



STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0080
(916) 322-2270 • FAX (916) 324-3984
www.boe.ca.gov

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No. 2019/018

June 27, 2019

TO COUNTY ASSESSORS,
CLERKS OF THE BOARDS
AND OTHER INTERESTED PARTIES:

Notice of Proposed Regulatory Action

**The State Board of Equalization Proposes to Adopt
Amendments to California Code of Regulations, Title 18, Section 370,
Random Selection of Counties for Representative Sampling
and Language for
New Property Tax Rule California Code of Regulations, Title 18, Section 370.5
*Random Selection of Counties for Survey or Representative Sampling for
Calendar Years 2016 Through 2020***

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Government Code section 15606, proposes to adopt amendments to California Code of Regulations, title 18, section (Property Tax Rule) 370, *Random Selection of Counties for Representative Sampling* and language for new section (Property Tax Rule) 370.5, *Random Selection of Counties for Survey or Representative Sampling for Calendar Years 2016 Through 2020*. Property Tax Rule 370 established a five-year rotation or "survey cycle" and prescribed the procedures for selecting, at random, at least three counties and cities and counties, other than the 10 largest counties and cities and counties, in which to perform a representative sampling of assessments, in each year during each five-year survey cycle. Property Tax Rule 370 also clarified how a county or city and county with significant assessment problems would be surveyed in lieu of a county or city and county selected at random and clarified that the Board is not prohibited from conducting additional surveys, samples, or other investigations of any county assessor's office. The proposed amendments to Property Tax Rule 370 clarify that its provisions apply to surveys for calendar years *other than* 2016 through 2020, pursuant to changes to Government Code section 15643. The Board also proposes to add new Property Tax Rule 370.5 to clarify the five-year change in the assessment practices survey cycle for years 2016 through 2020.

PUBLIC HEARING

The Board will conduct a meeting at 450 N Street, Sacramento, California, on July 30, 2019. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 10:00 a.m. or as soon thereafter as the matter may be heard on July 30, 2019. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Property Tax Rule 370 and new Property Tax Rule 370.5.

AUTHORITY

Government Code section 15606

REFERENCE

Government Code sections 15640 and 15643

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current Law

Under Government Code (GC) sections 15640 and 15643, the Board must perform a survey to determine the adequacy of the assessment procedures and practices employed by the county assessor and/or a sampling of the assessments from the local assessment roll in selected counties and cities and counties. GC section 15643 specifies the frequency of surveys and the manner in which the Board is required to select the counties or cities and counties it will survey each year.

GC section 15643 was previously amended in 1996 (Stats. 1996, ch. 1087, section 5 [Senate Bill 1827], emphasis added) ("1996 GC section 15643") to provide as follows:

- (a) The board shall proceed with the surveys of the assessment procedures and practices in the several counties and cities and counties as rapidly as feasible, and shall repeat or supplement each survey at least once in five years.
- (b) The surveys of the 10 largest counties and cities and counties shall include a sampling of assessments on the local assessment rolls as described in Section 15640. *In addition, the board shall each year, in accordance with procedures established by the board by regulation, select at random at least three of the remaining counties or cities and counties, and conduct a sample of assessments on the local assessment roll in those counties. If the board finds that a county or city and county has "significant assessment problems," as provided in Section 75.60 of the Revenue and Taxation Code, a sample of assessments will be conducted in that county or city and county in lieu of a county or city and county selected at random.* The 10 largest counties and cities and counties shall be determined based upon the total value of locally assessed property located in the counties and cities and counties on the lien date that falls within the calendar year of 1995 and every fifth calendar year thereafter.

(c) The statewide surveys which are limited in scope to specific topics, issues, or problems may be conducted whenever the board determines that a need exists to conduct a survey.

(d) When requested by the legislative body or the assessor of any county or city and county to perform a survey not otherwise scheduled, the board may enter into a contract with the requesting local agency to conduct that survey. The contract may provide for a board sampling of assessments on the local roll. The amount of the contracts shall not be less than the cost to the board, and shall be subject to regulations approved by the Director of General Services

As relevant here, Assembly Bill (AB) 681 (Stats. 2015, ch. 404) amended subdivision (b) of GC section 15643, in effect January 1, 2016 through December 31, 2020 ("amended section GC 15643"). AB 681 also added new GC section 15643 ("new GC section 15643"), operative January 1, 2021, which contains identical provisions to 1996 GC section 15643, subdivisions (a) through (d) quoted above, except that the calendar year in subdivision (b) of new GC section 15643 was changed from 1995 to 2021. AB 681 provided for amended GC section 15643 (in effect 2016 – 2020) to be repealed and new GC section 15643 to become operative January 1, 2021. As a result, this law change modifies the number of county assessment practices surveys and assessment samplings required of assessors for calendar years 2016 through 2020. Specifically, this law change requires the Board to:

