

Notice of Proposed Regulatory Action

The State Board of Equalization Proposes to Adopt 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*

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, sections (Property Tax Rule or Rules) 302, *The Board's Function and Jurisdiction*; 305, *Application*; 305.1, *Exchange of Information*; 305.2, *Prehearing Conference*; and 323, *Postponements and Continuances* (the Proposed Amendments). These rules implement, interpret, and make 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 (together, appeals boards) when hearing and deciding local property tax disputes. The Proposed Amendments make the following changes to those practices and procedures:

Rule 302 – adds new subdivision (a)(1) to explicitly state the requirement of an appeals board to ensure that applicants are afforded due process and given the opportunity for a timely and meaningful hearing.

Rule 305 – amended to specify 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; amended to state 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; amended to state 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.

Rule 305.1 – amended the title and headings and remove rule statutory references to clarify that this rule pertains 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.

Rule 305.2 – amended to state that an application may not be denied at a prehearing conference or prehearing proceeding.

Rule 323 – amended to require reasonable cause or both parties agreement to postpone or continue hearings for longer than 90 days, and requires the reason for the longer delay to be stated on the record.

PUBLIC HEARING

The Board will conduct a meeting at 450 N Street, Sacramento, California, on December 12, 2018. 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 9:30 a.m. or as soon thereafter as the matter may be heard at the Board's December 12, 2018 hearing. 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 California Code of Regulations, title 18, sections 302, 305, 305.1, 305.2 and 323.

AUTHORITY

Government Code section 15606, subdivision (c)

REFERENCE

Rule 302: RTC sections 531.1, 1603, 1604, and 1605.5.

Rule 305: RTC sections 51, 166, 170, 408.1, 469, 619, 1603, 1603.5, 1604, 1605, 1636, 5097, and 5097.02

Rule 305.1: RTC section 1606

Rule 305.2: California Constitution, article XIII, section 16, RTC section 1601 et. seq.

Rule 323: RTC sections 1605.6 and 1606

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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 Regulations 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).

Effect, Objective, and Benefits of the 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 302, 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 302, 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 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.

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.

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.

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].

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption 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.

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 will result in an absorbable \$500 one-time cost for the Board to update its website after the amendments are completed. The Board has determined that the adoption of the Proposed Amendments 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 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.

The adoption of the Proposed Amendments may affect small business.

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 on California businesses and individuals and determined that the Proposed Amendments are not major regulations, 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 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, as stated above under the INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW, Effect, Objective, and Benefits of the

Proposed Amendments, the Board has determined that the adoption of the Proposed Amendments will benefit the health and welfare of California residents, worker safety, or the state's environment by safeguarding efficient and fair operation of local assessment appeals hearings.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

Adoption of the Proposed Amendments 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 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 94279-0082.

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 9:30 a.m. on December 12, 2018, or as soon thereafter as the Board begins the public hearing regarding the Proposed Amendments during the December 12, 2018, 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. 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 Proposed Amendments 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 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, 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.