u> intangible assets or rights.</p> | Accepted |
| 28 | 20 | 6 | Law Office of Peter Michaels | <p>Revise bulleted item: • Land, improvements, and personal property owned or leased by a state assessee and used in its primary operation of transportation of freight by rail; gas or fluids by pipeline, canal or ditch; generation, transmission or distribution of electricity; or transmission of information by cellular, paging, or telephone.</p> <p>Comment: It does not appear that (public utility) gas transmission or (independent) gas storage are mentioned.</p> | Accepted |
| 29 | 20 | 18 | Law Office of Peter Michaels | <p>Bulleted text: • Railroad rights-of-way acquired by congressional grant or franchised by a governmental agency.</p> <p>Comment: Clarify or delete "grant" based on <i>Union Pacific Railroad v. Santa Fe Pacific Pipelines</i>.</p> | Not accepted Suggestion would not add clarity to the text |
| 30 | 20 | 28 | Law Office of Peter Michaels | <p>Revise bulleted item: • Property owned by and assessed to a state assessee, but leased to others <u>a non-state assessee</u>.</p> | Not accepted Local issue |

| NO. | PAGE/LINE REFERENCE | | SOURCE | PROPOSED LANGUAGE/COMMENTS | SBE STAFF POSITION |
|-----|---------------------|-------|------------------------------|--|---|
| | | | | | |
| 31 | 22 | 2 | Law Office of Peter Michaels | Revise sentence: Value indicators are the evidences evidence of market value prepared by the appraiser in support of the final value conclusion. | Accepted |
| 32 | 23 | 1 | Law Office of Peter Michaels | Revise sentence: Assessors' Handbook Section 501, <i>Basic Appraisal</i> , and Section 502, <i>Advanced Appraisal</i> , publications containing discussions of general valuation principles and methods, much of which is generally applicable to the valuation of public-utility <u>state assessed</u> property. | Accepted |
| 33 | 24 | 8 | Law Office of Peter Michaels | Revise sentence: The allocation of unit value within a state is called intrastate allocation. If all of a state assessee's unitary property is located in California, obviously no interstate allocation is required. | Accepted |
| 34 | 24 | 11 | Law Office of Peter Michaels | Revise paragraph: The values for all state-assessed property appear on the "Board Roll." Under section 756, on or before each July 31, the Board must provide each county auditor with a roll showing the values for all state-assessed property located in his or her county. The <u>As allocated</u> , state assessments are levied, and the corresponding property taxes collected, at the county level. | Accepted |
| 35 | 25 | FN 31 | Law Office of Peter Michaels | Revise footnote: ³¹ A few points about interstate allocation that are well known to those involved but perhaps not obvious to others: (1) Each state estimates its own unit value, and each state may define the unit slightly differently. | Accepted |
| 36 | 27 | 12 | Law Office of Peter Michaels | Revise section title: Telecommunication <u>Telephone</u> | Not accepted |
| 37 | 27 | 17 | Law Office of Peter Michaels | Revise paragraph: Telephone companies can be classified into three types: local exchange, interexchange, and wireless. Local exchange (and competitive local exchange) companies provide services in a defined geographic area, usually within a single state. In the case of multistate local exchange companies operating in California, the geographic area served, amount of property, and revenues in California generally are very limited. | Not accepted Competitive local exchanges do not provide services in a defined area |
| 38 | 27 | 28 | Law Office of Peter Michaels | Revise sentence: A wireless telephone company provides mobile telecommunication services through its own facilities, facilities owned by other wireless companies, and facilities owned by local <u>exchange</u> and interexchange companies. | Accepted |