- Continue to survey and conduct the assessment sampling of the ten counties or cities and counties with the largest value of locally-assessed property.
- Survey the assessment procedures and practices in one county or city and county and conduct a sample of the assessments on the local assessment roll in another county or city and county, both selected at random from the 11th to 20th largest counties and cities and counties (amended GC section 15643, subdivision (b)(1));
- Survey the assessment procedures and practices in three counties or cities and counties and conduct a sample of the assessments on the local assessment roll in two other counties or cities and counties. The counties to be surveyed or sampled are selected at random from the 21st to 58th largest counties (amended GC section 15643, subdivision (b)(2)); and
- Conduct a sample of assessments on the local assessment roll in a county or city or county that has significant assessment problems (amended GC section 15643, subdivision (b)(3)).

After calendar year 2020, the statutory requirements for the Board to select the counties or cities and counties it will survey each year will revert to the requirements provided by the 1996 GC section 15643 which was in effect prior to the January 1, 2016 amendments, which are currently codified in new GC section 15643 (operative January 1, 2021).

In 1997, the Board adopted Property Tax Rule 370, pursuant to its authority in GC section 15606, subdivision (c), in order to implement, interpret, and make specific 1996 GC section 15643 and Revenue and Taxation Code (RTC) section 75.60. Property Tax Rule 370 established a five-year rotation or "survey cycle" and prescribed the procedures for selecting, at random, at least three

counties and cities and counties, other than the 10 largest counties and cities and counties, in which to perform a representative sampling of assessments each year during each new five-year survey cycle. Property Tax Rule 370 also clarified how a county or city and county with significant assessment problems would be surveyed in lieu of a county or city and county selected at random and clarified that the Board is not prohibited from conducting additional surveys, samples, or other investigations of any county assessor's office.

Effect, Objective, and Benefits of the Proposed Amendments

Board staff determined that Property Tax Rule 370 is still necessary because after calendar year 2020, the statutory requirements for the Board to select the counties or cities and counties it will survey each year will revert to the requirements provided by 1996 GC section 15643 in effect prior to the January 1, 2016 amendments, which are currently codified in new GC section 15643 (operative January 1, 2021).

Thus, the Board proposes to amend Property Tax Rule 370 to clarify that its provisions apply to surveys for calendar years other than the five calendar years 2016 through 2020. The Board also proposes to add new Property Tax Rule 370.5 to accommodate the survey cycle for calendar years 2016 through 2020.

The proposed amendments to Property Tax Rule 370 include:

1. Changing the title of Property Tax Rule 370 to add "for Calendar Years Other than 2016 Through 2020."
2. Adding an introductory phrase to the beginning of subdivision (a) to clarify that the rule applies to calendar years other than 2016 through 2020.
3. Capitalizing the word "Board" when referring to the State Board of Equalization in subdivisions (b)(1) and (c) for consistency.
4. Changing "regulation" to "rule" in subdivision (d) because GC section 15606 authorizes the Board to prescribe "*rules* and regulations" (italics added) governing county assessors when assessing and local boards of equalization when equalizing for property tax purposes, and the regulations the Board has adopted to implement, interpret, and make specific the property tax laws are commonly referred to as "Property Tax Rules" or "Rules." (See, e.g., the Property Tax Rules published in the Board's *Property Taxes Law Guide*).
5. Adding a sentence to subdivision (d) clarifying the procedure when the Board is requested to perform a survey that is not otherwise scheduled, consistent with new GC section 15643, subdivision (d).

Proposed new Property Tax Rule 370.5 is similar to Property Tax Rule 370 in structure. Subdivisions (a) and (b) prescribe the new procedures for the random selection of counties and cities and counties that form the pools of the 11th to 20th largest counties and cities and counties and the 21st to 58th largest counties and cities and counties for survey or representative sampling for calendar years 2016 through 2020. Subdivision (c) incorporates the requirement that the Board conduct a sample of assessments on the local assessment roll in a county or city and county that has significant assessment problems for calendar years 2016 through 2020. And subdivision (d) specifies the procedure when the Board is requested to perform a survey that is not otherwise scheduled, consistent with amended GC section 15643, subdivision (d).

Board staff worked with the California Assessors' Association in creating the amendments to Property Tax Rule 370 and language for Property Tax Rule 370.5. Subsequently, interested parties were provided with Board staff's draft of the proposed amendments to Property Tax Rule 370 and the language of proposed new Property Tax Rule 370.5 on December 22, 2016 (see Letter to Assessors 2016/061 available on the Board's website), and invited interested parties to participate in the rulemaking effort. The only comment received regarding the draft of the proposed amendments was from the Los Angeles County Assessor's Office in support of the amendments and language of the proposed new rule as written. Both of these documents are available on the Board's website at <http://www.boe.ca.gov/proptaxes/prop370-proposed-rev-and-adoption.htm>.

