

ASSESSMENT APPEALS MANUAL

MAY 2003

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CALIFORNIA STATE BOARD OF EQUALIZATION

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FOREWORD

In the administration of the property tax in California, achieving equity in the equalization process requires two elements. First, the taxpayer and the appeals board should have as much relevant information as possible about the value of the property and about the assessment placed on that property by the assessor. Second, all parties must receive an adequate, impartial hearing of any appeal regarding that property.

For purposes of local property taxation, equalization means adjustments in the values of properties listed on the assessment roll to conform to their values within the parameters of property tax laws.

By the Revenue Act of 1857, the California Legislature designated each county board of supervisors to serve as the county board of equalization. The California State Constitution, adopted in 1879, included specific provisions for county boards of supervisors to sit as the local boards of equalization. In 1880, the California Supreme Court interpreted the constitutional language by affirming that it "empowered a county board of equalization to increase or lower an individual assessment on the county roll,..."¹

The current language, set forth in section 16 of article XIII of the Constitution, provides in part:

The county board of supervisors, or one or more assessment appeals boards created by the county board of supervisors, shall constitute the county board of equalization for a county....

Thus, in all counties in California either one or more assessment appeals boards or a county board of supervisors perform the duties of a local board of equalization as mandated by article XIII, section 16, of the Constitution. To discharge these duties, most counties have adopted rules of notice and procedure relevant to appeals hearings under their jurisdiction. The divergence of the local rules and practices adopted by the various counties has created confusion for taxpayers who have property in more than one county. Additionally, the need for uniform guidance in the appeals arena became more pronounced during the 1990's as the number of applications for assessment reduction dramatically rose.

This manual is provided by the State Board of Equalization as an informational resource for members of local boards of equalization and assessment appeals boards throughout the state, and is intended to advance standardization of assessment appeals practices within California.

Section 15606, subdivision (c), of the Government Code directs the State Board of Equalization to prescribe rules and regulations governing local boards of equalization in the performance of their duties, and subdivision (f) provides that the Board will issue *instructions*, such as those set forth in this manual. While regulations adopted by the State Board of Equalization are binding

¹ *Wells Fargo & Co. v. State Board of Equalization* (1880) 56 Cal. 194.

as law, Board-adopted manuals are advisory only. Nevertheless, courts have held that they may be properly considered as evidence in the adjudicatory process.²

The citations and law references in this publication were current as of the writing of the manual. Board staff met with members of the California Assessors' Association, California Association of Clerks and Election Officials, county counsels, and industry representatives to solicit input for this manual. The Board originally approved this manual in September 1998, adopted updates to the manual in September 2000, and approved this version of the manual on May 28, 2003.

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May 2003

² *Coca-Cola Co. v. State Board of Equalization* (1945) 25 Cal.2d 918; *Prudential Ins. Co. v. City and County of San Francisco* (1987) 191 Cal.App.3d 1142; *Hunt-Wesson Foods, Inc. v. County of Alameda* (1974) 41 Cal.App.3d 163.

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CHAPTER 1: FUNCTION AND PURPOSE OF APPEALS BOARDS

Section 16 of article XIII of the California Constitution provides for the establishment of local boards of equalization and, pursuant to that authority, the Legislature has mandated guidelines for the functioning of those boards by enacting sections 1601 through 1645.5 of the Revenue and Taxation Code³, and the State Board of Equalization has adopted sections 301 through 326 of Title 18, Public Revenues, California Code of Regulations. In addition to the procedures mandated by the Legislature, those boards are also governed by local rules adopted by boards of supervisors pursuant to the authority of section 16 of article XIII of the California Constitution.

ROLE OF APPEALS BOARDS

Section 1601 defines *county board* as "a county board of supervisors meeting as a county board of equalization or an assessment appeals board." Throughout this manual, unless otherwise noted, we use the term *appeals board* when referring to the body charged with the equalization function for the county.

The function of an appeals board is to determine the full value of property or to determine other matters of property tax assessment over which the appeals board has jurisdiction.

Section 15606, subdivision (c), of the Government Code authorizes that the State Board of Equalization will "prescribe rules and regulations to govern local boards of equalization when equalizing...." Pursuant to that provision, the State Board promulgated Property Tax Rule 302⁴ which enumerates the functions of an appeals board as follows:

- (a) The functions of the board are:
 - (1) To lower, sustain, or increase upon application, or to increase after giving notice when no application has been filed, individual assessments in order to equalize assessments on the local tax assessment roll,
 - (2) To determine the full value and, where appealed, the base year value of the property that is the subject of the hearing,
 - (3) To hear and decide penalty assessments, and to review, equalize, and adjust escaped assessments on that roll except escaped assessments made pursuant to Revenue and Taxation Code section 531.1,
 - (4) To determine the classification of the property that is the subject of the hearing, including classifications within the general classifications of real property, improvements, and personal property. Such classifications may result in the property so classified being exempt from property taxation.

³ All statutory section references are to the Revenue and Taxation Code unless otherwise designated.

⁴ All references to Rules are Property Tax Rules from Title 18, Public Revenues, California Code of Regulations.

- (5) To determine the allocation of value to property that is the subject of the hearing, and
 - (6) To exercise the powers specified in sections 1605.5 and 1613 of the Revenue and Taxation Code.
- (b) Except as provided in subsection (a)(4), the board has no jurisdiction to grant or deny exemptions or to consider allegations that claims for exemption from property taxes have been improperly denied.
 - (c) The board acts in a quasi-judicial capacity and renders its decision only on the basis of proper evidence presented at the hearing.

In discharging its duties, an appeals board "is exercising judicial functions, and its decisions as to the value of the property and the fairness of the assessment so far as amount is concerned constitutes an independent and conclusive judgment of the tribunal created by law for the determination of that question which abrogates and takes the place of the judgment of the assessor upon that question."⁵ Thus, an appeals board is a quasi-judicial body. It has some of the characteristics of a court of law as it adjudicates disputes between taxpayers and the assessor, and its decisions are legally binding and enforceable. However, rules of evidence and other matters of procedure are less formal than in a court of law. Nevertheless, due process requires that an appeals board must give each side a reasonable notice of hearing and an opportunity to present its case and to question the other side's evidence and witnesses.⁶

Furthermore, an appeals board, as a quasi-judicial body, has the right to pass on its own jurisdiction in the first instance.⁷

In the process of determining the value of property, an appeals board is generally limited to the evidence presented by the assessor and taxpayer. An appeals board may, on its own motion, request the assessor or taxpayer to provide specific evidence and may examine the assessor and taxpayer on evidence they present;⁸ however, the appeals board members should not individually obtain evidence on their own, or consider evidence provided by individual board members.

An appeals board's decision is final and may not be reheard by the board even if requested by the assessor or taxpayer. Furthermore, an appeals board may not reconsider or rehear its own decision on an application unless a court so orders, except as provided in Rule 326 and discussed in Chapter 9 of this manual.

On appeal, a court's review of an appeals board's findings of factual issues is limited to a determination of whether the appeals board's findings were supported by *substantial evidence* presented at the appeals hearing.⁹ An appeals board's factual determination of value may not be

⁵ *Los Angeles Gas and Electric Co. v. County of Los Angeles* (1912) 162 Cal. 164.

⁶ Section 1610.2; Rules 307, 313, 316, and 317.

⁷ *County of Sacramento v. Assessment Appeals Board No. 2* (1973) 32 Cal.App.3d 654.

⁸ Section 1609.4.

⁹ *County of San Diego v. Assessment Appeals Bd. No. 2* (1983) 148 Cal.App.3d 548.

set aside by a reviewing court unless it was fraudulent, arbitrary, involved an abuse of discretion, or unless the board failed to follow standards prescribed by the Legislature.¹⁰ However, an appeals board's findings on legal issues (including the valuation method used by an appeals board) are subject to complete review by a court on appeal.¹¹

An appeals board has no jurisdiction to grant or deny exemptions, to decide disputes involving tax rates, local governmental budgets, tax bills, tax policy, and has no authority to consider a taxpayer's ability to pay in making its determination.

COMPOSITION OF APPEALS BOARDS

BOARDS OF SUPERVISORS SITTING AS LOCAL BOARDS OF EQUALIZATION

A county board of equalization is comprised of the members of the county board of supervisors; however, the two boards are distinct constitutional bodies and act in different capacities.

¹⁰ *County of San Diego v. Assessment Appeals Bd. No. 2, supra.*

¹¹ *Georgia-Pacific Corp. v. County of Butte* (1974) 37 Cal.App.3d 461.

There are 19 counties in California where the board of supervisors also performs the duties of the county board of equalization.¹²

TABLE 1
LOCAL BOARDS OF EQUALIZATION

County	Population ¹³ (2000)	No. of Appeals Filed (2000-01)
Alpine	1,220	11
Amador	35,450	51
Calaveras	41,000	Unknown
Colusa	19,150	7
Del Norte	28,250	47
Glenn	26,900	Unknown
Imperial	149,000	108
Inyo	18,200	27
Kings	134,500	Unknown
Lake	59,100	55
Mendocino	87,400	60
Modoc	9,550	1
Napa	125,800	Unknown
Plumas	21,000	Unknown
San Benito	54,500	12
Sierra	3,610	3
Tehama	56,700	33
Trinity	13,100	5
Tuolumne	55,200	19

TERM OF OFFICE FOR LOCAL BOARDS OF EQUALIZATION

The term of office for a member of a local board of equalization is the same as that individual's term as a member of the county board of supervisors. Only elected county supervisors or individuals appointed to serve out a term arising from a vacancy on a board of supervisors may sit as members of a local board of equalization. When a member of a board of supervisors leaves office, his or her duties as a member of the local board of equalization are relinquished.

ASSESSMENT APPEALS BOARDS

Most counties in which a significant number of applications are filed annually, or in which the assessment roll is comprised of many complex property types, have created assessment appeals boards.

¹² California State Board of Equalization, *A Report on Budgets, Workloads, and Assessment Appeals Activities in California Assessors' Offices*, September 2002, Sacramento, California, p.20.

¹³ California Department of Finance, *Intercensal Estimates of the Population of California: State and Counties 1990-2000, Report I 90-00 July*.

Section 16 of article XIII of the Constitution requires, in part, that:

The Legislature shall provide for: (a) the number and qualifications of members of assessment appeals boards, the manner of selecting, appointing, and removing them, and the terms for which they serve, and (b) the procedure by which two or more county boards of supervisors may jointly create one or more assessment appeals board.

Members of assessment appeals boards are selected by one of two statutorily prescribed methods:

- Under section 1622, the members of a county board of supervisors nominate individuals to the board and the presiding judge of the superior court of the county selects by lot three members from among those persons nominated; or,
- Under section 1622.1, individuals are appointed directly to a board by the majority vote of the board of supervisors.

Under the latter method of direct appointment, the assessment appeals board may consist of either three or five members, but a five-member board will act only as a three-member panel, which members are designated by the clerk. Every county in California that has adopted an ordinance creating an assessment appeals board has adopted the direct appointment method for appeals board members.

Section 16 of article XIII provides that either the board of supervisors *or* one or more assessment appeals boards "shall constitute the county board of equalization for a county." This provision has been interpreted to mean that once the board of supervisors acts to establish an assessment appeals board, the power to equalize assessments is vested solely in the assessment appeals board. There is no constitutional or statutory authority for the board of supervisors to assume any jurisdiction over an appeals board in its valuation function.

Section 1622.2 permits up to two members of a county board of supervisors who have served as members of a county board of equalization also to serve as assessment appeals board members. The term of office for such an individual, however, cannot exceed his or her term of office as a member of the county board of supervisors.

There are 39 counties in California in which the board of supervisors has created one or more assessment appeals boards to function as the county board of equalization.

ELIGIBILITY REQUIREMENTS FOR ASSESSMENT APPEALS BOARD MEMBERS

Assessment appeals may involve complex issues such as the valuation of large subdivisions in various stages of development, industrial developments, shopping centers, undeveloped land in transition, possessory interests, view site property, and motels and apartments with large vacancy factors. Since most persons have limited experience in complex appraisal matters, the Legislature enacted eligibility requirements for assessment appeals board members. Section 1624 sets forth the eligibility requirements as follows:

A person is not eligible for nomination for membership on an assessment appeals board unless he or she meets one of the following criteria:

- (a) Has a minimum of five years professional experience in this state as a certified public accountant or public accountant, a licensed real estate broker, an attorney, a property appraiser accredited by a nationally recognized professional organization, or a property appraiser certified by the Office of Real Estate Appraisers.
- (b) Is a person who the nominating member of the board of supervisors has reason to believe is possessed of competent knowledge of property appraisal and taxation.

The phrase "property appraiser accredited by a nationally recognized professional organization" has raised questions in some counties in evaluating the eligibility of persons nominated to become an assessment appeals board member. While the Legislature did not define "nationally recognized professional organization" as used in section 1624, the State Board of Equalization recognizes the following organizations as qualifying within the meaning of section 1624:

- Appraisal Institute—formerly known as American Institute of Real Estate Appraisers (AIREA) and Society of Real Estate Appraisers (SREA)
- International Association of Assessing Officers
- International Right of Way Association
- National Association of Real Estate Appraisers
- National Association of Review Appraisers
- Society of Auditor-Appraisers
- American Society of Appraisers
- American Society of Farm Managers and Rural Appraisers
- National Association of Independent Fee Appraisers

In counties with a population of 200,000 or more, section 1624.05 narrows the eligibility requirements for appeals board members to the same four categories of professional experience set forth in section 1624. However, unlike section 1624, an individual does not qualify for appointment by being "a person who the nominating member of the board of supervisors has reason to believe is possessed of competent knowledge of property appraisal and taxation."

Individuals who have worked in an assessor's office are not eligible for appointment to an assessment appeals board within three years of leaving that employment.¹⁴ This disqualification results from employment in any county assessor's office, not only the assessor's office in the county in which the appointment to the appeals board is contemplated.

¹⁴ Section 1624.1.

TERM OF OFFICE FOR ASSESSMENT APPEALS BOARDS

Once an assessment appeals board has been established in a county, the term of office for members selected to serve on the board is three years beginning on the first Monday in September. Section 1623 provides the formula for appointment of appeals board members to newly created boards. The three-year terms for board members are staggered so as to avoid having a panel consisting of all new members with no appeals board experience.

In the event of a vacancy on a board, the person selected to fill the vacancy will serve for the remainder of the unexpired term. That individual is then eligible to be appointed to a full three-year term.

The board of supervisors should take action to reappoint the current member or to appoint a new member at least 60 days prior to expiration of an assessment appeals board member's term. A member whose term has expired and who has not been reappointed may continue to serve for up to 60 days after the expiration of such term with respect to matters on which the assessment appeals board had commenced hearing prior to the expiration of the member's term.¹⁵ However, if a member's term expires and he or she is not reappointed and no new member is appointed, then the incumbent member continues to serve until the board of supervisors reappoints or appoints a new member.

A county board of supervisors cannot establish term limits for assessment appeals board members' total length of service, e.g., six years, because the authority to set terms is within the Constitutional authority of the Legislature. The board of supervisors, however, can exercise its right not to re-appoint an individual to an assessment appeals board.

TRAINING OF MEMBERS

Section 1624.01 requires that all new members of assessment appeals boards must complete a training course. While training is not required for members of boards of equalization, those members are encouraged to attend the training course to keep abreast of important changes in property tax laws. Section 1624.01 provides:

(a) On or after January 1, 2001, any person newly selected for membership on, or newly appointed to be a member of, an assessment appeals board shall complete the training described in subdivision (a) of Section 1624.02 prior to the commencement of his or her term on the board or as soon as reasonably possible within one year thereafter.

(b) A member of an assessment appeals board who does not complete the training required by this section in the time permitted shall complete that training within 60 days of the date of the notice by the clerk advising the member that his or her failure to complete the training constitutes resignation by operation of law. If the member fails to comply within 60 days of the notice by the clerk, the

¹⁵ Subdivision (e) of section 1623. For ease of reference in this manual, we may refer to subdivisions as, for example, section 1623(e).

member shall be deemed to have resigned his or her position on the board. Notwithstanding the provisions of this section, a board member may continue to retain his or her position on the board in order to complete all appeal hearings to which the member is assigned and which commenced prior to the date of resignation pursuant to this subdivision.

The training required by section 1624.01 will include an overview of the assessment process, elements in the conduct of assessment appeal hearings, and important developments in case and statutory law and administrative rules. The training course will be conducted by either the State Board of Equalization or by the county at the county's option. The curriculum for the course of training will be developed in consultation with county boards of supervisors, administrators of assessment appeals boards, assessors, and local property taxpayer representatives.

SELECTION OF BOARD CHAIR

Rule 310 provides that the appeals board will select a chair:

The board shall select one of its members to act as chair and preside over all hearings. This function may be rotated among board members. The chair shall exercise such control over the hearings as is reasonable and necessary. He or she shall make all rulings regarding procedural matters and regarding the admission or exclusion of evidence.

The following are examples of duties of a chair:

1. Conduct meetings in an orderly fashion, recognizing members, persons affected or their agents, and the assessor or assessor's deputy who wish to speak to an agenda item or issue.
2. Ensure that agendas for the meetings are adhered to and completed.
3. Ensure that hearings run smoothly and that repetitive remarks/testimony are discouraged or minimized.
4. Recess hearings if disagreements between members occur, and resolve the issues out of the presence of the parties to the hearing.
5. Ensure that objections are noted in the record and procedural matters are resolved.
6. Request that all persons, including other members, act respectfully and courteously to one another.
7. Ensure that the hearing record reflects all issues on the application so as to preserve them for appeal.

MULTI-COUNTY APPEALS BOARD

Section 16 of article XIII of the Constitution allows for the creation of appeals boards whose jurisdiction would include the equalization of property values for more than one county. Section 16 provides in part:

... Two or more county boards of supervisors may jointly create one or more assessment appeals boards which shall constitute the county board of equalization for each of the participating counties.

County boards of supervisors may invoke this provision of the Constitution by:

- Creating an appeals board to adjudicate all property disputes within all participating counties; or
- Creating an appeals board specifically to adjudicate a property under appeal where the property is located in all of the participating counties.

HEARING OFFICERS

Since 1970 counties have had the option under section 1636 of appointing a hearing officer to enhance their assessment appeals process. Section 1636 allows a county board of supervisors to appoint one or more assessment hearing officers, or to contract with the state Office of Administrative Hearings for the services of an administrative law judge pursuant to the provisions of section 27720 through section 27728 of the Government Code.

Section 1637 sets forth the conditions under which an application may be heard by a hearing officer. First, the applicant is the assessee and has filed an application under section 1603. Second, for counties in which the board of supervisors has not adopted a resolution pursuant to section 1641.1 (see below), the value of the property appealed, as shown on the current assessment roll, does not exceed \$500,000; or the property is a single-family dwelling, condominium or cooperative, or a multiple-family dwelling of four units or less regardless of value. Third, an assessment hearing officer may conduct hearings only on applications where the applicant has requested that the hearing be held before a hearing officer. Section 1637 further allows boards of supervisors to adopt a resolution whereby the assessor must also agree to a hearing before a hearing officer if the total assessed value of the property on the current roll exceeds an amount set by the resolution. This last provision does not apply in cases involving owner-occupied residential property.

Some counties have chosen to confine their hearing officer duties to resolving issues regarding change in ownership and new construction questions only. These hearing officers are restricted to adjudicating those legal questions and are prohibited from making value determinations.

Hearings by a hearing officer are subject to the same statutes and regulations that apply to appeals boards and, like hearings held before an appeals board, are conducted in accordance with

section 1609 which provides that technical rules of evidence need not be observed.¹⁶ When the matter is before a hearing officer, the hearing and disposition of an application will be conducted in an informal manner.¹⁷ At the conclusion of the hearing, the hearing officer prepares a report and recommendation for the appeals board. Unless the board of supervisors adopts a resolution as provided in sections 1640.1 and 1641.1, the recommendation is binding upon the appeals board and the appeals board will establish the assessed value consistent with the recommendation. If the board of supervisors adopts a resolution pursuant to section 1640.1, the hearing officer's recommendation is not binding on the board and the applicant is entitled to a full hearing before the appeals board. If a resolution pursuant to section 1641.1 is adopted, acceptance or rejection of the recommendation is left to the discretion of the appeals board. Of the ten counties that have appointed hearing officers,¹⁸ some findings are final and some are recommendations only.

TABLE 2
HEARING OFFICERS

County	Population¹⁹ (2000)	No. of Appeals Filed (2000-01)	No. of Hearing Officers	Decision Binding on AAB
Alameda	1,466,900	Unknown	1	Yes
Butte	205,400	Unknown	1	Yes
Los Angeles	9,716,100	19,760	23	No
Orange	2,893,100	7,688	5	Yes
Sacramento	1,242,000	965	1	No*
San Bernardino	1,742,300	2,574	2	Yes
San Diego	2,814,500	2,900	14	Yes
San Francisco	787,500	728	8	No
Santa Clara	1,709,500	2,760	2	Yes
Ventura	765,300	1,338	1	Yes

*The hearing officer makes a recommendation to the board of supervisors, not the assessment appeals board.

In order to avoid a possible conflict of interest, a member of an appeals board should not sit concurrently as an assessment hearing officer in those counties that have adopted resolutions pursuant to sections 1640.1 and 1641.1. In those counties, such concurrent service may create a conflict of interest for a hearing officer who later sits on the appeals board that is empowered to hold a hearing de novo on the hearing officer's recommendation.

In counties that have *not* adopted resolutions pursuant to sections 1640.1 and 1641.1, a member of an appeals board may sit concurrently as an assessment hearing officer provided (1) the board

¹⁶ Rule 313, subsection (e).

¹⁷ Section 1638.

¹⁸ California State Board of Equalization, *A Report on Budgets, Workloads, and Assessment Appeals Activities in California Assessors' Offices*, September 2002, Sacramento, California, p.20.

¹⁹ California Department of Finance, *Intercensal Estimates of the Population of California: State and Counties 1990-2000, Report I 90-00 July*.

member/hearing officer has been appointed by the county board of supervisors to serve concurrently in both positions, and (2) to avoid an appearance of conflict of interest, no hearing officer's recommendation should be submitted to a board on which the hearing officer serves as a board member.

ELIGIBILITY REQUIREMENTS FOR HEARING OFFICERS

If a hearing officer is created under the provisions of the Revenue and Taxation Code, the eligibility criteria for appointment include the same requirements as contained in section 1624. The more restrictive professional experience requirements of section 1624.05 in counties with a population of 200,000 or more do not apply to hearing officers.

If a hearing officer is created under the provisions of the Government Code, the appointee must meet the eligibility requirements pursuant to section 27724 of the Government Code. Section 27724 provides:

Any county hearing officer, or any deputy or assistant hearing officer, appointed pursuant to this chapter, shall be an attorney at law having been admitted to practice before the courts of this state for at least five years prior to his or her appointment.

INTERACTION WITH OTHER OFFICIALS/DEPARTMENTS

An appeals board is an independent entity created to adjudicate disputes between taxpayers and the county assessor, and, in the performance of its duties, functions in conjunction with other county and state officials and departments. The board looks to county and state officials for appraisal, procedural, and legal advice and instructions, and it relies on various county departments to carry out decisions made by the board.

COUNTY BOARD OF SUPERVISORS

The Constitution, article XIII, section 16, provides in part:

... County boards of supervisors shall fix the compensation for members of assessment appeals boards, furnish clerical and other assistance for those boards, adopt rules of notice and procedures for those boards as may be required to facilitate their work and to insure uniformity in the processing and decision of equalization petitions, and may provide for their discontinuance.

Section 1625 provides that any member of an assessment appeals board may be removed for cause by the board of supervisors.

While a board of supervisors has administrative authority over the assessment appeals board, such is not the case relative to the equalization duties of an assessment appeals board. As noted above, there are no provisions for a board of supervisors to assume any jurisdiction over an assessment appeals board in its equalization functions. In terms of circumscribing the power of

an assessment appeals board, the board of supervisors may only appoint or remove individual members, discontinue a board, and provide administrative guidance to appeals boards.

It is within the purview of the board of supervisors to decide a taxpayer's claim for a refund or cancellation of taxes paid.²⁰ Although the board of supervisors cannot review the decision of the appeals board and substitute its opinion of value on the assessment roll, the board of supervisors can decide to grant a taxpayer's separately filed claim for refund. If the taxpayer has indicated that the application to the appeals board also serves as a claim for refund,²¹ however, then a denial of the application by the appeals board will be deemed a denial of the claim for refund as well. The taxpayer will then have six months to file an action for refund of taxes in the superior court.²²

COUNTY LEGAL ADVISOR

The *county legal advisor* is the county counsel; or, if there is no county counsel, the district attorney of the county in all counties other than San Francisco. The city attorney of the City and County of San Francisco is the county legal advisor in that jurisdiction.²³ The county legal advisor has the responsibility of advising the appeals board and the clerk of the board in legal and procedural matters regarding assessment appeals hearings and to represent the board in civil proceedings to which the board is a party. The legal advisor's advice may be oral, written, or by representation during a hearing. A county board of supervisors may contract with a private law firm to provide legal services to an appeals board.

In no event may the appeals board and the assessor be represented by the same private law firm, or if the county counsel's office serves as county legal advisor, by the same individual/representative of that office. In this respect, section 31000.7 of the Government Code provides:

The same law firm shall not be employed to advise or represent both the assessor and the county board of equalization on any matters relating to hearings before the county board of equalization. This prohibition shall not apply to the county counsel's office. Individual representatives of that office may represent the assessor and the county board of equalization, as long as the same individual does not represent both parties.

Section 31000.7²⁴ and State Bar rules of professional conduct²⁵ require that all care should be exercised to ensure that the county counsel's office, the district attorney's office, or the city attorney's office avoids conflicts of interest by imposing a distinct division of responsibilities between the attorney representing the appeals board and the attorney representing the assessor. In addition, the attorney representing the appeals board should not partake in any ex parte

²⁰ Section 4946 and section 5096.

²¹ Section 5097.

²² Section 5141.

²³ Rule 301.

²⁴ *Howitt v. Superior Court* (1992) 3 Cal.App.4th 1575.

²⁵ Rules Prof. Conduct, rule 3-310.

discussions regarding the substantive issues of an appeal with either the applicant or the assessor, nor with any of the attorneys, agents, or representatives of the applicant or assessor. Any county that cannot effectively erect an *ethical wall* between attorneys representing the appeals board and the assessor should obtain separate independent counsel to advise the board or the assessor.²⁶

CLERK OF THE BOARD

In most counties, the clerk of the board of supervisors is also the clerk of the assessment appeals board. While the clerk has responsibilities directly supportive of the functions of the board of supervisors, the duties discussed here are those associated with assessment appeals proceedings only.

The clerk of the board is tasked with a myriad of administrative duties relative to the functioning of the assessment appeals process. Some of these responsibilities include:

- Provide public notice of appeals board meetings to equalize assessments.²⁷
- Accept applications from taxpayers seeking a reduction in property tax assessments.²⁸
- Ensure that applications meet the requirements of Rule 305 for completeness and timeliness and are on the State Board of Equalization prescribed form.²⁹
- Respond to taxpayers' inquiries regarding their applications as well as hearing procedures.
- Schedule hearings before hearing officers or appeals boards.³⁰
- Determine which appeals board members will comprise a panel for a hearing.
- Monitor training for assessment appeals board members.³¹
- Provide needed information to the hearing officer or appeals board members for the hearing.
- Provide a copy of each application and request for amendment of an application to the county assessor.³²
- Administer an oath to all individuals presenting evidence at the hearing.
- Announce each item on the hearing agenda.³³
- Maintain copies of evidence presented at the hearing.

²⁶ *Howitt v. Superior Court, supra.*

²⁷ Section 1601.

²⁸ Section 1603.

²⁹ Section 1603; Rule 305.

³⁰ Section 1605.5; Rule 307.

³¹ Section 1624.01.

³² Rule 306.

³³ Rule 313.

- Tape-record, report, or videotape the hearing³⁴
- Record the final decision of the board.³⁵
- Provide a copy of the tape recording or a transcript of the hearing to applicants who request it upon payment of the appropriate fee.³⁶
- Transmit findings of fact when requested.³⁷
- Issue subpoenas at the direction of the board.³⁸
- Deliver to the county auditor a statement of all changes made by the board during the preceding calendar month with an affixed affidavit.³⁹
- Certify the last day of the regular filing period and notify the State Board of Equalization as to whether the last day of the regular filing period for the county will be September 15 or November 30.⁴⁰

An application must be timely filed in order to confer jurisdiction on an appeals board. While an appeals board has the ultimate responsibility to rule on the timeliness of an application, most counties have adopted rules of practice to allow the clerk of the board to make this determination. The Attorney General has stated in a formal opinion⁴¹ that this practice does not violate due process if the board of supervisors establishes for the clerk certain specific guidelines for determining which applications are untimely filed, and, when so determined, directs the clerk to notify applicants and advise them that they may petition the board to reconsider the decision.

COUNTY ASSESSOR

The assessor in person or through a deputy will attend all hearings of the county board and may make any statement or produce evidence on matters before the county board.⁴² It is the responsibility of the assessor (or an appointed deputy) to prepare for the hearing by reviewing the information on the application. The assessor should be prepared to answer questions posed by the applicant and the appeals board members during the hearing, and to present evidence to support the assessor's opinion of value.

³⁴ Rule 312.

³⁵ Sections 1612 and 1628.

³⁶ Section 1611.

³⁷ Section 1611.5; Rule 308.

³⁸ Rule 322.

³⁹ Section 1614.

⁴⁰ Section 1603, subdivision (b)(3)(B).

⁴¹ 59 Ops.Cal.Atty.Gen. 182 (1976).

⁴² Section 1610.2.

COUNTY AUDITOR

Section 1614 states:

On the second Monday of each month the clerk shall deliver the statement of all changes made by the county board during the preceding calendar month to the auditor with an affixed affidavit....

This statement will contain all decisions rendered by the appeals board, including those that require an alteration to the assessment roll based on new values determined by the board. The decisions transmitted to the county auditor must be sufficiently detailed to allow the auditor to readily ascertain the values that have been established by the board. The appeals board must not merely provide a narrative or formula and rely on the auditor to compute a value to be enrolled.

The county auditor (or auditor-controller in some counties) must enroll these new values as provided by the clerk of the board, and then recalculate the taxes based on the newly enrolled values. Any special district assessments or taxes must be accounted for in the recalculated tax amounts.

COUNTY TAX COLLECTOR

The county tax collector reviews recalculated tax amounts computed by the county auditor in accordance with decisions made by the appeals board. The tax collector then compares the new tax liabilities to the amount of taxes already paid by the taxpayer.

If a refund is due, the county tax collector notifies the county auditor, and a refund check for the amount of overpaid taxes is issued to the taxpayer.

If the taxpayer owes additional taxes, the tax collector will mail a notice to the taxpayer indicating the new tax amount.

STATE BOARD OF EQUALIZATION

The State Board of Equalization is an independently elected five-member board which is part of the Executive Branch of the California State Government. It is constitutionally vested with the duty to annually assess (1) pipelines, flumes, canals, ditches, and aqueducts lying within two or more counties, and (2) property, except franchises, owned or used by regulated railway, telegraph, or telephone companies, car companies operating on railways in the state, and companies transmitting or selling gas or electricity.⁴³ The Board is also responsible for review, equalization, and adjustment of assessments of properties owned by local governments that are located outside their boundaries and assessed pursuant to article XIII, section 11.

⁴³ Article XIII, section 19.

The Legislature has charged the State Board of Equalization with regulatory authority over county assessors in the assessment of property, and over county boards of equalization when equalizing the value of property.⁴⁴

The Board performs its duties to local governments through (1) the adoption of Property Tax Rules; (2) issuance of *Assessors' Handbooks* on appraisal (see Appendix 1); (3) issuance of legal opinions to county assessors, county appeals boards, and property taxpayers; (4) issuance of county assessment compliance and topic audits; and (5) providing training and educational materials to assessors, county appeals boards, and interested members of the public.

Section 15606 of the Government Code requires, in part, that the State Board of Equalization:

... (c) Prescribe rules and regulations to govern local boards of equalization when equalizing, and assessors when assessing, including uniform procedures for the consideration and adoption of written findings of fact by local boards of equalization as required by Section 1611.5 of the Revenue and Taxation Code.

(d) Prescribe and enforce the use of all forms for the assessment of property for taxation, including forms to be used for the application for reduction in assessment...

(g) Prescribe rules and regulations to govern local boards of equalization when equalizing and assessors when assessing with respect to the assessment and equalization of possessory interests.

(h) Bring an action in a court of competent jurisdiction to compel an assessor or any city or county tax official to comply with any provision of law, or any rule or regulation of the board adopted in accordance with subdivision (c), governing the assessment or taxation of property....

Appeals board members may utilize the services of the State Board of Equalization in several ways:

- By using the reference materials prepared by the Board, e.g., the *Assessors' Handbook*, Letters To Assessors, Property Taxes Law Guide, special topic surveys, pamphlets, etc.
- By attending training sessions conducted by Board staff.
- By seeking assistance from Board staff on a particular assessment, procedural, or legal issue (whenever possible, an appeals board member's request for assistance should be made through the county legal advisor).
- By having a Board employee appear before an appeals board during a hearing as an expert witness.⁴⁵

⁴⁴ Government Code section 15606.

⁴⁵ Section 1609.5.

Instructions in the form of Letters To Assessors, the *Assessors' Handbook*, special topic surveys, and other similar writings from the State Board of Equalization do not have the force of law. They are only advisory notice to the assessors and appeals boards of the Board's analyses, conclusions, and recommendations concerning problems of general concern or are strictly informational reports of court decisions, legislative enactments, or other factual information. When problems common to all assessors or appeals boards are of such a nature that equity or law requires uniformity, the State Board of Equalization adopts regulations, known as Property Tax Rules, which are set forth in the California Code of Regulations.⁴⁶ Property Tax Rules are legally enforceable by the express provisions of section 15606 of the Government Code. The State Board of Equalization may also bring a legal action on its own behalf to compel a county assessor or any city or county tax official to comply with any provisions of law or any validly adopted Property Tax Rule or regulation.

Unlike the Property Tax Rules, State Board of Equalization guidance in the form of Letters To Assessors, the *Assessors' Handbook*, special topic surveys, and other similar writings do not have the force of law. They are only advisory notice to the assessors and appeals boards of the Board's analyses, conclusions, and recommendations concerning problems of general concern or are strictly informational reports of court decisions, legislative enactments, or other factual information.

STATE ATTORNEY GENERAL

Appeals boards primarily consult with their county legal advisors to seek advice on legal issues. An appeals board may, however, request the State Office of the Attorney General to issue an opinion on a specific legal question or issue. The request for an Attorney General opinion must be made by the county legal advisor on behalf of the appeals board.

As the chief law officer of the state, the Attorney General has broad enforcement powers, and in the absence of legislative restriction, may file any civil action which he or she deems necessary for the enforcement of state laws and the protection of public rights and interests. As such, the Attorney General can bring an action against a county on the grounds that the county appeals process is in violation of law.⁴⁷

⁴⁶ Title 18, Public Revenues, Property Tax Rules 301 through 326.

⁴⁷ *Pierce v. Superior Court* (1934) 1 Cal.2d 759.

CHAPTER 2: LEGAL FRAMEWORK

LAWS THAT GOVERN THE ASSESSMENT APPEALS PROCESS

The assessment appeals process is governed by substantive and procedural law derived from constitutional provisions and implemented by statutes, regulations, and local rules. General principles of legal construction determine the proper order of precedence accorded those laws to ensure that they do not exceed the authority granted and are not inconsistent with other fundamental principles of law.

PREEMPTION OF LAWS

Preemption refers to the exclusive power of a legislative body to legislate in certain areas so as to preempt the legislative or rulemaking authority of a subordinate political subdivision. Whenever the State Legislature has seen fit to adopt a general scheme for the regulation of a particular subject, the entire control over whatever phases of the subject are covered by state legislation ceases as far as local legislation is concerned.⁴⁸ For example, in those areas where the State Legislature has enacted statutes, counties have no authority to adopt local rules in conflict with those statutes.

REGULATION MAY NOT EXCEED STATUTORY AUTHORITY

A *regulation* is a rule or order which interprets or implements a validly enacted statute to carry out the intent of the law and to guide an agency in the uniform application of the law. An agency or other governmental body has no power to adopt a regulation in conflict with or which alters or violates a statute.⁴⁹ In addition, an agency or other governmental body may not adopt a regulation for which there is no constitutional or statutory authority.