| NO. | PAGE/LINE REFERENCE | | SOURCE | PROPOSED LANGUAGE/COMMENTS | SBE STAFF POSITION |
|-----|---------------------|----|------------------------------|---|-----------------------------|
| | | | | | |
| 39 | 27 | 35 | Law Office of Peter Michaels | Revise sentence: Pipeline <u>Intercounty pipeline</u> companies own property used in the distribution of oil, natural gas, and other products in a liquid state; their operations are frequently interstate. | Not accepted Unnecessary |
| 40 | 28 | 7 | Law Office of Peter Michaels | Text: The Board typically uses a slightly modified form of the WSATA recommended allocation formula that includes the historical or original cost of pipeline and other property, barrel- or MCF-miles, and originating and terminating barrels or MCP as allocation factors, weighted as follows: Comment: MCP? SBE Rewrite: The Board typically uses a slightly modified form of the WSATA recommended allocation formula that includes the historical or original cost of pipeline and other property, barrel- or MCF-miles, and originating and terminating barrels or MCP <u>MCF</u> as allocation factors, weighted as follows: | See SBE Rewrite |
| 41 | 30 | 2 | Law Office of Peter Michaels | Revise sentence: The allocation factor for a given assessee's property in a given county was the ratio between current ReprCNLD of the assessee's property in that county to current ReprCNLD of the assessee's net unit value. This methodology is still utilized for intrastate allocation of several of the largest gas and electric and telecommunication state <u>electric and telephone company state</u> assessees. | Accepted |
| 42 | 30 | 7 | Law Office of Peter Michaels | Revise sentence: Beginning with the 1996 lien date, the intrastate allocation factor for the remaining <u>all other</u> state assessees was modified. The allocation of these companies is now based on undepreciated historical costs. ³⁴ | Accepted |
| 43 | 32 | 4 | BOE Staff | Revise paragraph: Section 100.95, effective beginning with the 2007-2008 fiscal year, requires the county auditor to allocate property tax revenue from qualified public utility owned property newly constructed after January 1, 2007 to those governmental agencies and school entities in the tax rate area where the property is located <u>in a prescribed manner. The county, school entities in the county, and certain special districts are to receive the same proportion of the revenues as was received from the countywide unitary allocation in the previous fiscal year in the same manner as other unitary property. The remaining revenue is allocated to the city or county as determined by the tax-rate area where the property is located and is excluded from the countywide distribution directed by section 100.</u> | Accepted |

| NO. | PAGE/LINE REFERENCE | | SOURCE | PROPOSED LANGUAGE/COMMENTS | SBE STAFF POSITION |
|-----|---------------------|----|------------------------------|--|----------------------------------|
| | | | | | |
| 44 | 32 | 30 | BOE Staff | Revise paragraph: As with section 100.95, this law requires that the portion of value revenue allocated to from the qualified property be assigned to the specific tax rate area <u>City of Oakley and the East Contra Costa County Fire Protection District</u> where the property is located, rather than assigning it to <u>distributing in the same manner as the</u> countywide tax-rate area. | Accepted |
| 45 | 36 | 8 | Law Office of Peter Michaels | Revise sentence: This is followed by a discussion of the appeals process, including petitions for filing an appeal <u>reassessment</u> , conduct of Board hearings, and further appeal rights of state assessees. ³⁹ | Accepted |
| 46 | 36 | 25 | Law Office of Peter Michaels | Revise sentence: Prior to the Board's annual valuation, a state assessee may review the staff's annual capitalization rate study and its work papers <u>workpapers</u> related to value indicators for <i>unitary</i> property. | Accepted |
| 47 | 36 | 27 | Law Office of Peter Michaels | Revise sentence: The Board also provides a state assessee with the opportunity to make a presentation to the Board, either in person or in writing, regarding capitalization rates and other matters affecting the Board's valuation of its property. The Board holds public meetings in February and April <u>May</u> for these purposes. | Not accepted April is correct |
| 48 | 37 | 5 | Law Office of Peter Michaels | Revise sentence: Notices of assessment <u>unitary value</u> are mailed by June 1 for unitary property and by the last day of July for nonunitary property. | Not accepted Unnecessary |
| 49 | 37 | 9 | Law Office of Peter Michaels | Revise sentence: After receiving the notice of assessment <u>unitary value or notice of nonunitary value</u> , a state assessee may obtain, by written request, a copy of the appropriate staff capitalization rate study and the final calculations of value indicators relevant to the property to which the notice pertains. | Not accepted Unnecessary |
| 50 | 37 | 32 | Law Office of Peter Michaels | Revise sentence: 3. If the petition has been designated as a claim for refund under Revenue and Taxation Code section 5148 and the petitioner is in disagreement with the Board's decision, an action in superior court may be filed. | Accepted |

