

**Initial Statement of Reasons for
Proposed Amendments to
California Code of Regulations, Title 18, Section 202,
*Allocation of Aircraft of Certificated Air Carriers and Scheduled Air Taxi
Operators***

SPECIFIC PURPOSE, PROBLEM INTENDED TO BE ADDRESSED, NECESSITY, AND ANTICIPATED BENEFITS

Current Law

Under article XIII, section 1 of the California Constitution, all property is taxable and assessed at fair market value, unless otherwise provided by the California Constitution or the laws of the United States. Section 2 of article XIII of the California Constitution authorizes the Legislature to provide for property taxation of tangible personal property. Certificated aircraft used by air carriers are tangible personal property, subject to taxation when in revenue service in the state of California.

Until December 31, 2016, the law specified an aircraft valuation methodology required to be used by assessors, which was based on the lowest of trended acquisition cost less depreciation; the wholesale price listed in the Airliner Price Guide, a commercially published value guide, less ten percent; or the original price paid. In addition, assessors and commercial air carriers used a “lead county” system of assessment, which streamlined the administrative procedures involved. This allowed commercial air carriers operating in multiple California counties to file a single consolidated property statement with a designated lead county assessor’s office. The lead county’s assessor’s office calculated the total unallocated fleet value of the air carrier’s certificated aircraft for each make, model, and series and transmitted the calculated fleet value to the other counties. To assess the aircraft, each county assessor’s office determined its allocated portion of the calculated fleet value based on the flight data for its particular county. The allocation process limited each county’s assessment to reflect the aircraft’s physical presence in that county. However, this valuation methodology and the lead county system expired statutorily on December 31, 2016.

Due to the expiration of the mandatory valuation methodology and lead county system, county assessors were able to use any valid method (cost, income, comparable sales, published market value guides) to determine the fair market value of aircraft. Subsequently, assessors entered into a memorandum of understanding (the Aircraft Assessment Memorandum of Understanding) in order to continue the lead county system amongst assessors that were responsible for assessing certificated aircraft.

As related to the value allocation process, the law prior to approval of SB 791, required the Board of Equalization (Board) to designate a representative period of time to measure aircraft

presence in California after consulting with assessors annually. Since 1997, the Board has selected various weeks in the month of January to be the representative period. (See Rev. & Tax. Code, § 441, subd. (m).)

As relevant here, Senate Bill (SB) 791 (Stats. 2019, ch. 333) amended Revenue and Taxation Code¹ section 441, amended and added section 1152, added sections 1153.5 and 1157, and repealed section 1153. Specifically, SB 791 requires the Board to:

- Establish a new formula for allocating the taxable value of certificated aircraft for use beginning with the 2020-2021 fiscal year, operative for the January 1, 2020 lien date. The new allocation formula used by each county assessor is the proportionate amount of time, both in the air and on the ground, that certificated aircraft have spent in California during the 12-month period from January 1 through December 31 of the previous year immediately preceding the lien date (January 1), as compared to the total time during that 12-month period.
- Re-establish the local centralized administrative procedures using a “lead county” system and provide for the duties of the lead county.
- Require an audit of a commercial air carrier once every four years on a centralized basis by an audit team of auditor appraisers from at least one, but not more than three counties, as selected by the Aircraft Advisory Subcommittee of the California Assessors’ Association (CAA), led by the lead county for the commercial air carrier.
- Continue to issue an annual Letter To Assessors (LTA) with the “California Standard Flight Times” to be used in calculating the allocation formula.

SB 791 also requires the Board, after consultation with the CAA and representatives of commercial air carriers, to promulgate an emergency regulation that implements the newly established allocation formula. SB 791 requires that the emergency regulation be effective by January 1, 2020.

Pursuant to SB 791, Board staff sent draft California Code of Regulations, title 18, section (Property Tax Rule) 202 on October 11, 2019 to CAA and representatives of commercial air carriers, inviting them to propose any changes. Board staff incorporated such changes from commenters and the Board adopted emergency Property Tax Rule 202 on November 19, 2019. BOE provided notice of proposed emergency action to interested parties on December 6, 2019 via LTA no. 2019/043. OAL approved emergency Rule 202 and the emergency rule was effective on January 1, 2020.

To make emergency Rule 202 permanent, Board staff initiated a project to amend Property Tax Rule 202 through the certificate of compliance rulemaking process. Staff incorporated ongoing feedback of the emergency rule, prepared a draft of proposed amendments to Property Tax Rule 202, and distributed it to interested parties for comments or suggestions on February 7, 2020. (See LTA No. 2020/006.) Board staff did not receive any comments or suggestions to this draft.

Chief Counsel Henry Nanjo subsequently prepared a memorandum date July 6, 2020 and submitted it to the Board Members for consideration at the Board's July 22, 2020 meeting. In the

¹ All further statutory references are to the California Revenue and Taxation Code, unless otherwise specified.

memorandum, the Chief Counsel and Board staff recommended that the Board propose to adopt staff's draft amendments to Property Tax Rule 202.

At the July 22, 2020 meeting, the Board Members voted to adopt staff's recommended amendments to Property Tax Rule 202. The Board determined that the proposed amendments and language for the new rule were reasonably necessary for the specific purpose of permanently implementing emergency Rule 202 and to further clarify and implement the amendments made to Revenue and Taxation Code sections 441, 1152, 1153.5, and 1157, as well as the repeal of section 1153.