ASSESSMENT APPEALS PROCEDURES MAY NOT VIOLATE BASIC CONSTITUTIONAL GUARANTEES OF DUE PROCESS

Although constitutional requirements of procedural due process do not require that an assessment appeal involve a trial before a court, a proceeding before an administrative officer or board is constitutionally adequate only if the basic requirements of notice and opportunity for hearing are met.⁵⁰

UNITED STATES CONSTITUTION

The assessment appeals process, though a function of state law, derives from federal constitutional principles of due process. The 14th Amendment of the United States Constitution requires that no state "shall ... deprive any person of life, liberty, or property, without due process of law." In the context of assessment appeals procedures, the United States Supreme

⁴⁸ *Pipoly v. Benson* (1942) 20 Cal.2d 366.

⁴⁹ *California Welfare Rights Org. v. Carleson* (1971) 4 Cal.3d 445; *Cabral v. State Board of Control* (1980) 112 Cal.App.3d 1012.

⁵⁰ 7 Witkin, *Summary of Cal. Law* (9th ed. 1988) Constitutional Law § 518, p.715.

Court has held that the due process clause does not require that the notice of and opportunity to contest an assessment must be given prior to the making of the assessment. Due process requires only that, prior to the tax becoming final and irrevocable, the taxpayer is afforded a hearing on the assessment before a body such as an appeals board which is duly constituted for such a purpose.⁵¹

CALIFORNIA CONSTITUTION

Consistent with due process principles, section 16 of article XIII of the California Constitution specifically authorizes the creation of one or more county boards for the purpose of equalizing assessments of individual properties and briefly describes their function of equalizing values on the local roll. Section 16 delegates authority to the county board of supervisors to provide resources for the essential administrative functions of appeals boards and to "adopt rules of notice and procedures for those boards as may be required to facilitate their work and to insure uniformity in the processing and decision" of applications. When rules conflict with statutes, the statutes prevail.

REVENUE AND TAXATION CODE AND OTHER CODES

The Revenue and Taxation Code implements the constitutional provisions applicable to assessment appeals and other property tax matters. The property tax statutes relative to appeals are set forth in Division 1, Part 3, Chapter 1, Article 1, of the Revenue and Taxation Code. The assessment appeals provisions fall principally within sections 1601 through 1645.5 (see Appendix 2). Those sections provide the basic framework of the assessment appeals process and are intended to promote fair and uniform procedures. In addition, the Revenue and Taxation Code sections may incorporate and follow the provisions of other code sections as necessary to carry out the purposes of the assessment appeals procedures. For example, section 1611.6 adopts the definition of the term *arbitrary and capricious* set forth in Government Code section 800.

PROPERTY TAX RULES

Title 18, Public Revenues, Division 1, Chapter 1 of the California Code of Regulations, in part, are the body of regulations that implement and interpret the statutes governing the role and function of assessment appeals boards and boards of equalization. This set of regulations is commonly referred to as the Property Tax Rules and each section is designated as a "Rule" followed by the California Code of Regulations section number. Property Tax Rule 1 expressly provides, in pertinent part, that "[t]he rules in this subchapter govern assessors when assessing, county boards of equalization and assessment appeals boards when equalizing..." Rules 301 through 326 make up the main body of rules governing appeals boards procedures (see Appendix 3).

LOCAL RULES

Article XIII section 16 of the Constitution specifically directs county boards of supervisors to adopt rules of notice and procedure to facilitate the work of local appeals boards under the

⁵¹ *Nickey v. Mississippi* (1934) 292 US 393.

county's control and to ensure uniformity in the processing and decision of applications before those local appeals boards. Local rules are valid if they are not expressly prohibited by section 16, are not preempted by or in conflict with statutes or regulations, and comport with due process.⁵²

CASE LAW

LITIGATION OF ASSESSMENT APPEALS CASES

A party who is dissatisfied with a local appeals board's decision may bring an action in superior court, the state trial court, challenging that decision. The superior court may reverse the appeals board on legal issues and remand or send back the case to the appeals board with instructions, or the court can decide the case itself in those instances where no issue of valuation remains to be determined. Unless the case is further appealed, the appeals board must rehear the appeal and is bound by the court's instructions to follow the court's interpretation of the law. Superior court decisions, while lacking value as legal precedent, are nonetheless binding on the parties before the court.

APPELLATE COURT DECISIONS

A published opinion made by the California Court of Appeal, the intermediate level appellate court in California, in a particular appellate district, and for which no conflicting published opinion of law exists in another appellate district of the state, is binding on all trial courts, and other inferior forums, including administration tribunals such as appeals boards, in all judicial districts.⁵³ Occasionally, district courts of appeal take contrary positions on the same legal issue and, for that reason, the California Supreme Court may grant a petition for review to decide the issue and to resolve the conflict. Until the California Supreme Court grants review of conflicting appellate decisions in different appellate districts, the decision of law of each particular appellate court is binding authority only within that appellate district. The conflicting appellate decision from another appellate district may, nonetheless, hold persuasive authority in appellate districts that have not rendered a decision on the matter.

California Supreme Court opinions interpreting California law are binding on all appeals boards as the law of the state. If the matter in dispute involves issues of federal constitutional or statutory law, it may be appealed to the United States Supreme Court. In the event that the United States Supreme Court accepts the case and renders a decision interpreting California law, that interpretation supersedes all other interpretations and must be followed by all courts and administrative tribunals, such as local appeals boards.

⁵² *Williamson v. Payne* (1938) 25 Cal.App.2d 497.

⁵³ *Auto Equity Sales, Inc. v. Superior Ct.* (1962) 57 Cal.2d 450.

CHAPTER 3: APPLICATION PROCESS

This chapter describes the *Application for Changed Assessment* form, the requirements for a valid application, who may file an application for assessment appeal, the application filing periods, and the amendment of an application.

APPLICATION FORM

As provided in section 1603(a) and Government Code section 15606(d), the State Board of Equalization prescribes the assessment appeal application form. Currently, this form is titled *Application for Changed Assessment*, form BOE-305-AH. Counties must provide this form free of charge to applicants.⁵⁴

Individual counties may, to some extent, modify this form to meet local processing needs, but any proposed modifications must be submitted to the State Board of Equalization for prior approval. Counties may not change the numbering of any item on the *Application*, nor may they remove any wording from the form or its instructions unless such language is optional.

An assessment appeal in the form of a letter received during the application period may be treated as a timely filed, but incomplete, application if addressed to, mailed to, and received by the clerk of the board. If so, the clerk of the board should provide the applicant with the prescribed form and allow a reasonable time in which to complete and return the form. Also, a facsimile application may be accepted as timely filed unless specifically prohibited by local rules. Acceptance of facsimile filing may be subject to certain conditions set forth in local rules.

In addition, an appeal filed on another county's version of the *Application* form may be accepted by the clerk of the board, if filed in a timely manner. If accepted, the clerk should then require that the taxpayer complete the proper *Application* form for the county where the property is located.

FILING THE APPLICATION FORM

To be considered valid, an *Application for Changed Assessment* must contain all of the following information and must be filed during the appropriate filing period.

REQUIRED INFORMATION

Applicants or their agents will furnish the following information on the *Application for Changed Assessment*:⁵⁵

1. The name and mailing address of the applicant. Agents may not furnish their own mailing address in place of an applicant's actual mailing address.

⁵⁴ Rule 305, subsection (c).

⁵⁵ Rule 305.

2. The name and mailing address of the applicant's agent, if any. NOTE: If the application is filed by an agent, other than a California-licensed attorney authorized by the applicant to file the application, written authorization of agency, signed by the person affected, must be included on or attached to the application form (see also section on Application by Agent following in this chapter).
3. A description of the property which is the subject of the application sufficient to identify it on the assessment roll.
4. The applicant's opinion of the value of the property on the valuation date of the assessment year in issue.
5. The roll value on which the assessment of the property was based.
6. The facts relied upon to support the applicant's claim that the board should order a change in the assessed value or classification of the property.
7. Signatures (see section on Signature following in this chapter).

An application that does not show the above items is invalid and should not be accepted by the board. Conversely, an application which shows the foregoing items is valid and no additional information is required of the applicant on the application form. If an applicant files an incomplete application, the clerk of the board will allow an applicant additional time to provide the required information. Board clerks should provide prompt notice to an applicant that an application is incomplete and therefore invalid.⁵⁶

APPLICANT'S CERTIFICATION

Pursuant to section 1603(f), the application form must contain the following certification by the applicant (or agent):

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing and all information hereon, including any accompanying statements or documents, is true, correct, and complete to the best of my knowledge and belief and that I am (1) the owner of the property or the person affected (i.e., a person having a direct economic interest in the payment of the taxes on that property – "The Applicant,") (2) an agent authorized by the applicant under Item 2 of this application, or (3) an attorney licensed to practice law in the State of California, State Bar No. _____, who has been retained by the applicant and has been authorized by that person to file this application.

This statement provides a certification by the applicant (or agent) that the information contained on the form is accurate and complete. This exact language is required by the statute and may not be changed by a county.

⁵⁶ Rule 305, subsection (c)(4).

SIGNATURE

In order for an application to be considered valid and complete, all of the information on the application must be verified by the applicant or the applicant's agent under penalty of perjury.⁵⁷ Thus, the original or digital signature of the applicant or the applicant's agent must appear on the application as required; a photocopied or rubber-stamped signature is not acceptable.

Government Code section 16.5 authorizes the use of and prescribes guidelines for digital signatures (electronic signatures). A *digital signature* means an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature.⁵⁸ Section 16.5 provides in part:

(a) In any written communication with a public entity, as defined in Section 811.2, in which a signature is required or used, any party to the communication may affix a signature by use of a digital signature that complies with the requirements of this section. The use of a digital signature shall have the same force and effect as the use of a manual signature if and only if it embodies all of the following attributes:

- (1) It is unique to the person using it.
- (2) It is capable of verification.
- (3) It is under the sole control of the person using it.
- (4) It is linked to data in such a manner that if the data are changed, the digital signature is invalidated.
- (5) It conforms to regulations adopted by the Secretary of State....⁵⁹

Clerks of appeals boards have discretion in applying the signature requirements of section 1603 and Rule 305. If the clerk believes an electronic filing and digital signature are sufficient to reflect compliance with the statute and rule, then the filing may be accepted as valid.

WHO MAY FILE AN ASSESSMENT APPEAL APPLICATION

An assessment appeal application may be filed by the property owner or the owner's spouse, parents or child,⁶⁰ or any other person affected; this person becomes the *applicant*. An application may also be filed by an authorized agent.⁶¹

⁵⁷ Rule 305, subsection (b).

⁵⁸ Government Code section 16.5, subdivision (d).

⁵⁹ California Code of Regulations, Title 2, Chapter 10, Sections 22000 through 22005.

⁶⁰ Rule 305, subsection (a).

⁶¹ *Ibid.*

Rule 305 states:

(a)(1) An application is filed by a person affected or the person's agent, or a relative mentioned in regulation 317 of this division. If the application is made by an agent, other than an authorized attorney licensed to practice in this state who has been retained and authorized by the applicant to file the application, written authorization to so act must be filed with the application...

(3) If the applicant is a corporation, limited partnership, or a limited liability company, the agent authorization must be signed by an officer or authorized employee of the business entity.

APPLICATION BY PERSON AFFECTED

Person affected is not limited to a property owner or the person who paid the property taxes. Any person having a direct economic interest in the payment of the property taxes is a person affected for purposes of filing an assessment appeal.⁶²

For example, a lease of commercial property requires that the tenant pay the property taxes for that property during the term of the lease. In this case, the lessee, as the person contractually responsible for payment, *and* the lessor, as the owner of property against which the tax becomes a lien, have a direct economic interest in the payment of those taxes. For purposes of filing an assessment appeal, the lessee or the lessor is a person affected.

Person affected does not, however, include all holders of leasehold interests. In the example of an apartment building where the tenants do not directly pay the property taxes, they do not have a direct economic interest and, therefore, are not persons affected.

A property owner who acquires an ownership interest after the lien date is a person affected because such an owner is responsible for payment of the property taxes and, thus, has a direct economic interest.⁶³

APPLICATION BY AGENT

If an assessment appeal application is filed by an agent—other than a California-licensed attorney authorized by the applicant to file the application—written authorization of agency, signed by the person affected, must be included on or with the application form (see also section Exclusions to Who May File following in this chapter).

The *Application for Changed Assessment* form prescribed by the State Board of Equalization has an area designated for the agent's authorization. If an agent (other than a California-licensed attorney) is filing an application on behalf of an eligible applicant, this section of the form must be completed and signed by the applicant, or an agent authorization may be attached to the

⁶² Section 1603, subdivision (f); Rule 301, subsection (g).

⁶³ 53 Ops.Cal.Atty.Gen. 328 (1970); Rule 301, subsection (g).

application,⁶⁴ before the application may be accepted as complete and valid by the clerk of the board. If the applicant elects to attach an agent authorization to the application, the attached authorization will include the following:

- The date the authorization statement is executed;
- A statement to the effect that the agent is authorized to sign and file applications in the specific calendar year in which the application is filed;
- The specific parcel(s) or assessment(s) covered by the authorization, or a statement that the agent is authorized to represent the applicant on all parcels and assessments located in the specific county;
- The name, address, and telephone number of the specific agent who is authorized to represent the applicant; the agent may be either a named individual or a firm or agency representing the applicant;
- The applicant's signature and title;
- A statement that the agent will provide the applicant with a copy of the application.

If a photocopy of the original authorization is attached to the application, the appeals board may require the agent to submit an original signed authorization. An agent must have authorization to file an application at the time the application is filed; retroactive authorizations are not permitted.

The applicant should promptly notify the clerk of the board in writing when a new agent has been substituted for the current agent.

APPLICATION BY A RELATIVE

Rule 317 lists the family members who may appear at an assessment appeals hearing to represent a relative. Rule 317, subsection(e), states:

A husband may appear for his wife, or a wife for her husband, and sons or daughters for parents or vice versa.

When any of the individuals listed above file an *Application for Changed Assessment* and sign the application in place of the eligible relative, they become the *applicant* for purposes of the hearing.

APPLICATION BY A BUSINESS ENTITY

If the applicant is a corporation, limited partnership, or a limited liability company, the application may be signed by an officer or authorized employee of the business entity.⁶⁵ The term *officer of the corporation* refers to one who has been elected, or whose office is provided for by the articles of incorporation or the by-laws.⁶⁶ More specifically, section 312 of the

⁶⁴ Rule 305, subsection (a).

⁶⁵ Rule 305, subsection (a)(3).

⁶⁶ *E. Clemens Horst Co. v. Industrial Accident Commission* (1920) 184 C 180.

Corporations Code enumerates those officers required of a corporation as "a chairman of the board or a president or both, a secretary, a chief financial officer...." In addition to the required officers, a corporation may provide for other officers as necessary to carry out its business.

APPLICATION BY AN ATTORNEY

A *party affected* or his or her agent, as used in section 1603(a), does not include an attorney who files an assessment appeal application without prior direct authorization from the person affected. An application, signed and filed by an attorney, is valid only if the attorney has been directly retained by the applicant and authorized by that person to file an assessment appeal application. By signing an application, an attorney acknowledges that he or she has been retained and authorized as stated in the certification required by section 1603(f).

ASSESSMENT APPEALS FILING PERIODS

To be considered valid, an application must be filed with the clerk of the board during the appropriate filing period. Applications must not be submitted directly to the assessor's office for initial review and processing. The appeals board is an independent entity whose function is to resolve disputes between the assessor and taxpayers and a conflict of interest may result if the assessor's office takes an active role in the processing of applications.

An application which is not filed within the appropriate filing period must be rejected as untimely, and in such circumstances, an appeals board has no jurisdiction or authority over the matter except to deny the application for untimeliness. Assessment appeals filing periods are established by statute and vary according to the type of assessment under appeal.

REGULAR FILING PERIOD

Time periods for filing an application for the regular period are set forth in section 1603 which provides in part:

(b)(1) The application shall be filed within the time period from July 2 to September 15, inclusive. An application that is mailed and postmarked September 15 or earlier within that period shall be deemed to have been filed within the time period beginning July 2 and continuing through and including September 15...

(3) Notwithstanding paragraph (1), the last day of the filing period shall be extended to November 30 in the case of an assessee or party affected with respect to all property located in a county where the county assessor does not provide, by August 1, a notice, as described in Section 619, to all assesseees of real property on the local secured roll of the assessed value of their real property as it shall appear or does appear on the completed local roll, including the annual increases in assessed value caused solely by increases in the valuation of property that reflect

the inflation rate, not to exceed 2 percent, pursuant to the authority of subdivision (b) of Section 2 of Article XIII A of the California Constitution...

(B) The clerk shall certify the last day of the filing period and shall immediately notify the State Board of Equalization as to whether the last day of the filing period for the county will be September 15 or November 30.

(4) If a final filing date specified in this subdivision falls on Saturday, Sunday, or a legal holiday, an application that is mailed and postmarked on the next business day shall be deemed to have been filed within the requisite time period specified in this subdivision. If on any final filing date specified in this subdivision, the county's offices are closed for business prior to 5 p.m. or for that entire day, that day shall be considered a legal holiday for purposes of this section....

During the July 2 to September 15 (or November 30 as applicable) filing period, applications may include but are not necessarily limited to:

- Decline in value appeals
- Base year value appeals
- Personal property appeals
- Appeals of penalty assessments
- Appeals of exempt value allocations

There are two exceptions to the regular filing period described above. The first exception, set forth in section 1603, subdivision (b)(2), specifies:

Notwithstanding paragraph (1), if the taxpayer does not receive the notice of assessment described in Section 619 at least 15 calendar days prior to the deadline to file the application described in this subdivision, the party affected, or his or her agent, may file an application within 60 days of receipt of the notice of assessment or within 60 days of the mailing of the tax bill, whichever is earlier, along with an affidavit declaring under penalty of perjury that the notice was not timely received.

Section 619 requires notification of increases in the assessed value of real property but does not apply to increases resulting solely from the application of the inflation factor as an annual adjustment to a previously established base year value.

The second exception to the regular filing period, set forth in section 1603, subdivision (c), provides:

The application may be filed within 12 months following the month in which the assessee is notified of the assessment, if the party affected or his or her agent and the assessor stipulate that there is an error in the assessment as the result of the

exercise of the assessor's judgment in determining the full cash value of the property and a written stipulation as to the full cash value and assessed value is filed in accordance with Section 1607.

If the applicant (or agent) and the assessor stipulate that there was an error in the assessment under specified conditions, the two parties must submit a written stipulation to the appeals board as to the full value and assessed value of the property and set forth the facts upon which the reduction in value is premised. The board may accept the stipulated value, or may reject the stipulated value and set the application for a hearing.

FILING PERIOD FOR SUPPLEMENTAL AND ESCAPE ASSESSMENTS AND ROLL CORRECTIONS

Section 1605 provides a separate filing period for assessments made outside the regular assessment period (i.e., supplemental assessments, escape assessments, and roll corrections) during which an application must be filed with the clerk. This filing period is linked to the date of mailing of the assessment notice or tax bill, depending upon an action taken by the board of supervisors pursuant to subdivision (c) of section 1605:

1. In the County of Los Angeles,⁶⁷ or in any county in which the board of supervisors has adopted a resolution pursuant to subdivision (c) of section 1605, an application must be filed within 60 days of the date of mailing printed on the tax bill, or the postmark, whichever is later.
2. In all other counties, an application must be filed within 60 days of the date of mailing printed on the notice of assessment, or the postmark, whichever is later.

The assessor may file a motion with the appeals board for a hearing on the issue of the timeliness of an application.

Under certain circumstances, an application may be filed based on the written audit results following an audit conducted by the assessor.⁶⁸ For applications filed following an audit where the assessor elects not to enroll a discovered escape assessment, or when the escape assessment is enrolled but offset pursuant to section 533, the filing must occur within 60 days after receipt of the written audit results.

An *Application for Changed Assessment* must be filed within 60 days of the assessee's notification of the assessment. In counties where the board of supervisors has adopted the resolution described in subdivision (c) of section 1605, this deadline may occur 60 days after the date of mailing printed on the tax bill reflecting the assessment appealed, or the postmark date, whichever is later.

⁶⁷ The filing period in Los Angeles County is determined by statute in paragraph (2) of subdivision (b) of section 1605. All other counties may establish the date of mailing of the tax bill as the pivotal date for such appeals by resolution of the board of supervisors.

⁶⁸ Rule 305.3, subsection (d).

EXTENSION FOR SUPPLEMENTAL ASSESSMENTS

Section 75.31 extends the 60-day filing period only for supplemental assessments if the applicant and assessor stipulate to a reduction. Subdivision (c)(3)(B) provides, in relevant part:

... an application for reduction in a supplemental assessment may be filed within 12 months following the month in which the assessee is notified of that assessment, if the affected party or his or her agent and the assessor stipulate that there is an error in assessment as the result of the exercise of the assessor's judgment in determining the full cash value of the property and a written stipulation as to the full cash value and the assessed value is filed in accordance with Section 1607.

As provided in section 1607, the board may accept the stipulated value, or may reject the stipulated value and set the application for a hearing.

DECLINE IN VALUE FILING PERIOD

When the fair market value of a property declines below its assessed value on the assessment roll, the property must be revalued and reassessed in accordance with section 51 as of the January 1 lien date. An appeal based on this issue is sometimes called a *Proposition 8* or *Decline in Value* appeal. Normally, decline in value applications must be filed between July 2 and September 15 to appeal the assessed value enrolled for the preceding January 1 lien date, or between July 2 and November 30 when the assessor does not send notices of assessed value as specified in section 1603.

Example

The assessor has provided all taxpayers with real property on the secured roll with a notice of assessed value prior to August 1. A taxpayer receives a notice of assessed value for her single-family dwelling from the assessor. She believes that her home is worth less than the \$250,000 assessment for the current roll year. To appeal this property's assessed value, the owner (or agent) must file an *Application for Changed Assessment* between July 2 and September 15 of the current roll year.

Under very limited conditions, some counties may permit applicants to file decline in value applications after September 15. In those cases, extension of the deadline can occur when the county has enacted an ordinance allowing property owners to file an *Informal Assessment Review* form.⁶⁹

BASE YEAR VALUE FILING PERIOD

Applicants who want to appeal a property's base year value have two filing periods:

1. **Filing based upon the supplemental assessment notice (60-day filing period)**—An applicant may file an application within 60 days after the date of mailing printed on the

⁶⁹ Section 1603, subdivision (d).

supplemental assessment notice, or the postmark date, whichever is later; or, in some counties, within 60 days of the date of mailing printed on the supplemental tax bill, or the postmark date, whichever is later. An application will appeal the change in ownership or new construction determination and/or appeal the supplemental assessment and request a reduction in the base year value established by the assessor for the change in ownership or new construction event that triggered the supplemental assessment.⁷⁰

2. Regular filing period

a. Filing July 2 – September 15 for the new base year value during the first year of enrollment on the current local roll, not on the supplemental roll, or three succeeding years when a notice of assessed value is mailed pursuant to section 1603—If the applicant misses the 60-day supplemental assessment filing period, the new base year value may be appealed during the regular filing period in the year that the base year value is enrolled by the assessor or the three following years. If the appeals board reduces the base year value, the reduction is effective in the year in which the application was filed and any future years, but is not retroactive.⁷¹

Example

On August 15, 1999 a limited partnership buys a large warehouse facility in an industrial park. The assessor determines that the purchase constituted a change in ownership. On October 3, 1999, the assessor mails the notice of supplemental assessment required under section 75.31. In most counties, the owner has 60 days from October 3, 1999 to file an application appealing the supplemental assessment. Should the property owner miss the 60-day deadline, he or she may file a base year value appeal during the following regular filing periods:

- July 2, 2000 — September 15, 2000
- July 2, 2001 — September 15, 2001
- July 2, 2002 — September 15, 2002
- July 2, 2003 — September 15, 2003

Assume the property owner files an application contesting the base year value on July 5, 2001. If the appeals board grants the application and reduces the base year value, the reduction would apply for the 2001-2002 tax year and any future years. It would not affect either the supplemental assessment or the assessed value for the 2000-2001 tax year.

b. Filing July 2 – November 30 for the new base year value during the first year of enrollment on the current local roll, not on the supplemental roll, or the three succeeding years when a notice of assessed value is not mailed pursuant to

⁷⁰ Section 1605.

⁷¹ Section 80(a)(5); Rule 305.5.

section 1603—The regular filing period is extended to November 30 for base year value appeals in the first year and the three succeeding years when the assessor does not provide, by August 1, notices to assessees of the assessed value of their real property as it will appear, or does appear, on the secured roll.

3. **Erroneous change in ownership filing period—Filing July 2 – September 15 or November 30 based on erroneous change in ownership determination by the assessor**—An applicant may file an application to correct a base year value resulting from an erroneous change in ownership determination, not involving an assessor's judgment of value, if the assessor declines to make the correction pursuant to section 51.5. Such an application must be filed during the regular filing period July 2 through September 15 or November 30, whichever is applicable. When such an application has been filed, the board must first determine that the information presented to the assessor is credible evidence of an error not involving the assessor's value judgment. For example, an applicant might produce a marriage certificate as evidence that a transfer which resulted in a change in ownership should actually have received the interspousal exclusion. Because the error will necessarily involve a factual dispute, an applicant must have some evidentiary basis, as opposed to an opinion, for any such claim.⁷²

CALAMITY REASSESSMENT FILING PERIOD

If the assessor has reassessed a property following a misfortune or calamity, applicants must file an application to protest the reassessed value within six months from the date of mailing of the reassessment notice.⁷³

⁷² *Sunrise Retirement Villa v. Dear* (1997) 58 Cal.App.4th 948.

⁷³ Section 170, subdivision (c).

TABLE 3
APPLICATION FILING PERIODS

Reason for the Appeal	Filing Period
Decline in Value Appeals Personal Property Assessments Business Property Assessments Appeals of Exempt Value Allocations	<p>During the regular assessment period from July 2 through September 15 following the January 1 lien date when a notice of assessed value is mailed by August 1 pursuant to section 1603.</p> <p style="text-align: center;">or</p> <p>During the regular assessment period from July 2 through November 30 following the January 1 lien date when no notice of assessed value is mailed pursuant to section 1603.</p>
Supplemental Assessments Escape Assessments (including those made as the result of sections 469 and 470 audits)	<p>No later than 60 days after date of notice or date of mailing of the tax bill, or the postmark date, whichever is later (section 1605).</p> <p>Extension of filing period for supplemental assessment only; within 12 months following the month in which the assessee is notified, if the party affected or his or her agent and the assessor stipulate that there is an error in the assessment as the result of the exercise of the assessor's judgment in determining the full cash value of the property and a written stipulation as to the full cash value and assessed value of the property is filed in accordance with section 1607.</p>
Base Year Value Appeals	<ol style="list-style-type: none"> 1. Within 60 days after notice of supplemental assessment or mailing date of tax bill, or the postmark date, whichever is later. 2. If outside supplemental assessment filing period, then during regular filing period in the year that the base year value is enrolled or in the three following years. 3. During the regular filing period any time after the time period specified in (1) or (2) if the applicant claims that an erroneous change in ownership determination occurred, which error did not involve an assessor's exercise of value judgment.
Calamity Reassessments (if section 170 ordinance enacted)	Six months from the mailing date of the reassessment notice.
Penalty Assessments	If imposed concurrent with an assessment, then during the period the assessment may be appealed. If not imposed concurrent with an assessment, then within 60 days after notice of penalty assessment.

PROOF OF FILING DATE

Under normal circumstances, an application mailed with a postmark on or before the final filing date established by statute will be deemed to be timely filed.

Section 166 states:

- (a) Whenever a taxpayer is required to file any statement, affidavit, application, or any other paper or document with a taxing agency by a specified time on a specified date, such filing shall be deemed to be within the specified period if it is sent by United States mail, properly addressed with postage prepaid, and bears a post office cancellation mark of the specified date, or earlier within the specified period, stamped on the envelope, or on itself, or if proof satisfactory to the agency establishes that the mailing occurred on the specified date, or earlier within the specified period.

An application filed by mail that bears both a private business postage meter postmark date and a U.S. Postal Service postmark date will be deemed to have been filed on the date that is the same as the U.S. Postal Service postmark date, even if the private business postage meter date is the earlier of the two postmark dates.⁷⁴

Although most applications will be received timely by the clerk of the board, some may not. With respect to an applicant who states that he or she mailed an application on or before the filing date, but the clerk has no record of receiving such an application, section 166 requires that the applicant provide a statement or affidavit asserting a timely filing within one year of the deadline applicable to the original filing:

- (d) Any statement or affidavit made by a taxpayer asserting such a timely filing must be made within one year of the deadline applicable to the original filing; provided, however, that this subsection shall not apply to any statement or affidavit asserting the timely filing of a property statement or to any statement made by the taxpayer in connection with an escape assessment imposed pursuant to Section 531.

Section 166 indicates that statements or affidavits may constitute proof of filing, but whether a statement or affidavit alone is sufficient proof in a given situation is a matter for the appeals board to decide. In addition to the statements or affidavits, the clerk of the board should evaluate all relevant evidence which might or might not support the contention that an application was filed timely.

⁷⁴ Rule 305, subsection (d)(5).

APPLICATION TIMELY FILED IN WRONG COUNTY

Subdivision (e) of section 166 expresses the Legislature's intent that its provisions are to be "liberally construed in favor of the taxpayer." Consistent with that intent, a timely filed application unintentionally filed with the appeals board of another county may be deemed to be filed within the specified filing period. Upon being notified that an application has been timely filed but mailed to the wrong county appeals board office, the clerk of the proper county's appeals board should take reasonable steps to reinstate the application. The date of receipt by the proper county in which the application should have been filed should be the date used as the commencement of the two-year statute.

AMENDING AND CORRECTING ASSESSMENT APPEAL APPLICATIONS

Rule 305, subsection (e), provides the parameters for correcting and amending an application. An applicant (or agent) has the right to amend an application anytime until 5:00 p.m. on the last day upon which the application might have been timely filed; e.g., until 5:00 p.m. on September 15 for applications filed during the regular filing period, or until 5:00 p.m. on November 30 when the county assessor does not send value notices pursuant to section 1603 by August 1.

After the applicable filing period has expired, the following limitations apply:

- An application may be corrected by the applicant following notification by the clerk of a deficiency in the original application.
- An application may be amended by the applicant provided that the effect of the amendment is not to request relief additional to or different in nature from that originally requested.
- An application may be amended, at the discretion of an appeals board, if requested in writing by the applicant and filed with the clerk of the board prior to any scheduled hearing, or an amendment may be requested orally at the hearing. An appeals board may allow an amendment that states additional facts claimed to require a reduction of the assessment that is the subject of the application. For example, an appeals board has the authority to grant a request to amend an application from an appeal of a decline in value for a specified lien date to an appeal of the base year value as of that lien date, providing the property is still eligible for equalization pursuant to section 80. A base year application may be filed during the first year of enrollment on the current local roll, not on the supplemental roll, or during the three succeeding years.

However, no request to amend an application may be granted after the conclusion of the hearing, even if the final determination is deferred until a later date following deliberation.⁷⁵

⁷⁵ Rule 305(e)(2).

As a condition to granting a request to amend an application, an appeals board may require the applicant to sign a written agreement extending the two-year period provided in section 1604 (see section on Continuance in Chapter 8).

An applicant may revise the opinion of value stated on the application at any time up to and during the assessment appeals hearing. In addition, the applicant may present testimony and other evidence at the hearing to support a full value that may be different from the opinion of value stated on the application. The presentation of such testimony or other evidence will not be considered an amendment to the application.⁷⁶

WITHDRAWAL OF AN APPLICATION

Generally, an applicant can withdraw an application at any time prior to a hearing. In some counties, however, if the assessor has indicated that evidence to support a higher value will be introduced at the hearing, the applicant will not be allowed to withdraw the application without the concurrence of the assessor.

If an applicant withdraws an application that has also been designated as a claim for refund, the applicant should be advised that withdrawal of the application will also constitute withdrawal of the claim for refund.

RETENTION OF RECORDS

The clerk is responsible for maintaining the records of all appeals hearings held with a hearing officer or before appeals boards, including evidence presented during the hearings. The clerk may destroy records consisting of assessment appeal applications when five years have elapsed since the final action on the application. The records may be destroyed three years after the final action on the application if the records have been microfilmed, microfiched, imaged, or otherwise preserved on a medium that provides access to the documents.⁷⁷

⁷⁶ Rule 305, subsection (e).

⁷⁷ Government Code section 25105.5; Rule 305, subsection (g).

CHAPTER 4: BEFORE THE HEARING

Once an application is received by the clerk of the appeals board, the clerk reviews it for adequacy, and, if valid, schedules it for hearing and sends notice to the parties. The parties are each responsible for obtaining relevant evidence for presentation and, if necessary, competent witnesses to testify at the hearing. Appeals board members are responsible for making themselves aware of circumstances in which their impartiality might be called into question and the integrity of the appeals process compromised. Under such circumstances, a board member has an affirmative duty to disqualify himself or herself.

SCHEDULING HEARINGS

All applications will be filed with the clerk of the board who, in accordance with specific guidelines established by the board of supervisors and/or the State Board of Equalization, is responsible for validating the timeliness and completeness of all applications.⁷⁸ If the clerk determines that an application is incomplete, the applicant must be promptly notified,⁷⁹ and the applicant should be allowed a reasonable period of time in which to submit the required information. If an application is denied as untimely, or the board denies jurisdiction for any other reason, the applicant should be sent notice stating the reasons for the denial and informing the applicant of the right to request that the board schedule a hearing to review the denial.⁸⁰

When a timely valid application has been formally filed, the clerk must set the application for hearing. Coordination with the assessor's staff is essential because they can usually facilitate scheduling by categorizing and grouping applications by those that involve relatively straightforward assessments requiring little preparation time; those that are more complicated and require more preparation time; and those that will require an audit of the taxpayer's records prior to the hearing. In addition, staffing and workload levels within the assessor's office will also impact preparation times and may be a scheduling consideration. Although it may be administratively infeasible to coordinate with all applicants prior to scheduling hearings, the clerk should try to coordinate with applicants when scheduling the more complex appeals.

Occasionally, the applicant or the assessor will request that a hearing be rescheduled within a few weeks, or even days, of the hearing date. Usually this will occur when an unforeseen occurrence arises, such as illness affecting the assessor or applicant, the agent, or a material witness. The board should allow either the applicant or the assessor to make such requests in writing, explaining the need for rescheduling the hearing.

⁷⁸ *Midstate Theatres, Inc. v. Board of Supervisors* (1975) 46 Cal.App.3d 204.

⁷⁹ Rule 305, subsection (c)(4).

⁸⁰ Rule 309, subsection (e).

Rule 323 contains the provisions for hearing postponements. Rule 323, subsection (a), states in part:

The applicant and/or the assessor shall be allowed one postponement as a matter of right, the request for which must be made not later than 21 days before the hearing is scheduled to commence. If the applicant requests a postponement as a matter of right within 120 days of the expiration of the two-year limitation period provided in section 1604 of the Revenue and Taxation Code, the postponement shall be contingent upon the applicant's written agreement to extend and toll indefinitely the two-year period subject to termination of the agreement by 120 days written notice by the applicant. The assessor is not entitled to a postponement as a matter of right if the request is made within 120 days of the expiration of the two-year period, but the board, in its discretion, may grant such a request. Any subsequent requests for a postponement must be made in writing, and good cause must be shown for the proposed postponement. A stipulation by an applicant and the assessor shall be deemed to constitute good cause, but shall result in extending and tolling indefinitely the two-year limitation period subject to termination of the agreement by 120 days written notice by the applicant....

While a clerk may, for the sake of administrative convenience and efficiency, consider the scheduling preferences of the assessor's office, it remains the clerk's responsibility to confirm validity of applications and to make final scheduling decisions.

MULTIPLE ISSUES

When multiple applications are filed for a single property, e.g., for several different tax years, then, whenever possible, the clerk should consolidate the applications into one hearing. This consolidation generally results in greater convenience for the taxpayer, the assessor, and the appeals board. Rule 305, subsection (h), provides:

The board, on its own motion or on a timely request of the applicant or applicants or the assessor, may consolidate applications when the applications present the same or substantially related issues of valuation, law, or fact. If applications are consolidated, the board shall notify all parties of the consolidation.

On the other hand, it may be necessary to set two hearings for a single application involving more than one issue or property type. For instance, when an applicant files a decline in value appeal involving personal property and fixtures, it may be necessary for the assessor's staff to perform an audit of the taxpayer's records to reach a final value conclusion. Therefore, if an application appeals both real property (land, buildings, and fixtures) and personal property, the assessor's appraisal of the land and building might be ready for hearing well before the audit of records to value the personal property and fixtures. For that reason, many counties find it administratively easier to hear the land and building portion of the application separately from the personal property and fixtures.