| NO. | PAGE/LINE REFERENCE | | SOURCE | PROPOSED LANGUAGE/COMMENTS | SBE STAFF POSITION |
|-----|---------------------|----|------------------------------|---|-----------------------------|
| | | | | | |
| 51 | 38 | 3 | Law Office of Peter Michaels | <p>Revise sentence: The Board shall publish, within 120 days of the date upon which the Board renders it decision, a written formal opinion, a written memorandum opinion, or a written summary decision for each decision in which the <u>tax dollar</u> amount in controversy is five hundred thousand dollars (<u>\$500,000</u>) or more.⁴⁰</p> <p>SBE Rewrite: The Board shall publish, within 120 days of the date upon which the Board renders it decision, a written formal opinion, a written memorandum opinion, or a written summary decision for each decision in which the <u>tax</u> amount in controversy is five hundred thousand dollars (<u>\$500,000</u>) or more.⁴⁰</p> | See SBE Rewrite |
| 52 | 38 | 22 | Law Office of Peter Michaels | <p>Revise bulleted item: · Whether an appeals conference, oral hearing, or Written Findings and Decision is <u>are</u> requested.</p> | Accepted |
| 53 | 39 | 18 | Law Office of Peter Michaels | <p>Revise paragraph: If an Appeals conference is requested, the staff files an analysis that is the State-Assessed Properties Division's written response to the petition at least 35 days prior to date of the Appeals conference. The petitioner may file a written response <u>reply</u> to staff's analysis within 15 days of the distribution of the analysis. The petitioner may not submit new or additional evidence with its reply brief unless the State-Assessed Properties Division or Appeals Division previously requested new or additional information, but the petitioner may dispute or agree with the analysis and recommendations set forth in the State-Assessed Properties Division's Analysis. At least 10 days before the Board meeting date for <u>on</u> which the petition is scheduled for Board action, the Appeals Division will submit a Hearing Summary or Summary Decision to the Chief of Board Proceedings.⁴³</p> | Not accepted Unnecessary |
| 54 | 40 | 14 | Law Office of Peter Michaels | <p>Text: A Board hearing generally consists of the assessee's unsworn presentation, presentations by Board staff (usually an appraiser and an attorney), and, if necessary, testimony by witnesses. If the assessee requests, the Board will conduct a formal evidentiary hearing in which witnesses testify under oath or affirmation.</p> <p>Comment: Add sentence explaining that, once a petition is placed on published Board public hearing agenda, Board may take official notice of the property statement filed with Board, together with any attachments, including without limitation any reports to regulatory agencies such as the U.S. Securities and Exchange Commission and the CPUC, and any annual reports to shareholders; the Appraisal Data Report prepared by the State-Assessed Properties Division together with any workpapers; the Notice of Unitary Value; and any correspondence between SAPD and petitioner.</p> | Not accepted Unnecessary |

| NO. | PAGE/LINE REFERENCE | | SOURCE | PROPOSED LANGUAGE/COMMENTS | SBE STAFF POSITION |
|-----|---------------------|----|------------------------------|--|-----------------------------|
| | | | | | |
| 55 | 41 | 23 | Law Office of Peter Michaels | <p>Add footnote: If the petition is on the nonappearance agenda, the assessee normally will not be informed of the date of the Board meeting at which the matter will appear on the agenda.^{Fn}</p> <p>^{Fn} Board meeting agendas are available on the Board's webpage at www.boe.ca.gov.</p> | Not accepted Unnecessary |
| 56 | 41 | 25 | Law Office of Peter Michaels | <p>Revise sentence: When a decision is reached, the Board sends a written notice of decision, and, if requested in the petition, written findings and decision <u>conclusions</u>.</p> | Accepted |
| 57 | 42 | 4 | SBE Staff | <p>Add footnote: If the Board denies the petition and, hence, the claim, then upon payment of tax to the county or counties, the assessee may proceed directly to file an action in superior court for a refund of the tax.^{Fn}</p> <p>^{Fn} <i>Sprint Telephone v. State Board of Equalization</i></p> | Accepted |
| 58 | 42 | 8 | Law Office of Peter Michaels | <p>Revise sentence: After the Board has rejected <u>denied</u> a claim for refund, the assessee has exhausted its administrative remedies and may bring an action in superior court for refund of the tax.</p> <p>SBE Rewrite: After the Board has rejected a claim for refund, the assessee has exhausted its administrative remedies and may bring an action in superior court for refund of the tax.</p> | See SBE Rewrite |
| 59 | 42 | 13 | Law Office of Peter Michaels | <p>Revise bulleted item: • The mailing date of the Board's written findings and conclusion <u>conclusions</u> on the petition, whichever is later.</p> | Accepted |
| 60 | 42 | 21 | Law Office of Peter Michaels | <p>Revise paragraph: After the audit, State-Assessed Properties Division staff mail a copy of the preliminary audit report, and, if requested, copies of the audit work papers <u>workpapers</u> to the assessee. If the assessee disagrees with the conclusions of the report, he or she <u>it</u> may request a meeting with the auditor and the auditor's supervisor.</p> <p>SBE Rewrite: After the audit, State-Assessed Properties Division staff mail a copy of the preliminary audit report, and, if requested, copies of the audit work papers <u>workpapers</u> to the assessee. If the assessee disagrees with the conclusions of the report, he or she may request a meeting <u>may be requested</u> with the auditor and the auditor's supervisor.</p> | See SBE Rewrite |

