



STATE BOARD OF EQUALIZATION  
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No. 2003/062

September 30, 2003

TO COUNTY ASSESSORS, COUNTY APPEALS BOARDS,  
COUNTY COUNSELS, AND INTERESTED PARTIES:

PROPERTY TAX RULE 309, HEARING

Enclosed is a draft of proposed amendments to Property Tax Rule 309, *Hearing*. A recent appellate decision necessitates changes to Rule 309, and, additionally, Board staff is proposing that language be added that will clarify procedures for appeals hearings when controlling litigation is pending.

The decision of *FlightSafety International, Inc. v. Los Angeles County Assessment Appeals Board* (105 Cal.App.4th 620) involved the provisions of Revenue and Taxation Code section 1604 whereby a county assessment appeals board must hear and decide a taxpayer's application for reduction of an assessment within two years of the filing of the application. Under that statute, if the appeals board fails to act within two years, the taxpayer's opinion of value becomes the assessed value until the board makes a final determination on the application.

Rule 309 was amended effective April 22, 2000 to clarify the two-year provisions of section 1604. As amended, subsection (c) of Rule 309 provides that for an appeal of a decline in value or personal property assessment, the applicant's opinion of value should be placed on the roll for only the year or years for which the application was filed.

However, the *FlightSafety* court held that an applicant's opinion of value for an appeal of a personal property assessment, contrary to the language in subsection (c) of Rule 309, remains on the roll until the appeals board hears and decides the application. Therefore, staff is proposing that the language at variance with the *FlightSafety* decision be deleted from Rule 309. In addition, staff is proposing language for the rule to clarify the administrative procedures that appeals boards should follow when controlling litigation is pending.

Rule 309 will be scheduled for a public hearing following review of comments received on the proposed revisions to the rule. Suggestions or comments should be submitted by November 21, 2003 to Ms. Sherrie Kinkle in the Assessment Policy and Standards Division or to [sherrie.kinkle@boe.ca.gov](mailto:sherrie.kinkle@boe.ca.gov), (916) 322-2921, Fax (916) 323-8765.

Sincerely,

/s/ David J. Gau

David J. Gau  
Deputy Director  
Property and Special Taxes Department

DJG:sk  
Enclosure

State of California  
BOARD OF EQUALIZATION  
**PROPERTY TAX RULES**

**Rule 309. HEARING.**

*Authority Cited:* Section 15606(c), Government Code.

*Reference:* Sections 441, 1603, 1604, 1606, 1624.4, 1641.1, and 1641.2, Revenue and Taxation Code.

(a) In counties having a population in excess of 4,000,000, on the fourth Monday in September of each year, the board shall meet to equalize the assessment of property on the local roll and shall continue to meet for that purpose from time to time until the business of equalization is disposed of. In all other counties, the board shall meet on the third Monday in July and shall continue to meet until the business of equalization is disposed of. All hearings before the board shall be conducted in the manner provided in this subchapter. Nothing herein requires the board to conduct hearings prior to the final day for filing applications.

(b) A hearing must be held and a final determination made on the application within two years of the timely filing of an application for reduction in assessment submitted pursuant to subdivision (a) of section 1603 of the Revenue and Taxation Code, unless the applicant or the applicant's agent and the board mutually agree in writing or on the record to an extension of time.

(c) If the hearing is not held and a determination is not made within the time specified in subsection (b) of this regulation, the applicant's opinion of value stated in the application shall be conclusively determined by the board to be the basis upon which property taxes are to be levied, except when:

(1) The applicant has not filed a timely and complete application; or,

(2) The applicant has not submitted a full and complete property statement as required by law with respect to the property which is the subject of the application; or,

(3) The applicant has not complied fully with a request for the exchange of information under regulation 305.1 of this subchapter or with the provisions of subdivision (d) of section 441 of the Revenue and Taxation Code; or

(4) Controlling litigation is pending. "Controlling litigation" is litigation which is:

(A) pending in a state or federal court whose jurisdiction includes the county in which the application is filed; and

(B) directly related to an issue involved in the application, the court resolution of which would control the resolution of such issue at the hearing; or,

(5) The applicant has initiated proceedings to disqualify a board member pursuant to Revenue and Taxation Code section 1624.4 within 90 days of the expiration of the two-year period required by Revenue and Taxation Code section 1604; or,

(6) The applicant has requested that the hearing officer's recommendation be heard by the board pursuant to Revenue and Taxation Code section 1641.1, in those counties in which the board of supervisors has adopted a resolution implementing section 1641.1, within 90 days of the expiration of the two-year period required by Revenue and Taxation Code section 1604.

(d) For applications affected by controlling litigation as defined in (c)(4) of this regulation, the assessor, county counsel, or the applicant, or applicant's agent, shall make the board aware of the litigation within 30 days after the assessor, county counsel, or applicant discovers the controlling litigation or reasonably should have been aware of the litigation, e.g., extensive coverage in the news media. Upon

determination by the board that the litigation could affect the board's decision, the application will be continued until the litigation is concluded. The two-year limitation period provided in section 1604 of the Revenue and Taxation Code will begin when the board is notified by the assessor, county counsel, or applicant, or applicant's agent, that the litigation is concluded. The clerk will reschedule the application for hearing not earlier than 120 days after the board has been notified that the controlling litigation has concluded, unless the assessor and the applicant agree in writing to a lesser amount of time.

(e) For applications ~~involving base year value appeals~~ that have not been heard and decided by the end of the two-year period provided in section 1604 of the Revenue and Taxation Code and where the two-year period has not been extended pursuant to subsections (b) or (c) of this regulation, the applicant's opinion of value will be entered on the assessment roll for the tax year or years covered by the pending application, and will remain on the roll until the fiscal year in which the board makes a final determination on the application. No increased or escape taxes other than those required by a change in ownership or new construction, or resulting from application of the inflation factor to the applicant's opinion of value shall be levied for the tax years during which the board fails to act.

~~For applications appealing decline in value and personal property assessments that have not been heard and decided by the end of the two-year period provided in section 1604, the applicant's opinion of value will be enrolled on the assessment roll for the tax year or years covered by the pending application.~~

~~(d)~~(f) If the applicant has initiated proceedings pursuant to subsection (c)(5), or made a request pursuant to subsection (c)(6) of this regulation, the two-year time period described in subsection (b) shall be extended 90 days.

~~(e)~~(g) The applicant shall not be denied a timely hearing and determination pursuant to subsection (b) of this regulation, by reason of any of the exceptions enumerated in subsection (c) herein, unless, within two years of the date of the application, the board, or the clerk at the direction of the board, gives the applicant and/or the applicant's agent written notice of such denial. The notice shall indicate the basis for the denial and inform the applicant of his or her right to protest the denial. If requested by the applicant or the applicant's agent, the clerk shall schedule a hearing on the validity of the application and shall so notify the applicant, the applicant's agent, and the assessor.

(h) When a hearing is postponed or not scheduled because controlling litigation is pending, the notice to the applicant shall identify the controlling litigation by the name of the case, the court number or the docket number of the case, and the court in which the litigation is pending. If a hearing is postponed because controlling litigation is pending, the hearing must be held and a final determination made within a period of two years after the application is filed, excluding the period of time between the notice of pending litigation and the date that the litigation becomes final.