Although land, buildings, and fixtures are all classified as real property for property taxation purposes, there is no requirement that fixtures be assessed (or equalized) as a unit with other real property items. Rule 461, subsection (e), provides that, for purposes of determining declines in value, fixtures and other machinery and equipment classified as improvements constitute a separate appraisal unit.

If portions of the property appealed are heard separately, an appeals board must ensure that property is neither double assessed nor escaping assessment. This can be accomplished by reviewing the findings upon which the first hearing's value conclusion is based prior to determining a value in the second hearing.

In some cases, the most appropriate valuation of a property is as a single unit, with the total value allocated among the components. In such cases, separate hearings are not appropriate. Applications which have multiple issues, some of which may be dispositive of the entire application, may be bifurcated by the appeals board at the request of the parties.

COPY OF APPLICATION, AMENDMENT, AND CORRECTION TO ASSESSOR

Rule 306 provides:

The clerk shall transmit to the assessor a copy of each application for a change in assessment and each written request for amendment or correction that is received. A reasonable time shall be allowed before the hearing for the assessor to obtain information relative to the property and the assessment thereof.

PRE-HEARING CONFERENCES

A county board of supervisors may establish procedures for holding prehearing conferences which can be a valuable tool in the orderly scheduling and conduct of hearings.⁸¹ Such conferences are usually appropriate for hearings that will consume more than one day of appeals board time and may be set by the clerk at a time convenient to the taxpayer and assessor. The conference may deal with a variety of subjects, including but not limited to, application validity, bifurcation of hearings, time estimates, resolution on noncontroversial factual or valuation issues, outline basic legal and/or valuation issues to the appeals board, stipulations, status of requests for information, and calendaring of the full hearing on the issues.

Pre-hearing conferences have been shown to save considerable time and expense for the appeals board as well as the parties. They are most helpful in minimizing the need for the parties to request continuances of hearings that are unilaterally set by the clerk.

⁸¹ Rule 305.2.

OBTAINING INFORMATION FOR THE HEARING

For an appeals hearing to be most effective, taxpayers and assessors should provide the board members with comprehensive information regarding the subject property and the taxpayer's and the assessor's opinions of value for the subject property. There are various means for both the taxpayer and the assessor to obtain pertinent information for the hearing.

SECTION 408, INSPECTION OF ASSESSOR'S RECORDS

Section 408 allows an assessee, or a representative of the assessee, to inspect records at the assessor's office regarding the assessment of his or her property, as well as market information regarding any comparable properties that the assessor used in the valuation of the assessee's property. The assessee or representative may inspect or copy all information, documents, and records, including auditors' narrations and workpapers, whether or not required to be kept or prepared by the assessor, relating to the appraisal and the assessment of the assessee's property, and any applicable penalties and interest. The assessor is prohibited by law from disclosing market information that relates to the business affairs of another taxpayer unless the assessor is provided with a written waiver from that taxpayer allowing the assessor to disclose the information.

Information obtainable under section 408 is relevant to a determination of value and may be introduced at an appeals hearing. Assessors are expected to comply with an assessee's reasonable request pursuant to that provision. If an assessor fails to permit the inspection or copying of materials or information pursuant to a section 408 request, and the assessor introduces any requested materials or information at an appeals hearing, the applicant or representative may request and shall be granted a continuance for a reasonable period of time. The continuance shall extend the two-year period specified in section 1604 for a period of time equal to the period of continuance.

A taxpayer has a right to inspect records under section 408 whether or not an appeal has been formally filed.⁸²

SECTION 441, INFORMATION FROM TAXPAYER'S RECORDS

Section 441, subdivision (d), requires a taxpayer to make available to the assessor, for assessment purposes, information or records regarding the taxpayer's property or any other personal property located on premises the taxpayer owns or controls. The assessor may obtain details of property acquisition transactions, construction and development costs, rental income, and other data relevant to the determination of an estimate of value.

Information obtainable under subdivision (d) of section 441 is relevant to a determination of value and may be introduced at an appeals board hearing. Taxpayers are expected to comply with an assessor's reasonable requests pursuant to that provision; thus, both the assessor and the

⁸² *Henderson v. Bettis* (1975) 53 Cal.App.3d 486.

taxpayer should be able to make use of and present the same information at hearings. In the event that a taxpayer withholds requested information, subdivision (h) of section 441 provides:

If a taxpayer fails to provide information to the assessor pursuant to subdivision (d) and introduces any requested materials or information at any assessment appeals board hearing, the assessor may request and shall be granted a continuance for a reasonable period of time. The continuance shall extend the two-year period specified in subdivision (c) of Section 1604 for a period of time equal to the period of the continuance.

Section 441, subdivision (d), applies regardless of whether or not an appeal has been filed.⁸³

SECTIONS 469 AND 470, AUDITS OF TAXPAYER'S RECORDS

The assessor may obtain information regarding assessable fixtures and business tangible personal property of any profession, trade, or business by conducting an audit pursuant to sections 469 or 470. Section 469 requires an assessor to audit the books and records of a profession, trade, or business at least once every four years if the locally assessable fixtures and business tangible personal property owned, claimed, possessed, or controlled by the taxpayer engaged in that profession, trade, or business has a full value of \$400,000 or more.

Section 470 provides that a person owning, claiming, possessing, or controlling property subject to local assessment will, upon request by the assessor, make available for review business records relevant to the amount, cost, and value of the property.

The assessor may conduct an audit under sections 469 or 470 regardless of whether or not an application has been filed.

SECTION 1606, EXCHANGE OF INFORMATION

Section 1606 provides that at the time of filing of an application or at any time prior to 30 days before the commencement of the hearing, any applicant (for property of any value) or the assessor (if the subject property has an assessed value over \$100,000) may request an exchange of information between himself or herself and the other party. The information exchanged must relate to the protested valuation of the property as set forth in section 1606 (see the section on Exchange of Information). The taxpayer and the assessor may request information under section 1606 only after an appeal has been formally filed.

RULE 322, SUBPOENAS

Rule 322 allows an applicant or the assessor to request that the appeals board issue a subpoena for attendance of witnesses at a hearing, and/or to produce books, records, maps, and documents relevant to the issues raised in the application. Additionally, the appeals board may issue a subpoena on its own motion. Subpoenas will be restricted to compelling the appearance of a

⁸³ *State Board of Equalization v. Cenicerros* (1998) 63 Cal.App.4th 122; *Roberts v. Gulf Oil* (1983) 147 Cal.App.3d 770.

person or the production of things at the hearing and will not be utilized for purposes of prehearing discovery.

A Rule 322 subpoena may not be issued unless an appeal has been formally filed or a hearing set by the appeals board on its own motion or investigation.

NOTICE OF HEARING

Section 1605.6 sets forth the requirements for the appeals hearing notice which the clerk of the board must provide to the applicant and to the assessor. After the filing of an application for reduction of an assessment, the clerk will set the matter for hearing and notify the applicant (or agent) in writing by personal delivery or by depositing the notice in the United States mail directed to the address given in the application. The notification must be given not less than 45 days prior to the hearing; however, the assessor and the applicant or the applicant's designated representative may agree to a shorter notice period.⁸⁴ If requested by the assessor or the applicant, the clerk may electronically transmit the notice to the requesting party.⁸⁵

NOTICE REQUIRED FOR A HEARING ON AN APPLICATION

The notice to the applicant must include the following:

- The time and place of the hearing.
- A statement that the board must find the full value of the property from the evidence presented at the hearing, which may require lowering or raising the current value.
- A statement that the board may equalize the value of portions of the property that are not the subject of the application—when another portion of the property's assessment has been protested and that, if the equalization results in an increase in the assessed value of those portions, such increase will offset, in whole or in part, any reduction in the protested portion.

The clerk must also notify the assessor of the time and place of the hearing.

NOTICE REQUIRED FOR A HEARING BY A BOARD ON ITS OWN MOTION

An appeals board has the authority to raise an assessment on its own motion without an application for reduction pending before it. But before the board can take such action, it must first set the matter for hearing and give notice of the hearing not less than 20 days prior to the hearing unless such notice is waived by the assessee (or the assessee's agent) in writing in advance of the hearing or orally at the time of the hearing or a shorter notice is stipulated to by the assessor and the assessee (or agent).⁸⁶

⁸⁴ *International Medication Systems, Inc. v. Assessment Appeals Bd.* (1997) 57 Cal.App.4th 761.

⁸⁵ Rule 307, subsection (a).

⁸⁶ Rule 307.

The notice will include the following:

- A statement that a hearing will be held before the local board to determine whether or not the assessment will be raised.
- The time and place of the hearing.
- The assessor's parcel number or numbers of the property as shown on the local roll.
- A statement that the board is required to find the full value of the property from the evidence presented at the hearing.
- The amount by which it is proposed to raise the assessment.

ASSESSOR'S REQUEST FOR A HIGHER VALUE

After the filing of an application, the assessor may request, pursuant to section 1609.4, that the board determine a higher assessed value than that placed on the roll and offer evidence to support the higher value. In this instance, the chairperson of the appeals board must determine whether or not the assessor gave notice in writing to the applicant (or agent) of this proposed action. If notice and a copy of the evidence the assessor is presenting to the board has been supplied to the applicant (or agent) at least ten days prior to the hearing, the assessor may introduce the evidence at the hearing.⁸⁷

The assessor's notice to the taxpayer advising of a proposed increase in assessed value is frequently known as a *raise letter*.

EXCHANGE OF INFORMATION

Section 1606 and the interpretive regulation Rule 305.1 set forth the exchange of information provisions whereby either the applicant or, if the assessed value of the property exceeds \$100,000, the assessor may initiate a request for an exchange of information and evidence supporting each party's opinion of value. Section 1606 does not require an exchange of the details of the evidence to be presented at the hearing but, rather, only requires that the information exchanged provides reasonable notice to the other party concerning the subject matter to be presented through the testimony of witnesses and evidence.⁸⁸

REQUEST FOR AN EXCHANGE OF INFORMATION

The request for an exchange of information, whether initiated by the applicant or the assessor, may be submitted to the clerk of the board at the time of the filing of the application, or to the other party and the clerk at any time prior to 30 days before the commencement of the hearing. For purposes of determining the date upon which the exchange was deemed initiated, the date of postmark as affixed by the United States Postal Service, or the date certified by a bona fide

⁸⁷ Section 1609.4; Rule 313, subsection (f).

⁸⁸ *Bank of America v. County of Fresno* (1981) 127 Cal.App.3d 295.

private courier service on the envelope or package containing the information, will control.⁸⁹ The party initiating the exchange must provide his or her valuation information for the other party at the time the request for an exchange of information is initiated. If the request is submitted to the clerk of the board, the clerk will forward the request and the valuation information provided to the other party.

If one party initiates a request for information and the other party does not comply within the specified time, the appeals board may grant a postponement for a reasonable period of time. The postponement will extend the time for responding to the request. If the appeals board finds willful noncompliance on the part of the noncomplying party, the hearing will be convened as originally scheduled and the noncomplying party may comment on evidence presented by the other party but will not be permitted to introduce other evidence unless the other party consents to such introduction.⁹⁰ If the noncomplying party has the burden of proof, nothing in this regulation will shift that burden to the other party, and there will be no requirement for the complying party to submit evidence to the board for comment.

COMPARABLE SALES DATA

If the opinion of value is to be supported with evidence of comparable sales, these sales must be described by the assessor's parcel number, street address, or legal description sufficient to identify them. Information for each comparable sale must include the approximate date of sale, the price paid, the terms of sale (if known), and the zoning of the property.

The comparative sales approach is preferred when reliable sales data are available.⁹¹ This approach is based upon the premise that the fair market value of a property is closely and directly related to the sales prices of comparable properties sold under open market conditions. Characteristics of comparability include such things as size, quality, age, condition, site, amenities (e.g., view), zoning, and governmental restrictions.

INCOME DATA

If the opinion of value is to be supported with evidence based on an income study, the assessor and applicant must present the gross income, the expenses, and the capitalization method and rate or rates employed.

The income approach to value is typically used when the property under appraisal is purchased in anticipation of a money income it will produce.⁹² This is the preferred approach for the appraisal of land when reliable sales data for comparable properties are not available.

COST DATA

If the opinion of value is to be supported with evidence of replacement cost, the assessor and the applicant must present:

⁸⁹ Section 1606, subdivision (a)(2).

⁹⁰ Rule 305.1, subsection (d).

⁹¹ Rule 4.

⁹² Rule 8.

- With regard to improvements to real property, the date of construction, type of construction, and replacement cost of construction.
- With regard to machinery and equipment, the date of installation, replacement cost, and any history of extraordinary use.
- With regard to both improvements and machinery and equipment, facts relating to depreciation, including any functional or economic obsolescence, and remaining economic life.

The cost approach is used in conjunction with other value approaches and is the preferred approach when neither reliable sales nor income data are available.⁹³ In the cost approach, the value of an improved property is determined by adding the estimated land value and the estimated cost new of the improvements, less depreciation. The cost approach can also be used to estimate the value of personal property.

TRANSMITTAL OF DATA TO OTHER PARTY

If the party requesting an exchange of data has submitted the information required within the specified time, the other party must submit a response to the initiating party and to the clerk at least 15 days prior to the hearing. The responding party must provide information conforming to the requirements set forth in section 1606 with respect to comparable sales, cost, or income information. If the assessor is the respondent, he or she is required to submit, or submit to the clerk for mailing, the response to the address shown on the application or on the request for exchange of information, whichever is filed later.⁹⁴

The initiating party and the other party will use adequate methods of submission to ensure to the best of their ability that the exchange of information process is *completed* at least 10 days prior to the hearing.⁹⁵

INTRODUCTION OF NEW MATERIAL

Whenever a formal exchange of information has taken place, the parties may introduce evidence only on matters that were exchanged unless one party consents to introduction of additional evidence proposed to be admitted by the other party.

At the hearing, either party may introduce new material relating to the information received from the other party during an exchange of information. If a party introduces such new material at the hearing, the other party, upon request, will be granted a continuance for a reasonable period of time.⁹⁶

⁹³ Rule 6.

⁹⁴ Rule 305.1.

⁹⁵ Section 1606, subdivision (c)(2).

⁹⁶ Rule 305.1, subsection (c).

REQUEST FOR FINDINGS OF FACT

Section 1611.5 and Rule 308 provide the means whereby an applicant or an assessor may request written findings of fact of a hearing. Such a request must be made before the hearing begins (see Chapter 9). Rule 308 states in part:

If an applicant or the assessor desires written findings of fact, the request must be in writing and submitted to the clerk before commencement of the hearing. The requesting party may abandon the request and waive findings at the conclusion of the hearing. If the requesting party abandons the request at this time, the other party may orally or in writing renew the request at the conclusion of the hearing and accompany the request with payment of the required fee or deposit.

The county may charge a reasonable fee for preparation of the findings of fact. If a fee is required, the fee or a deposit must be paid prior to the end of the hearing as described in the local rules of practice. The fee information must be included on the county's *Application for Changed Assessment* form.⁹⁷

DISQUALIFICATION OF A BOARD MEMBER

Every board member should endeavor to maintain the integrity of the appeals process by disqualifying himself or herself from participating in proceedings when appropriate. In this regard, section 1624.2 provides:

No member of an assessment appeals board shall knowingly participate in any assessment appeal proceeding wherein the member has an interest in either the subject matter of or a party to the proceeding of such nature that it could reasonably be expected to influence the impartiality of his judgment in the proceeding. Violation of this section shall be cause for removal under Section 1625 of this code.

The assessor or the applicant may challenge the participation of an appeals board member in any proceeding.⁹⁸ A written statement objecting to the hearing of a matter before a member of the board and setting forth the facts constituting the ground of the disqualification of the member must be filed with the clerk of the board. The statement should be submitted at the earliest practicable opportunity after discovery of the facts on which the disqualification is based, and in any event prior to commencement of a hearing on any issue of fact before the challenged member. The clerk will provide copies of the statement to all parties of the hearing, as well as the board member alleged in the statement to be disqualified.

Within 10 days after filing of the statement or 10 days after being served with the statement, the board member being challenged may file with the clerk a written answer either consenting to the

⁹⁷ Rule 308.

⁹⁸ Section 1624.4.

appeal being heard by another member, or denying the disqualification by admitting or denying the allegations contained in the statement and setting forth any additional relevant facts. If the challenged board member does not consent to the disqualification, the question of the member's disqualification will be heard and determined by a member other than the challenged member who is agreed upon by the parties who have appeared in the proceeding, or, in the event the parties fail to agree within five days after the expiration of the time allowed for the challenged member to answer, by a member assigned to act by the clerk of the board.

BOARD MEMBERS REPRESENTING APPLICANTS

Section 1624.3 bars current board members or alternate members from representing applicants for compensation. Section 1624.3 states:

No current member of an assessment appeals board, nor any alternate member, may represent an applicant for compensation on any application for equalization filed pursuant to Section 1603 in the county in which the board member or alternate member serves.

APPLICATION FILED BY BOARD MEMBER

An application filed by a board member, or an application in which a member will represent his or her spouse, parent, or child, must be heard before an appeals board comprised of three special alternate members appointed by the presiding judge of the superior court in the county. A member must notify the clerk when the member files an application or when the member intends to represent his or her spouse, parent, or child in an assessment appeal matter.⁹⁹

DISQUALIFICATION OF A HEARING OFFICER

Hearing officers are bound by the same legal and ethical requirements as board members regarding potential conflicts of interest. Rule 308.5, subsection (a), provides:

In those counties having assessment appeals boards or hearing officers, the party affected or the party's agent, or the assessor, may file with the clerk a written statement objecting to the hearing of a matter before a member of the board or a hearing officer. The statement shall set forth the facts constituting the ground of the disqualification of the member or hearing officer and shall be signed by the party affected or the party's agent, or by the assessor, and shall be filed with the clerk at the earliest practicable opportunity after discovery of the facts constituting the ground of the member's or hearing officer's disqualification, and in any event before the commencement of the hearing of any issue of fact in the proceeding before such member or hearing officer....

A challenge to disqualify a hearing officer is resolved in the same manner as a challenge of a board member whereby a disinterested board member decides the merits of the disqualification.

⁹⁹ Section 1622.6.

However, in a county in which the board of supervisors has adopted a resolution implementing the provisions of sections 1640.1 and 1641.1, the board may elect to schedule the application before the appeals board in lieu of resolving the disqualification challenge of the hearing officer.¹⁰⁰

HEARING OFFICER REPRESENTING APPLICANTS

Section 1636.2 bars current hearing officers from representing applicants for compensation. Section 1636.2 states:

No current hearing officer may represent an applicant for compensation on any application for equalization filed pursuant to Section 1603 in the county in which the hearing officer serves.

APPLICATION FILED BY HEARING OFFICER

An application filed by a hearing officer, or an application in which a hearing officer will represent his or her spouse, parent, or child, is subject to the same restrictions as a board member. Pursuant to section 1622.6, the application must be heard before an appeals board comprised of three special alternate members appointed by the presiding judge of the superior court in the county. A hearing officer must notify the clerk when he or she files an application or when the hearing officer intends to represent his or her spouse, parent, or child in an assessment appeal matter.¹⁰¹

EMPLOYEES OF THE CLERK OF THE BOARD REPRESENTING APPLICANTS

No current employee of the office of the clerk of the board may represent an applicant for compensation on any application for equalization filed pursuant to section 1603.¹⁰²

APPLICATIONS FILED BY EMPLOYEES OF THE CLERK OF THE BOARD

An application filed by an employee of the clerk of the board, or an application in which the employee will represent his or her spouse, parent, or child, must be heard before an appeals board comprised of three special alternate members appointed by the presiding judge of the superior court in the county. The employee of the clerk must notify the clerk when the employee files an application or when the employee intends to represent his or her spouse, parent, or child in an assessment appeal matter.¹⁰³

¹⁰⁰ Rule 308.5, subsection (c).

¹⁰¹ Section 1636.5, subdivision (a).

¹⁰² Section 1612.5.

¹⁰³ Section 1612.7.

CHAPTER 5: JURISDICTION OF APPEALS BOARDS

STATUTORY REQUIREMENTS

The general outline of an appeals board's function and jurisdiction is set forth in section 16 of article XIII of the Constitution which provides, in relevant part:

Except as provided in subdivision (g) of Section 11, the county board of equalization, under such rules of notice as the county board may prescribe, shall equalize the values of all property on the local assessment roll by adjusting individual assessments.

Pursuant to the authority of this provision, the Legislature, by statute, and the State Board of Equalization, by regulation, have further elaborated the means by which appeals boards exercise their jurisdiction. An appeals board equalizes the assessment of property on the local roll by determining the full value of an individual property and by reducing or increasing its individual assessment.¹⁰⁴ A board may reduce an assessment only upon a timely filed, complete application.¹⁰⁵ However, an appeals board may, after giving proper notice, invoke jurisdiction on its own motion and increase an assessment.¹⁰⁶ For assessments made outside the regular assessment period, such as supplemental and escape assessments, an appeals board has no equalization jurisdiction until the assessee has been properly notified as prescribed by law.¹⁰⁷

TIMELY FILED APPLICATION FOR REDUCTION IN ASSESSMENT

An appeals board has authority to make a reduction in an assessment on the local roll only upon the filing of a timely and complete application.¹⁰⁸ As described in Chapter 3, the law prescribes the specific items required for a complete application and the filing periods during which an application may be filed. An appeals board has no jurisdiction to hear an assessment appeal if all application filing requirements have not been complied with.

Unless the appeals board has invoked its jurisdiction,¹⁰⁹ an applicant or his or her designated representative must be notified no less than 45 days in advance of the hearing unless the assessor and the applicant or representative stipulate to a shorter period of time. If a hearing date is rescheduled for any reason, the clerk must notify the applicant or representative no less than 10 days prior to the new hearing date unless the parties have stipulated to a shorter notice period or the application has been heard previously by a hearing officer pursuant to section 1636 et seq.¹¹⁰ The notice requirement that precedes an assessment reduction hearing is mandatory and

¹⁰⁴ Section 1610.8.

¹⁰⁵ Section 1603.

¹⁰⁶ Section 1610.8; Rule 302, subsection (a).

¹⁰⁷ Section 1605.

¹⁰⁸ Section 1603, subdivision (a).

¹⁰⁹ Rule 307, subsection (d).

¹¹⁰ Section 1605.6.

jurisdictional. Failure to comply with express notice requirements, except when waived, voids any subsequent proceeding on an application.¹¹¹

BOARD INVOKING JURISDICTION ON ITS OWN MOTION FOR INCREASES

After giving proper notice to the person to be assessed, an appeals board may propose to increase an assessment on its own motion.¹¹² The notice provided by the board "is jurisdictional to the right of the board to proceed ... must be 'a notice of the intended action of the board' and ... in the absence of a controlling statute fixing the time of notice the property owner must be given time to have and must have a full and fair hearing."¹¹³ Thus, without an application pending before it, an appeals board has no jurisdiction to decide a matter of increasing an assessment without first providing proper notice to the applicant (or agent). The notice must indicate that the increase has not yet been made but is only proposed, by stating that the board will determine at the hearing whether or not to increase the assessment. The required notice must be given not less than 20 days prior to the hearing unless such notice is waived by the assessee or his or her agent.¹¹⁴

A board may commence the process of invoking its jurisdiction in response to information received from another taxpayer, an assessor, or by other means. In response to such information, a board may, but is not required to, conduct a preliminary investigative hearing for the limited purpose of determining whether reasonable cause exists to invoke its jurisdiction to increase an assessment.¹¹⁵ If a preliminary hearing is held, the board may, in its discretion, allow the presentation of evidence and testimony by persons who would not be considered parties in a regular appeals hearing on the property. However, the board may restrict the scope of a presentation made by such persons because they do not have rights of procedural due process afforded parties to an appeals hearing.¹¹⁶

NOTICE OF ASSESSMENTS MADE OUTSIDE THE REGULAR ASSESSMENT PERIOD

Regardless of whether an application has been filed, an appeals board has no jurisdiction to hear an appeal of an assessment made outside the regular assessment period until the assessee has been properly notified of the assessment.

Section 1605 provides in relevant part:

- (a) An assessment made outside of the regular assessment period is not effective for any purpose, including its review, equalization and adjustment by the county board, until the assessee has been notified thereof personally or by United States mail at the assessee's address as contained in the official records of the county assessor. For purposes of this subdivision, for counties in which the board of

¹¹¹ *International Medication Systems, Inc. v. Assessment Appeals Bd.*, *supra*.

¹¹² Section 1610.8; Rule 302.

¹¹³ *Huntley v. Board of Trustees* (1913) 165 Cal. 289.

¹¹⁴ Rule 307, subsection (d).

¹¹⁵ *Stevens v. Fox Realty Corp.* (1972) 23 Cal.App.3d 199.

¹¹⁶ *Id.* at 206.

supervisors has adopted the provisions of subdivision (c) and the County of Los Angeles, receipt by the assessee of a tax bill based on that assessment shall suffice as the notice.

Specific provisions requiring notice as a precondition to the effectiveness of escape assessments are set forth in virtually identical language in section 534.

An assessment made outside the regular period is not effective *for any purpose* until proper notice is given and, for that reason, an application filed prior to notice is invalid. Consequently, an appeals board has no jurisdiction to hear an application filed prior to notice of the assessment. If the clerk becomes aware of an application that was filed without proper notice, the applicant should be advised of the error.

With regard to escape assessments, section 531.8 imposes on the assessor the duty of sending a proposed notice prior to making the assessment. Section 531.8 provides, in part:

No escape assessment shall be enrolled under this article before 10 days after the assessor has mailed or otherwise delivered to the affected taxpayer a "Notice of Proposed Escape Assessment" with respect to one or more specified tax years.

The "Notice of Proposed Escape Assessment" is not the notice required for the assessment to be deemed effective within the meaning of section 1605 and section 534. An application filed solely upon receipt of such a notice, and prior to a notice of escape assessment or a tax bill reflecting the escape assessment, is invalid. Upon receiving an application filed on the notice of a proposed escape assessment, the clerk must promptly notify the applicant that the application is invalid.¹¹⁷

Property Tax Rule 305.3 contains the provisions for filing an application following an audit conducted by the assessor and specifies which documents will constitute a valid notice for appeal purposes. Subsection (d) states in part:

... The notice for purposes of filing an application shall be one of the following, depending upon the conclusion(s) of the audit:

(1) Where an escape assessment is enrolled by the assessor, the notice shall be the tax bill based upon the results of the audit and resulting escape assessment(s) for counties of the first class or any county that has adopted a resolution pursuant to Revenue and Taxation Code section 1605, subdivision (c). If the county is not a county of the first class or has not adopted a resolution pursuant to Revenue and Taxation Code section 1605, subdivision (c), the notice of escape assessment pursuant to Revenue and Taxation Code section 534 shall serve as the notice.

(2) Where the assessor does not enroll an escape assessment resulting from the audit or when the escape assessment is enrolled but offset pursuant to Revenue

¹¹⁷ Rule 305, subsection (c).

and Taxation Code section 533, the assessor's written notification of the audit results for the property, locations, and each year that were the subject of the audit as described in subsection (c) of this rule shall be the notice. The notice of audit results showing property subject to escape assessment for each year shall indicate that it is the notice of the assessee's right to file an application.

EXEMPTIONS

The appeals board has no jurisdiction to grant or deny exemptions or to consider allegations that claims for exemption from property taxes have been improperly denied. However, the board has jurisdiction to determine the classification of property that is the subject of the hearing even when such classifications may result in the property so classified being exempt from property taxation.¹¹⁸

SUBSTANTIVE MATTERS

The goal of the assessment appeals process is the correct determination of property value for tax assessment purposes and, for that reason, valuation disputes are within the special competence of appeals boards.¹¹⁹ However, an application may require resolution of legal issues prior to or in conjunction with resolution of valuation issues (see section on Legal Issues following in this chapter). Appeals boards are empowered to adjudicate appeals involving both legal and value issues. Furthermore, appeals boards are specifically directed by statute to hear applications based on the legal issue of a determination of change in ownership or new construction.¹²⁰

VALUATION ISSUES

ALLOCATION OF VALUE WITHIN A CORRECT TOTAL ASSESSMENT

The total value of a property is comprised of the separately assessed values of land, improvements, and personal property.¹²¹ Article XIII, section 13 of the California Constitution requires that an assessor separately assess land and improvements. Thus, when establishing a base year value upon a change in ownership or completion of new construction, the assessor must determine a new base year value for land and/or a new base year value for improvements. The total of the separate base year values become the total base year value for the entire property.

The correct allocation of the total base year value is important because subsequent adjustments resulting from an event such as removal of an improvement must be correctly reflected by the separate base year values so as to avoid an overallocation of the total base year value to the land.

¹¹⁸ Rule 302, subsection (a)(4).

¹¹⁹ *El Tejon Cattle Co. v. County of San Diego* (1967) 252 Cal.App.2d 449.

¹²⁰ Section 1605.5.

¹²¹ Among the items to be included on the assessment roll, Rule 252, subsection (a)(8), requires "the separately stated assessed values of all land, improvements, and personal property subject to taxation at general tax rates...."

The possibility that a misallocation made at the time the base year value is established may result in adverse tax consequences at some later time requires that a taxpayer have the right to appeal the allocation of the base year value within the time limitations period of either section 1605, subdivision (b), for supplemental assessments or section 80 for base year value appeals.¹²² Once the base year value has been determined by an appeals board or is presumed to be correct because the value was not appealed within the statutory time limitation period, then the allocation may not be appealed.

ALLOCATION OF SUBDIVIDED PROPERTY

When an assessor receives a copy of a final subdivision or parcel map, he or she must allocate the base year value of the original parcel among all of the new parcels. The allocation is a proper issue for consideration by the board.¹²³

BASE YEAR VALUE TRANSFERS

Since 1986, there have been three amendments to article XIII A affecting the transfers of base year values for senior citizens and disabled persons. The implementing statute for the three amendments is section 69.5. Briefly, these amendments to article XIII A were as follows:

Proposition 60, passed in November 1986. This proposition allows persons over age 55, who transfer their residence and buy or build a replacement residence of equal or lesser value in the same county within two years, to transfer the old residence's base year value to the new residence.

Proposition 90, passed in November 1988. This proposition extends the relief allowed by Proposition 60 to replacement residences located in a different county from the original residence, if the county of the replacement residence has adopted an ordinance participating in the intercounty transfer program.

Proposition 110, passed in June 1990. This proposition further extends the relief allowed by Propositions 60 and 90 to severely and permanently disabled persons, permitting them to transfer the base year values of their original residences to replacement residences of equal or lesser value under specified circumstances.

An appeals board has jurisdiction, on an application appealing the denial of a claim for a base year value transfer pursuant to section 69.5, to determine the full cash value of an original property solely for the purpose of the "equal or lesser" value comparison test of that section, provided the appeals board has jurisdiction in the county where the original property is located. The issue that the board must determine for purposes of qualification is whether the full cash value of the original property was properly determined by the assessor. The full cash value thus determined by the appeals board would establish a new base year value for the original property upon the change in ownership, provided that such value has not already been the subject of an

¹²² Rule 302, subsection (a)(5).

¹²³ Rule 302, subsection (a)(5).

application decided by an appeals board and the base year value may still be challenged per section 80. If the appeals board determines that a different value is appropriate, the current owner of the original property would incur an adjusted tax liability. Consequently, the current owner of the original property must be afforded due process by providing an opportunity to be heard by the appeals board. Therefore, the appeals board must notify the current owner of its intention to hear and decide an application appealing the denial of a section 69.5 claim for transfer of a base year value when such a hearing involves a determination of value for the original property.

VALUATION OF PROPERTY SUBJECT TO SECTION 469 AUDIT

As a result of an audit conducted pursuant to section 469, an assessor may discover property that had escaped assessment for any year under review. Upon discovery of such escaped property, the assessee has a right to appeal the assessed value of all the property, except property previously equalized, at the location of the profession, trade, or business that is the subject of the audit, regardless of whether the assessor actually enrolls an escape assessment.¹²⁴ *All property*, as that phrase is used in sections 469 and 1605, subdivision (e), means land, improvements, and personal property.

Section 469, subdivision (b), provides, in part:

(3) If the result of an audit for any year discloses property subject to an escape assessment, then the original assessment of all property of the assessee at the location of the profession, trade, or business for that year shall be subject to review, equalization and adjustment by the county board of equalization or assessment appeals board pursuant to Chapter 1 (commencing with Section 1601) of Part 3 of this division, except in those instances when the property had previously been equalized for the year in question.

If an audit discloses an overassessment in any tax year and an underassessment in any tax year, section 533 provides, in part, that under certain circumstances refunds will be an offset against proposed tax liabilities. However, the taxpayer is entitled to an equalization hearing for those years in which the assessor determined that property was underassessed, whether or not a bill was issued. In an appeal of the total value of property "subject to an escape assessment," a taxpayer may not appeal any property which had previously been equalized for the year in question because such values have already been reviewed and determined by an appeals board.

Property Tax Rule 305.3 provides definitions for *property subject to an escape assessment* and *property that has been previously equalized*. Rule 305.3, subsection (b), states in relevant part:

(2) "Property subject to an escape assessment" means any individual item of the assessee's property that was underassessed or not assessed at all when the assessor made the original assessment of the assessee's property, and which has not been

¹²⁴ *Heavenly Valley v. El Dorado County* (2000) 84 Cal.App.4th 1323 (opn.mod. 86 Cal.App.4th 25d); Rule 305.3; 80 Ops.Cal.Atty.Gen. 224 (1997).

previously equalized by an appeals board, regardless of whether the assessor actually makes or enrolls an escape assessment. Property is subject to an escape assessment even if the audit discloses an overassessment of another portion of an item of the property, and the amount of the underassessment could be offset completely by the amount of overassessment...

(7) "Property that has been previously equalized for the year in question" means that the board has previously made a final determination of full value for that item, category, or class of property that was the subject of an assessment appeals hearing or was the subject of a stipulated agreement approved by the board. An item, category, or class of property, or portion thereof, shall be deemed to have been the subject of a hearing or of a stipulated agreement only to the extent the board's decision or the stipulated agreement specifically identifies the value of such item, category, or class, or portion thereof, as having been contested and resolved at hearing or as having been agreed to by the parties in stipulation.

VALUATION OF PORTIONS OF EXEMPT PROPERTY

An appeals board has no jurisdiction to grant or deny exemptions or to consider allegations that claims for exemption from property taxes have been improperly denied.¹²⁵ However, when a portion of a tax-exempt property is determined to be taxable, the assessed value of that portion of the property may be reviewed and equalized by the appeals board. In determining the value of the taxable portion, the appeals board is required to determine the value of the entire property and to allocate an appropriate percentage of the total value to that segment of the property under appeal.

VALUATION OF PROPERTY NOT PROTESTED

An appeals board is empowered to adjust by increasing or decreasing the value of all portions of a property even though only the value of certain portions of the property have been contested by the taxpayer.¹²⁶ However, an appeals board may take such action only on properties that have been appraised and assessed together as a unit and only when the *entire* unit is subject to reassessment. For example, an appeal filed on tenant improvements added to a shopping center would not permit an appeals board to increase or decrease the assessed value of the entire shopping center, unless the entire shopping center has been recently constructed or undergone a change in ownership and is still eligible for review of its base year value, or has experienced a decline in value pursuant to section 51.

VALUATION OF PROPERTY FOR PURPOSES OF CALIFORNIA LAND CONSERVATION ACT CONTRACT CANCELLATION

A cancellation fee is imposed for cancellation of a contract under which agricultural property is assessed at a restricted value pursuant to the California Land Conservation Act.¹²⁷ The

¹²⁵ Rule 302.

¹²⁶ Section 1610.8.

¹²⁷ Government Code section 51200 et seq.

cancellation fee is calculated as an amount equal to 12 1/2 percent of the cancellation value. The assessor is required to make a cancellation valuation by determining the fair market value of such property as though it were free of the contractual restriction.¹²⁸ At the request of either of the parties to the contract, the cancellation valuation determined by the assessor will be subject to appeal to an appeals board.¹²⁹

LEGAL ISSUES

CHANGE IN OWNERSHIP AND NEW CONSTRUCTION

For most real property in California, full value is determined under the provisions of article XIII A of the Constitution as of the date property is purchased, newly constructed, or a change in ownership has occurred. Change in ownership and new construction are legal concepts defined by statute. Section 60 defines *change in ownership* as "a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest." *New construction* is defined by section 70 as:

- (1) Any addition to real property, whether land or improvements (including fixtures) since the last lien date; and
- (2) Any alteration of land or of any improvement (including fixtures) since the last lien date that constitutes a major rehabilitation thereof or that converts the property to a different use.

