

**Initial Statement of Reasons for
Proposed Amendments to
California Code of Regulations, Title 18,
Section 302, *The Board’s Function and Jurisdiction*, Section 305,
Application, Section 305.1, *Exchange of Information*, Section 305.2,
Prehearing Conference, and Section 323, *Postponements and
Continuances***

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

Current Law

In California, the county assessor is charged with assessing all property subject to general property taxation. (Rev. & Tax. Code, §§ 128 & 401; see also *Blackwell Homes v. County of Santa Clara* (1991) 226 Cal.App.3d 1009, 1013.) After an assessment is made, a taxpayer may challenge the assessment by filing an application for a reduction in an assessment (application) with the county board of equalization. (Rev. & Tax. Code, § 1603; see also *Sunrise Retirement Villa v. Dear* (1997) 58 Cal.App.4th 948, 958.)

Section 16 of article XIII of the California Constitution mandates that appeals boards “equalize,” the value of all property on a local assessment roll by adjusting individual assessments. The Legislature has enacted RTC sections 1601 through 1645.5, and, under the authority of Government Code section 15606, subdivision (c), the Board has adopted California Code of Regulations, title 18, sections (Property Tax Rule or Rules) 301 through 326 to govern the administration of appeals boards.

The process governing appeals boards must not infringe on an applicant’s constitutional due process rights. A fundamental premise underlying appeals board hearings is that the constitutional right to an equalization hearing comprehends a decision in the light of the evidence before any determination becomes final. (*Universal Consol. Oil Co. v. Byram (Univ. Consol. Oil)* (1944) 25 Cal.2d 353, 360.) All parties must be fully apprised of the evidence to be considered, and must be given opportunity to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal. (*Interstate Commerce Commission v. Louisville & N.R. Co.* (1913) 227 U.S. 88, 93.) Therefore, “[c]ompliance with the constitutional requirement for an equalization hearing is not met unless the substance [and] the form of the hearing is granted to the complaining taxpayer.” (*Univ. Consol. Oil, supra*, at p. 361; see also *AAM*, p. 80.) However, due process, “unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances [citations omitted]” (*Mathews v. Eldridge* (1976) 424 US 319, 334), and states are afforded great flexibility in satisfying the requirements of due process in the field of taxation (*Batt v. City and County of San Francisco* (2007) 155 Cal.App.4th 65).

Proposed Amendments

The Proposed Amendments would clarify the following regarding local assessment appeals hearings:

1. That the functions of the appeals board include the duty to ensure all applicants are afforded due process and given the opportunity for a timely and meaningful hearing. (Proposed Amendment to Rule 302, subdivision (a)(1).)
2. That an agent's authorization is valid only for the years indicated in the agent's authorization, and may not cover more than four consecutive calendar years in the future. (Proposed Amendment to Rule 305, subdivision (a)(1)(B).)
3. That if an application is filed online, an agent authorization should be filed in paper form as soon as possible if it cannot also be filed online. (Proposed Amendment to Rule 305, subdivision (a)(2).)
4. That no application shall be rejected because an agent authorization is not signed in the same calendar year as the application is filed, but that retroactive authorizations are not allowed. (Proposed Amendment to Rule 305, subdivision (a)(6).)
5. That Rule 305.1 pertains only to exchanges of information, which are governed by Revenue and Taxation Code section 1606, and not requests for information governed by sections 408, 451, and 441.
6. That an application may not be denied at a prehearing conference or other prehearing proceeding. (Proposed Amendment to Rule 305.2, subdivision (b).)
7. That reasonable cause or both parties agreement is required to postpone or continue hearings for longer than 90 days, and requires the reason for the longer delay to be stated on the record. (Proposed Amendment to Rule 323, subdivision (c).)

These clarifications are reasonably necessary for the efficient and fair operation of local assessment appeals hearings, as follows:

1. Proposed Amendment to Rule 302, subdivision (a)(1) – to set forth in regulation the existing requirement that local appeals boards afford applicants an timely and meaningful hearing.
2. Proposed Amendment to Rule 305 – to set forth four years as a reasonable time period for which an agent authorization is valid. This period allows agents the reasonable accommodation of not having to procure authorizations each year but still requires agents to update authorizations. The option of allowing electronic submitting is delayed until January 1, 2022, in order to give counties time to develop their technical capabilities as well as perform capital budgeting for any fiscal expenditures that may be necessary. The proposed amendments are also necessary to reinforce that, if not filed online, the agent authorization should be filed as soon as possible so that local boards can begin the intake and scheduling process of applications as soon as possible. It is also reasonably necessary to clarify that no application shall be rejected because an agent authorization is not signed in the same calendar year as the application is filed, but that retroactive

- authorizations are not allowed, so there is no confusion on the part of clerks of the boards and agents regarding the requirements for agent authorizations.
3. Proposed Amendments to Rule 305.1 are reasonably necessary to avoid confusion as to the scope of the rule.
 4. Proposed Amendment to Rule 305.2, subdivision (b) – to ensure that applicants are afforded the greatest opportunity to have a hearing on the merits of their case.
 5. Proposed Amendment to Rule 323, subdivision (c) – to ensure that hearings are not delayed unnecessarily.