Proposed Amendments to Property Tax Rule 202

The proposed amendments include:

1. Replacement of the representative period with a 12-month period from January 1 through December 31 of the previous year immediately preceding the lien date in order to reflect the change brought forth by SB 791 in repealing sections 1153 and adding new section 1152.
2. Extension of Revenue and Taxation Code sections applicable to aircraft from sections 1150 to 1156 to sections 1150 to 1157, since SB 791 added section 1157, which is applicable to Property Tax Rule 202.
3. Replacement of the Allocation Formula to the one introduced by SB 791 and new section 1152, which incorporates the aforementioned 12-month period, a time in the air definition including flight time and taxi time within California's borders and based on the "California Standard Flight Times" table as prepared by the State Board of Equalization, a time on the ground definition as all time in the state that is not flight or taxi time but mandating a report of time on ground and excluding time on the ground allocated to heavy maintenance, a time allocable to each airport definition as the amount of time aircraft is on the ground at the airport computed by the formula, and the exclusion from time-in-state factor of all time, both in the air and on the ground that aircraft have spent within the state prior to the aircraft's first entry into the revenue service of the air carrier. The proposed amendments to Property Tax Rule 202 also clarify that a flight missing from the "California Standard Flight Times" table does not preclude inclusion of the flight within the allocation formula and that commercial air carriers must provide written notification to the lead county for that air carrier of its absence; the lead county shall then provide written notification to the Board of the missing flight.
4. Removal of the distinction between scheduled and nonscheduled operations from the sources of allocation data as such distinctions are encompassed within the allocation formula.
5. Addition of a subdivision that details the designation, responsibilities, and audit of a lead county assessor's office for each commercial air carrier as provided in SB 791 and section 1153.5.
6. Clarification of "type" as "subfleet type" in Application of Allocation Formula, as well as removing language deemed extraneous and unnecessary with the changes brought upon by SB 791, as well as removing examples of subfleet types, as such examples were outdated.

The adoption of the proposed amendments to Property Tax Rule 202 is not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Property Tax Rule 202 or the proposed amendments to Property Tax Rule 202.

DOCUMENTS RELIED UPON

The Board relied on its Legislative Enrolled Bill Analysis regarding SB 791, the text of SB 791, the Memorandum by the Chief Counsel dated July 6, 2020, and the Aircraft Assessment Memorandum of Understanding.

ALTERNATIVES CONSIDERED

The Board considered whether to begin the formal rulemaking process to adopt the proposed amendments to Property Tax Rule 202 at this time or, alternatively, whether to take no action at this time. The Board decided to begin the formal rulemaking process to adopt the proposed amendments at this time because the Board determined that the proposed amendments are reasonably necessary for the reasons set forth above.

The Board did not reject any reasonable alternative to the proposed amendments to Property Tax Rule 202 that would lessen any adverse impact the proposed action may have on small business or that would be less burdensome and equally effective in achieving the purpose of the proposed action. No reasonable alternative has been identified and brought to the Board's attention that would lessen any adverse impact the proposed action may have on small business, 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.

INFORMATION REQUIRED BY GOVERNMENT CODE SECTION 11346.2, SUBDIVISION (b)(5), ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b), AND DETERMINATIONS AND ESTIMATE REQUIRED BY GOVERNMENT CODE SECTION 11346.5, SUBDIVISION (a)(5), (6), AND (8)

The proposed amendments to Property Tax Rule 202 reflect the amendment of section 441, amendment and addition of section 1152, addition of sections 1153.5 and 1157, and repeal of section 1153. Property Tax Rule 202 consolidates the law pertaining to the valuation of certificated aircraft in one regulation, implements such law, and provides clarification of the referenced statutes, but does not impose any other duties or responsibilities that are not already imposed by the Revenue and Taxation Code.

Thus, the proposed amendments will not mandate that individuals or businesses or state or local government do anything that is not already required by the Revenue and Taxation Code, and there is nothing in the proposed amendments that would significantly change how individuals and businesses would generally behave in the absence of the proposed regulatory action, or that

would have a significant effect on the state's economy or that would impact the state's revenue. Therefore, Board staff determined that the proposed amendments will not impact property tax revenue. The proposed amendments and new rule will not impose new compliance costs on businesses and individuals and will not provide a monetary benefit to businesses and individuals. And, Board staff estimated that the proposed amendments and new rule will result in an absorbable \$420 one-time cost for the Board to update its website after the amendments and new rule are completed assuming that average hourly compensation costs are \$52.45 per hour² and that it will take approximately eight hours ($\$52.45 \times 8 = \419.60 , rounded to \$420), but will not have any other fiscal impact on local or state government.

Therefore, the Board has determined that the adoption of the proposed amendments to Property Tax Rule 202 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, and the Board estimates that the adoption of the proposed amendment to Property Tax Rule 202 will result in an absorbable \$420 one-time cost to the Board, but 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.

In addition, the Board has made an initial determination that the proposed amendments to Property Tax Rule 202 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, and the Board has determined that the proposed amendments to Property Tax Rule 202 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, because the Board has estimated that the proposed amendments will not have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars (\$50,000,000) during any 12-month period.

Further, based upon these facts and all of the information in the rulemaking file, the Board also determined that the adoption of the proposed amendments to Property Tax Rule 202 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 within the State of California.

Furthermore, Property Tax Rule 202 does not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has also determined that the adoption of the proposed amendments to Rule 202 will not affect the benefits of Rule 202 to the health and welfare of California residents, worker safety, or the state's environment.

² Source: Hourly compensation costs are from the U.S. Bureau of Labor Statistics. Hourly compensation costs are for State and Local Workers. *Employer Costs for Employee Compensation – March 2020*, June 18, 2020 press release, <https://www.bls.gov/news.release/pdf/ecec.pdf>.

The forgoing information also provides the factual basis for the Board's initial determination that the adoption of the proposed amendments to Property Tax Rule 202 will not have a significant adverse economic impact on business.