| NO. | PAGE/LINE REFERENCE | | SOURCE | PROPOSED LANGUAGE/COMMENTS | SBE STAFF POSITION |
|-----|---------------------|----|------------------------------|---|---|
| | | | | | |
| 61 | 78 | 10 | Law Office of Peter Michaels | Add case citation: <i>Cardinal Health v. County of Orange</i> (2008) 167 Cal.App.4 th 219 <u>The issue in this case was whether application software was not subject to property taxation if it came "bundled" or "embedded" with taxable computer hardware. The assessment appeals board and the trial court agreed with the assessor that because the application software was bundled or embedded with taxable computer hardware, the assessor could ignore the taxpayer's evidence of the value of its nontaxable application software and assess the total amount charged for the software and hardware bundle. The Court of Appeal reversed the decision of the trial court, and held that the fact that the nontaxable application software was bundled or embedded with taxable computer hardware did not excuse the assessor from his duty to make an informed judgment as to the value of taxable and nontaxable components of the bundled software and hardware.</u> | Not accepted Not state assessee case |
| 62 | 78 | 45 | Law Office of Peter Michaels | Revise paragraph: <i>Elk Hills Power, LLC v. Board of Equalization</i> (2013) 57 Cal.4th 593 The issue in this case was whether the Board properly considered applied <u>excluded the value of nontaxable intangible</u> emission reduction credits (ERCs) in determining the unitary value of Elk Hills' state-assessed electric power plant for purposes of property taxation under both the replacement cost less depreciation approach (RCLD) and the income approach. The Supreme Court concluded that "the Board directly and improperly taxed the power company's ERCs when it added their replacement cost to the power plant's taxable value." The Supreme Court, however, clarified that "[w]here the taxpayer does not proffer evidence that the Board included the fair market value of an intangible right or asset in the unit whole, the Board would not have to make a deduction prior to assessment." With respect to the income approach, the Court distinguished between cases involving intangibles that are necessary for the beneficial and productive use of tangible property such as ERCs, and business enterprise intangibles. The Court concluded that "the Board was not required to deduct a value attributable to the ERCs under an income approach" because "[t]here was no credible showing that there is a separate stream of income related to enterprise activity." Accordingly, the Court determined that the Board correctly "estimated the amount of income the property is expected to yield over its life and determined the present value of that amount." | Not accepted Suggestion does not add clarity |

| No. | PAGE/LINE REFERENCE | | SOURCE | PROPOSED LANGUAGE/COMMENTS | SBE STAFF POSITION |
|-----|---------------------|----|---|---|--------------------|
| 63 | 80 | 1 | Law Office of Peter Michaels | Revise sentence: <i>Michael Todd Company, Inc. v. County of Los Angeles et al.</i> (1962) 57 Cal.2nd 684. The market value for assessment purposes is the value of property when put to beneficial use and is not the residual value remaining when the property is reduced to its constituent elements (e.g., a file <u>film</u> negative should be valued as a motion picture, not merely as film). The absence of an "actual market" for a particular type of property does not mean that the property has no value, but only that the assessor must utilize other pertinent factors such as replacement cost and income analysis in making the valuation. | Accepted |
| 64 | -- | -- | Los Angeles County Assessor's Office (D. Hough) | Comment: We accept the draft as written and have no comments or suggestions at this time. | |