Board staff subsequently prepared Formal Issue Paper 17-002 and submitted it to the Board Members for consideration at the Board's June 20, 2017, Property Tax Committee meeting. In the formal issue paper, Board staff recommended that the proposed amendments to Property Tax Rule 370 and the language for proposed new Rule 370.5 be authorized for publication.

At the June 20, 2017 meeting, the Board Members voted to adopt staff's recommended amendments to Property Tax Rule 370 and the language for new Property Tax Rule 370.5. The Board determined that the proposed amendments and language for the new rule are reasonably necessary for the specific purpose of addressing the issue of a temporary five-year change in the survey cycle.

The adoption of the proposed amendments to Property Tax Rule 370 and new language of Rule 370.5 is not mandated by federal law or regulations. There are no previously adopted or amended federal regulations that are identical to Property Tax Rules 370 or 370.5 or the proposed amendments to Property Tax Rule 370.

The Board has performed an evaluation of whether the proposed amendments to Property Tax Rule 370 and the language for new Property Tax Rule 370.5 are inconsistent or incompatible with existing state regulations. The Board has determined that the proposed amendments and new rule are not inconsistent or incompatible with existing state regulations because there are no other Property Tax Rules that prescribe the procedures for selecting, at random, at least three counties and cities and counties, other than the 10 largest counties and cities and counties, in which to perform a representative sampling of assessments, each year during each five-year survey cycle. In addition, there are no previously adopted or amended federal regulations that are identical to Property Tax Rules 370 or 370.5 or the proposed amendments to Property Tax Rule 370.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Property Tax Rule 370 and the language for new Property Tax Rule 370.5 will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

ONE-TIME COST TO THE BOARD, BUT NO OTHER COST OR SAVINGS TO ANY STATE AGENCY, LOCAL AGENCY, OR SCHOOL DISTRICT

The Board has determined that the adoption of the proposed amendments to Property Tax Rule 370 and the language for new Property Tax Rule 370.5 will result in an absorbable \$396 one-time cost for

the Board to update its website after the amendments and new rule are completed. The Board has determined that the adoption of the proposed amendment to Property Tax Rule 370 and the language for new Property Tax Rule 370.5 will result in no other direct or indirect cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, no other non-discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that the adoption of the proposed amendments to Property Tax Rule 370 and the language for new Property Tax Rule 370.5 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board assessed the economic impact of the proposed amendments to Property Tax Rule 370 and the language for new Property Tax Rule 370.5 on California businesses and individuals and determined that the proposed amendments to Property Tax Rule 370 and the language for new Property Tax Rule 370.5 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Board has prepared the economic impact assessment (EIA) required by Government Code section 11346.3, subdivision (b)(1), for the proposed amendments and included it in the initial statement of reasons. In the EIA, the Board has determined that the adoption of the proposed amendments to Property Tax Rule 370 and the language for new Property Tax Rule 370.5 will neither create nor eliminate jobs in the State of California nor create new businesses or eliminate existing businesses within the state nor expand businesses currently doing business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Property Tax Rule 370 and the language for new Property Tax Rule 370.5 will not affect the benefits of the rule to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

Adoption of the proposed amendments to Property Tax Rule 370 and the language for new Property Tax Rule 370.5 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments and new rule should be directed to Henry Nanjo, Chief Counsel, by telephone at (916) 323-1094, by e-mail at henry.nanjo@boe.ca.gov, or by mail at State Board of Equalization, Attn: Henry Nanjo, MIC:121, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0073.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Ms. Rose Smith, Regulations Coordinator, by telephone at (916) 323-9656, by fax at (916) 324-3984, by e-mail at rose.smith@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rose Smith, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080. Ms. Smith is the designated backup contact person to Mr. Nanjo.

WRITTEN COMMENT PERIOD

The written comment period ends at 10:00 a.m. on July 30, 2019, or as soon thereafter as the Board begins the public hearing regarding the proposed amendments to Property Tax Rule 370 and the language for new Property Tax Rule 370.5 during the July 30, 2019, Board meeting. Written comments received by Ms. Rose Smith at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Property Tax Rule 370 and the language for new Property Tax Rule 370.5. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an underline and strikeout version of the text of Property Tax Rule 370 and new Property Tax Rule 370.5 illustrating the express terms of the proposed amendments and an initial statement of reasons for the adoption of the proposed amendments, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the initial statement of reasons are also available on the Board's website at www.boe.ca.gov.

**SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE
SECTION 11346.8**

The Board may adopt the proposed amendments to Property Tax Rule 370 and the language for new Property Tax Rule 370.5 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the resulting regulation, with the change clearly indicated, available to the public for at least 15 days prior to adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Ms. Smith. The Board will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Property Tax Rule 370 and the language for new Property Tax Rule 370.5, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's website at www.boe.ca.gov.

Sincerely,

/s/ Henry D. Nanjo

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

HDN:rfs