Between 2017 and 2018, discussions regarding assessment appeals hearings rules ensued between the California Alliance of Taxpayer Advocates¹ (CATA), the California Assessors' Association (CAA), the California Association of Clerks and Election Officials (CACEO) and the Board which included the commencement of an interested parties process. On July 10, 2018, via email, CATA petitioned the Board to adopt a number of amendments to the property tax rules. The rule petition was discussed at the July 24, 2018 Board meeting. At that meeting the Board directed the Executive Director to instruct the Chief Counsel to draft a legal analysis on the proposed rule changes.

On August 8, 2018, CATA submitted a letter to the Board's Executive Director with virtually identical Proposed Amendments as in its July 10, 2018 correspondence. On August 21, 2018, the Board discussed this matter further at its hearing. Prior to and after the July 24, 2018, and August 21, 2018 Board hearings, proponents and opponents to the petition submitted comments specifying reasons for support or opposition.²

On September 7, 2018, the Board received an additional letter from CATA modifying their proposals after discussions with the CAA and the CACEO. Board staff subsequently prepared a Chief Counsel Memorandum³ and submitted it to the Board Members for consideration at the Board's September 25, 2018, meeting. At the conclusion of its September 25, 2018, meeting the Board approved the Proposed Amendments and the Board Members voted to propose the adoption of the Proposed Amendments, authorizing the publication of the Notice of Regulatory Action. The Board determined that the Proposed Amendments are reasonably necessary to have the effect and accomplish the objectives discussed above.

The Board anticipates that the Proposed Amendments will increase openness and transparency in government and benefit the public, local boards of equalization and assessment appeals boards, county assessors, and the owners of property potentially subject to assessment appeals hearings.

¹ CATA describes itself as a “non-profit trade association made up of tax consultants representing taxpayers before County Assessors, The Franchise Tax Board and The State Board of Equalization. CATA's purpose is to protect the rights of state and local taxpayers by advancing the professional practice of state and local tax consulting through education, advocacy and high ethical standards.”

(<<https://www.cataxadvocates.org/about>> [as of August 9, 2018].)

² All comments are posted at: <<http://www.boe.ca.gov/meetings/public-comments2018.htm>> [as of September 28, 2018].

³ Available at: <<http://www.boe.ca.gov/meetings/pdf/2018/092518-G1-Rules302-et-al-memo.pdf>> [as of September 28, 2018].

The Board has performed an evaluation of whether the Proposed Amendments are inconsistent or incompatible with existing state regulations. The Board has determined that the Proposed Amendments are not inconsistent or incompatible with existing state regulations because there are no other Property Tax Rules that prescribe the provisions that would be adopted by the Proposed Amendments. In addition, there are no comparable federal regulations or statutes to the Proposed Amendments.

The adoption of the Proposed Amendments is not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to the Proposed Amendments.

DOCUMENTS RELIED UPON

The Board relied upon the September 21, 2018, Chief Counsel Memorandum, correspondence submitted for and comments made during the Board's discussion of the issues at its August 21, 2018 and September 25, 2018, meeting in deciding to propose the amendments described above.

ALTERNATIVES CONSIDERED

The Board considered whether to begin the formal rulemaking process to adopt the Proposed Amendments, to issue some form of informal guidance 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 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)

As explained in more detail above, the Proposed Amendments implement, interpret, and makes specific Division 1, Part 3, Chapter 1 of the Revenue and Taxation Code (RTC) by prescribing practices and procedures governing county boards of equalization and assessment appeals boards when hearing and deciding local property tax disputes. The Proposed Amendments will not mandate that individuals or businesses or state or local

government do anything that is not already required, 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 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 will result in an absorbable \$500 one-time cost for the Board to update its website after the amendments are completed assuming that average hourly compensation costs are \$49.23 per hour⁴ and that it will take approximately eight hours ($49.23 \times 8 = \$492.30$, rounded to \$500), 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 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 Amendments will result in an absorbable \$500 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 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 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 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, the Proposed Amendments do not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has

⁴ 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 – June 2018*, <http://www.bls.gov/>

also determined that the adoption of the Proposed Amendments will not affect the benefits of the rules before amendment to the health and welfare of California residents, worker safety, or the state's environment.

The forgoing information also provides the factual basis for the Board's initial determination that the adoption of the Proposed Amendments will not have a significant adverse economic impact on business.

The Proposed Amendments may affect small business within the meaning of California Code of Regulations, title 1, section 4 because a small business may own property that is subject to a local assessment appeals hearing.