Thus, a hearing on an application appealing a change in ownership or new construction determination requires an adjudication of legal issues, rather than a determination of value, although a taxpayer may challenge the value as well (see section on Determining Value in Cases Involving Legal Issues following in this chapter). Nevertheless, section 1605.5 specifically imposes on appeals boards the mandatory duty of hearing applications for reductions in assessment to decide change in ownership and new construction issues. While many changes in ownership result from simple conveyances of present fee simple interests between individuals, some are more complex transfers of non-fee interests, transfers through the medium of a trust, or transfers by a grant of a future interest. Furthermore, changes in ownership result not only from transfers of interests in real property but also from certain transfers of interests in legal entities which own real property. Similarly, new construction determinations may involve complex nonvaluation issues which require an application of law to facts.

Because the Legislature has granted appeals boards the authority to hear these matters, appeals board members must carefully consider and apply the laws applicable to change in ownership and new construction. Change in ownership provisions are set forth in sections 60 through 69.5 and in Rules 462.001 through 462.500. New construction provisions are found in sections 70 through 74.6 and in Rules 463 and 463.500.

¹²⁸ Government Code section 51283.

¹²⁹ Government Code section 51203.

CLASSIFICATION OF THE PROPERTY

Classification of property is a matter of law and is a necessary precondition to a determination and allocation of value. Conversely, when an appeals board is required to find the total value of a property, it must separately allocate full values for land, improvements, and personal property. In some cases, it is also necessary to classify fixtures separately from structures. When the board is asked to decide classification issues, its determination of those issues is subject to de novo review by the courts. If the dispute does not involve issues of fact, then the taxpayer does not need to exhaust the administrative remedy of an assessment appeal.¹³⁰

PROCEDURAL ISSUES

ESCAPE ASSESSMENTS

An escape assessment is an assessment made after the completion of the regular assessment roll, as an addition to that roll. Section 531.8 provides that no escape assessment will be enrolled before 10 days after the assessor has notified the taxpayer of the proposed escape assessment. In most cases, escape assessments must be made within four years after July 1 of the assessment year in which the property escaped assessment. This deadline may be extended to eight years if conditions exist that warrant application of a penalty assessment provided in section 504.¹³¹

Section 532, subdivision (b), further provides that the time limitations period is eight years if a change in ownership has not been properly reported:

(2) Any assessment resulting from an unrecorded change in ownership or change in control for which either a change in ownership statement, as required by Section 480 or a preliminary change in ownership report, as required by Section 480.3, is not filed with respect to the event giving rise to the escape assessment or underassessment shall be made within eight years after July 1 of the assessment year in which the property escaped taxation or was underassessed....

In addition, if property has escaped taxation, in whole or in part, or has been underassessed following a change in ownership or change in control and either the section 503 (fraud) penalty is added, or a Change in Ownership Statement (as required by sections 480.1 or 480.2) was not filed, then escape assessments may be made for *every year* in which the property escaped taxation or was underassessed.

PENALTY ASSESSMENTS

Appeals boards have jurisdiction to hear and decide penalty assessments, except those associated with exemptions as provided in section 531.1.¹³²

¹³⁰ *Exchange Bank v. County of Sonoma* (1976) 59 Cal.App.3d 608.

¹³¹ Section 532, subdivision (b)(1).

¹³² Section 1605.5, subdivision (b); Rule 302.

When penalty issues are involved, the appeals board has to determine whether the specified condition(s) or standard of conduct necessary for incurring the penalty (e.g., willful misrepresentation to evade taxes) existed.

BASE YEAR VALUE

In accordance with section 110.1, a property's base year value is its fair market value as of either the 1975 lien date or the date the property was last purchased, newly constructed, or underwent a change in ownership after the 1975 lien date.

Section 80 states in part:

(3) The base year value determined pursuant to paragraph (2) of subdivision (a) of Section 110.1 shall be conclusively presumed to be the base year value, unless an application for equalization is filed during the regular equalization period for the year in which the assessment is placed on the assessment roll or in any of the three succeeding years. Once an application is filed, the base year value determined pursuant to that application shall be conclusively presumed to be the base year value for that assessment.

Where no application is filed for the year in which the assessment is placed on the roll, but an application is filed in one of the next three years, section 80(a)(5) provides that any reduction in value as a result of the hearing will apply only to that year and to subsequent years.¹³³ In addition, an appeals board is precluded from hearing an application which challenges a base year value previously determined by an appeals board for an earlier assessment year.

Errors or omissions in the determination of a base year value, including failure to establish that base year value, that do not involve an assessor's judgment as to value must be corrected in any assessment year in which the error or omission is discovered.¹³⁴ If the correction reduces the base year value, a refund or cancellation must be granted. If the correction results in an increased base year value, appropriate escape assessments are imposed.¹³⁵

TWO-YEAR TIME LIMIT

Section 1604 and Rule 309 provide a time period in which appeals boards are required to hear and make a determination on an application. Rule 309 states in part:

(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.

¹³³ *Oscro Drug, Inc. v. County of Orange* (1990) 221 Cal.App.3d 189.

¹³⁴ Section 51.5, subdivisions (a) and (d).

¹³⁵ *Sunrise Retirement Villa v. Dear* (1997) 58 Cal.App.4th 948.

(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 ... or
- (5) The applicant has initiated proceedings to disqualify a board member ... or
- (6) The applicant has requested the hearing officer's recommendation be heard by the board....

Section 1604, subdivision (c), provides that the *county assessment appeals board* must make a final determination on an application for reduction in assessment of property within two years of the timely filing of the application. Thus, the statute contemplates that the assessment appeals board, rather than a hearing officer, must hold a hearing and render a final determination within the two-year period. Although the hearing officer conducts a hearing and prepares a recommendation, the assessment appeals board establishes the value based upon the recommendation pursuant to section 1641. Therefore, the appeals board's hearing and adoption of a hearing officer's recommendation as a basis for establishing the assessed value constitutes a final determination for purposes of section 1604, subdivision (c).

If an applicant fails to provide information to the assessor pursuant to section 441, subdivision (d), and introduces any requested materials or information at any appeals board hearing, the assessor may request and will be granted a continuance for a reasonable period of time. In this event, the two-year period is extended for a period of time equal to the period of the continuance.

The clerk of the board should closely follow applications to ensure that all are heard and final determinations are made within two years. A hearing and decision by an appeals board that the board has no jurisdiction to hear an appeal constitutes a hearing and final determination within the meaning of subdivision (c) of section 1604.¹³⁶

¹³⁶ *Heavenly Valley v. El Dorado County Board of Equalization* (2000) 84 Cal.App.4th 1323 (opn.mod. 86 Cal.App.4th 25d).

When a two-year period expires, section 1604(c) does not require immediate enrollment of the taxpayer's opinion of value, but instead sets the date two years after the close of the filing period—September 15 or November 30¹³⁷—when all taxpayers' opinions of value should be enrolled. Thus, the board clerk must individually track applications by exact date of filing, and, after a board hearing, transmit to the auditor a one-time value reduction two years after the close of the filing period for all applications that remain unheard.

For applications involving base year value appeals, if the applicant's opinion of value has been placed on the roll because the appeals board was unable to hear the application timely, that value remains on the roll until the appeals board makes a final determination on the application. 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, the applicant's opinion of value will be enrolled on the assessment roll for the tax year or years covered by the pending application.¹³⁸

Section 1604(c)(1) provides that the taxpayer and an appeals board may mutually agree to an extension of time for hearing and determination past the two-year limitation. Counties should have a procedure in place and an adopted standard waiver form for this purpose. Wherever possible, in appropriate circumstances, appeals boards should obtain the waiver from the taxpayer so that unnecessary roll corrections may be avoided.

EXTENSIONS AND WAIVERS REGARDING ESCAPE AND SUPPLEMENTAL ASSESSMENTS

The deadline for making an escape assessment may be extended if the taxpayer and the assessor agree in writing to extend the time. Section 532.1 provides:

- (a) If, before the expiration of the period specified in Section 532 for making an escape assessment, the taxpayer and the assessor have agreed in writing to extend the time for making an assessment, correction, or claim for refund, the assessment may be made at any time prior to the expiration of the period agreed upon. The period may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

The taxpayer and the assessor may also agree to extend the time for making a supplemental assessment in accordance with section 75.11(e).

This written agreement is usually known as a waiver. Each county develops its own agreement, and the title of the document and the actual wording may vary. If the waiver does not specifically state that it extends the time for filing a claim for a refund, then it only extends the time allowed for escape assessments and corrections. A board of supervisors does not have authority to grant refunds for untimely claims if the agreement does not also waive the statute of limitations for filing a claim for refund.

¹³⁷ November 30 in counties where the assessor does not mail assessee notices by August 1 of assessed value for real property on the secured roll.

¹³⁸ Rule 309, subsection (c).

DETERMINING VALUE IN CASES INVOLVING LEGAL ISSUES

To serve the best interests of taxpayers and to promote efficiency for local governments, appeals boards should hear and decide as many applications as possible. An assessment appeal will sometimes involve legal issues as well as valuation issues. For example, a taxpayer may challenge a reassessment on the grounds that no reassessment even occurred, such as a change in ownership or new construction, as well as challenge the assessor's valuation of the property as of the date of the reassessment. In such appeals, the determination of the legal issue may render the valuation issue moot. Thus, if the challenged assessment was issued, for example, pursuant to the assessor's belief that there had been a change in ownership, and the appeals board determined that no change in ownership occurred, there may be no need for the appeals board to hear the valuation challenge also brought by the application.

To promote efficiency for the applicant, assessor, and the appeals board, the county may adopt procedures for bifurcated hearings, whereby the appeals board would hold a hearing on the controlling legal issue first, and schedule a second hearing on the valuation issue to occur after the appeals board has heard and resolved the legal challenge. If the appeals board's resolution of the legal issue renders the valuation challenge moot, the hearing on the valuation issue can be denied in order to exhaust administrative remedies.

An appeals board should not, however, hear applications that involve no factual disputes as to value and that are solely based on legal issues outside the jurisdiction of local appeals boards. In such cases, the taxpayer should be informed in writing that the application was denied for lack of jurisdiction due to the absence of any valuation issues; this notice protects the taxpayer's right to appeal in court by evidencing that the taxpayer exhausted the administrative remedy of an appeals board hearing.

MATTERS REQUIRING EXHAUSTION OF ADMINISTRATIVE REMEDIES

Generally, a taxpayer is required to exhaust his or her administrative remedies as a condition precedent to bringing a court action.¹³⁹ The taxpayer bears the burden of establishing exhaustion of administrative remedies as a procedural aspect of the case. A contention by the taxpayer that seeking an appropriate and necessary administrative remedy would prove fruitless is not an excuse for noncompliance with the doctrine of exhaustion of administrative remedies.¹⁴⁰

An exception to the exhaustion of administrative remedies requirement exists "where the facts [are] undisputed and the property assessed [is] tax-exempt, outside the jurisdiction or non-existent, or where the assessment is void for failure to follow statutory procedure."¹⁴¹ As indicated above, if an application is filed in such cases, an appeals board should decline to hear the application because it fails to raise any valuation issues that, if decided by the board, would

¹³⁹ *Star-Kist Foods, Inc. v. Quinn* (1954) 54 Cal.2d 507.

¹⁴⁰ *Westinghouse Electric Corp. v. County of Los Angeles* (1974) 42 Cal.App.3d 32.

¹⁴¹ *Id.* at 36-37.

partially or entirely dispose of the legal issues.¹⁴² However, because this exception only applies if the facts are undisputed, the circumstances in which the appeals board would decline to take jurisdiction are very limited.

Even in cases where the taxpayer contends that the assessment is erroneous or illegal as a matter of law and valuation is not at issue, taxpayers are advised to file an application with the appeals board to ensure that a reviewing court may not dismiss the case for failure to exhaust administrative remedies.

¹⁴² *Stenocord Corp. v. City and County of San Francisco* (1970) 2 Cal.3d 984.

CHAPTER 6: OVERVIEW OF APPRAISAL AND LEGAL ISSUES

This chapter contains a brief overview of basic appraisal terms and accepted appraisal practices. For a more in-depth discussion of appraisal practices and the approaches to value property, see Assessors' Handbook Section 501, *Basic Appraisal*; Assessors' Handbook Section 502, *Advanced Appraisal*; and Assessors' Handbook Section 504, *Assessment of Personal Property and Fixtures*.

TAXABLE PROPERTY

Section 1 of article XIII of the Constitution provides that all property is taxable unless specifically exempted. Following are examples of taxable property:

- Land
- Land improvements (landfills, reservoirs, ponding, landscaping, etc.)
- Improvements (structures)
- Machinery and equipment
- Fixtures
- Leaseholds
- Personalty and supplies
- Pollution control equipment
- Possessory interests
- Cogeneration plants

LIEN DATE

All locally assessed taxable property is assessed annually as of 12:01 a.m. on January 1. This is also known as the *lien date* because on this date the taxes for the following fiscal year attach as a lien against real property assessed on the secured roll.

The full value of the property assessed on the lien date depends on the type of property. Personal property (except for manufactured homes and floating homes) is assessed at fair market value annually as of January 1. For real property subject to assessment under article XIII A, the lien date is the date when the annual inflation adjustment to the base year value is officially made.

APPRAISAL UNIT

Valuation of property for assessment purposes is usually based on the appraisal unit. An appraisal unit of property is a collection of assets that function together and that commonly sell as a unit or that are specifically designated as such by law.¹⁴³

The assessor must determine the appropriate unit to be appraised prior to determining a value. In many cases, the identification of the appraisal unit is obvious, but in some instances it may not be easily determined.

Multiple parcels that would likely be bought and sold in the market as a group can be appraised as a single appraisal unit.

The definition of a parcel of land is an area of land *in one ownership and one general use*.¹⁴⁴ A parcel shows the land area as it is actually owned and used rather than as it may have been plotted on subdivision maps or other maps. It is an area of land that, in the opinion of the assessor, should be included under one description for assessment purposes after consideration of all legal factors. A parcel designation reflects an assessor's opinion which a property owner may dispute and, if necessary, may appeal to an appeals board for resolution.

PROPERTY VALUATION UNDER ARTICLE XIII A

For locally assessed real property, full value is determined under the provisions of article XIII A when such property is newly constructed or undergoes a change in ownership and is subject to the following valuation rules:

- Properties which have not undergone a change in ownership or new construction since 1975-76 are said to have a 1975-76 base year value, which is the fair market value as of the 1975 lien date.
- Each property's base year value is adjusted upwards each year, as necessary, to reflect inflation as measured by the California Consumer Price Index, but not in excess of 2 percent annually. This process continues so long as the property is not subject to a change in ownership or new construction. This value is known as the adjusted or factored base year value.
- Real property that has transferred after the 1975 lien date such that a change in ownership results, is reassessed to current fair market value as of the date of the transfer. Real property that has undergone new construction after the 1975 lien date is also assessed at current fair market value as of the date of completion.

¹⁴³ Rule 324.

¹⁴⁴ California State Board of Equalization, Assessors' Handbook Section 215, *Assessment Map Standards* (Sacramento: California State Board of Equalization, October 1997; reprint of *Standards for Assessors' Maps, Parcel Numbering and Tax-Rate Area Systems*, August 1992), p. 24 (page citation is to the reprint edition).

- The fair market value assessment at the time of new construction or change in ownership becomes the property's new base year value, which is thereafter adjusted upwards by no more than 2 percent annually until such time as the property undergoes another change in ownership or new construction occurs.
- If only a partial interest in the property undergoes a change in ownership (for example, a co-tenant's interest) or new construction occurs on only a portion of a property (for example, a room addition), the partial interest or newly constructed portion is given a new base year value (based on current fair market value) and the remainder retains its old adjusted base year value. A property can have multiple base year values due to partial interest changes in ownership or new construction until the entire property changes ownership, at which time it is assigned a new base year value based on its total fair market value at the time of the sale or transfer.
- Property for which the current fair market value as of the current lien date declines below its base year value or adjusted base year value is reassessed to reflect the lower fair market value.

Timberland is not subject to the above valuation system.

Some types of locally assessed real property are subject to the above valuation system but are also subject to additional specific assessment provisions. Examples of these properties are agricultural and open-space lands subject to California Land Conservation Act contracts, land (except for land owned in the counties of Inyo or Mono) owned by a county or municipal agency outside its boundaries and taxable at the time of acquisition,¹⁴⁵ and enforceably restricted historical properties. These properties are assessed at the lowest of fair market value, adjusted base year value, or the special valuation limitations established by constitutional or statutory provisions.

Proper valuation of property is key to fair property taxation since the tax is ad valorem, i.e., determined by applying the tax rate to the taxable value of the property (referred to as the assessed value or full value). For example, a property with an assessed value of \$115,000 in an area where the total tax rate is 1.1 percent will have a property tax liability of \$1,265:

$$\$115,000 \text{ assessed value} \times 0.011 \text{ tax rate} = \$1,265 \text{ tax}$$

CHANGE IN OWNERSHIP

A change in ownership is defined by section 60 as "a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest." Specific types of transfers resulting in changes in ownership are set forth in section 61. A change in ownership generally has a substantial effect on the full value of a property because the property is reappraised at current fair market value.

¹⁴⁵ These properties are equalized by the State Board of Equalization.

Section 5814 provides the change in ownership provisions that are controlling for manufactured homes. Section 5814 reads:

- (a) For purposes of this part, "change in ownership" and "purchase" shall have the same meanings as provided in Sections 60 to 68, inclusive, to the extent applicable. The operative dates of those sections shall be controlling in the determination of whether a change in ownership or purchase of a manufactured home has occurred.
- (b) As used in Sections 60 to 68, inclusive, the term "real property" includes a manufactured home that is subject to tax under this part.

Present Interest

The first element of the section 60 definition, a transfer of *a present interest*, excludes by definition transfers of future interests, such as remainders. This element also excludes transfers in which interests are retained by the grantor, such as retained life estates, because there is no transfer of the present interest until the grantor relinquishes his or her interest.

Beneficial Use

The *beneficial use* element requires that the transfer must convey both legal and beneficial interests in the property. For example, a transfer of legal title by a trustee does not result in a change in ownership. In that circumstance, there is no transfer of beneficial use which is vested in the beneficiary. This condition is considered necessary to protect fiduciary relationships from unintended changes in ownership.¹⁴⁶

Value Equivalence

At the inception of the development of the change in ownership concept, the Legislature deemed certain non-fee simple interests in real property as "substantially equal to the value of the fee interest" as intended by section 60. Therefore, the transfer of an interest less than fee simple absolute may result in a change in ownership. For example, subdivision (c)(1) of section 61 provides that a change in ownership, except as otherwise provided in section 62, includes:

The creation of a leasehold interest in taxable real property for a term of 35 years or more (including renewal options), the termination of a leasehold interest in taxable real property which had an original term of 35 years or more (including renewal options), and any transfer of a leasehold interest having a remaining term of 35 years or more (including renewal options);...

The *value equivalence* standard reflects a recognition by the Legislature that the assessor must be able to identify only one "primary" owner of a property because of the complexity of

¹⁴⁶ Assembly Revenue and Taxation Committee, *Report of the Task Force on Property Tax Administration*, January 22, 1979, p.39.

determining separate base year values of split ownership interests, such as those of a lessee and a lessor.¹⁴⁷

Ownership Interests in Legal Entities

Certain transfers of ownership interests in legal entities, such as partnership interests, result in a change in ownership of real property owned by the legal entity. Section 61, subdivision (j), and subdivisions (c) and (d) of section 64 set forth the circumstances under which transfers of interests in legal entities result in changes in ownership.

Since 1981, the State Board of Equalization has assisted county assessors' staffs in monitoring transfers of interests in legal entities. The Board forwards to assessors information on transfers of entity interests if the Board believes that the entity's property has undergone a change in ownership. The information is not conclusive; it is the responsibility of the assessor and, if necessary, the appeals board to determine whether a change in ownership has occurred.

Reporting Changes in Ownership

A change in ownership is a reassessable event under article XIII A, and the assessor is required to determine and enroll the current fair market value of the property. An assessor's principal sources of information about a change in ownership event are the Preliminary Change of Ownership Report and the Change in Ownership Statement. Taxpayers are obligated to file change of ownership reports and statements.

- Preliminary Change of Ownership Report (PCOR)—The PCOR is filed with the county recorder's office at the time a transfer deed is recorded. The recorder's office transmits the PCOR to the assessor's office.
- Change in Ownership Statement (COS)—If the transfer is not recorded, a COS must be filed with the assessor within 45 days of the transfer. In addition, a COS may be sent by the assessor to a property owner when the assessor believes that a change in ownership has occurred and a PCOR was not filed or when the PCOR did not provide sufficient information.
- Mobilehome Park Report—If a resident-owned mobilehome park does not use recorded deeds to transfer ownership interests in the spaces or lots, the park must annually file by February 1 with the assessor a report containing specified ownership information.¹⁴⁸

NEW CONSTRUCTION

Newly constructed property is assessed at its fair market value as of the date of completion. New construction in progress on the lien date is appraised at its full value on that date and each succeeding lien date until the date of completion. Section 70 and Rule 463 define *new construction* and *newly constructed* using the following terms.

¹⁴⁷ *Ibid.*

¹⁴⁸ Section 62.1, subdivision (b)(5).

Addition

An *addition* is the act or process of adding; also, the unit or component of a unit that is added. The act of adding implies that there is a pre-existing structure or base to which something is added. Additions are made to land and improvements, including fixtures. Additions do not change the base year or base year value of the pre-existing portion of the property. A new base year and value is determined for the added property only. A property can have multiple base year values due to new construction.

Alteration

An *alteration* is the act or process of altering; a modification or change. An alteration qualifies as new construction when it:

- Rehabilitates real property to the point that it is like new, or
- Converts the property to a different use.

Basically, there are five general classifications of property use types: agricultural, residential, commercial, industrial, and recreational. Any physical alteration of land or improvements leading to a change from one of these uses to another would qualify as new construction. The value added by the physical alteration is assessable, but the value attributable to the change in use is not assessable.¹⁴⁹ The appraisal task is to estimate the value added by the alteration.

Date of Completion

The *date of completion* is the date when a property or a portion of a property is available for use. The estimate of the proper date of completion for purposes of assigning a base year value will depend upon whether the project is completed in stages or as a single-phase project. Each phase is assigned a different base year and would be valued as of the date it is available for use. A presumption of completion may be attached to a building permit "final" approval or "notice of occupancy" issued by a local agency.¹⁵⁰

Modernization

Modernization means taking corrective measures to bring a property into conformity with changes in style, whether exterior or interior, or additions necessary to meet standards of current demand. Modernization normally involves replacing part of the structure or mechanical equipment with modern replacements of the same kind. For property tax purposes, modernization implies curing functional obsolescence and physical deterioration to the degree that the structure or fixture is substantially equivalent to new after the modernization has been completed. When this "like new-ness" is achieved, modernization qualifies as new construction as defined in section 70.

¹⁴⁹ Rule 463, subsection (b)(2).

¹⁵⁰ Rule 463.500, subsection (c)(4).

Normal Maintenance

Normal maintenance is the action of continuing, carrying on, preserving, or retaining something; it is the work of keeping something in proper condition. Maintenance performed on real property is normal when it is regular, standard, and typical. Normal maintenance keeps a property in condition to perform efficiently the service for which it is intended and ensures that a property will experience an economic life of typical duration. Normal maintenance is not considered new construction for property tax purposes.

Rehabilitation

Rehabilitation is the restoration of a property to satisfactory condition without changing the plan, form, or style of a structure. It involves curing physical deterioration. If rehabilitation brings about the substantial equivalence to new condition of a structure or a fixture, it qualifies as new construction for property tax purposes.

Remodeling

Remodeling is changing the plan, form, or style of a structure to correct functional or economic deficiencies. In remodeling, property is removed and other property of like utility is substituted for it. Remodeling can constitute new construction. If this is the case, the old property should be removed at its factored base year value, and the new property should be enrolled at its current fair market value as of the date of replacement.

Replacement

Replacement is substituting an item that is fundamentally the same type or utility for an item that is exhausted, worn out, or inadequate. For property tax purposes, replacements made as normal maintenance which do not make the entire structure or fixture the equivalent of new are not new construction. Replacements can be so extensive and extreme, however, as to make a building "like new." It is a matter of degree and requires appraisal judgment.

Renovation

Renovation is making a property into new condition. When renovation results in "like newness," there is new construction.

Exclusions from New Construction Reassessment

Constitutional amendments adopted and statutory interpretations of article XIII A have permitted several exclusions from fair market value reassessment at the time of new construction. They include:

1. Specified seismic retrofitting and earthquake hazard mitigation technologies applied to existing buildings.¹⁵¹

¹⁵¹ Section 74.5.

2. Modifications to make an existing building or structure more accessible to a severely and permanently disabled person.¹⁵²
3. Timely construction of property damaged or destroyed by a misfortune or calamity where the property after reconstruction is substantially equivalent to its state prior to the misfortune.¹⁵³
4. Underground storage tanks that must be improved, upgraded, or replaced to comply with federal, state, and local regulations; and timely reconstruction of structures, or a portion thereof, required as a consequence of the foregoing where the structure or portion thereof is substantially equivalent to the prior structure in size, function, and utility.¹⁵⁴
5. Construction or installation of a fire protection system in an existing structure.¹⁵⁵
6. Repair or replacement of contaminated property.¹⁵⁶
7. Specified construction or addition of any active solar energy system.¹⁵⁷

SUPPLEMENTAL ASSESSMENTS

A supplemental assessment is made upon a change in ownership or completion of new construction. The supplemental assessment process was adopted so that reappraisal and reassessment would occur as of the date of a change in ownership or completion of new construction rather than waiting until the next lien date. A supplemental assessment may be a negative amount; for example, a property undergoes a change in ownership at a time when the fair market value is less than the value on the current assessment roll. In the case of new construction, only the value attributable to the new construction is to be enrolled as a supplemental assessment. The supplemental assessment provisions are set forth in sections 75 through 75.80.

DECLINES IN VALUE

The general appraisal rules which apply to property that has sustained a decline in value are contained in section 51. They are as follows:

- For any lien date, if property experiences a decline in value for any reason, so that its fair market value is less than its value on the property tax roll, the property is reassessed downward to reflect its current market value.
- If the property experiences a decline in value, but the market value is still greater than the adjusted base year value on the roll, the adjusted base year value will remain as the taxable value.

¹⁵² Section 74.6.

¹⁵³ Section 70.

¹⁵⁴ *Ibid.*

¹⁵⁵ Section 74.

¹⁵⁶ Section 69.4, subdivision (a).

¹⁵⁷ Section 73.

- If the market value later goes up, the value on the tax roll should be adjusted upwards at the next lien date. However, the assessed value may not be increased above the adjusted base year value which would have applied if the decline had not occurred.

CLASSIFICATION OF THE PROPERTY

One of the most difficult and often controversial assessment issues that may confront an appeals board is the proper classification of the property under appeal.¹⁵⁸ Section 602 provides in part that the local roll will show:

- (e) The assessed value of real estate, except improvements.
- (f) The assessed value of improvements on the real estate.
- (g) The assessed value of improvements assessed to any person other than the owner of the land.
- ... (i) The assessed value of personal property, other than intangibles.

This means that all property that is listed on the roll must be classified as real estate (land), improvements, or personal property.

The importance of proper classification of property can be appreciated when it is realized that:

- Section 13 of article XIII requires it.
- Real property is subject to valuation restrictions.
- Special assessments are levies on real property only.
- The Legislature has wide latitude in the taxation of personal property by reason of section 2 of article XIII.
- Personal property cannot be assessed to insurance companies under section 28 of article XIII.
- Personal property cannot be assessed to banks or financial corporations pursuant to section 23182.
- Possessory interests in personal property are not taxable (except for pollution abatement equipment financed by the California Pollution Control Financing Authority).
- Insurance companies and financial corporations may offset certain property taxes against other taxes.
- Except for manufactured homes and floating homes, personal property is not subject to supplemental assessment.

¹⁵⁸ For an in-depth discussion of classification of property, see Assessors' Handbook Section 504, *Assessment of Personal Property and Fixtures*, Chapter 2.

Machinery and Equipment

There is often substantial difficulty in the proper classification of machinery and equipment as either personal property or fixtures. The distinction is important because fixtures are considered improvements, i.e., real property, for purposes of property tax assessment. Rule 122.5 defines fixtures and provides the factors which must be considered for their proper classification. In addition, Rule 124 provides a partial listing of examples of items that should be classified as improvements on the assessment roll. When in doubt, an appeals board should seek the assistance of its county legal advisor.

Manufactured Homes and Floating Homes

Manufactured homes and floating homes are classified as personal property but are subject to essentially the same assessment provisions as real property. Valuation procedures for manufactured homes are prescribed by section 5800 et seq., and valuation procedures for floating homes are provided in section 2189.7.

California Land Conservation Act Properties

For equalization of a property subject to a California Land Conservation Act contract, an appeals board may be required to determine whether a portion of the property is a homesite or whether it is put to agricultural use. This determination can substantially affect the assessed value of the property.

Taxable Possessory Interests

An appeals board may be required to determine either the existence of or the value of a taxable possessory interest. Possessory interests are defined in section 107.

Examples of taxable possessory interests include:

- Forest Service permits—residential and commercial, including ski lifts, resorts, stores, and cabins
- Harbor leases—residential, commercial, and industrial
- Aircraft operators using government-owned airports
- Possession and use of residences owned by public agencies
- Cable television companies laying cable in publicly owned streets
- Employee housing on tax-exempt land
- Shipping companies renting berths in county-owned ports
- Indian land lease
- The right to cut and remove standing timber on public lands
- Gas, petroleum, or other hydrocarbon rights in public lands
- Grazing rights on federal lands

- Possession of public property at harbors, factories, airports, golf courses, marinas, recreation areas, parks, stadiums, and governmental facilities

PENALTY ASSESSMENTS

An appeals board has the jurisdiction to hear and decide penalty assessments,¹⁵⁹ except those associated with exemptions.¹⁶⁰ Most commonly, appeals boards review the following penalty situations:

1. If any person who is required by law or is requested by the assessor to make an annual property statement fails to file it with the assessor within the time requirement set by statute, a penalty of 10 percent of the assessed value of the unreported taxable tangible property will be added to the assessment made on the current roll.¹⁶¹ If an application for abatement is timely filed, the board may abate the penalty if it finds that the failure to file timely was due to reasonable cause and not due to willful neglect.
2. If any person willfully conceals, fails to disclose, removes, transfers, or misrepresents tangible personal property and as a result causes an assessment to be lower than that which would otherwise be required by law, a penalty of 25 percent will be added to the assessed value of the property.¹⁶² In the case of a 25 percent penalty, the penalty is applicable if the conditions described by the statute¹⁶³ existed; there can be no *reasonable cause*. The appeals board has to determine whether the specified condition(s) (e.g., willful misrepresentation to evade taxes) was true.

MISFORTUNE OR CALAMITY

If property has been damaged or destroyed by a misfortune or calamity, the owner may request that the property be reassessed downward *immediately* to reflect its current value in the damaged condition. This immediate downward reassessment procedure is available only in counties which have adopted authorizing ordinances pursuant to section 170. For real property, the downward reassessment is accomplished by reducing the adjusted base year value in the same proportion as the decline in the fair market value of the property due to the damage.

The downward assessment results in a reduction of property taxes for the current year, prorated to reflect the number of months remaining in the year after the damage occurred. The reduced taxes are refunded to the property owner. The downward assessment (plus annual inflation adjustment) is carried forward until such time as the damaged property is restored, repaired, reconstructed, or other reassessable event occurs. If the damaged property is later restored, repaired, or reconstructed, with a resultant increase in fair market value, it will be reassessed upward. That value cannot exceed its prior adjusted base year value, even though the fair market

¹⁵⁹ Section 1605.5, subdivision (b).

¹⁶⁰ Rule 302.

¹⁶¹ Section 463.

¹⁶² Section 502.

¹⁶³ A 25 percent penalty may arise from any of several different statutes; each statute describes specific criteria for the penalty.

value may be higher, unless it is determined that the restoration resulted in new construction as defined in Rule 463.

On an application appealing a reassessed value pursuant to section 170, an appeals board has jurisdiction to determine the full value of the property at the time of the disaster or at the time of restoration following the disaster, including jurisdiction to determine if the restoration of the property has resulted in new construction. If a portion of the restoration is determined to be new construction, a new base year value will be established for the newly constructed portion, provided that such value has not already been the subject of an application decided by an appeals board.

EXEMPTIONS

If the single question under appeal would result in granting an exemption from property tax, then pursuant to Rule 302, an appeals board has no jurisdiction to hear the application. If the matter solely involves the legal issue of classification which would result in an exemption and the facts are not in dispute, then an appeals board may hear and decide the application. Section 3 of article XIII enumerates the various properties that are exempt from taxation, including, but not limited to:

- Property owned by the state
- Property owned by a local government, except property located outside its boundaries that was taxable when acquired
- Property used for free libraries and museums
- Property used exclusively for public schools, community colleges, state colleges, and state universities
- Property used exclusively for educational purposes by a nonprofit institution of higher education
- Property used exclusively for religious worship
- Nonprofit cemeteries
- Growing crops
- Fruit and nut trees until four years after planting
- Grapevines until three years after planting
- Immature forest trees
- Vessels of more than 50 tons burden engaged in the transportation of freight or passengers

Section 4 of article XIII also authorizes the Legislature to exempt certain properties.

VALUATION METHODS

Determination of full value involves judgment, and the law recognizes that there is no single acceptable appraisal approach or method which must be employed to determine fair market value. The most common indicators of value are the purchase price of the subject property, sales prices of comparable properties, capitalization of the income stream (rent) produced by the property, and the cost to replace the property in its present condition. For purposes of establishing fair market value of recently purchased real property (other than possessory interests), California law establishes a rebuttable presumption that the purchase price is the fair market value.¹⁶⁴ However, the presumption may be overcome if there is sufficient market information to establish a different value.¹⁶⁵

APPROACHES TO VALUE

Rule 3 prescribes the application of one or more of the following approaches to value in order to arrive at fair market value: (1) comparative sales approach, (2) stock and debt approach, (3) replacement/reproduction cost approach, (4) historical cost approach, or (5) income approach. The three major appraisal approaches for estimating value for locally assessed property are the cost, comparative sales, and income approaches.

In the appraisal process, one should analyze all the data available on a subject property and utilize the most applicable approach(es) in the appraisal. This is supported by Rule 3 which states, in part:

In estimating value as defined in section 2 [Rule 2], the assessor shall consider one or more of the following [approaches to value], as may be appropriate for the property being appraised.

In the absence of reliable sales data, the cost and income approaches assume greater importance. If a property is owned for the purpose of producing rental income, and if there is an active rental market for similar facilities, the income approach is generally most appropriate. However, if there are neither comparable sales nor rents paid for comparable properties, the cost approach becomes more appropriate.

Each appraisal approach utilized should be carried out independently from the others. A value indicator from the cost approach, for example, should not be forced to agree with a value indicator from the comparative sales approach. If this is the case, the cost approach was not properly applied; rather, the cost approach was discarded in favor of the comparative sales approach, mislabeled as a cost approach. Each approach utilized should be completed on the basis of market data supporting that approach, and all data should be derived from the market relevant to the property being appraised. If each approach to value is performed independently, the resulting value indicators will define a value range and provide a rational and defensible final estimate of value.

¹⁶⁴ Rule 2.

¹⁶⁵ *Dennis v. County of Santa Clara* (1989) 215 Cal.App.3d 1019.

Although all three approaches to value should be considered, the use of all three may not always be appropriate. The nature of a property, its market, and the availability of data will normally dictate which approach(es) is most applicable. Because most single-family residences are owned for the amenities they provide and not for their potential rental income, the cost and comparative sales approaches are generally more appropriate when appraising this property type. Commercial properties may be appraised using all three methods, but limited sales of closely comparable properties may render the cost and income approaches more appropriate and reliable.

Independent application of the approaches utilized will lead to separate indicators of value. The final analytical step in the appraisal process is to reconcile the separate indicators into a final value estimate. During the reconciliation process, each indicator is reviewed and reconsidered. Consideration should be given to factors influencing value that are not reflected or only partially reflected in the indicators. One should not make a simple arithmetic average of the several values. The greatest weight should be given to the approach(es) that most reliably measures the benefits sought by buyers in the market for the subject property.

The market value of real estate is more realistically described as a band or a range rather than as a point. The appraiser is attempting to make an estimate that lies within that range. It is difficult, if not impossible, to specify the exact limits of any range of market value, especially since the range varies with different types of properties, locations, economic and market conditions, and other factors. The possible range is smaller for a property in a homogeneous residential subdivision than for a property in a heterogeneous commercial district.

Cost Approach

In the cost approach, the value of an improved property is estimated by adding the estimated land (or site) value and the estimated cost new of the improvements less depreciation. The cost approach can also be used to estimate the value of business property (fixtures and personal property).

The cost approach is the most universally applied approach in appraisal for property tax purposes and is preferred when neither reliable sales nor income data are available.¹⁶⁶ The cost approach is the only approach that can be applied to all improved real property and personal property. Some properties are rarely sold and/or do not have calculable incomes, but costs are incurred for all properties.

Rule 6, subdivision (a), directs when to use the cost approach:

The reproduction or replacement cost approach to value is used in conjunction with other value approaches and is preferred when neither reliable sales data (including sales of fractional interests) nor reliable income data are available and when the income from the property is not so regulated as to make such cost irrelevant. It is particularly appropriate for construction work in progress and for other property that has experienced relatively little physical deterioration, is not

¹⁶⁶ Rule 6.

misplaced, is neither over- nor underimproved, and is not affected by other forms of depreciation or obsolescence.

The rationale for the use of the cost approach is based upon the economic *principle of substitution*. This principle holds that a rational person will pay no more for a property than the cost of acquiring a satisfactory substitute, assuming no costly delay. Real property costs tend to equal value only when the improvement is new and reflects highest and best use. The cost approach is most reliable when the property being appraised is relatively new and has experienced little depreciation.

Comparative Sales Approach

The comparative sales approach may be defined as an approach that uses direct evidence of the market's opinion of the value of a property. In this approach, the appraiser estimates the market value of the subject property by comparing it to similar properties that have sold near in time to the valuation date of the subject property (after making appropriate adjustments for differing characteristics, if any, of the similar properties).¹⁶⁷ In addition to actual sales, the appraiser may consider listings, offers, options, and the opinions of owners, real estate agents, and other appraisers as to the selling prices that comparable properties might command. It is important to note that listings should not be considered as direct evidence of the final value estimate for real property. The comparative sales approach is based on the premise that the fair market value of a property is closely and directly related to the sales prices (under the conditions of an open market transaction) of comparable, competitive properties.

The comparative sales approach is not the only approach that utilizes market data. Construction costs and income information are also market data. However, significant differences exist in the nature of the market data in the cost and income approaches in contrast to the comparative sales approach. Neither costs nor incomes are direct evidence of market value. Rational people would consider cost and future income when buying and selling property in order to form their opinions of market value. However, in the comparative sales approach, an indicated value is direct evidence of the market's opinion of value, which gives this approach a certain preeminence.

Rule 4 states, in part:

When reliable market data are available with respect to a given real property, the preferred method of valuation is by reference to sales prices.

The comparative sales approach is based upon the principle of substitution and presumes that the market value of a property will approximate the sales prices, listings, offers, and appraisals of competitive substitutes. With a perfect degree of substitution and purely competitive market conditions, properties would have exactly the same value. No two real properties are ever identical; all differ at least in location. However, reasonable substitutes may exist if relevant economic characteristics are similar. Because bargaining is characteristic of most sales, even perfect economic substitutes frequently sell for different amounts. This is the nature of the real

¹⁶⁷ *Main & Von Karman Associates v. County of Orange* (1994) 23 Cal.App.4th 337.

estate market. (See also the section on 90-Day Rule for Comparable Sales Information in Chapter 7.)

Income Approach

The income approach to value includes any method of converting an income stream into a present value estimate, i.e., an indicator of current fair market value. The income approach is also called the capitalization of income approach because capitalization is the process of converting an expected income into an indicator of value.

The methods or techniques used in the income approach may be relatively simple (e.g., income or rent multipliers and direct capitalization), or more complex (e.g., various yield capitalization techniques). All of these methods are referred to as capitalization techniques because they convert an expected future income stream into a present value estimate.

The income approach requires careful application because small variations in its key variables (capitalization rate, duration of income stream, estimated income and expenses, etc.) may be mathematically amplified into a wide range of estimated value. This is particularly true for the capitalization rate variable. The accuracy of the income approach depends upon the validity of the assumptions used to estimate the key variables. The mathematical techniques used in the approach, while sometimes complicated, are merely tools for converting these assumptions into an estimate of current market value.

Rule 8 prescribes the conditions under which the income approach may be applied. Subdivision (a) specifies that:

The income approach to value is used in conjunction with other approaches when the property under appraisal is typically purchased in anticipation of a money income and either has an established income stream or can be attributed a real or hypothetical income stream by comparison with other properties. It is the preferred approach for the appraisal of land when reliable sales data for comparable properties are not available. It is the preferred approach for the appraisal of improved real properties and personal properties when reliable sales data are not available and the cost approaches are unreliable because the reproducible property has suffered considerable physical depreciation, functional obsolescence or economic obsolescence, is a substantial over- or underimprovement, is misplaced, or is subject to legal restrictions on income that are unrelated to cost.

The validity of the income approach depends upon the following three assumptions: (1) value is a function of income (i.e., the property is purchased for the income it will produce); (2) value depends upon the quality and quantity of the income stream (i.e., the investor demands a return of and on his or her investment in the property with consideration of the property's risk); and (3) future income is less valuable than present income (i.e., the value of the property is the sum of the present worth of its anticipated future net benefits). If the circumstances of the subject

property do not square with these three assumptions, the income approach should not be given weight as an indicator of the property's current market value.

CHAPTER 7: EVIDENCE, PRESUMPTIONS, AND BURDENS OF PROOF

Constitutional, statutory, and regulatory provisions set forth evidentiary procedures and rules governing the admissibility of evidence, standards of proof, and the order of presentation at assessment appeals hearings. These rules and procedures provide a framework within which the assessor and the taxpayer must present factual, appraisal, and legal issues for consideration by an appeals board. The taxpayer must fairly submit the question of the value of the property to the board in order to be entitled to attack its determination in court.¹⁶⁸

RULES OF EVIDENCE FOR APPEALS HEARINGS

In administrative adjudicative proceedings, such as assessment appeals hearings, almost all relevant evidence is admissible. *Evidence* means testimony, writings, material objects or other things presented to the senses that are offered to prove the existence or nonexistence of a fact. An appeals board is not required to observe formal rules of evidence used in courts of law, but may admit and consider most competent evidence bearing on a question before it.¹⁶⁹ Reasons for divergence from formal rules of evidence include:

- Complicated rules of evidence are intended to limit the discretion of lay jurors who may misunderstand or misuse evidence.
- Judges, like appeals boards members, are presumed to have great familiarity with the subject matter and, therefore, are less susceptible to errors in determining the probative value of many forms of evidence.¹⁷⁰

However, there are reasons that appeals boards may exclude specific evidence:

1. The evidence is not relevant to the matter in issue. Generally, if relevance is in doubt, a board should accept the evidence and give it appropriate weight during deliberation.
2. The prejudicial or inflammatory nature of the evidence outweighs any probative value. This reason usually does not apply in administrative hearings because the triers of fact, the appeals board members, are presumed to be capable of decision-making based on facts and reason. Nonetheless, an appeals board should exclude any evidence introduced by one party for the sole purpose of arousing negative feelings about the other party if such evidence has little or no probative value.
3. The evidence is unreliable though admissible in administrative hearings. When admitted, such evidence should be recognized as potentially unreliable and given appropriate weight by the board members.

¹⁶⁸ *Merchants Trust Co. v. Hopkins* (1930) 103 Cal.App. 473.

¹⁶⁹ *Rancho Santa Margarita v. County of San Diego* (1933) 135 Cal.App. 134; Section 1609.

¹⁷⁰ II Davis & Pierce, *Administrative Law Treatise* (3d ed. 1994) § 10.2, p.119.

STANDARD FOR ADMISSIBLE EVIDENCE

Rule 313, subsection (e), provides, in part:

Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

Relevant evidence is defined as:

Evidence tending to prove or disprove an alleged fact. Evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.¹⁷¹

INFORMAL PROCESS

Appeals hearings are conducted informally so that both the taxpayer and assessor can proceed without an attorney. The proceeding must allow both the applicant and the assessor a reasonable opportunity to be heard. For that reason, hearings must be conducted according to procedures designed to guarantee each party's right to fundamental fairness and due process. (See section on Procedural Due Process in Chapter 9.) Due process requirements are not met unless the taxpayer is accorded a full and fair hearing both in substance as well as in form.

Rule 313 prescribes the basic procedural requirements of hearings as follows:

- A full and fair hearing will be accorded each application.
- The appeals board may act only upon the basis of proper evidence admitted into the record. (See also section on Use of Personal Knowledge by the Board Members in Chapter 9.)
- There will be reasonable opportunity for the presentation of evidence, for the cross-examination of all witnesses, for argument, and for rebuttal by each party.

Furthermore, a reasonable opportunity to be heard includes such basic considerations as effective communication between the parties and the board members. For example, when either the taxpayer or the assessor presents information in a manner that is not clear, an appeals board member should ask for clarification so that he or she understands the point or information that is being presented. If there is a language barrier, a reasonable attempt must be made by the appeals board to ascertain what is being said.

An appeals hearing is not a contest of which party can make the most professional or persuasive presentation. The appeals process serves only to determine the proper full value of property.

In an appeals hearing, there are few formal rules of discovery and few formal procedures for admitting evidence. The board members may accept evidence from either the applicant or the assessor at any time during the hearing and in any manner deemed appropriate by the

¹⁷¹ *Black's Law Dictionary* (6th ed. 1997) p.894.

board, i.e., written evidence, maps, illustrations, testimony, etc. However, presentation of evidence should be controlled and directed in an orderly manner by the board chair. When necessary and appropriate, board members should ask for clarification as to the purpose for which the evidence is being introduced. The board may admit and consider any evidence that has some bearing on the question before it and is not otherwise objectionable. Evidence relative to the veracity of witnesses, such as prior inconsistent statements or testimony from an appeals hearing or court action, should be admitted by the appeals board. Should any such evidence include confidential information, it should only be admitted with the permission of the affected parties, or be deleted prior to introduction.

When an appeals board declares evidence inadmissible, it should be prepared to make a succinct reasoning for the disallowance of the evidence. The clerk of the board should maintain a copy of all admitted evidence presented at the hearing.

90-DAY RULE FOR COMPARABLE SALES INFORMATION

The preferred method of arriving at the assessed value of a property is through the use of market data that represents arm's-length, open market sales, of both the subject property and of comparable properties (when such data is available), that are near in time to the valuation date of the subject property.

Rule 324 specifies the nature of the evidence that appeals boards may consider regarding comparable sales:

- (d) When valuing a property by a comparison with sales of other properties, the board may consider those sales that, in its judgment, involve properties similar in size, quality, age, condition, utility, amenities, site location, legally permitted use, or other physical attributes to the property being valued. When valuing property for purposes of either the regular roll or the supplemental roll, the board shall not consider a sale if it occurred more than 90 days after the date for which value is being estimated. The provisions for exclusion of any sale occurring more than 90 days after the valuation date do not apply to the sale of the subject property.

The prohibition against considering sales of properties other than the subject property¹⁷² occurring more than 90 days after the date for which value is being estimated is mandatory on appeals boards. Attempting to submit evidence of such sales is the most common error among parties. The *valuation date*—the date used as the basis for determining the value of the property—depends upon the reassessment event:

- For change in ownership and new construction, the valuation date is the date of the transfer resulting in a change in ownership or the date the new construction was completed.¹⁷³

¹⁷² Rule 324, subsection (d).

¹⁷³ Section 75.10, subdivision (a).

- For declines in value or construction in progress, the valuation date is the lien date, January 1 of the current assessment year.
- For misfortune or calamity in counties which have adopted ordinances pursuant to section 170, the valuation date is the date the property sustained damage or destruction due to misfortune or calamity.
- For misfortune or calamity in counties which have not adopted ordinances, the valuation date is the lien date, January 1 of the current year.

Reliability of data may vary considerably. Even relatively poor data can fairly be considered as shedding light on the value if it is the best or only data available.¹⁷⁴ Generally, appeals boards should admit comparable sales information, provided the sales occurred prior to or within 90 days following the valuation date, and appropriate adjustments to those comparable sales have been made.

There are no statutes or regulations regarding the timeliness of valuation data other than those relating to comparable sales data. In general, an appeals board should consider data available to the market in general (which is presumably available to the assessor) as of the lien date; or in the case of a change in ownership or new construction, the date of transfer or completion; or for a calamity or misfortune, the date of the calamity or misfortune.

SUBPOENA AUTHORITY

An appeals board may issue a subpoena for records or attendance of witnesses on the board's own motion, or in response to a request from either the applicant or the assessor. Rule 322 provides the subpoena authority for appeals boards:

(a) At the request of the applicant or the assessor in advance of the hearing or at the time of the hearing, the board or the clerk on authorization from the board may issue subpoenas for the attendance of witnesses at the hearing. The board may issue a subpoena on its own motion. A subpoena may be served on any resident of the State of California or any person or business entity found within the state. All subpoenas shall be obtained from the board.

(b) If a subpoena is issued at the request of the applicant, the applicant is responsible for serving it and for the payment of witness fees and mileage.

(c) An application for a subpoena for the production of books, records, maps, and documents shall be supported by an affidavit such as is prescribed by section 1985 of the Code of Civil Procedure.

... (f) No subpoena to take a deposition shall be issued nor shall deposition be considered for any purpose by the board.

¹⁷⁴ *Domenghini v. San Luis Obispo* (1974) 40 Cal.App.3d 689.

An employee of the State Board of Equalization may be subpoenaed as a witness before a local equalization hearing at the request of the appeals board, the county legal advisor, the county assessor, or the applicant. In the event a State Board of Equalization employee is subpoenaed at the request of the applicant and the board grants a reduction in the assessment, the board may reimburse the applicant in whole or in part for the actual witness fees paid.¹⁷⁵

PRESUMPTIONS APPLICABLE TO ASSESSMENT APPEALS

Property tax assessments, and some factual circumstances on which property tax assessments are based, carry certain legal presumptions determining the manner in which evidence is presented as well as the quantum of evidence that a party is required to present. Under California law, a *presumption* is defined as:

... an assumption of fact that the law requires to be made from another fact or group of facts found or otherwise established in the action. A presumption is not evidence.¹⁷⁶

A presumption is either conclusive or rebuttable. Every rebuttable presumption is either (a) a presumption affecting the burden of producing evidence or (b) a presumption affecting the burden of proof.¹⁷⁷

Both the presumption affecting the burden of producing evidence and the presumption affecting the burden of proof may be used in an appeals hearing. The effect of a presumption affecting the burden of proof is to impose upon the party against whom it operates the burden of proving the nonexistence of the presumed fact.¹⁷⁸ Depending upon the matter in issue, a presumption may operate against either the assessor or the applicant.

An appeals board must apply an applicable presumption as the starting point for determination as to which party has the burden of the production of evidence. The appeals board then proceeds with examination of the evidence to determine whether the evidence is sufficient to rebut the presumption and to establish a different value for the protested property.

If the presumption operates against the applicant and the applicant fails to present evidence sufficient to rebut the correctness of the assessed value, at the request of the assessor, the appeals board will dismiss the case without requiring the assessor to provide evidence substantiating the assessed value. If the appeals board determines the applicant has presented evidence sufficient to make a *prima facie* case, the burden shifts to the assessor to present evidence to support his or her opinion of value.¹⁷⁹ However, if the presumption operates against the assessor and the assessor fails to present evidence sufficient to rebut the presumption, the appeals board should

¹⁷⁵ Section 1609.5.

¹⁷⁶ Evidence Code section 600.

¹⁷⁷ Evidence Code section 601.

¹⁷⁸ Evidence Code section 606.

¹⁷⁹ *Fujitsu Microelectronics, Inc. v. Assessment Appeals Board* (1997) 55 Cal.App.4th 1120.

rule in favor of the applicant providing that there is substantial evidence in the record to support the applicant's value.

PRESUMPTION THAT THE ASSESSOR HAS PROPERLY PERFORMED HIS OR HER DUTIES

The property tax system is based on the assumption that county assessors properly perform their assessment duties in accordance with law and other applicable standards. Evidence Code section 664 provides that "it is presumed that official duty has been regularly performed." With regard to assessments:

It will be presumed, in absence of contrary evidence, that assessor regularly and correctly assessed property for taxation.¹⁸⁰

This presumption operates against the applicant and the applicant may overcome it by presenting substantial, competent evidence different than the assessor's sufficient to make material the inquiry as to whether the assessor's methods were proper.¹⁸¹

Rule 321 sets forth the guidelines for appeals boards regarding the burden of proof during an appeals hearing and provides, in part:

(a) Subject to exceptions set by law, it is presumed that the assessor has properly performed his or her duties. The effect of this presumption is to impose upon the applicant the burden of proving that the value on the assessment roll is not correct, or, where applicable, the property in question has not been otherwise correctly assessed. The law requires that the applicant present independent evidence relevant to the full value of the property or other issue presented by the application.

With regard to the presumption stated above, the appeals board then proceeds with examination of the evidence to determine whether the applicant's evidence is sufficient to establish an opinion of value and that the evidence demonstrates that the assessor did not establish a correct assessment.

PRESUMPTION THAT A GOVERNMENTAL EMPLOYEE HAS PERFORMED THE JOB CORRECTLY

The presumption set forth in Evidence Code section 664 applies not only to the county assessor but to all employees of governmental agencies. Thus, it is presumed that the clerk of the board, the county legal advisor, the county auditor, the county tax collector, and so forth have performed their duties properly.

The official actions of governmental agencies other than the county assessor's office or the county legal advisor's office may affect the property tax assessment process, and there can be instances when such actions other than those in the assessor's office can affect the value of

¹⁸⁰ *E. E. McCalla Co. v. Sleeper* (1930) 105 Cal.App. 562.

¹⁸¹ *Campbell Chain Co. v. County of Alameda* (1970) 12 Cal.App.3d 248.

property. For example, a formal determination or ruling by a federal or state agency that a property has suffered contamination can have a substantial impact on the value of a property. In such a case, appeals boards should presume that all concerned governmental employees have properly performed their duties absent evidence to the contrary.

EXCEPTIONS TO ASSESSOR'S PRESUMPTION OF CORRECTNESS FOR DWELLINGS AND ESCAPE ASSESSMENTS

In addition to penalty assessments, the Legislature, for policy reasons, has placed the burden of proof on the assessor in other limited circumstances as well. In this regard, section 167 specifically provides:

(a) Notwithstanding any other provision of law to the contrary, and except as provided in subdivision (b), there shall be a rebuttable presumption affecting the burden of proof in favor of the taxpayer or assessee who has supplied all information as required by law to the assessor in any administrative hearing involving the imposition of a tax on an owner-occupied single-family dwelling, the assessment of an owner-occupied single-family dwelling, or the appeal of an escape assessment pursuant to this division.

(b) Notwithstanding subdivision (a), the rebuttable presumption described in that subdivision shall not apply in the case of an administrative hearing with respect to the appeal of an escape assessment resulting from a taxpayer's failure to file with the assessor a change in ownership statement, business property statement, or permit for new construction.

Thus, the assessor bears the burden of proof in appeals of owner-occupied single-family dwellings or escape assessments, provided, however, that the escape assessment did not result from a taxpayer's failure to file with the assessor a change in ownership statement or a business property statement, or to obtain a permit for new construction.

PURCHASE PRICE PRESUMPTION

Section 110 sets forth the *open market* conditions upon which are based full cash value or fair market value of real property—the standard for assessed value of real property in California. That section further provides in part:

... (b) For purposes of determining the "full cash value" or "fair market value" of real property, other than possessory interests, being appraised upon a purchase, "full cash value" or "fair market value" is the purchase price paid in the transaction unless it is established by a preponderance of the evidence that the real property would not have transferred for that purchase price in an open market transaction. The purchase price shall, however, be rebuttably presumed to be the "full cash value" or "fair market value" if the terms of the transaction were negotiated at arms length between a knowledgeable transferor and transferee neither of which could take advantage of the exigencies of the other....

Thus, the party asserting that the full value is other than the purchase price paid bears the burden of proving that the sale was not an open market transaction. Furthermore, that party must establish by a preponderance of evidence that the price paid would have been different if the sale had taken place under open market conditions.

Rule 2 states that this presumption may be rebutted by evidence that the full cash value of the property is significantly more or less than the total cash equivalent of the consideration paid for the property. *Significantly more or less* means a deviation of more than 5 percent of the total consideration.

Subsection (a) of Rule 2 states, "[w]hen applied to real property, the words 'full value,' 'full cash value,' 'cash value,' 'actual value,' and 'fair market value' mean the prices at which the unencumbered or unrestricted fee simple interest in the real property (subject to any legally enforceable governmental restrictions) would transfer...." Private restrictions or encumbrances on real property, such as below-market leases, are not properly considered when determining the fair market value of that property for property tax assessment purposes.¹⁸² Consequently, the purchase price of property, even if the sale occurred under *open market* conditions, may not be a valid indicator of the fair market value of that property if the purchase price was affected by private restrictions such as below-market leases.

The purchase price presumption applies to all property types and transfers with the exception of the following:

1. The transfer of any taxable possessory interest.
2. The transfer of real property when the consideration is in whole, or in part, in the form of ownership interests in a legal entity (e.g., shares of stock) or the change in ownership occurs as the result of the acquisition of ownership interests in a legal entity.
3. The transfer of real property when the information prescribed in the change in ownership statement is not timely provided.

PRESUMPTION REGARDING ENFORCEABLE RESTRICTIONS

Section 402.1 provides generally that the assessor must consider any enforceable restrictions in determining the value of property. Where enforceable restrictions exist, subdivision (b) creates a rebuttable presumption "that restrictions will not be removed or substantially modified in the predictable future and that they will substantially equate the value of the land to the value attributable to the legally permissible use or uses." Subdivisions (d) and (e) impose further requirements upon assessors when valuing enforceably restricted property under circumstances in which the presumption has not been rebutted and under circumstances in which it has been rebutted.

¹⁸² *Carlson v. Assessment Appeals Bd. 1* (1985) 167 Cal.App.3d 1004.

RETAINING ASSESSOR'S PRESUMPTION OF CORRECTNESS

For valuation of cable television interests, intercounty pipelines, and certain taxable airline possessory interests, the assessor has the presumption of correctness only if the value determination is made in accordance with standards prescribed by statute.

1. Valuation of cable television interests—the assessor must follow the parameters of section 107.7 to retain the presumption of correctness. When setting the value, if the assessor does not use a portion of the franchise fee as the economic rent, the resulting assessment will not benefit from any presumption of correctness. In addition, if the assessor uses the comparable sales method, which is not the preferred method to value cable television interests, the resulting assessment will not benefit from any presumption of correctness.
2. Valuation of intercounty pipelines—the assessor must follow the parameters of section 401.10 to retain the presumption of correctness. Section 401.10 mandates a methodology when determining values of intercounty pipelines for any year from the 1984-85 tax year to the 2010-11 tax year. Any assessed value that is determined on the basis of valuation standards other than those in section 401.10 will not benefit from any presumption of correctness. In addition, section 401.10 also mandates that when an assessed value is determined in accordance with the methodology in section 401.10, the taxpayer may not challenge the right to assess that property and the values determined in accordance with that methodology will be rebuttably presumed to be correct for that property for that tax year.
3. Valuation of airline taxable possessory interests—the assessor must follow the parameters of section 107.9 to retain the presumption of correctness. Section 107.9 mandates a methodology when determining values for certain taxable possessory interests for operators of certificated aircraft at publicly owned airports for fiscal year 1998-99 and thereafter. Assessments under this section will not exceed the factored base year value established under article XIII A.

If the assessor fails to follow the prescribed standards, neither party (assessor nor taxpayer) has a presumption of correctness. The appeals board must make its decision based solely on the weight of the evidence presented.

WHEN THE ASSESSOR MUST PRESENT EVIDENCE FIRST

There are five instances when the burden of proof shifts to the assessor; that is, the assessor must affirmatively establish by a preponderance of evidence the correctness of his or her opinion of value or other assessment action. Those instances are appeals involving the value of owner-occupied single-family dwellings, penalty assessments, escape assessments, nonenrollment of purchase prices, and when the assessor intends to request a higher assessed value than is on the roll.

Single-Family Homeowner Hearings

As stated above, pursuant to section 167 and Rule 321, the assessor bears the burden of proof if the matter in issue is the full value of an owner-occupied single-family dwelling. Owners of single-family residences generally represent themselves at appeals hearings without assistance from an attorney or tax representative. Usually, these applicants are novices to the assessment appeals process and have limited knowledge of property tax appraisal and appeals hearing procedures.

Penalty Hearings

When an applicant protests a penalty assessment, the burden of proof is on the assessor to justify the imposition of that penalty. Rule 313, subsection (c), provides that the "board shall not require the applicant to present evidence first when the hearing involves ... a penalty portion of an assessment." Thus, the assessor is required to present evidence to justify imposition of the penalty.

This rule is particularly helpful in situations where imposition of the penalty is mandatory upon the assessor even though the assessor believes the taxpayer acted in good faith. For example, a taxpayer may have started a new business and was unaware of the mandatory requirement for filing a property statement. The assessor discovers the existence of the property after the final filing date and requests that the taxpayer file a business property statement. In response to the assessor's request, the taxpayer promptly files a completed property statement; however, the assessor is required to add a penalty because the property statement was not timely filed. The taxpayer appeals the penalty, and the assessor recommends abatement of the penalty because the taxpayer acted in good faith.

Escape Assessment Hearings

When the matter in issue is the enrollment of an escape assessment which has not resulted from a taxpayer's failure to file a change in ownership statement, business property statement, or permit for new construction, the assessor bears the burden of proof and is required to present evidence first.¹⁸³ The assessor must adequately explain to the appeals board why the original assessment was incorrect and provide a reasonable description of how the escape assessment was made. If the assessor cannot establish a reasonable basis for making the escape assessment, then it should be voided by the appeals board. If the assessor establishes a reasonable basis for the assessment, then the applicant has an opportunity to persuade the board that there should be no escape assessment or that the assessment should be a different amount.

Nonenrollment of Purchase Price Hearings

Unless otherwise provided by law, if the assessor makes an assessment after a property has been sold and fails to enroll the purchase price of the property, then the assessor bears the burden of proof and must present evidence that the sale was not an open market transaction. Open market conditions which tend to produce a "full cash value" or "fair market value" as defined in section 110 include:

¹⁸³ Section 167.

- Exposure on the open market for a sufficient amount of time
- Neither the buyer nor the seller is able to take advantage of the exigencies of the other
- Both parties are seeking to maximize their gains
- Both buyer and seller have full knowledge of the property and are acting prudently

The open market conditions are elements that should be analyzed when the purchase price is being contested as the fair market value—whether contested by the applicant, the assessor, or the appeals board.

Furthermore, the assessor must establish by a preponderance of evidence that the price paid would have been different if the sale had taken place under open market conditions. Rule 2 provides that the presumption may be rebutted by evidence that the full cash value of the property is significantly more or less than the total cash equivalent of the consideration paid for the property.

Raise Letter

When the assessor sends an applicant a *raise letter*, a letter notifying the applicant that the assessor intends to request that the appeals board find a higher assessed value than is on the roll, the assessor no longer has the presumption that he or she has properly performed his or her duties.¹⁸⁴ However, if the applicant has failed to supply all the information required by law to the assessor, the assessor maintains the presumption of correctness.¹⁸⁵ When an appeal involves a raise letter situation and the applicant has supplied all required information, the assessor must present evidence first at the hearing to substantiate the higher value.¹⁸⁶

PRESUMPTIONS AFFECTING TITLE TO PROPERTY

Under some circumstances, establishing the legal and beneficial title to property is necessary to make a change in ownership determination. A change in ownership is defined in section 60 as "a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest." In general, fee simple title is presumed to be intended to pass by a grant of real property, unless it appears from the grant that a lesser estate was intended.¹⁸⁷ Furthermore, persons whose names appear as title holders on a deed are presumed to hold both legal and beneficial title. Evidence Code section 662 provides that "[t]he owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof."

Rule 462.200 identifies specific transactions in which the persons whose names appear on a deed may not necessarily hold beneficial interests in the property. The rule also sets forth factors which may be considered in determining whether the presumption of full fee title has been rebutted.

¹⁸⁴ Rule 313, subsection (f).

¹⁸⁵ Section 167.

¹⁸⁶ Rule 313, subsection (f).

¹⁸⁷ Civil Code section 1105.

BURDEN OF PROOF

Evidence Code section 115 defines *burden of proof* as "the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court." The party with the burden of proof is required to establish the existence or nonexistence of a fact by producing evidence that satisfies a required standard.

PREPONDERANCE OF EVIDENCE STANDARD

Unless otherwise provided by law, the required standard of proof in California is proof by a preponderance of the evidence.¹⁸⁸ This standard also generally applies to assessment appeal proceedings.¹⁸⁹ Thus, with respect to the assessor's presumption of correctness and its exceptions, the party with the burden must prove his or her case by a preponderance of the evidence.¹⁹⁰ A *preponderance of evidence* is usually defined "in terms of probability of truth" and as evidence which, when weighed against evidence offered in opposition to it, "has more convincing force and the greater probability of truth."¹⁹¹

CLEAR AND CONVINCING EVIDENCE STANDARD

There are certain legal presumptions applicable in property tax assessment matters in which the required standard of proof is that of *clear and convincing* proof. The clear and convincing standard is a higher standard than preponderance of the evidence and has been held to require evidence "so clear as to leave no substantial doubt."¹⁹² In other words, a preponderance calls for probability while "clear and convincing proof demands a high probability."¹⁹³

Examples of situations in property taxation where the clear and convincing standard apply are:

- Evidence that a clerical or other error occurred that requires correction more than four years after the year of the enrollment.
- Proof that an electronic transmittal of a tax payment was made on a specific date and time.

¹⁸⁸ Evidence Code section 115.

¹⁸⁹ Rule 324, subsection (a).

¹⁹⁰ Rule 321.

¹⁹¹ 1 Witkin, *Evidence* (3d ed. 1986) § 157, p.135.

¹⁹² *In re Jost* (1953) 117 Cal.App.2d 379.

¹⁹³ 1 Witkin, *Evidence* (3d ed. 1986) § 160, p.137.

CHAPTER 8: HEARING PROCEDURES

Section 16 of article XIII of the Constitution grants county boards of supervisors the authority to adopt rules and regulations relative to the assessment appeals process. Most counties have adopted local rules of practice regarding the hearing procedures for their appeals boards. Rule 313 sets forth procedural guidelines for conducting an assessment appeals hearing.

RESOLUTION VIA ROLL CORRECTION OR STIPULATION

Many disagreements between taxpayers and assessors are resolved prior to the assessment appeals hearing. These resolutions most often involve roll corrections or stipulations initiated by an assessor subsequent to receipt of pertinent information from a taxpayer.

ROLL CORRECTION SUBSEQUENT TO APPLICATION BEING FILED

Section 4831 allows an assessor to correct any error or omission involving the exercise of a value judgment that arises solely from a failure to reflect a decline in the full value of real property as required by subdivision (a)(2) of section 51. The assessor may correct the roll anytime within one year after the making of the assessment that is being corrected.

The Legislature amended section 4831 to permit corrections in order to reduce the workload of appeals boards in some counties which were overwhelmed with decline in value appeals. Even after an application has been formally filed with the appeals board, the assessor and the taxpayer may arrive at a mutually agreed upon value and, if within a year of making the assessment, the assessor can make a roll correction under section 4831.

If an agreement and correction have been made pursuant to section 4831, the taxpayer may withdraw his or her application from the appeals process. Counties are advised to develop a procedure by which applicants may withdraw their applications on the condition that the assessor enrolls the agreed upon value. By this means, if the taxpayer receives the notice from the county reflecting a new value different than the value agreed upon, or the assessor fails to take action, the taxpayer may still pursue the appeal. An appeals board is not required to accept withdrawal of an application for reduced assessment.

STIPULATION IN PLACE OF APPEARANCE AND TESTIMONY

An appeals board may not increase or lower any assessment without a hearing, and may act only on the basis of the evidence presented by the parties.¹⁹⁴ Ordinarily, the applicant must appear personally or be represented by an agent who is familiar with the facts of the matters in issue.¹⁹⁵ However, section 1607 does provide a means whereby a board may accept a written stipulation and waive the attendance of the applicant at the hearing. Section 1607 reads in part:

¹⁹⁴ *City of Oakland v. Southern Pacific Co.* (1900) 131 Cal. 226.

¹⁹⁵ Rule 317.

... in the event there is filed with the county board a written stipulation, signed by the assessor and county legal officer on behalf of the county and the person affected or the agent making the application, as to the full value and assessed value of the property which stipulation sets forth the facts upon which the reduction in value is premised, the county board may, at a hearing, (a) accept the stipulation, waive the appearance of the person affected or the agent and change the assessed value in accordance with Section 1610.8, or (b) reject the stipulation and set or reset the application for reduction for hearing.

Although many counties frequently use this stipulation process, an appeals board is not required to accept a stipulation. The appeals board is required to find the correct full value of the subject property. If the board is satisfied that the data presented in a stipulation constitute a reasonable basis for the full value, the board should accept the stipulation in the interests of promoting administrative efficiency and lessening the burden on taxpayers and government. If the basis for the stipulation is unclear or does not appear to be consistent with California property tax law, the appeals board should demand an adequate explanation and, if such an explanation is not produced, the board should reject the stipulation and set the matter for hearing. The appeals board must, of course, follow the mandatory hearing notice provisions of section 1605.6.

Section 1608 allows an appeals board to waive examination of the applicant "if the board and the assessor are satisfied that the issues raised by the application have been considered by the board in previous years or are fully presented in the application, and if the person or agent making the application requests such waiver in his or her application."

CONDUCTING APPEALS HEARINGS

In counties of the first class—those having a population in excess of 4,000,000 (Los Angeles County)—on the fourth Monday in September of each year, Rule 309 provides that the board will meet to equalize the assessment of property on the local roll and will continue to meet for that purpose from time to time until the business of equalization is disposed of. In all other counties, the board will meet on the third Monday in July and will continue to meet until the business of equalization is disposed of. Rule 309 specifically provides that its provisions do not require a board to conduct hearings prior to the final day for filing applications.

CONDUCT OF BOARD MEMBERS AND HEARING OFFICERS

Although the appeals hearing is intended to be an informal administrative proceeding, appeals board members and hearing officers should conduct themselves in a professional and courteous manner to promote respect for the integrity of the assessment appeals process and to ensure that applicants receive a fair and impartial hearing. The following are some recommended practices/procedures:

1. Members and hearing officers should always be punctual to their respective hearings and make sure that they are able to fulfill their time commitments for the day.

2. Members and hearing officers should promptly advise the clerk of the board of vacation plans or other time conflicts which would impact the hearing schedule.
3. Members, hearing officers, and clerks of the board should maintain a professional relationship with the county assessor's staff and county counsel's staff at all times.
4. Members, hearing officers, and clerks of the board should address all participants of the hearing as Mr. or Ms. and not refer to them on a first name basis during the hearing.
5. Members and hearing officers should base their decisions on the evidence presented at the hearing and not on personal knowledge; they should not express personal comments during the hearing.
6. Members and hearing officers may ask questions for clarification, but should not ask questions which may tend to direct or lead the testimony of the witnesses or parties.
7. Members and hearing officers should allow the parties to present their cases and not attempt to assist them with their presentations.
8. Members and hearing officers should not unnecessarily interrupt participants of the hearing while they are presenting their cases; rather, they should refer to their notes and ask questions at an appropriate time.
9. Members and hearing officers should not unduly question participants of the hearing about their qualifications.
10. Members, hearing officers, and clerks of the board should work to ensure that all applicants are afforded ample time to present their evidence without unreasonable time constraints.
11. Members and hearing officers should not accept or solicit further comments or questions by any participants of the hearing after all evidence and testimony have been received and the application has been taken under submission.
12. Members and hearing officers should advise the clerk of the board of any potential conflict of interest on a particular application to ensure that members and hearing officers do not hear an application where a conflict might exist.

ANNOUNCEMENT OF THE PROPERTY AND ISSUES

At the commencement of the hearing, the chair or the clerk will announce the number of the application and the name of the applicant. The chair will then determine if the applicant (or agent) is present. If neither is present, the chair will ascertain whether the clerk has notified the applicant of the time and place of the hearing. If the notice has been given and neither the applicant nor an agent is present, the application will be denied for lack of appearance, or, if good cause for the nonappearance is shown of which the board is timely informed, the board

may postpone the hearing.¹⁹⁶ If the notice has not been given, the hearing will be postponed to a later date and the clerk directed to give proper notice to the applicant.¹⁹⁷

If the applicant (or agent) is present at the hearing, the chair or the clerk will announce the nature of the application, the assessed value as it appears on the local roll, and the applicant's opinion of the value of the property. The chair may request that either or both parties briefly describe the subject property, the issues the board will be requested to determine, any recommendation by the assessor, and any agreements or stipulations agreed to by the parties.¹⁹⁸

APPEARANCE BY THE APPLICANT

The applicant must appear personally at the hearing or be represented by an agent unless the applicant's appearance has been waived by the board.¹⁹⁹ If the applicant is represented by an agent, the agent must be thoroughly familiar with the facts pertaining to the matter before the board.²⁰⁰ The board may require confirmation that the applicant is properly represented at the hearing.

SWEARING IN OF THE PARTIES AND WITNESSES

All testimony will be taken under oath or affirmation. The clerk or hearing officer will administer an oath to both parties to the hearing, as well as to anyone who will give evidence during the hearing.

Every person who willfully states anything which he or she knows to be false in any oral or written statement, not under oath, required or authorized to be made as the basis of an application to reduce any tax or assessment, is guilty of a misdemeanor.²⁰¹

PRESENTATION OF EVIDENCE

As discussed in Chapter 7, the applicant usually has the burden of proof in an appeals hearing and is required to present evidence first, rebutting the presumption that the value of the protested property is not the value established by the assessor. There are five exceptions when the procedure is reversed and the assessor must furnish evidence first:

- The assessment of an owner-occupied single-family dwelling.
- The imposition of a penalty.
- The assessment of an escaped property, except where the taxpayer or assessee has failed to supply all information, including a business property statement, change in ownership statement, or permit for new construction, as required by law, to the assessor.

¹⁹⁶ Rule 313.

¹⁹⁷ *International Medication Systems, Inc. v. Assessment Appeals Bd.*, *supra*.

¹⁹⁸ Rule 313, subsection (b).

¹⁹⁹ Section 1607; Rule 316.

²⁰⁰ Rule 317.

²⁰¹ Section 1610.4.

- The assessor does not enroll the purchase price.
- The assessor intends to request a higher assessed value than is on the roll.

The hearing need not be conducted according to technical rules relating to evidence and witnesses. It is the responsibility of the board chair to guide the hearing process; generally, most hearings are informally structured. Typically, a hearing should proceed as follows:

- The party who is required to give evidence first makes a presentation.
- The other party and/or board members ask questions of the party making the presentation.
- The other party makes a presentation.
- The other party and/or board members ask questions.
- Either or both parties present evidence to rebut the other party's evidence.

The chair should not close the evidentiary portion of the hearing until there has been a reasonable opportunity for the presentation of evidence, for the cross-examination of all witnesses and materials proffered as evidence, for argument, and for rebuttal, including questions and comments of the board members.²⁰²

QUESTIONING PARTIES AND WITNESSES

Questioning during an appeals board hearing is much less formal than in a courtroom. In court, answers that are not responsive to the question posed may be stricken from the record. An appeals board, however, may allow testimony even though it is not directly related to the question which prompted it. In court, cross-examination is limited to questioning directly related to the scope of testimony given by the witness. An appeals board may admit testimony as to any matters relevant to the issue, although it is preferable that cross-examination be limited to issues presented on direct examination.

As permitted by the board chair, each party may call and examine witnesses, introduce exhibits, and cross-examine opposing witnesses on any matter relevant to the issues. Any relevant evidence is admissible if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of the valuation of similar properties.

An appeals board may ask its own questions of a witness. Normally, the board members will wait until after the parties have finished their direct, cross, and redirect examinations. However, an appeals board member need not hesitate to ask a witness to clarify or expand upon testimony at any point during the proceeding. Although it may not be desirable to interrupt because it tends to disrupt the flow of the witness' presentation, the appeals board must be able to make an informed decision. For that reason, if some point seems relevant and a board member is not sure what the witness said or meant, it is better to ask for clarification immediately.

²⁰² Rule 313, subsection (e).

Property tax rules governing appeals board procedures do not address the issue of cross-examination of parties at a hearing. Counties should adopt local rules of practice to make their policy clear to both sides at the outset of the hearing.

HEARINGS WILL BE RECORDED

All hearings of the board will be recorded or reported, or videotaped.²⁰³ A hearing is considered "recorded or reported" if it is taken down by a stenographer or court reporter, tape recorded, or videotape recorded. Counties should provide in their rules of practice the manner in which a hearing will be recorded and the fee that will be charged to obtain a copy of the hearing transcript. With regard to obtaining a copy of the transcript, the request must be made within 60 days after the final determination of the board. In counties that do not regularly employ stenographers to report hearings, an applicant may, at his or her own expense, have a stenographer present.²⁰⁴

HEARINGS MUST BE OPEN TO THE PUBLIC

Section 1605.4 and Rule 313 require that appeals board hearings and hearing officer hearings must be open, accessible, and audible to the public. When a portion of a hearing involves evidence regarding trade secrets for which the assessor or applicant wishes to maintain confidentiality, that portion of the hearing may be closed to the public. If the board grants the request of the assessor or applicant to close a portion of the hearing, only evidence relating to the confidential information may be presented during the time the hearing is closed to the public.

A trade secret:

... means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.²⁰⁵

Counties should include in their local rules a procedure for maintaining the confidentiality of transcripts and exhibits presented during portions of appeals hearings closed to the public.

While the hearing process itself must be open to the public, there is no requirement that appeals board members must arrive at a decision before closing a hearing. Therefore, at the conclusion of taking evidence, the board may deliberate in private to reach a decision.²⁰⁶

²⁰³ Rule 312, subsection (a).

²⁰⁴ Rule 312.

²⁰⁵ Civil Code section 3426.1.

²⁰⁶ Section 1605.4; Rule 313, subsection (g)(1).

APPLICABILITY OF THE BROWN ACT

The Ralph M. Brown Act²⁰⁷ provides that all meetings of a legislative body of a local agency will be open and public, and all persons will be permitted to attend any meeting of a legislative body. Notice must be given of each meeting to those who request it, an agenda must be posted, and the public must be provided an opportunity to directly address the legislative body.

In view of the specific statutory requirements set forth in Revenue and Taxation Code sections 1601 through 1645.5, the Office of the Attorney General was requested to issue a formal opinion on the following question:

Does the Ralph M. Brown Act apply to the hearings of a county board of supervisors when acting as the county board of equalization or to the hearings of an assessment appeals board?²⁰⁸

The Office of the Attorney General concluded that appeals board hearings are governed by the more specific Revenue and Taxation Code provisions rather than the Brown Act provisions which are "tailored for the traditional type of meetings held by boards of supervisors, city councils, and other legislative or administrative bodies which normally conduct their business sessions in public."²⁰⁹

The opinion reasoned that the fact that the Legislature had continued to amend and refine the Revenue and Taxation Code statutory scheme demonstrated an intent that these specific code requirements control. Otherwise, applying the Government Code provisions would render meaningless the procedural requirements of sections 1601 through 1645.5 and such a construction should be avoided whenever reasonably possible.²¹⁰

CONTINUANCE

The board may continue a hearing to a later date. If the hearing is continued, the clerk will inform the applicant (or agent) and the assessor in writing of the time and place of the continued hearing not less than 10 days prior to the new hearing date, unless the parties agree in writing or on the record to waive written notice.²¹¹

There are two primary reasons for continuing a hearing:

- New information introduced at the hearing—If new material relating to the information received from the other party during an exchange of information is introduced, the other party may request a continuance for a reasonable period of time.²¹²

²⁰⁷ Government Code sections 54950-54962.

²⁰⁸ 79 Ops.Cal.Atty.Gen. 124 (1996).

²⁰⁹ *Id.* at p.126.

²¹⁰ *Id.* at p.127.

²¹¹ Rule 323, subsection (c).

²¹² Rule 305.1, subsection (c).

- Amendment of an application—If the appeals board grants a request to amend an application, upon request of the assessor, the hearing on the matter will be continued by the board for no less than 45 days, unless the parties mutually agree to a different period of time.²¹³

If the applicant requests a continuance within 90 days of the expiration of the two-year limitation period provided in section 1604, the board may require a written extension signed by the applicant extending and tolling the two-year period indefinitely. The applicant has the right to terminate the extension agreement upon 120 days written notice.²¹⁴

POSTPONEMENTS

Rule 323, subsection (a), provides in part:

The applicant and/or the assessor shall be allowed one postponement as a matter of right, the request for which must be made not later than 21 days before the hearing is scheduled to commence.

If the applicant requests a postponement of a scheduled hearing within 120 days of the expiration of the two-year limitation period provided in section 1604, the postponement will be contingent upon the applicant agreeing to extend and toll indefinitely the two-year period. The applicant has the right to terminate the extension agreement with 120 days written notice.

The assessor is not entitled to a postponement as a matter of right within 120 days of the expiration of the two-year limitation period. However, at the discretion of the board, such a request may be granted.

In addition, if the applicant or the applicant's agent are unable to attend a properly noticed hearing, the applicant or the applicant's agent may request, prior to the hearing date, a postponement of the hearing with a showing of good cause to the board.²¹⁵ Any information exchange dates established pursuant to Rule 305.1 remain in effect based on the originally scheduled hearing date, notwithstanding the hearing postponement, except when a hearing is postponed due to the failure of a party to respond to an exchange of information.²¹⁶

A board of supervisors may delegate decisions concerning postponement to the clerk in accordance with locally adopted rules.

²¹³ Rule 305, subsection (e)(2)(C)(iv).

²¹⁴ Rule 323, subsection (a).

²¹⁵ Rule 313.

²¹⁶ Rule 305.1, subsection (d); Rule 323, subsection (a).

CHAPTER 9: DECISION PROCESS

An appeals board must render a decision on each application over which it has jurisdiction after a properly conducted hearing on the matters in issue. The decision may be rendered at the conclusion of the hearing, or the decision may be deferred to a later time after deliberation. Unless the hearing is bifurcated, the decision must be complete and dispose of all issues raised in the application that are within the jurisdiction of the board. The decision of an appeals board with regard to specific valuations and methods of valuation is equivalent to the findings and judgment of a trial court.²¹⁷

QUORUM AND VOTE REQUIRED

Rule 311 prohibits an appeals board from making a decision unless a quorum of the members is present. "A hearing must be had before a majority of the members of the board; a hearing before less than a majority may constitute a denial of due process."²¹⁸ The decision must be arrived at by a vote of the members. Rule 311 provides:

No hearing before the board shall be held unless a quorum is present ... no decision, determination, or order shall be made by the board by less than a majority vote of all the members of the board who have been in attendance throughout the hearing.

APPROPRIATE USE OF APPRAISAL APPROACHES AND METHODS

In most appeal hearings, the goal of the appeals board is to make a determination of the full value of the property under appeal. Generally, this is accomplished by reviewing an appraisal or those data pertinent to the subject property. In an economic context, *appraisal* is the process of estimating the value of a specific property at a stated time and place. The word *valuation* is also used in this sense as a synonym for appraisal. An appraisal unit of property is a collection of assets that functions together, and that persons in the marketplace commonly buy and sell as a single unit or that is normally valued in the marketplace separately from other property, or that is specifically designated as such by law.²¹⁹ Any appraisal or valuation of property involves three fundamental considerations.

DEFINITION OF VALUE

The first consideration is obtaining a clear definition of value acceptable for the purpose of the appraisal. In California, the value standard for property tax purposes is full cash or fair market value. The constitutional requirement of *fair market value* is defined as follows:

²¹⁷ *McClelland v. Board of Supervisors* (1947) 30 Cal.2d 124.

²¹⁸ *Bandini Estate Co. v. County of Los Angeles* (1938) 28 Cal.App.2d 224.

²¹⁹ Rule 324, subsection (b).

It provides, in other words, for an assessment at the price that property would bring to its owner if it were offered for sale on an open market under conditions which neither buyer nor seller could take advantage of the exigencies of the other. It is a measure of desirability translated into money amounts ... and might be called the market value of property for use in its present condition.²²⁰

In most cases, an appeals board is obligated to find the fair market value as of the assessment date (the lien date or the date of change in ownership or completion of new construction).

However, there are circumstances in which an appeals board is required to find a full value that is different from fair market value. For example, an agricultural property may be subject to a California Land Conservation Act contract and must be assessed on its income-producing capability using a statutorily specified capitalization rate. For this type of property, the dispute between the assessor and taxpayer typically involves the income-producing capability of the property rather than the fair market value of the property.

DEFINITION OF PROPERTY RIGHTS

The second consideration is obtaining a clear definition of the property rights or interests that are to be valued, which includes identifying the appraisal unit. In most cases, the identification of the appraisal unit is obvious and causes few or no problems. For example, single-family homes are typically sold in combination with the land. Buyers and sellers negotiate for the land and the buildings as a unit and not separately.

In some cases though, the identification of the appraisal unit may not be as obvious. For example, unimproved residential subdivision lots owned by one person may be sold individually or in groups. Also, a farm property may consist of several parcels that could be sold separately or as a single farm unit. Unit of appraisal decisions should be based on consideration of ownership, use, location, and, most importantly, highest and best use. For example, there could be a sale of a farm that consists of several parcels. Although the taxpayer may appeal the value of a single parcel, the appeals board would be justified in reviewing the value of the entire farm. As discussed earlier, even though the taxpayer files an appeal on only a portion of the property, the appeals board on its own motion or at the request of the assessor may equalize the entire property.²²¹

In addition to the above examples, in some instances the property being appraised includes rights other than the fee simple rights such as grazing rights, mining rights, and air rights. When there is disagreement between the applicant and the assessor regarding the identification of the property being appraised, the appeals board must resolve the dispute in accordance with property tax laws.

²²⁰ *De Luz Homes, Inc. v. County of San Diego* (1955) 45 Cal.2d 546; see sections 110 and 110.1.

²²¹ Rule 324, subsection (b).

DETERMINE PROPER APPRAISAL METHOD(S)

The third consideration is determining the proper method, or methods, by which the value should be estimated. An appeals board is bound by the same principles of valuation that an assessor is legally required to follow when determining the fair market value of the protested property.

Rules 3, 4, 6, and 8 discuss the three generally recognized approaches to value:

- Comparative sales approach
- Cost approach
- Income approach

A considerable amount of appraisal judgment may be necessary when using any of the valuation approaches. The appeals board will be provided with the appraisal method or methods used by the assessor. In some instances, the applicant will also provide the board with an appraisal of the subject property, which may not be based on the same appraisal method(s) used by the assessor.

The appeals board must determine the fair market value by utilizing the appraisal method or methods most appropriate for the type of property in dispute. In addition, the board must determine whether the method(s) used was properly applied, considering the type of property assessed and any governmentally imposed land use restrictions, by examining the factual data, the presumptions, and the estimates relied upon.²²²

PROCEDURAL DUE PROCESS

Prior to and during the conduct of a hearing and in the process of reaching a decision, an appeals board must act to guarantee fundamental fairness to all parties by ensuring the requirements of *procedural due process* are met. In the administrative hearing context, due process requires that, at a minimum, each party receives adequate notice and opportunity for hearing.²²³ Failure to afford all parties the right to fundamental fairness by denying due process constitutes grounds for judicial review.²²⁴

Denial of procedural due process may result from defects in the composition of the board, or in the manner in which the board conducts a hearing. Examples of denial of procedural due process that have been held to invalidate equalization proceedings include:²²⁵

- One-person hearings
- Refusal to allow reasonable opportunity for cross-examination
- Refusal to permit reasonable argument

²²² Rule 324, subsection (a).

²²³ 7 Witkin, *Summary of Cal. Law* (9th ed. 1988) § 518, p.715; *International Medication Systems, Inc. v. Assessment Appeals Bd.*, *supra*.

²²⁴ *Universal Construction Oil Co. v. Byram* (1944) 25 Cal.2d 353.

²²⁵ *Id.* at p.361.

- Ex parte communication concerning an appeal with any members of the appeals board regarding the appeal by any party (or his or her representative)

DECISION MUST BE BASED ON EVIDENCE PRESENTED

Rule 324 provides:

Acting upon proper evidence before it, the board shall determine the full value of the property, including land, improvements, and personal property, that is the subject of the hearing. The determination of the full value shall be supported by a preponderance of the evidence presented during the hearing.

All decisions rendered by an appeals board must be based on the evidence taken at the hearing.²²⁶ A board should not accept or consider evidence from either the assessor or the applicant at any time outside of the hearing. Even if the evidence offered prior to the hearing is later introduced during the hearing, the party providing the evidence may have created an unfair advantage for his or her viewpoint.

If an appeals board concludes the evidentiary portion of a hearing and chooses to deliberate in private, the board will not accept evidence subsequent to the hearing. A board may not change an assessment without evidence, nor may its action in denying an application for a reduction be based upon evidence taken subsequent to the hearing and out of the presence of one of the parties.²²⁷

USE OF CONFIDENTIAL ASSESSOR INFORMATION

Confidential documents, as described in sections 408 and 451, obtained by the assessor while discharging the duties of his or her office may not be disclosed to the public or competitors of the taxpayer unless a court so orders. If the confidential information relates to the applicant, it may be used in the course of the appeals hearing.²²⁸

RULES OF THUMB

A *rule of thumb* is a perception based on experience or practice rather than on evidence or knowledge. Rules of thumb, or preconceived conclusions, are completely inappropriate in an assessment appeals hearing. Examples of inappropriate rules of thumb include such things as:

- Swimming pools never add in value what they cost.
- Property in the south part of the county is not as valuable as the rest of the county.
- Homes on a corner are always worth more.

²²⁶ *City of Oakland v. Southern Pacific Co., supra.*

²²⁷ *Bandini Estate Co. v. County of Los Angeles, supra.*

²²⁸ *Chanslor-Western Oil v. Cook* (1980) 101 Cal.App.3d 407.

WEIGHT OF THE EVIDENCE

At the conclusion of the hearing, the board members must assimilate all the evidence presented to them. In order to evaluate the evidence and render a decision, the members must determine the weight each piece of evidence merits. Weight is not based on quantity, but rather depends on credibility, that is, the effect of the evidence in inducing belief. The presumption that the assessor has properly performed his or her duties is not evidence and will not be considered by the board in its deliberations.²²⁹

The qualifications of the person presenting testimony and other evidence is only one factor to be considered in determining the weight to be given to that testimony and other evidence. The assessor's information should not be given more credence for the sole reason that "the assessor makes appraisals for a living." Conversely, testimony of an "expert witness" for a taxpayer should not be deemed more credible merely based on his or her title.

BOARD MUST HAVE SUFFICIENT INFORMATION TO MAKE A DECISION

In order for the appeals board members to properly adjudicate any matter before them, they must be presented with sufficient information to render a decision. Board members should be diligent in asking for clarification in areas of uncertainty. A decision should not be based on inconclusive evidence. If, in the opinion of the board, not enough evidence was provided during the course of the hearing to make a decision, the board may continue the hearing so that information they believe is pertinent may be assembled and brought before them.

RECOGNITION OF PRESUMPTIONS

During the decision process, an appeals board must evaluate evidence presented and recognize any applicable statutory presumptions (see Chapter 7).

USE OF PERSONAL KNOWLEDGE BY THE BOARD MEMBERS

There are two types of personal knowledge that appeals board members may possess:

1. Knowledge about properties in the county based on past experiences or facts gained by virtue of having lived in the area for a period of time.
2. Knowledge of a technical or professional nature gained through education and in the course of one's profession.

An appeals board member is prohibited from using personal knowledge as described in number 1 above in rendering a decision on a protested property value. The fact that a member is familiar

²²⁹ Rule 321, subsection (b).

with the appealed property, or privy to rumors about the appealed property, must not influence a member's evaluation of the evidence presented during the hearing.²³⁰

On the other hand, use of technical and professional knowledge is not only permitted, it is quite desirable. Board members with accounting, appraisal, legal, and real estate backgrounds typically have a better understanding of appraisal, legal, and complex business issues and are, therefore, usually more adept at the decision-making process; however, use of technical and professional knowledge must be applied to the evidence presented during the hearing. The Legislature recognized the benefits of professional knowledge for appeals board members when it enacted minimum eligibility requirements.²³¹

FULL VALUE

The value that the appeals board must determine is the full value of the property, which is usually the fair market value. However, in some cases full value is based on special valuation restrictions imposed by law. Full value is the value the assessor will enroll and on which the tax liabilities will be based. An appeals board must use legally valid valuation principles and methods as is required of the assessor and applicant.

An appeals board's value determination is not limited by either party's opinion of value. The board is not required to choose between the opinions of value promoted by the parties to the appeal, but will make its own determination of value based upon the evidence properly admitted at the hearing.²³² The board may establish its own value insofar as the value conclusion falls within an acceptable range from the evidence presented and is not based on speculation and conjecture.²³³

FINDINGS OF FACT

If an applicant or the assessor desires written findings of fact, the request must be in writing and submitted to the clerk before commencement of the hearing.²³⁴ The fee for findings may be tendered any time before the conclusion of the hearing.²³⁵ The findings of fact should discuss all of the material points raised by the application and at the hearing. The findings should also include a statement of the method or methods of valuation used in determining the full value of the property.

The board may request any party to submit proposed written findings of fact and will provide the other party the opportunity to review and comment on the proposed findings submitted. If both

²³⁰ Rule 313, subsection (e).

²³¹ Sections 1624 and 1624.05.

²³² Rule 324, subsection (b).

²³³ *Madonna v. County of San Luis Obispo* (1974) 39 Cal.App.3d 57.

²³⁴ Rule 308, subsection (a).

²³⁵ Section 1611.5.

parties prepare proposed findings of fact, no opportunity to review and comment need be provided.²³⁶

The findings should be sufficiently complete such that, if the board's decision is appealed, a reviewing court is able to determine from the findings that the board's decision addressed the material points raised based on the evidence presented by the applicant and assessor, and that the board's rulings on these points and the final value decision were reasonable and in compliance with applicable property tax laws.

A reviewing court will not substitute its judgment of value for that of the appeals board. However, if the court cannot determine from the record and findings of fact that the appeals board's decision is supported by substantial evidence, the court will remand the matter to the board with instructions to reconsider its decision or rehear the matter consistent with directions issued by the court.

The county may charge a reasonable fee to cover the expense of preparing the findings; this fee should be included in the rules of practice adopted by the county. When findings have been requested by either the applicant or the assessor, the county staff for the appeals board must provide the findings within 45 days after the final determination of the board is entered into the record pursuant to the requirements of Rule 325.²³⁷ (See section on When is a Decision Final.)

If, upon request, a board fails to make findings of fact or to make findings that reasonably comply with statutory requirements, then the county is liable for reasonable costs necessary for making them. Section 1611.6 provides:

If the county board fails to make findings upon request, or if findings made are found by a reviewing court to be so deficient that a remand to the county board is ordered to secure reasonable compliance with the elements of findings required by Section 1611.5, the action of the county board shall be deemed to be arbitrary and capricious within the meaning of Section 800 of the Government Code, so as to support an allowance of reasonable attorney's fees against the county for the services necessary to obtain proper findings. The dollar limitation set forth in Section 800 of the Government Code shall not apply to an allowance of attorney's fees pursuant to this section.

TRANSCRIPT OF HEARING

The county board is required to make a record of the hearing and, upon request, will furnish the party with a tape recording or a transcript at his or her expense. Request for a tape recording or a

²³⁶ Rule 325, subsection (b).

²³⁷ Rule 308.

transcript may be made at any time, but not later than 60 days following the final determination by the county board.²³⁸

The county may charge a reasonable fee for a transcript. This fee should be included in the rules of practice adopted by the county.

In a county which does not regularly employ a stenographic reporter, the applicant, at his or her own expense, may have the hearing reported by a stenographer. If the applicant desires the clerk to arrange for a stenographic reporter, the applicant must ask the clerk to do so in writing at least ten days before the hearing.²³⁹

If a stenographic reporter is present, the county may designate the reporter's transcript as the official record upon being filed with the board.²⁴⁰

NOTICE OF DECISION

A board may announce its decision to the applicant and the assessor at the conclusion of the hearing, or it may take the matter under submission. If the matter is taken under submission, the clerk must notify the applicant in writing of the decision of the board by United States mail addressed to the applicant or to an agent at the address given in the application.²⁴¹

WHEN IS A DECISION FINAL

An appeals board may announce its decision at the conclusion of the hearing or the matter may be taken under submission by the appeals board at that time.

Rule 325 provides, in part, that a decision becomes final when:

- (1) The vote is entered into the record at the conclusion of the hearing provided no findings of fact are requested by either party, and all parties are present at the hearing or the hearing is subject to stipulation by both parties...
- (2) A written notice of the decision is issued provided no findings of fact are requested by either party, and the decision is taken under submission by the board at the conclusion of the hearing...
- (3) A written notice of the decision is issued or the findings of fact are issued, whichever is earlier, provided findings of fact are requested....

Rule 325 also prescribes time limitation periods within which the notice of decision and findings of fact will be issued.

²³⁸ Section 1611.

²³⁹ Rule 312, subsection (d).

²⁴⁰ Rule 312, subsection (e).

²⁴¹ Rule 325.

When findings of fact have been prepared, either party or the clerk may request clarification but such a request will not alter the final decision. An applicant or the assessor may request clarification in order to determine whether to appeal all or some part of the board's decision. Therefore, clarification should be made promptly to enable the requesting party to be fully informed of the legal and factual issues on which the board based its decision well in advance of any subsequent filing deadlines.²⁴²

RECONSIDERATION AND REHEARING

The decision of the board upon an application is final. The board will not reconsider or rehear an application or modify a decision.²⁴³ The board is prohibited from amending a final determination based on information received subsequent to the hearing. The value established by the board is conclusively presumed to be the full value of that property until such time as a reassessable event occurs, e.g., a change in ownership.

The board may, however, amend a decision to correct a ministerial clerical error,²⁴⁴ and may reopen a hearing when it was previously closed due to nonappearance by the applicant.²⁴⁵ Correcting a *ministerial clerical error* involves instances only when there is no occasion to use judgment or discretion, such as correcting a mathematical error made while computing the value of a property.

In instances where only a portion of a property has been equalized by an appeals board, the remainder of that property may be eligible for review by an appeals board. If, for example, additional improvements are discovered by the assessor after a property's value has been set by an appeals board, those additional improvements can be the subject of a later hearing.

²⁴² Section 5097 specifies that claims for refunds must be filed within four years of the date of payment of the taxes or the application may be designated as a claim for refund.

²⁴³ Rule 326.

²⁴⁴ Rule 326, subsection (a)(1).

²⁴⁵ Rule 313, subsection (a); Rule 326, subsection (a)(2).

CHAPTER 10: JUDICIAL REVIEW OF THE DECISION

On appeal from an appeals board's decision, if an applicant or the assessor claim only that the appeals board erroneously applied a valid method of determining full value, the decision of the board is equivalent to the determination of a trial court, and the reviewing court may review only the record presented to the board. Judicial review is limited to a determination of whether substantial evidence exists to support the board's findings. The court may overturn the board's decision only when no substantial evidence supports it, in which case the actions of the board are deemed so arbitrary as to constitute a deprivation of property without due process.²⁴⁶

An appellant has no right to a trial de novo to resolve conflicting issues of fact as to the value of a property. Stated another way, with respect to findings of fact, a court will not substitute its own judgment for that of an appeals board. If the board has arrived at a determination based on the consideration of proper evidence, though it could have reached a contrary conclusion, it will be affirmed.²⁴⁷

If an appeal challenges the validity of the method of valuation used by the board, then the decision is subject to review by a court to determine whether the challenged method is arbitrary, in excess of discretion, or in violation of the standards prescribed by law.²⁴⁸ In addition, an appeal may be taken on the grounds that an applicant or assessor was denied due process.

Denial of due process may result from a conscious failure by the appeals board to exercise fair or impartial judgment, or an appeals board's decision made without substantial evidence to support it.²⁴⁹

It is not, however, necessary that fraud or bad faith on the part of the appeals board be expressly shown. It may arise by implication out of the fact that the assessment when taken as a whole, and viewed with respect to the assessable values of the various kinds of taxable property, discloses such a degree of discrimination between properties of the same class or properties of different classes as to show willful and systematic disregard of the requirement of the Constitution and statutes.

PREREQUISITE TO FILING FOR JUDICIAL REVIEW

Ordinarily, a taxpayer seeking relief from an erroneous assessment of property tax must exhaust available administrative remedies before resorting to the courts. The administrative remedies are:

²⁴⁶ *County of Orange v. Orange County Assessment Appeals Bd.* (1993) 13 Cal.App.4th 524.

²⁴⁷ *Rancho Santa Margarita v. County of San Diego*, *supra*.

²⁴⁸ *Bret Harte Inn, Inc. v. City and County of San Francisco*, *supra*.; *De Luz Homes, Inc. v. County of San Diego*, *supra*.

²⁴⁹ *County of Orange v. Orange County Assessment Appeals Bd.*, *supra*.

- Filing an application for reduction in assessment with the local appeals board
- Filing a claim for refund of excess taxes paid with the local board of supervisors

However, an application to the local appeals board is not required in cases where the facts are undisputed and the protest alleges that the property assessed is tax exempt, outside the jurisdiction of the county, or nonexistent, or where the assessment is void for failure to follow statutory procedures.²⁵⁰

In cases in which the applicant and the assessor stipulate that the application involves only nonvaluation issues, subdivision (b) of section 5142 provides that the applicant and the assessor may file a stipulation to that effect which may be accepted or rejected by an appeals board. Such a stipulation, if accepted by an appeals board, will be deemed as compliance with the requirement that an application must be filed and prosecuted in order to exhaust administrative remedies. Although section 1605.5 specifically allows the appeals board to hear change in ownership, new construction, and penalty issues, those are nonvaluation issues subject to stipulation within the meaning of section 5142.

In any event, the taxpayer must file a claim for refund with the board of supervisors as a prerequisite to filing for judicial review. If the application filed with the appeals board states that it also serves as a claim for refund, that statement constitutes exhaustion of the administrative requirement of filing a claim for refund with the county board of supervisors.²⁵¹

²⁵⁰ *Westinghouse Electric Corp. v. County of Los Angeles, supra.*

²⁵¹ Section 5141.

APPENDIX 1: LIST OF ASSESSORS' HANDBOOK SECTIONS

The *Assessors' Handbook* is a series of sections published by the California State Board of Equalization. It is a collection of reference manuals addressing property tax appraisal and assessment practices. These are the same handbook sections used by the State Board of Equalization staff and the staff of the county assessors' offices of California.

The *Assessors' Handbook* is available in Adobe Acrobat format on the World Wide Web. To download, display, or print the various handbook sections, point your web browser to the State Board of Equalization's Web site:

<http://www.boe.ca.gov/proptaxes/ahcont.htm>

To view a specific handbook section, select one from the list.

The *Assessors' Handbook* sections may also be ordered by calling the Board's Customer and Taxpayer Services Section at 1-800-400-7115.

Following is a listing of the *Assessors' Handbook* sections currently available. Since *Assessors' Handbook* sections are constantly under review and revision, it is always advisable to verify the current status of any relevant section.

SECTION NUMBER	HANDBOOK SECTION TITLE
AH 201	Assessment Roll Procedures
AH 215	Assessment Map Standards
AH 222	Standard Form List
AH 265	Cemetery Exemption
AH 267	Welfare, Church, and Religious Exemptions
AH 501	Basic Appraisal
AH 502	Advanced Appraisal
AH 503	Cash Equivalent Analysis
AH 504	Assessment of Personal Property and Fixtures
AH 505	Capitalization Formulas and Tables
AH 510	Assessment of Possessory Interests
AH 511	Assessment of Manufactured Homes and Parks
AH 513	Assessment of Shopping Centers
AH 515	Assessment of Golf Courses
AH 516	Assessment of Cemeteries
AH 521	Assessment of Agricultural and Open-Space Properties
AH 531	Residential Building Costs
AH 534	Rural Building Costs
AH 542	Assessment of Water Companies and Water Rights
AH 560	Assessment of Mining Properties
AH 566	Assessment of Petroleum Properties

SECTION NUMBER	HANDBOOK SECTION TITLE
AH 570	Assessment of Commercial Aircraft
AH 576	Assessment of Vessels
AH 577	Assessment of General Aircraft
AH 581	Equipment Index and Percent Good Factors
AH 582	Explanation of the Derivation of Equipment Percent Good Factors

APPENDIX 2: REVENUE AND TAXATION CODE SECTIONS

Part 3. Chapter 1.²⁵²

Article 1. Equalization by County Board of Equalization

1601. Notice. (a) For purposes of this article, "county board" shall mean a county board of supervisors meeting as a county board of equalization or an assessment appeals board.

(b) In counties of the first class, the clerk shall give notice of the time the county board will meet to equalize assessments by publication in a newspaper.

(c) In all other counties, immediately upon delivery of the roll to the auditor, the clerk shall give notice of the period during which assessment protests will be accepted, the place where they may be filed, and the time the county board will meet to equalize assessments by publication in a newspaper, if any is printed in the county, or, if none, as directed by the board of supervisors.

1602. Inspection. The roll or a copy thereof shall be made available for inspection by all interested parties during regular office hours of the officer having custody thereof.

1603. Application. (a) A reduction in an assessment on the local roll shall not be made unless the party affected or his or her agent makes and files with the county board a verified, written application showing the facts claimed to require the reduction and the applicant's opinion of the full value of the property. The form for the application shall be prescribed by the State Board of Equalization.

(b)(1) The application shall be filed within the time period from July 2 to September 15, inclusive. An application that is mailed and postmarked September 15 or earlier within that period shall be deemed to have been filed within the time period beginning July 2 and continuing through and including September 15.

(2) Notwithstanding paragraph (1), if the taxpayer does not receive the notice of assessment described in Section 619 at least 15 calendar days prior to the deadline to file the application described in this subdivision, the party affected, or his or her agent, may file an application within 60 days of receipt of the notice of assessment or within 60 days of the mailing of the tax bill, whichever is earlier, along with an affidavit declaring under penalty of perjury that the notice was not timely received.

(3) Notwithstanding paragraph (1), the last day of the filing period shall be extended to November 30 in the case of an assessee or party affected with respect to all property located in a county where the county assessor does not provide, by August 1, a notice, as described in Section 619, to all assesses of real property on the local secured roll of the assessed value of their real property as it shall appear or does appear on the completed local roll, including the annual increases in assessed value caused solely by increases in the valuation of property that reflect the inflation rate, not to exceed 2 percent, pursuant to the authority of subdivision (b) of Section 2 of Article XIII A of the California Constitution.

(A) The county assessor shall notify the clerk of the county board of equalization and the county tax collector by April 1 of each year as to whether the notice specified in this paragraph will be provided by August 1.

(B) The clerk shall certify the last day of the filing period and shall immediately notify the State Board of Equalization as to whether the last day of the filing period for the county will be September 15 or November 30.

(C) The State Board of Equalization shall maintain a statewide listing of the time period to file an application in each county.

²⁵² This appendix contains the statutes directly relevant to property tax assessment appeals as of the date of publication of this manual. It is not possible to reissue or correct the manual every time a statutory provision changes, so the reader is cautioned to review current statutes.

(D) The provisions of Section 621 may not be substituted as a means of providing the notice specified in this paragraph.

(4) If a final filing date specified in this subdivision falls on Saturday, Sunday, or a legal holiday, an application that is mailed and postmarked on the next business day shall be deemed to have been filed within the requisite time period specified in this subdivision. If on any final filing date specified in this subdivision, the county's offices are closed for business prior to 5 p.m. or for that entire day, that day shall be considered a legal holiday for purposes of this section.

(c) The application may be filed within 12 months following the month in which the assessee is notified of the assessment, if the party affected or his or her agent and the assessor stipulate that there is an error in the assessment as the result of the exercise of the assessor's judgment in determining the full cash value of the property and a written stipulation as to the full cash value and assessed value is filed in accordance with Section 1607.

(d) Upon the recommendation of the assessor and the clerk of the county board of equalization, the board of supervisors may adopt a resolution providing that an application may be filed within 60 days of the mailing of the notice of the assessor's response to a request for reassessment pursuant to paragraph (2) of subdivision (a) of Section 51, if all of the following conditions are met:

(1) The request for reassessment was submitted in writing to the assessor in the form prescribed by the State Board of Equalization and includes all information that is prescribed by the State Board of Equalization.

2) The request for reassessment was made on or before the immediately preceding March 15.

(3) The assessor's response to the request for reassessment was mailed on or after September 1 of the calendar year in which the request for reassessment was made.

(4) The assessor did not reduce the assessment in question in the full amount as requested.

(5) The application for changed assessment is filed on or before December 31 of the year in which the request for reassessment was filed.

(6) The application for reduction in assessment is accompanied by a copy of the assessor's response to the request for reassessment.

(e) In the form provided for making application pursuant to this section, there shall be a notice that written findings of facts of the local equalization hearing will be available upon written request at the requester's expense and, if not so requested, the right to those written findings is waived. The form shall provide appropriate space for the applicant to request written findings of facts as provided by Section 1611.5.

(f) The form provided for making an application pursuant to this section shall contain the following language in the signature block:

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing and all information hereon, including any accompanying statements or documents, is true, correct, and complete to the best of my knowledge and belief and that I am (1) the owner of the property or the person affected (i.e., a person having a direct economic interest in the payment of the taxes on that property—"The Applicant," (2) an agent authorized by the applicant under Item 2 of this application, or (3) an attorney licensed to practice law in the State of California, State Bar No. , who has been retained by the applicant and has been authorized by that person to file this application.

1603.5 Duplicate applications. (a) In the event a duplicate application for reduction in assessment is filed with the county board, the clerk may accept only the first application for reduction filed by or on behalf of the taxpayer, and may reject any duplicate application for reduction.

(b) For purposes of this section, "duplicate application for reduction" means an application for reduction filed by an applicant, or by his or her agent or attorney on his or her behalf, subsequent to an application for reduction previously filed by or on behalf of the same applicant, that seeks the same relief with respect to the same property for the same year in issue. A subsequent application for reduction that seeks to amend a previously filed application for reduction shall not be considered a duplicate application for reduction for purposes of this section.

1604. Regular equalization period. (a) In counties of the first class, annually, on the fourth Monday in September, the county board shall meet to equalize the assessment of property on the local roll. The board shall continue to meet for that purpose, from time to time, until the business of equalization is disposed of.

(b) In all other counties, annually, on the third Monday in July, the county board shall meet to equalize the assessment of property on the local roll. It shall continue to meet for that purpose, from time to time, until the business of equalization is disposed of.

Any taxpayer may petition the board for a reduction in an assessment and a proportionate reduction or refund of the taxes extended thereon by filing an application pursuant to Section 1603 or Section 5097.

The county board shall have no power to receive or hear any petition for a reduction in an escaped assessment made pursuant to Section 531.1 nor a penal assessment levied in respect thereto, nor to reduce those assessments.

(c) If the county assessment appeals board fails to hear evidence and fails to make a final determination on the application for reduction in assessment of property within two years of the timely filing of the application, the taxpayer's opinion of market value as reflected on the application for reduction in assessment shall be the value upon which taxes are to be levied for the tax year covered by the application, unless either of the following occurs:

(1) The taxpayer and the county assessment appeals board mutually agree in writing, or on the record, to an extension of time for the hearing.

(2) The application for reduction is consolidated for hearing with another application by the same taxpayer with respect to which an extension of time for the hearing has been granted pursuant to paragraph (1). In no case shall the application be consolidated without the taxpayer's written agreement after the two-year time period has passed or after an extension of the two-year time period previously agreed to by the taxpayer has expired.

The reduction in assessment reflecting the taxpayer's opinion of market value shall not be made, however, until two years after the close of the filing period during which the timely application was filed. Further, this subdivision shall not apply to applications for reductions in assessments of property where the taxpayer has failed to provide full and complete information as required by law or where litigation is pending directly relating to the issues involved in the application. This subdivision is only applicable to applications filed on or after January 1, 1983.

(d) If, pursuant to subdivision (c), the applicant's opinion of value has been placed on the assessment roll, that value shall remain on the roll until the county board makes a final determination on the application. The value so determined by the county board, plus appropriate adjustments for the inflation factor, shall be entered on the assessment roll for the fiscal year in which the value is determined. No increased or escape taxes other than those required by a purchase, 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 county board failed to act.

(e) The county board shall notify the applicant in writing of any decision by that board not to hold a hearing on his or her application for reduction in assessment within the two-year period specified in subdivision (c). This notice shall also inform the applicant that the taxpayer's opinion of value as reflected on the application for reduction in assessment shall, as a result of the county board's failure to hold a hearing within the prescribed time period, be the value upon which taxes are to be levied in the absence of the application of either paragraph (1) or (2) of subdivision (c).

1605. Notice and review of assessment made outside regular period. (a) An assessment made outside of the regular assessment period is not effective for any purpose, including its review, equalization and adjustment by the

county board, until the assessee has been notified thereof personally or by United States mail at the assessee's address as contained in the official records of the county assessor. For purposes of this subdivision, for counties in which the board of supervisors has adopted the provisions of subdivision (c) and the County of Los Angeles, receipt by the assessee of a tax bill based on that assessment shall suffice as the notice.

(b) Upon application for reduction in assessment pursuant to subdivision (a) of Section 1603, the assessment shall be subject to review, equalization, and adjustment by the county board. In the case of an assessment made pursuant to Article 2 (commencing with Section 75.10) of Chapter 3.5 of Part 0.5, or Article 3 (commencing with Section 501) of Chapter 3 of Part 2 that is made outside the regular assessment period as defined in subdivision (f), or an assessment made pursuant to Article 4 (commencing with Section 531) of Chapter 3 of Part 2, the application shall be filed with the clerk in accordance with the applicable of the following: (1) In a county other than the County of Los Angeles or a county in which the board of supervisors has adopted a resolution in accordance with subdivision (c), no later than 60 days after the date of mailing printed on the notice of assessment, or the postmark therefor, whichever is later. If the taxpayer does not receive the notice of assessment described in Section 75.31 or 534 at least 15 calendar days prior to the deadline established in the foregoing sentence, the party affected, or his or her agent, may file the application within 60 days of the date of mailing printed on the tax bill or the postmark therefor, whichever is later, along with an affidavit declaring under penalty of perjury that the notice of assessment was not timely received.

(2) In the County of Los Angeles or any county in which the board of supervisors has adopted a resolution in accordance with subdivision (c), an application subject to this subdivision shall be filed within the period specified in that subdivision.

(c) The board of supervisors of any county may by resolution require that the application for reduction pursuant to subdivision (a) of Section 1603 be filed with the clerk no later than 60 days after the date of mailing printed on the tax bill or the postmark therefor, whichever is later.

(d) In counties where assessment appeals boards have not been created and are not in existence, at any regular meeting, the board of supervisors, on the request of the assessor or any taxpayer, shall sit as the county board to equalize any assessments made by the assessor outside the regular assessment period for those assessments. Notwithstanding any other provision of law to the contrary, in any county in which assessment appeals boards have been created and are in existence, the time for equalization of assessments made outside the regular assessment period for those assessments, including assessments made pursuant to Sections 501, 503, 504, 531, and 531.5, shall be prescribed by rules adopted by the board of supervisors.

(e) If an audit of the books and records of any profession, trade, or business pursuant to Section 469 discloses property subject to an escaped assessment for any year, then the original assessment of all property of the assessee at the location of the profession, trade, or business for that year shall be subject to review, equalization and adjustment by the county board of equalization or assessment appeals board pursuant to this chapter, except in those instances when that property had previously been equalized for the year in question by the county board of equalization or assessment appeals board. The application shall be filed with the clerk no later than 60 days after the date on which the assessee was notified. Receipt by the assessee of a tax bill based upon that assessment shall suffice as that notice.

(f) For purposes of subdivision (a), "regular assessment period" means January 1 to and including July 1 of the calendar year in which the assessment, other than escape assessments, should have been enrolled if it had been timely made.

1605.4. Nature of hearings. Equalization hearings shall be open and public except that, upon conclusion of the taking of evidence, the county board may deliberate in private in reaching a decision. An applicant may request the board to close to the public a portion of the hearing by filing a declaration under penalty of perjury that evidence is to be presented which relates to trade secrets the disclosure of which will be detrimental to the business interests of the owner of the trade secrets. If the board grants the request, only evidence relating to the trade secrets may be presented during the time the hearing is closed.

1605.5. Property subject to change in ownership or newly constructed. (a) (1) The county board shall hear applications for a reduction in an assessment in cases in which the issue is whether or not property has been subject to a change in ownership, as defined in Chapter 2 (commencing with Section 60) of Part 0.5, or has been newly constructed, as defined in Chapter 3 (commencing with Section 70) of Part 0.5.

(2) In any county that has established an assessment appeals board, the board of supervisors may, by ordinance, provide that it shall act as the county board of equalization for the purpose of hearing applications pursuant to this subdivision.

(3) This subdivision shall not be construed to alter, modify, or eliminate the right of an applicant under existing law to have a trial de novo in superior court with regard to the legal issue of whether or not that property has undergone a change in ownership or has been newly constructed so as to require reassessment.

(b) The county board shall hear and decide issues with respect to penalties assessed under Section 463, 482, or 504 where those issues arise in connection with an application timely filed under Section 1603 or 1605. The county board shall hear and decide penalty issues under this subdivision regardless of whether the taxpayer has filed an application for reduction disputing only penalty amounts or, during the appeal process, all nonpenalty issues are resolved.

1605.6. Notification of hearing. After the filing of an application for reduction of an assessment, the clerk of the county board of equalization shall set the matter for hearing and notify the applicant, or his or her designated representative, of the time and date of the hearing. Notice of the time, date, and place of the hearing shall be given not less than 45 days prior to the hearing, unless the assessor and the applicant, or the applicant's designated representative, stipulate orally or in writing to a shorter notice period. If the hearing on a particular application is vacated for any reason, the clerk of the county board of equalization shall notify the applicant, or the applicant's designated representative, of the new time, date, and place of the hearing not less than 10 days prior to the new hearing date, unless the assessor and the applicant, or the applicant's designated representative, stipulate orally or in writing to a shorter notice period, or the application has been heard by a hearing officer in accordance with Article 1.7 (commencing with Section 1636). At the option of the clerk of the county board of equalization, the notice required by this section may be electronically transmitted, if requested in writing by the taxpayer, to an electronic address designated by the taxpayer. The clerk may also opt to electronically transmit the notice required by this section to the assessor, if requested by the assessor, to an electronic address designated by the assessor.

1606. Exchange of information. (a)(1) Any applicant for a change of an assessment on the local roll or the assessor, in those cases where the assessed value of the property involved, as shown on the current assessment roll, exceeds one hundred thousand dollars (\$100,000) without regard to any exemptions, may initiate an exchange of information with the other party by submitting the following data to the other party and the clerk in writing:

(A) Information stating the basis of the party's opinion of value.

(B) When the opinion of value is to be supported with evidence of comparable sales, information identifying the properties with sufficient certainty such as by assessor parcel number, street address or legal description of the property, the approximate date of sale, the applicable zoning, the price paid, and the terms of the sale, if known.

(C) When the opinion of value is to be supported with evidence based on an income study, information relating to income, expenses and the capitalization method.

(D) When the opinion of value is to be supported with evidence of replacement costs, information relating to date of construction, type of construction, replacement cost of construction, obsolescence, allowance for extraordinary use of machinery and equipment, and depreciation allowances.

(2) To initiate an exchange of information, the initiating party shall submit the data required by paragraph (1) at least 30 days before the commencement of the hearing on the application. For purposes of determining the date upon which the exchange was deemed initiated, the date of postmark as affixed by the United States Postal Service,

or the date certified by a bona fide private courier service on the envelope or package containing the information shall control.

(b)(1) Notwithstanding any limitation on assessed value contained in subdivision (a), if the initiating party has submitted the data required by subdivision (a) within the specified time, the other party shall submit to the initiating party and the clerk the following data:

(A) Information stating the basis of the other party's opinion of value.

(B) When the opinion of value is to be supported with evidence of comparable sales, information identifying the properties with sufficient certainty such as by assessor parcel number, street address or legal description of the property, the approximate date of sale, the applicable zoning, the price paid, and the terms of the sale, if known.

(C) When the opinion of value is to be supported with evidence based on an income study, information relating to income, expenses and the capitalization method.

(D) When the opinion of value is to be supported with evidence of replacement cost, information relating to date of construction, type of construction, replacement cost of construction, obsolescence, allowance for extraordinary use of machinery and equipment, and depreciation allowance.

(2) The other party shall submit the data required by this subdivision at least 15 days prior to the hearing. For purposes of determining the date upon which the other party responded to the exchange, the date of postmark as affixed by the United States Postal Service, or the date certified by a bona fide private courier service on the envelope or package containing the information shall control.

(c)(1) The person assigning a hearing date shall provide adequate notice to the parties of the date, so that the exchange of information permitted by this section can be made without requiring a continuance of the hearing.

(2) The initiating party and the other party shall use adequate methods of submission to ensure to the best of their ability that the exchange of information process is completed at least 10 days prior to the hearing.

(d) Whenever information has been exchanged pursuant to this section the parties may not introduce evidence on matters not so exchanged unless the other party consents to the introduction. However, at the hearing, each party may introduce new material relating to the information received from the other party. If a party introduces new material at the hearing, the other party, upon his or her request, shall be granted a continuance for a reasonable period of time.

(e) Nothing in this section may be construed as an intent of the Legislature to change, alter or modify generally acceptable methods of using the sales approach, income approach, or replacement cost approach to determine full cash value.

1607. Examination; stipulation. Before the county board makes any reduction, it shall examine, on oath, the person affected or the agent making the application touching the value of the property. A reduction shall not be made unless the person or agent attends and answers all questions pertinent to the inquiry; provided, however, in the event there is filed with the county board a written stipulation, signed by the assessor and county legal officer on behalf of the county and the person affected or the agent making the application, as to the full value and assessed value of the property which stipulation sets forth the facts upon which the reduction in value is premised, the county board may, at a hearing, (a) accept the stipulation, waive the appearance of the person affected or the agent and change the assessed value in accordance with Section 1610.8, or (b) reject the stipulation and set or reset the application for reduction for hearing.

1608. Examination; waiver. Notwithstanding the provisions of Section 1607, the county board may, in its discretion, waive the examination of the person or agent making the application, if the board and the assessor are satisfied that the issues raised by the application have been considered by the board in previous years or are fully presented in the application, and if the person or agent making the application requests such waiver in his or her

application. The board (whether meeting as a board of equalization or as a board of supervisors) shall promptly act upon such request for waiver and shall give the applicant written notice of its decision thereon. If the board waives the examination of the person or agent making the application, it shall give such person or agent written notice of its decision on the merits of the application promptly after making such decision.

1609. Rules of evidence. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. The applicant shall have the right to introduce evidence concerning the terms of sales of comparable property that has been sold.

1609.4. Evidence; subpoenas. On the hearing of the application, the county board may subpoena witnesses and books, records, maps, and documents and take evidence in relation to the inquiry. The assessor may introduce new evidence of full cash value of a parcel of property at the hearing and may also introduce information obtained pursuant to Section 441. If the assessor proposes to introduce evidence to support a higher assessed value than he placed on the roll, he shall, at least 10 days prior to the hearing, inform the applicant of the higher assessed value and the evidence proposed to be introduced and he may thereafter introduce such evidence at the hearing.

No subpoena to take depositions shall be issued nor shall depositions be considered for any purpose by the county board or the assessment appeals board.

1609.5. Subpoenas; state board employees. Whenever an employee of the board is desired as a witness before a county board in a hearing on an application for reduction, a subpoena requiring his attendance may be served by delivering a copy either to the employee personally or to the executive secretary of the board at his office in Sacramento.

The employee shall attend as a witness as required by the subpoena, regardless of the distance to be traveled, provided the subpoena is accompanied by fees payable to the State Board of Equalization in the amount of two hundred dollars (\$200) per day for each day that such employee is required to remain in attendance pursuant to such subpoena. Such fees are to be paid by the party requesting the subpoena.

The employee shall receive the salary or other compensation to which he is normally entitled during the time he travels to and from the place where the hearing is conducted and while he is required to remain at such place pursuant to such subpoena. He shall also receive usual and customary travel expenses and per diem. If the actual expenses should later prove to be less than the amount paid by the party, the excess shall be refunded by the board.

In the event the employee is subpoenaed at the request of the applicant and the county board grants a reduction in the assessment, the county board may reimburse the applicant in whole or in part for the actual witness fees paid pursuant to this section.

Any person who pays or offers to pay any money or other form of consideration for the services of any employee of the board required to appear as a witness, other than the compensation provided in this section, is guilty of a misdemeanor, and any employee who receives any such payment is guilty of a misdemeanor.

1609.6. Confidential information. Nothing in Section 1610.8 shall be construed as permitting any violation of Section 408 or 451.

1609.8. Valuation of property. When valuing property, a county board shall follow the provisions set forth in Section 402.5.

1610.2. Presence of assessor. The assessor in person or through a deputy shall attend all hearings of the county board and may make any statement or produce evidence on matters before the county board.

1610.4. False statements. Every person who willfully states anything which he knows to be false in any oral or written statement, not under oath, required or authorized to be made as the basis of an application to reduce any tax or assessment, is guilty of a misdemeanor.

1610.6. Entire roll. The county board shall neither raise nor lower the entire local roll.

1610.8. Individual assessments. After giving notice as prescribed by its rules, the county board shall equalize the assessment of property on the local roll by determining the full value of an individual property and by reducing or increasing an individual assessment as provided in this section. The full value of an individual property shall be determined without limitation by reason of the applicant's opinion of value stated in the application for reduction in assessment pursuant to subdivision (a) of Section 1603.

The applicant for a reduction in an assessment on the local roll shall establish the full value of the property by independent evidence. The records of the assessor may be used as part of such evidence.

The county board shall make a determination of the full value of each parcel for which an application for equalization is made.

1611. Request for transcript. The county board shall make a record of the hearing and, upon request, shall furnish the party with a tape recording or a transcript thereof at his expense. Request for a tape recording or a transcript may be made at any time, but not later than 60 days following the final determination by the county board.

1611.5. Record, transcript, findings and conclusions. Written findings of fact of the county board shall be made if requested in writing by a party up to or at the commencement of the hearing, and if payment of any fee or deposit which may be required to cover the expense of preparing the findings is made by the party prior to the conclusion of the hearing. However, the party requesting findings may abandon the request and waive findings at the conclusion of the hearing. If the requesting party abandons his or her request at this time, his or her fee or deposit shall be returned if no findings have yet been prepared. If the request is abandoned, the other party may orally or in writing renew the request upon payment of the required fee or deposit, and becomes responsible for any costs for the preparation of findings. A reasonable fee may be imposed by the county to cover the expense of preparing findings and conclusions. The written findings of fact shall fairly disclose the board's determination of all material points raised by the party in his or her petition and at the hearing, including a statement of the method or methods of valuation used in appraising the property.

At the hearing the final determinations by the board shall be supported by the weight of the evidence and, with regard to questions of value, its determinations shall be made without limitation by reason of the applicant's opinion of value stated in the application for reduction in assessment pursuant to subdivision (a) of Section 1603.

If written findings of fact have been requested, the board shall transmit those findings to the requesting party accompanied by a notice that any request for a transcript of the proceedings must be made within 60 days following the date of the final determination of the board.

1611.6. Attorney fees. If the county board fails to make findings upon request, or if findings made are found by a reviewing court to be so deficient that a remand to the county board is ordered to secure reasonable compliance with the elements of findings required by Section 1611.5, the action of the county board shall be deemed to be arbitrary and capricious within the meaning of Section 800 of the Government Code, so as to support an allowance of reasonable attorney's fees against the county for the services necessary to obtain proper findings. The dollar limitation set forth in Section 800 of the Government Code shall not apply to an allowance of attorney's fees pursuant to this section.

1612. Record. The clerk of the county board shall record, in a book kept for that purpose, all changes and orders made by the county board and, no later than the second Monday of each month, shall prepare a separate statement listing all such changes made during the preceding calendar month.

1612.5. Employees representing applicants. No current employee of the office of the clerk of the county board of equalization or assessment appeals board may represent an applicant for compensation on any application for equalization filed pursuant to Section 1603.

1612.7. Applications by employees. An employee of the clerk of the assessment appeals board shall notify the clerk immediately upon filing an application on his or her own behalf, or upon his or her decision to represent his or her spouse, parent, or child in an assessment appeal. The application shall be heard in accordance with the provisions of Section 1622.6.

1613. Changes on roll. After five days succeeding the time when notice of the date when the matter will be investigated is sent by the clerk of the county board to all persons interested, the county board may direct the assessor to:

- (a) Assess any taxable property other than State assessed property that has escaped assessment.
- (b) Change the amount, number, quantity, or description of property on the local roll.
- (c) Make and enter new assessments, at the same time canceling previous entries, when any assessment made by him is deemed by the county board so incomplete as to render doubtful the collection of the tax.

1614. Delivery of roll to auditor. On the second Monday of each month the clerk shall deliver the statement of all changes made by the county board during the preceding calendar month to the auditor with an affixed affidavit, subscribed by him, as follows:

"I, _____, swear that, as Clerk of the Board of Equalization of _____ County, I have kept correct minutes of all the acts of the board during the month of _____, __, touching alterations in the assessment roll, that all alterations agreed to or directed to be made have been included in the attached statement and that no other alterations are included therein."

1615. Court action. No action or proceeding shall be brought in any court on behalf of any governmental officer, agency or entity to review a decision of the county board of equalization or an assessment appeals board unless such action or proceeding is commenced within six months from the date the board makes its final determination.

Article 1.5. Equalization by Assessment Appeals Boards

1620. Applicability of article. The board of supervisors of any county may by ordinance create assessment appeals boards for the county to equalize the valuation of taxable property within the county for the purpose of taxation.

Text of section effective until January 1, 2005.

1621. Number of boards limited. (a) No more than ten assessment appeals boards may be created within any county. Assessment appeals boards shall be designated by number in the ordinance providing for their creation.

(b) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

Text of section effective January 1, 2005.

1621. (a) Not more than five assessment appeals boards may be created within any county. Assessment appeals boards shall be designated by number in the ordinance providing for their creation.

(b) This section shall become operative on January 1, 2005.

1622. Selection of members. An assessment appeals board shall consist of three members selected by lot by the presiding judge of the superior court of the county from among those persons nominated for that purpose by the members of the county board of supervisors. Within 60 days after the adoption of the ordinance providing for the creation of assessment appeals boards, each member of the board of supervisors shall nominate not less than three nor more than five persons for appointment to the assessment appeals boards.

1622.1. Selection of members; direct appointment. (a) As an alternative to the selection procedure provided in Section 1622, the county board of supervisors may, by ordinance, elect to appoint directly the members of the assessment appeals board. Approval of each member shall be by majority vote of the board of supervisors.

(b) An assessment appeals board appointed pursuant to this section may consist of three or five members. If a five-member board is appointed, the board shall only act as a three-member panel designated from time to time by the clerk of the assessment appeals board. If a five-member board is appointed, the term of office of these members shall be three years except that upon the original selection of these members, the members shall be assigned terms in such a manner that the terms of no more than two offices shall expire in any one year.

1622.2. County board of supervisors members. (a) Up to two members of a county board of supervisors who have served as a member of a county board of equalization pursuant to Section 1601 may serve on an assessment appeals board.

(b) Notwithstanding Sections 1623 and 1623.1, the term of office for any member of a county board of supervisors who serves on an assessment appeals board shall not exceed his or her term of office as a member of a county board of supervisors.

1622.5. Alternate members. In any county in which two or more boards have been created and are functioning:

(a) The clerk of the assessment appeals boards may assign one or more members from one board to serve temporarily as members of another board, and

(b) The board of supervisors may appoint alternate members for each board. Whenever any regular member of a board is temporarily unable to act as a member of the board, an alternate member may sit on the board and shall have the same authority to act as a regular member. Where such alternate member is likewise temporarily unable to act the clerk may assign an alternate member of the same board or of any other board to act as a member of the board and such alternate member may sit on the board and shall have the same authority to act as a regular member.

In any county in which one board has been created and is functioning the board of supervisors may appoint alternate members for the board. Whenever any regular member of the board is temporarily unable to act as a member of the board, an alternate member may sit on the board and shall have the same authority to act as a regular member.

1622.6. Application for equalization by member or alternate. An application for equalization filed pursuant to Section 1603 by a member or alternate member of an assessment appeals board, or an application in which that member represents his or her spouse, parent, or child, shall be heard before an assessment appeals board panel consisting of three special alternate assessment appeals board members appointed by order of the presiding judge of the superior court in the county in which the application is filed.

A member or alternate member of an assessment appeals board shall notify the clerk immediately upon filing an application on his or her own behalf, or upon his or her decision to represent his or her spouse, parent, or child in an assessment appeal matter. A special alternate assessment appeals board member may hear only the application or applications for equalization set forth in the superior court order appointing the member.

Any person shall be eligible for appointment as a special alternate assessment appeals board member who is a resident of the county in which the application is filed and who meets the qualifications set forth in Section 1624.

Sections 1624.1 and 1624.2 shall be applicable to the appointment of a special assessment appeals board member.

1623. Term of office. (a) The term of office of members selected to serve on assessment appeals boards shall be three years beginning on the first Monday in September, except that upon the original selection of members to serve on an assessment appeals board, the member first selected shall serve for a term of three years beginning on the first Monday in September following the date of the creation of the board, the second member selected shall serve for a term of two years beginning on such date, and the third member selected shall serve for a term of one year beginning on such date.

(b) In the event of a vacancy on a board, the person selected to fill the vacancy shall serve for the remainder of the unexpired term.

(c) Not less than 60 days prior to the expiration of the term of office of any member of an assessment appeals board and upon the occurrence of a vacancy on any such board, each member of the board of supervisors shall nominate one person for each office or vacancy to be filled. The presiding judge of the superior court shall select by lot one person from among those nominated to serve for the succeeding term on such board or to fill the vacancy as the case may be.

(d) Upon expiration of the term of office of any member of an assessment appeals board, the member whose term has expired shall continue to serve until such time as a new member takes office.

(e) A member whose term has expired may continue to serve for up to 60 days after the expiration of such term with respect to matters on which the assessment appeals board had commenced hearing prior to the expiration of the member's term.

1623.1. Selection of replacements; direct appointment. As an alternative to the nomination and selection procedure provided in Section 1623, the board of supervisors may, by ordinance, provide that it shall appoint the members and alternates of the assessment appeals board, upon the expiration of any term of office or the occurrence of a vacancy on such board.

1624. Eligibility. A person is not eligible for nomination for membership on an assessment appeals board unless he or she meets one of the following criteria:

(a) Has a minimum of five years professional experience in this state as a certified public accountant or public accountant, a licensed real estate broker, an attorney, a property appraiser accredited by a nationally recognized professional organization, or a property appraiser certified by the Office of Real Estate Appraiser.

(b) Is a person who the nominating member of the board of supervisors has reason to believe is possessed of competent knowledge of property appraisal and taxation.

1624.01. Training. (a) On and after January 1, 2001, any person newly selected for membership on, or newly appointed to be a member of, an assessment appeals board shall complete the training described in subdivision (a) of Section 1624.02 prior to the commencement of his or her term on the board or as soon as reasonably possible within one year thereafter.

(b) A member of an assessment appeals board who does not complete the training required by this section in the time permitted shall complete that training within 60 days of the date of the notice by the clerk advising the member that his or her failure to complete the training constitutes resignation by operation of law. If the member fails to comply within 60 days of the notice by the clerk, the member shall be deemed to have resigned his or her position on the board. Notwithstanding the provisions of this section, a board member may continue to retain his or her position on the board in order to complete all appeal hearings to which the member is assigned and which commenced prior to the date of resignation pursuant to this subdivision.

1624.02. Training by the State Board of Equalization. (a) Every person newly selected for membership on or newly appointed to be a member of, an assessment appeals board shall successfully complete a course of training conducted by either the State Board of Equalization or by the county at county option. Training shall include, but not be limited to, an overview of the assessment process, elements in the conduct of assessment appeal hearings, and important developments in case and statutory law and administrative rules. The curriculum for the course of training provided by the State Board of Equalization shall be developed in consultation with county boards of supervisors, administrators of assessment appeals boards, assessors, and local property taxpayer representatives. The curriculum for the course of training provided by counties shall be developed in consultation with the State Board of Equalization, assessors, and local property taxpayer representatives and subject to final approval by the State Board of Equalization. Training by the State Board of Equalization shall be conducted regionally. For purposes of this section, the term "successfully complete" shall include full-time attendance at the course of training and a person's receiving a certificate of completion given by the entity conducting the training at the conclusion of the course of training.

(b) There shall be no charge to counties for training conducted by the State Board of Equalization pursuant to this section.

1624.05. Eligibility; county population in excess of 200,000. (a) A person shall not be eligible for nomination for membership on an assessment appeals board unless he or she has a minimum of five years' professional experience in this state as one of the following: certified public accountant or public accountant, licensed real estate broker, attorney, or property appraiser accredited by a nationally recognized professional organization, or property appraiser certified by the Office of Real Estate Appraisers.

(b) Notwithstanding the provisions of subdivision (a), a person shall be eligible for nomination for membership on an assessment appeals board if, at the time of the nomination, he or she is a current member of an assessment appeals board.

(c) This section shall apply only to an assessment appeals board in a county with a population of 200,000 or more.

(d) County population estimates conducted by the Department of Finance pursuant to Section 13073.5 of the Government Code shall be used in determining the population of a county for purposes of this section.

1624.1. Assessor employee disqualified. No person shall be qualified to be a member of an assessment appeals board who has, within the three years immediately preceding his appointment to such board, been an employee of an assessor's office.

1624.2. Interest bars participation. No member of an assessment appeals board shall knowingly participate in any assessment appeal proceeding wherein the member has an interest in either the subject matter of or a party to the proceeding of such nature that it could reasonably be expected to influence the impartiality of his judgment in the proceeding. Violation of this section shall be cause for removal under Section 1625 of this code.

1624.3. Members barred from representing applicants. No current member of an assessment appeals board, nor any alternate member, may represent an applicant for compensation on any application for equalization filed pursuant to Section 1603 in the county in which the board member or alternate member serves.

1624.4. Objection to board member. (a) The party affected by an equalization proceeding or his or her agent, or the assessor, may make and file with the clerk of the assessment appeals board in which the proceeding is pending a written statement objecting to the hearing of a matter before a member of the board, and setting forth the facts constituting the ground of the disqualification of the member. Copies of the written statement shall be served by the presenting party on each party in the proceeding and on the board member alleged in the statement to be disqualified.

(b) Within 10 days after the filing of the statement, or within 10 days after the service of the statement as provided in subdivision (a), whichever is later, the board member alleged therein to be disqualified may file with the

clerk his or her consent in writing that the action or proceeding be tried before another member, or may file with the clerk his or her written answer admitting or denying any or all of the allegations contained in the statement and setting forth any additional fact or facts material or relevant to the question of his or her disqualification. The clerk shall transmit a copy of the member's consent or answer to each party who shall have appeared in the proceeding. Every statement and every answer shall be verified by oath in the manner prescribed by Section 446 of the Code of Civil Procedure for the verification of pleadings. The statement of a party objecting to the member on the ground of the member's disqualification, shall be presented at the earliest practical opportunity, after discovery of the facts constituting the ground of the member's disqualification, and in any event before the commencement of the hearing of any issue of fact in the proceeding before the member.

(c) No member of the board, who shall deny his or her own disqualification, shall hear or pass upon the question of the disqualification. The question of the member's disqualification shall be heard and determined by some other member agreed upon by the parties who have appeared in the proceeding, or, in the event of their failing to agree, by a member assigned to act by the clerk. Within five days after the expiration of the time allowed by this section for the member to answer, the clerk shall assign a member, not disqualified, to hear and determine the matter of disqualification.

1625. Removal of members. Any member of an assessment appeals board may be removed for cause by the board of supervisors.

1626. Discontinuance of boards. The board of supervisors of any county which has created one or more assessment appeals boards may discontinue all of said boards effective on the first Monday in September, subject to any such board continuing to function until matters pending before it have been disposed of. If all of such boards have been discontinued, no new board or boards may be created to function prior to the next succeeding first Monday in September. Notwithstanding the foregoing, the board of supervisors of any such county may increase, or may decrease to not less than one, the number of such boards, effective from and after the next succeeding first Monday in September, provided that any board so discontinued shall continue to function until matters pending before it have been disposed of.

1626.1. Additional Boards. Notwithstanding Section 1623, the board of supervisors of any county which has one or more assessment appeals boards in existence pursuant to this article may by ordinance increase the number of such boards effective from and after the first Monday in October and such boards shall remain in existence until discontinued under the provisions of Section 1626, but in no event shall the term of office of any member of the board exceed three years. Each term of office shall expire in a different calendar year.

1628. Clerk's duties. The clerk of the board of supervisors shall be clerk of the assessment appeals boards and keep a record of their proceedings. He shall perform the same duties in connection with their proceedings as he is required by law to perform in connection with the proceedings of the county board of equalization.

1630. Statement of intention. (a) Any real property owner the use of whose land is subject to an enforceable restriction placed upon it by a local agency may apply to the governing body of the local agency for a written statement declaring the present intention of the governing body to refrain from removing or modifying any such restriction in the predictable future.

(b) The written statement of intention may be granted or denied by the governing body at its discretion. A reasonable fee not to exceed ten dollars (\$10) may be charged for each such statement.

(c) The written statement may be presented to the county board of equalization as evidence that a restriction on the use of the taxpayer's land exists and that such restriction should be considered in assessing the value of the land.

(d) The written statement shall constitute a rebuttable presumption that the governing body does not intend to remove or modify the restriction in the predictable future.

Article 1.7. Assessment Hearing Officers

Text of section effective until July 1, 1997.

1636. Appointment of hearing officer. The county board of supervisors may appoint one or more assessment hearing officers or contract with the Office of Administrative Procedure for the services of a hearing officer pursuant to Chapter 14 (commencing with Section 27720) of Part 3 of Division 2 of Title 3 of the Government Code to conduct hearings on any assessment protests filed under Article 1 (commencing with Section 1601) of this chapter and to make recommendations to the county board of equalization or assessment appeals board concerning such protests. Only persons meeting the qualifications prescribed by Section 1624 may be appointed as an assessment hearing officer.

Text of section effective on July 1, 1997.

1636. Appointment of hearing officer. The county board of supervisors may appoint one or more assessment hearing officers or contract with the Office of Administrative Hearings for the services of an administrative law judge pursuant to Chapter 14 (commencing with Section 27720) of Part 3 of Division 2 of Title 3 of the Government Code to conduct hearings on any assessment protests filed under Article 1 (commencing with Section 1601) of this chapter and to make recommendations to the county board of equalization or assessment appeals board concerning the protests. Only persons meeting the qualifications prescribed by Section 1624 may be appointed as an assessment hearing officer.

1636.2. Hearing officers barred from representing applicants. No current hearing officer may represent an applicant for compensation on any application for equalization filed pursuant to Section 1603 in the county in which the hearing officer serves.

1636.5. Applications filed by hearing officers. (a) An assessment hearing officer shall notify the clerk immediately upon filing an application on his or her own behalf, or upon his or her decision to represent his or her spouse, parent, or child in an assessment appeal.

(b) When the application described in subdivision (a) is scheduled for hearing, the clerk shall schedule the matter before an alternate assessment appeals board pursuant to the provisions of Section 1622.6.

1637. Procedure. (a) Hearings before an assessment hearing officer shall be conducted pursuant to the provisions of Article 1 (commencing with Section 1601) governing equalization proceedings by a county board of equalization or an assessment appeals board. The assessment hearing officer may conduct hearings on applications where all of the following apply:

(1) The applicant is the assessee and has filed an application under Section 1603;

(2) For counties in which the board of supervisors has not adopted the provisions of Section 1641.1, the total assessed value of the property under consideration, as shown on the current assessment roll, does not exceed five hundred thousand dollars (\$500,000); or the property under consideration is a single-family dwelling, condominium or cooperative, or a multiple-family dwelling of four units or less regardless of value.

(3) The applicant has requested that the hearing be held before an assessment hearing officer.

(b) In addition to subdivision (a), the board of supervisors may, by resolution, require the assent of the assessor to hearings before an assessment hearing officer in all cases in which the total assessed value on the current roll of the property under consideration exceeds a sum set by the resolution. However, that requirement shall not apply in cases involving owner-occupied residential property.

1638. Representatives of assessor and assessee. The applicant may be represented in the hearing of the application and shall have the right to offer evidence. The assessor may be represented in the hearing by an attorney if the applicant is represented by an attorney and one or more members of his staff, and the assessor and members of

his staff shall have the right to offer evidence. The hearing shall be conducted in accordance with Section 1609. The hearing and disposition of applications shall be conducted in an informal manner.

1639. Conduct and report of hearing officer. The hearing officer shall conduct the hearing and shall prepare a summary report of the proceedings together with his recommendation on the assessment protest. The hearing officer shall transmit his report and recommendation to the clerk of the board of supervisors. The report and recommendation shall not constitute precedent for future proceedings initiated by the applicant or other applicants.

1640. Hearing officer's report. The clerk shall transmit in writing at the conclusion of the hearing or by mail to the protesting party or his or her agent and shall transmit to the county board of equalization or assessment appeals board the hearing officer's report and recommendation on the assessment protest. The protesting party shall be informed that the county board of equalization is bound by the recommendation of the assessment hearing officer.

1640.1. Hearing officer's report. (a) The clerk shall transmit in writing at the conclusion of the hearing or by mail to the protesting party or his or her agent and shall transmit to the county board of equalization or assessment appeals board the hearing officer's report and recommendation on the assessment protest. The protesting party shall be informed that the county board of equalization or the assessment appeals board is not bound by the recommendation of the assessment hearing officer and that he or she or the assessor is entitled to a full hearing before the county board or the assessment appeals board.

(b) The provision of this section shall supersede the provisions of Section 1640 in those counties in which the board of supervisors by resolution adopts the provisions of this section.

1641. Action by county board. Upon the recommendation of an assessment hearing officer the county board of equalization or assessment appeals board shall establish the assessed value for the property at the value recommended by the hearing officer.

1641.1. Action by county board; application for hearing. (a) Upon being notified of the recommendation of an assessment hearing officer, the protesting party or the assessor may request the county board of equalization or assessment appeals board to accept or reject the recommendation of the assessment hearing officer. The assessor may request the board to reject the recommendation of the assessment hearing officer. The county board of equalization or assessment appeals board shall, without further testimony, do either of the following:

- (1) Accept the recommendation and change the assessed value in accordance with Section 1610.8.
- (2) Reject the recommendation and set the application for reduction for hearing by the local board of equalization.

If a request is not filed with the county board of equalization or assessment appeals board, the protesting party or the assessor may, within 14 days after mailing of the hearing officer's report and recommendation, make application for a hearing before the county board or the assessment appeals board, and the application shall be set for hearing by the county board or the assessment appeals board. The board may consider, but shall not be bound by, the recommendation of the assessment hearing officer.

(b) The provisions of this section shall supersede the provisions of Section 1641 in those counties in which the board of supervisors by resolution adopts the provisions of this section.

1641.2. Objection to board member; extension. Notwithstanding the provisions of Section 1604, if within 90 days of the expiration of the two-year period specified in Section 1604 within which a county board is required to hear evidence and make a final determination on an application for reduction in assessment, a taxpayer or his or her agent objects to an assessment appeals board member pursuant to Section 1624.4 or makes application for a hearing officer's recommendation to be heard before the county board pursuant to Section 1641.1, the two-year period shall be extended by 90 days.

Article 1.9. Hearings Before Assessment Hearing Officers for Unitary Property

Located in More Than One County

1642. Unitary mining and mineral property. (a) An assessee of mining or mineral property located in more than one county and alleged to be unitary property, may, within the time specified in Sections 1603 and 1605, request a hearing before a panel comprising one assessment hearing officer from each county in which that unitary property is located by filing in each county concerned a multicounty application for reduction of assessment. The board of supervisors of each county in which the unitary property is located shall appoint one assessment hearing officer pursuant to Section 1636. In the event that the unitary property is located in an even number of counties, the assessment hearing officers shall designate one additional assessment hearing officer who shall be included in the panel. If the assessment hearing officers fail to designate the additional hearing officer within 60 days after the application is filed, the Office of Administrative Hearings shall designate the additional assessment hearing officer.

(b) Hearings before the panel of assessment hearing officers shall be conducted pursuant to Article 1 (commencing with Section 1601) governing equalization proceedings by county boards of equalization. All counties in which the unitary property is located shall be parties to the hearing. Hearings shall be held at the place or places as a majority of the panel shall designate.

(c) Section 1638 shall apply to the hearings by the panel.

(d) The presence of all members of the panel shall be necessary to constitute a quorum.

1643. Hearing procedure. (a) The panel of hearing officers shall conduct the hearing and receive evidence to determine (1) if the property concerned is unitary and (2) if it is unitary, the value of the unitary property as a whole and the portion thereof allocable to each county. The panel shall prepare a summary report of the proceedings, and make a recommendation concerning the total value of the entire unitary property and the apportionment of that value among the counties concerned. Any determination by a majority of the hearing officers shall constitute a determination by the panel.

(b) If the panel determines that the property concerned is not unitary, the application shall be referred back to each of the counties concerned to be treated as an application for reduction of assessment filed in each county.

1644. Report and recommendation. The report and recommendation of the panel of hearing officers shall be transmitted to the county clerk of each of the counties concerned. Each county clerk shall transmit a copy of the report and recommendation to the protesting party, the assessor, and to the board of equalization or the assessment appeals board of the county concerned within 14 days of the receipt thereof.

1645. County board of equalization-assessment appeals board procedures. (a) If, within 30 days following receipt of the report and recommendation of the panel of hearing officers by the county board of equalization or assessment appeals board of a concerned county, the assessor of that county or the assessee submits a written request to the board to reject the recommendation of the panel of hearing officers with respect to property located in that county, the board shall, without further testimony, do either of the following:

(1) Accept the recommendation of the panel and change the assessed values for that county in accordance with that recommendation.

(2) Reject the recommendation of the panel and set the request for hearing before the board as an application for reduction of assessment.

(b) In the event that neither the assessor nor the assessee makes a request in accordance with subdivision (a) within the prescribed 30-day period, the board shall, not later than 60 days following its receipt of the report and recommendation of the panel of hearing officers, without further testimony, take the action specified in paragraph (1) or (2) of subdivision (a).

(c) In any hearing set by the board pursuant to this section, there shall be a rebuttable presumption that the recommendation of the panel of hearing officers is correct.

1645.5. Definition. For purposes of this article, the term "unitary property" shall mean one or more parcels of real property that are contiguous and are operated as an economic unit.

APPENDIX 3: PROPERTY TAX RULES

Title 18, Public Revenues California Code of Regulations

Rule 2. THE VALUE CONCEPT.

Reference: Article 2, Chapter 3, Part 2, Division 1, Revenue and Taxation Code.
Sections 110, 110.1, 401, Revenue and Taxation Code.

(a) In addition to the meaning ascribed to them in the Revenue and Taxation Code, the words "full value," "full cash value," "cash value," "actual value," and "fair market value" mean the price at which a property, if exposed for sale in the open market with a reasonable time for the seller to find a purchaser, would transfer for cash or its equivalent under prevailing market conditions between parties who have knowledge of the uses to which the property may be put, both seeking to maximize their gains and neither being in a position to take advantage of the exigencies of the other.

When applied to real property, the words "full value", "full cash value", "cash value", "actual value" and "fair market value" mean the prices at which the unencumbered or unrestricted fee simple interest in the real property (subject to any legally enforceable governmental restrictions) would transfer for cash or its equivalent under the conditions set forth in the preceding sentence.

(b) When valuing real property (as described in paragraph (a)) as the result of a change in ownership (as defined in Revenue and Taxation Code, Section 60, et seq.) for consideration, it shall be rebuttably presumed that the consideration valued in money, whether paid in money or otherwise, is the full cash value of the property. The presumption shall shift the burden of proving value by a preponderance of the evidence to the party seeking to overcome the presumption. The presumption may be rebutted by evidence that the full cash value of the property is significantly more or less than the total cash equivalent of the consideration paid for the property. A significant deviation means a deviation of more than 5% of the total consideration.

(c) The presumption provided in this section shall not apply to:

(1) The transfer of any taxable possessory interest.

(2) The transfer of real property when the consideration is in whole, or in part, in the form of ownership interests in a legal entity (e.g., shares of stock) or the change in ownership occurs as the result of the acquisition of ownership interests in a legal entity.

(3) The transfer of real property when the information prescribed in the change in ownership statement is not timely provided.

(d) If a single transaction results in a change in ownership of more than one parcel of real property, the purchase price shall be allocated among those parcels and other assets, if any, transferred based on the relative fair market value of each.

History: Adopted June 21, 1967, effective July 23, 1967.
Amended December 17, 1975, effective January 25, 1976.
Amended October 9, 1984, effective September 20, 1985.
Amended July 24, 1991, effective September 25, 1991.

Rule 4. THE COMPARATIVE SALES APPROACH TO VALUE.

Reference: Sections 110, 110.1, 110.5, 401, Revenue and Taxation Code.
Article XIII A, Sections 1, 2, California Constitution.

When reliable market data are available with respect to a given real property, the preferred method of valuation is by reference to sales prices. In using sales prices of the appraisal subject or of comparable properties to value a property, the assessor shall:

(a) Convert a noncash sale price to its cash equivalent by estimating the value in cash of any tangible or intangible property other than cash which the seller accepted in full or partial payment for the subject property and adding it to the cash portion of the sale price and by deducting from the nominal sale price any amount which the seller paid in lieu of interest to a lender who supplied the grantee with part or all of the purchase money.

(b) When appraising an unencumbered-fee interest, (1) convert the sale price of a property encumbered with a debt to which the property remained subject to its unencumbered-fee price equivalent by adding to the sale price of the seller's equity the price for which it is estimated that such debt could have been sold under value-indicative conditions at the time the sale price was negotiated and (2) convert the sale price of a property encumbered with a lease to which the property remained subject to its unencumbered-fee price equivalent by deducting from the sale price of the seller's equity the amount by which it is estimated that the lease enhanced that price or adding to the price of the seller's equity the amount by which it is estimated that the lease depressed that price.

(c) Convert a sale to the valuation date of the subject property by adjusting it for any change in price level of this type of property that has occurred between the time the sale price was negotiated and the valuation date of the subject property.

(d) Make such allowances as he deems appropriate for differences between a comparable property at the time of sale and the subject property on the valuation date, in physical attributes of the properties, location of the properties, legally enforceable restrictions on the properties' use, and the income and amenities which the properties are expected to produce. When the appraisal subject is land and the comparable property is land of smaller dimensions, and it is assumed that the subject property would be divided into comparable smaller parcels by a purchaser, the assessor shall allow for the cost of subdivision, for the area required for streets and alleys, for selling expenses, for normal profit, and for interest charges during the period over which it is anticipated that the smaller properties will be marketed.

History: Adopted June 21, 1967, effective July 23, 1967.
Amended July 27, 1982, effective December 30, 1982.

Rule 6. THE REPRODUCTION AND REPLACEMENT COST APPROACHES TO VALUE.

Reference: Sections 110, 401, Revenue and Taxation Code.

(a) The reproduction or replacement cost approach to value is used in conjunction with other value approaches and is preferred when neither reliable sales data (including sales of fractional interests) nor reliable income data are available and when the income from the property is not so regulated as to make such cost irrelevant. It is particularly appropriate for construction work in progress and for other property that has experienced relatively little physical deterioration, is not misplaced, is neither over- nor underimproved, and is not affected by other forms of depreciation or obsolescence.

(b) The reproduction cost of a reproducible property may be estimated either by (1) adjusting the property's original cost for price level changes and for abnormalities, if any, or (2) applying current prices to the property's labor and material components, with appropriate additions for entrepreneurial services, interest on borrowed or owner-supplied funds, and other costs typically incurred in bringing the property to a finished state (or to a lesser state if unfinished on the lien date). Estimates made under (2) above may be made by using square-foot, cubic-foot, or

other unit costs; a summation of the in-place costs of all components; a quantity survey of all material, labor, and other cost elements; or a combination of these methods.

(c) The original cost of reproducible property shall be adjusted, in the aggregate or by groups, for price level changes since original construction by multiplying the cost incurred in a given year by an appropriate price index factor. When detailed investment records are unavailable for earlier years or when only a small percentage of the total investment is involved, the investments in such years may be lumped and factored to present price levels by means of an index number that represents the assessor's best judgment of the weighted average price change. If the property was not new when acquired by its present owner and its original cost is unknown, its acquisition cost may be substituted for original cost in the foregoing calculations.

(d) The replacement cost of a reproducible property may be estimated as indicated in (b)(2) of this section by applying current prices to the labor and material components of a substitute property capable of yielding the same services and amenities, with appropriate additions as specified in subsection (b)(2).

(e) Reproduction or replacement cost shall be reduced by the amount that such cost is estimated to exceed the current value of the reproducible property by reason of physical deterioration, misplacement, over- or underimprovement, and other forms of depreciation or obsolescence. The percentage that the remainder represents of the reproduction or replacement cost is the property's percent good.

(f) When the allowance made pursuant to paragraph (e) exceeds the amount included in the depreciation tables used by the assessor, the reasons therefor shall be noted in the appraisal record for the property and the amount thereof shall be ascertainable from the record.

History: Adopted September 1, 1967, effective October 7, 1967.
 Amended February 16, 1970, effective March 26, 1970.
 Amended February 18, 1971, effective March 24, 1971.
 Amended February 16, 1977, effective February 18, 1977.
 Amended December 19, 1997, effective January 18, 1998.

Rule 8. THE INCOME APPROACH TO VALUE.

Reference: Sections 110, 401, Revenue and Taxation Code.

(a) The income approach to value is used in conjunction with other approaches when the property under appraisal is typically purchased in anticipation of a money income and either has an established income stream or can be attributed a real or hypothetical income stream by comparison with other properties. It is the preferred approach for the appraisal of land when reliable sales data for comparable properties are not available. It is the preferred approach for the appraisal of improved real properties and personal properties when reliable sales data are not available and the cost approaches are unreliable because the reproducible property has suffered considerable physical depreciation, functional obsolescence or economic obsolescence, is a substantial over- or underimprovement, is misplaced, or is subject to legal restrictions on income that are unrelated to cost.

(b) Using the income approach, an appraiser values an income property by computing the present worth of a future income stream. This present worth depends upon the size, shape, and duration of the estimated stream and upon the capitalization rate at which future income is discounted to its present worth. Ideally, the income stream is divided into annual segments and the present worth of the total income stream is the algebraic sum (negative items subtracted from positive items) of the present worths of the several segments. In practical application, the stream is usually either

(1) divided into longer segments, such as the estimated economic life of the improvements and all time thereafter or the estimated economic life of the improvements and the year in which the improvements are scrapped and the land is sold, or

(2) divided horizontally by projecting a perpetual income for land and an income for the economic life of the improvements, or

(3) projected as a level perpetual flow.

(c) The amount to be capitalized is the net return which a reasonably well informed owner and reasonably well informed buyers may anticipate on the valuation date that the taxable property existing on that date will yield under prudent management and subject to such legally enforceable restrictions as such persons may foresee as of that date. Net return, in this context, is the difference between gross return and gross outgo. Gross return means any money or money's worth which the property will yield over and above vacancy and collection losses, including ordinary income, return of capital, and the total proceeds from sales of all or part of the property. Gross outgo means any outlay of money or money's worth, including current expenses and capital expenditures (or annual allowances therefor) required to develop and maintain the estimated income. Gross outgo does not include amortization, depreciation, or depletion charges, debt retirement, interest on funds invested in the property, or rents and royalties payable by the assessee for use of the property. Property taxes, corporation net income taxes, and corporation franchise taxes measured by net income are also excluded from gross outgo.

(d) In valuing property encumbered by a lease, the net income to be capitalized is the amount the property would yield were it not so encumbered, whether this amount exceeds or falls short of the contract rent and whether the lessor or the lessee has agreed to pay the property tax.

(e) Recently derived income and recently negotiated rents or royalties (plus any taxes paid on the property by the lessee) of the subject property and comparable properties should be used in estimating the future income if, in the opinion of the appraiser, they are reasonably indicative of the income the property will produce in its highest and best use under prudent management. Income derived from rental of properties is preferred to income derived from their operation since income derived from operation is the more likely to be influenced by managerial skills and may arise in part from nontaxable property or other sources. When income from operating a property is used, sufficient income shall be excluded to provide a return on working capital and other nontaxable operating assets and to compensate unpaid or underpaid management.

(f) When the appraised value is to be used to arrive at an assessed value, the capitalization rate is to include a property tax component, where applicable, equal to the estimated future tax rate for the area times the assessment ratio.

(g) The capitalization rate may be developed by either of two means:

(1) By comparing the net incomes that could reasonably have been anticipated from recently sold comparable properties with their sales prices, adjusted, if necessary, to cash equivalents (the market-derived rate). This method of deriving a capitalization rate is preferred when the required sales prices and incomes are available. When the comparable properties have similar capital gains prospects, the derived rate already includes a capital gain (or loss) allowance and the income to be capitalized should not include such a gain (or loss) at the terminus of the income estimate.

(2) By deriving a weighted average of the capitalization rates for debt and for equity capital appropriate to the California money markets (the band-of-investment method) and adding increments for expenses that are excluded from outgo because they are based on the value that is being sought or the income that is being capitalized. The appraiser shall weight the rates for debt and equity capital by the respective amounts of such capital he deems most likely to be employed by prospective purchasers.

(h) Income may be capitalized by the use of gross income, gross rent, or gross production multipliers derived by comparing sales prices of closely comparable properties (adjusted, if necessary, to cash equivalents) with their gross incomes, gross rents, or gross production.

(i) The provisions of this rule are not applicable to lands defined as open-space lands by Chapter 1711, Statutes of 1967, nor are they applicable in all respects to possessory interests.

History: Adopted December 12, 1967, effective January 18, 1968.
 Amended December 15, 1976, effective January 21, 1977.
 Amended September 27, 1977, effective November 25, 1977.
 Amended July 27, 1982, effective December 30, 1982.

Rule 10 TRADE LEVEL FOR TANGIBLE PERSONAL PROPERTY

References: Sections 110, 401, Revenue and Taxation Code.

(a) In appraising tangible personal property, the assessor shall give recognition to the trade level at which the property is situated and to the principle that property normally increases in value as it progresses through production and distribution channels. Such property normally attains its maximum value as it reaches the consumer level. Accordingly, tangible personal property shall be valued by procedures that are consistent with the general policies set forth herein.

(b) Except as provided by the following subdivisions, tangible personal property held by a consumer shall be valued at the amount of cash or its equivalent for which the property would transfer to a consumer of like property at the same trade level if exposed for sale on the open market. This value shall be estimated in accordance with regulations 4, 6, and 8. If a cost approach is employed, the cost shall include the full economic cost of placing the property in service. Full economic cost (i.e., replacement or reproduction cost), includes costs typically incurred in bringing the property to a finished state, including labor and materials, freight or shipping cost, installation costs, sales or use taxes, and additions for market supported entrepreneurial services (with appropriate allowances for trade, quantity, or cash discounts). Full economic cost does not include extended service plans or extended warranties, supplies, or other assets or business services that may have been included in a purchase contract.

(c) Tangible personal property leased, rented, or loaned for a period of six months or less, having a tax situs at the place where the lessor normally keeps the property as provided in regulation 204, shall be valued at the amount of cash or its equivalent for which it would transfer to other lessors or retailers of like property. The value may be estimated by reference to the price at which the lessor could be expected to sell the property at fair market value to other lessors or retailers of like property. If that price is unknown, then the value may be estimated by reference to one or more of the following indicators of value: (1) the lessor's full economic cost of the property with a reasonable allowance for depreciation; (2) the cost indicated in subdivision (e) if the lessor is also the manufacturer; or (3) in accordance with subdivision (b).

(d) Tangible personal property leased, rented, or loaned for an extended but unspecified period or leased for a term of more than six months, having tax situs at the lessee's situs as provided in regulation 204, shall be valued by estimating the cash price or its equivalent for which the property could be sold at fair market value to an outside customer operating at the same level of trade as the lessee. If that price is unknown, then the value may be estimated by reference to one or more of the following indicators of value: (1) the lessee's full economic cost of the property with a reasonable allowance for depreciation, or (2) in accordance with subdivision (b).

(e) Tangible personal property acquired from internal sources for self-consumption or use, shall be valued by estimating the cash price or its equivalent for which the property could be sold at fair market value to an outside customer using the property at the same trade level, (with appropriate allowances for trade, quantity, or cash discounts). If that price is unknown, then the value may be estimated by reference to one or more of the following indicators of value: (1) the cost of the property in its condition and location on the lien date, had it been acquired at fair market value from an outside supplier (including labor, materials, overhead, interdivisional and/or intercompany profits, interest on borrowed or owner supplied funds, sales or use tax, installation, and other costs incurred in bringing the property to a finished state, with appropriate allowances for trade, quantity, or cash discounts, and depreciation), or (2) in accordance with subdivision (b). The cost of the property in its condition and location on the lien date, had it been acquired at fair market value from an outside supplier, does not include extended service plans or extended warranties, supplies, other assets or business services. The quantity discount allowed a manufacturer, when it is its own largest customer, should be at least as large as that allowed its largest wholesale or retail customer.

(f) Tangible personal property in the hands of a person engaged in the function of a manufacturer, wholesaler, or retailer and a consumer shall be valued by estimating the cash price or its equivalent for which the property could be sold at fair market value to an outside customer operating at the same level of trade. The property shall be valued based on how it is situated or used on the lien date pursuant to subdivisions (b), (c), (d), and (e).

History: Adopted June 21, 1967, effective July 23, 1967.
Amended February 18, 1970, effective March 26, 1970.
Amended January 6, 1971, effective February 18, 1971.
Amended April 19, 1971, effective May 22, 1971.
Amended February 23, 2000, effective May 25, 2000.

Rule 301. DEFINITIONS AND GENERAL PROVISIONS.

Reference: Sections 110, 110.1, 110.5, 1601, 1603 et seq., Revenue and Taxation Code.
Section 31000.6, Government Code.

The provisions set forth in this regulation govern the construction of this subchapter.

(a) "County" is the county or city and county wherein the property is located that is the subject of the proceedings under this subchapter.

(b) "Assessor" is the assessor of the county.

(c) "Auditor" is the auditor of the county.

(d) "Board" is the board of equalization or assessment appeals board of the county.

(e) "Chair" is the chair of the county board of equalization or assessment appeals board.

(f) "Clerk" is the clerk of the county board of equalization or assessment appeals board.

(g) "Person affected" or "party affected" is any person or entity having a direct economic interest in the payment of property taxes on the property for the valuation date that is the subject of the proceedings under this subchapter, including the property owner, a lessee required by the property lease to pay the property taxes, and a property owner who acquires an ownership interest after the lien date if the new owner is also responsible for payment of property taxes for the lien date that is the subject of the application.

(h) "Full cash value" or "fair market value" is the value provided in sections 110 and 110.1 of the Revenue and Taxation Code.

(i) "Restricted value" is a value standard other than full cash value prescribed by the Constitution or by statute authorized by the Constitution.

(j) "Full value" is either the full cash value or the restricted value.

(k) "Equalization" is the determination by the board of the correct full value for the property that is the subject of the hearing.

(l) "County legal advisor" is the county counsel of the county, or the district attorney of the county if there is no county counsel, and the City Attorney of the City and County of San Francisco, or outside counsel specifically retained to advise the county board of equalization or assessment appeals board.

(m) "Authorized agent" is one who is directly authorized by the applicant to represent the applicant in an assessment appeals proceeding.

History: Adopted May 11, 1967, effective June 11, 1967.
Amended July 27, 1982, effective December 30, 1982.
Amended January 5, 2000, effective April 22, 2000.

Rule 302. THE BOARD'S FUNCTION AND JURISDICTION.

Reference: Sections 531.1, 1603, 1604, 1605.5, 1613, Revenue and Taxation Code.

(a) The functions of the board are:

(1) To lower sustain, or increase upon application, or to increase after giving notice when no application has been filed, individual assessments in order to equalize assessments on the local tax assessment roll,

(2) To determine the full value and, where appealed, the base year value of the property that is the subject of the hearing,

(3) To hear and decide penalty assessment, and to review, equalize and adjust escaped assessments on that roll except escaped assessments made pursuant to Revenue and Taxation Code section 531.1,

(4) To determine the classification of the property that is the subject of the hearing, including classifications within the general classifications of real property, improvements, and personal property. Such classifications may result in the property so classified being exempt from property taxation.

(5) To determine the allocation of value to property that is the subject of the hearing, and

(6) To exercise the powers specified in sections 1605.5 and 1613 of the Revenue and Taxation Code.

(b) Except as provided in subdivision (a)(4), the board has no jurisdiction to grant or deny exemptions or to consider allegations that claims for exemption from property taxes have been improperly denied.

(c) The board acts in a quasi-judicial capacity and renders its decision only on the basis of proper evidence presented at the hearing.

History: Adopted May 11, 1967, effective June 11, 1967.
Amended May 21, 1968, effective June 26, 1968.
Amended June 4, 1969, effective June 6, 1969.
Amended May 5, 1971, effective June 10, 1971.
Amended December 17, 1975, effective January 25, 1976.
Amended January 6, 2000, effective April 22, 2000.

Rule 305. APPLICATION.

Reference: Sections 51, 166, 408.1, 1603, 1605, Revenue and Taxation Code;
Section 25105.5 Government Code

No change in an assessment sought by a person affected shall be made unless the following application procedure is followed.

(a) ELIGIBLE PERSONS. (1) An application is filed by a person affected or the person's agent, or a relative mentioned in regulation 317 of this subchapter. If the application is made by an agent, other than an authorized attorney licensed to practice in this state who has been retained and authorized by the applicant to file the application, written authorization to so act must be filed with the application. For purposes of signing an application on behalf of an applicant, an agent shall be deemed to have been duly authorized if the applicant's written agent

authorization is on the application or attached to each application at the time it is filed with the board. The attached authorization shall include the following:

- (A) The date the authorization statement is executed;
- (B) A statement to the effect that the agent is authorized to sign and file applications in the specific calendar year in which the application is filed;
- (C) The specific parcel(s) or assessment(s) covered by the authorization, or a statement that the agent is authorized to represent the applicant on all parcels and assessments located in the specific county;
- (D) The name, address, and telephone number of the specific agent who is authorized to represent the applicant; and
- (E) The applicant's signature and title;
- (F) A statement that the agent will provide the applicant with a copy of the application.

(2) If a photocopy of the original authorization is attached to the application, the agent shall be prepared to submit an original signed authorization if requested by the board. The application form shall show that the agent's authorization was attached to the application. An agent must have authorization to file an application at the time the application is filed; retroactive authorizations are not permitted.

(3) If the applicant is a corporation, limited partnership, or a limited liability company, the agent authorization must be signed by an officer or authorized employee of the business entity.

(4) No application shall be rejected as a duplicate application by the clerk unless it qualifies as a duplicate application within the meaning specified in section 1603.5 of the Revenue and Taxation Code.

(b) **SIGNATURE AND VERIFICATION.** The application shall be in writing and signed by the applicant or the applicant's agent with declaration under penalty of perjury that the statements made in the application are true and that the person signing the application is one of the following:

- (1) The person affected, a relative mentioned in regulation 317 of this subchapter, an officer of a corporation, or an employee of a corporation who has been designated in writing by the board of directors or corporate officer to represent the corporation on property tax matters;
- (2) An agent authorized by the applicant as indicated in the agent's authorization portion of the application; or
- (3) An attorney licensed to practice law in this state who has been retained by the applicant and who has been authorized by the applicant, prior to the time the application is filed, to file the application.

(c) **FORMS AND CONTENTS.** The county shall provide, free of charge, forms on which applications are to be made.

(1) The application form shall be prescribed by the State Board of Equalization and shall require that the applicant provide the following information:

- (A) The name and address of the applicant.
- (B) The name and address of the applicant's agent, if any. If the applicant is represented by an agent, both the applicant's actual mailing address and the agent's mailing address shall be provided on the application.
- (C) The applicant's written authorization for an agent, if any, to act on the applicant's behalf.

(D) A description of the property that is the subject of the application sufficient to identify it on the assessment roll

(E) The applicant's opinion of the value of the property on the valuation date of the assessment year in issue

(F) The roll value on which the assessment of the property was based

(G) The facts relied upon to support the claim that the board should order a change in the assessed value, base year value, or classification of the subject property. The amount of the tax or the amount of an assessed value increase shall not constitute facts sufficient to warrant a change in assessed values.

(2) The form shall also include:

(A) A notice that a list of property transfers within the county, that have occurred within the preceding two-year period, is open to inspection at the assessor's office to the applicant upon payment of a fee not to exceed ten dollars (\$10). This requirement shall not apply to counties with a population under 50,000 as determined by the 1970 decennial census.

(B) A notice that written findings of fact will be prepared by the board upon request if the applicable fee is paid. An appropriate place for the applicant to make the request shall be provided.

(3) An application may include one or more reasons for filing the application. Unless permitted by local rules, an application shall not include both property on the secured roll and property on the unsecured roll.

(4) An application that does not include the information required in subsection (c)(1) of this regulation is invalid and shall not be accepted by the board. Prompt notice that an application is invalid shall be given by the clerk to the applicant and, where applicable, the applicant's agent. An applicant or the applicant's agent who has received notice shall be given a reasonable opportunity to correct any errors and/or omissions. Disputes concerning the validity of an application shall be resolved by the board.

(5) An application that includes the correct information required by subdivision (1) is valid and no additional information shall be required of the applicant on the application form.

(6) If the county has appointed hearing officers as provided for in Revenue and Taxation Code section 1636, the application form shall advise the applicant of the circumstances under which the applicant may request that the application be heard by such an officer.

(7) If the application appeals property subject to an escape assessment resulting from an audit conducted pursuant to section 469 of the Revenue and Taxation Code, then all property, both real and personal, of the assessee at the same profession, trade, or business location shall be subject to review, equalization, and adjustment by the appeals board, except when the property has previously been equalized for the year in question.

(d) TIME OF FILING. (1) An application appealing a regular assessment shall be filed with the clerk during the regular filing period beginning July 2 but not later than September 15. A regular assessment is one placed on the assessment roll for the most recent lien date, prior to the closing of that assessment roll. Additionally, an application appealing a base year value for the most recent lien date, where that value is not the value currently on the assessment roll, shall be filed with the clerk during the regular filing period beginning July 2 but not later than September 15.

(2) An application appealing an escape assessment or a supplemental assessment must be filed with the clerk no later than 60 days after the date on which the assessee was notified of the assessment, or no later than 60 days after the mailing of the tax bill in a county of the first class and in those counties where the board of supervisors has adopted a resolution to that effect, pursuant to section 1605 of the Revenue and Taxation Code.

(3) An application appealing a proposed reassessment made for property damaged by misfortune or calamity pursuant to section 170 of the Revenue and Taxation Code must be filed with the clerk no later than 14 days after the date of mailing of the notice of proposed reassessment by the assessor. The decision of the board regarding the damaged value of property shall be final, however, the decision regarding the reassessment made pursuant to section 170 shall create no presumption regarding the value of the property subsequent to the date of the damage.

(4) An application will be deemed to have been timely filed:

(A) If it is sent by U.S. mail, properly addressed with postage prepaid and is postmarked on the last day of the filing period or earlier within such period; or

(B) If proof satisfactory to the board establishes that the mailing occurred on the last day of the filing period or within such period. Any statement or affidavit made by an applicant asserting such a timely filing must be made within one year of the last day of the filing period.

(5) An application filed by mail that bears both a private business postage meter postmark date and a U.S. Postal Service postmark date will be deemed to have been filed on the date that is the same as the U.S. Postal Service postmark date, even if the private business postage meter date is the earlier of the two postmark dates. If the last day of the filing period falls on Saturday, Sunday, or a legal holiday, an application that is mailed and postmarked on the next business day shall be deemed timely filed. If the county's offices are closed for business prior to 5 p.m. or for the entire day on which the deadline for filing falls, that day shall be considered a legal holiday.

(6) Except as provided in sections 620.5, 1603, and 1605 of the Revenue and Taxation Code, the board has no jurisdiction to hear an application unless filed within the time periods specified above.

(e) AMENDMENTS AND CORRECTIONS. (1) An applicant or an applicant's agent may amend an application until 5:00 p.m. on the last day upon which it might have been timely filed.

(2) After the filing period has expired:

(A) An invalid application may be corrected in accordance with subsection (c)(4) of this regulation.

(B) The applicant or the applicant's agent may amend an application provided that the effect of the amendment is not to request relief additional to or different in nature from that originally requested.

(C)(i) Upon request of the applicant or the applicant's agent, the board, in its discretion, may allow the applicant or the applicant's agent to make amendments to the application in addition to those specified in subdivisions (A) and (B) to state additional facts claimed to require a reduction of the assessment that is the subject of the application.

(ii) The applicant or the applicant's agent shall state the reasons for the request, which shall be made in writing and filed with the clerk of the board prior to any scheduled hearing, or may be made orally at the hearing. If made in writing, the clerk shall provide a copy to the assessor upon receipt of the request.

(iii) As a condition to granting a request to amend an application, the board may require the applicant to sign a written agreement extending the two-year period provided in section 1604 of the Revenue and Taxation Code.

(iv) If a request to amend is granted, and upon the request of the assessor, the hearing on the matter shall be continued by the board for no less than 45 days, unless the parties mutually agree to a different period of time.

(3) An applicant or an applicant's agent shall be permitted to present testimony and other evidence at the hearing to support a full value that may be different from the opinion of value stated on the application. The presentation of such testimony or other evidence shall not be considered a request to amend or an amendment to the application.

(f) **CLAIM FOR REFUND.** If a valid application is designated as a claim for refund pursuant to section 5097 of the Revenue and Taxation Code, the applicant shall be deemed to have challenged each finding of the board and to have satisfied the requirements of section 5097.02 of the Revenue and Taxation Code.

(g) **RETENTION OF RECORDS.** The clerk may destroy records consisting of assessment appeal applications when five years have elapsed since the final action on the application. The records may be destroyed three years after the final action on the application if the records have been microfilmed, microfiched, imaged, or otherwise preserved on a medium that provides access to the documents. As used in this subsection, "final action" means the date of the final decision by the board.

(h) **CONSOLIDATION OF APPLICATIONS.** The board, on its own motion or on a timely request of the applicant or applicants or the assessor, may consolidate applications when the applications present the same or substantially related issues of valuation, law, or fact. If applications are consolidated, the board shall notify all parties of the consolidation.

History: Adopted May 11, 1967, effective June 11, 1967.
Amended December 11, 1967, effective January 13, 1968.
Amended May 21, 1968, effective June 26, 1968.
Amended November 20, 1968, effective November 22, 1968.
Amended June 4, 1969, effective June 6, 1969.
Amended May 6, 1970, effective June 6, 1970.
Amended April 14, 1972, effective May 14, 1972.
Amended June 13, 1974, effective June 14, 1974.
Amended April 7, 1977, effective May 22, 1977.
Amended July 31, 1980, effective November 19, 1980.
Amended July 27, 1982, effective December 30, 1982.
Amended and effective October 23, 1997.
Amended April 5, 2000, effective June 30, 2000.

Rule 305.1. EXCHANGE OF INFORMATION.

Reference: Sections 408, 441, 1606, 1609.4, Revenue and Taxation Code.

(a) **REQUEST FOR INFORMATION.** When the assessed value of the property involved, before deduction of any exemption accorded the property, is \$100,000 or less, the applicant may file a written request for an exchange of information with the assessor; and when the assessed value before deduction of any exemption exceeds \$100,000, either the applicant or the assessor may request such an exchange. The request may be filed with the clerk at the time an application for hearing is filed or may be submitted to the other party and the clerk at any time prior to 30 days before the commencement of the hearing. For purposes of determining the date upon which the exchange was deemed initiated, the date of postmark as affixed by the United States Postal Service, or the date certified by a bona fide courier service on the envelope or package containing the information shall control. The clerk shall, at the earliest opportunity, forward any request filed with the application or a copy thereof to the other party. The request shall contain the basis of the requesting party's opinion of value for each valuation date at issue and the following data:

(1) **COMPARABLE SALES DATA.** If the opinion of value is to be supported with evidence of comparable sales, the properties sold shall be described by the assessor's parcel number, street address or legal description sufficient to identify them. With regard to each property sold there shall be presented the approximate date of sale, the price paid, the terms of sale (if known), and the zoning of the property.

(2) **INCOME DATA.** If the opinion of value is to be supported with evidence based on an income study, there shall be presented: the gross income, the expenses, and the capitalization method (direct capitalization or discounted cash flow analysis), and rate or rates employed.

(3) **COST DATA.** If the opinion of value is to be supported with evidence of replacement cost, there shall be presented:

(A) With regard to improvements to real property: the date of construction, type of construction, and replacement cost of construction.

(B) With regard to machinery and equipment: the date of installation, replacement cost, and any history of extraordinary use.

(C) With regard to both improvements and machinery and equipment: facts relating to depreciation, including any functional or economic obsolescence, and remaining economic life.

The information exchanged shall provide reasonable notice to the other party concerning the subject matter of the evidence or testimony to be presented at the hearing. There is no requirement that the details of the evidence or testimony to be introduced must be exchanged.

(b) TRANSMITTAL OF DATA TO OTHER PARTY. If the party requesting an exchange of data under the preceding subsection has submitted the data required therein within the specified time, the other party shall submit a response to the initiating party and to the clerk at least 15 days prior to the hearing. The response shall be supported with the same type of data required of the requesting party. When the assessor is the respondent, he or she shall submit the response to the address shown on the application or on the request for exchange of information, whichever is filed later. The initiating party and the other party shall provide adequate methods of submission to ensure to the best of their ability that the exchange of information process is completed at least 10 days prior to the hearing.

(c) PROHIBITED EVIDENCE; NEW MATERIAL; CONTINUANCE. Whenever information has been exchanged pursuant to this regulation, the parties may introduce evidence only on matters pertaining to the information so exchanged unless the other party consents to introduction of other evidence. However, at the hearing, each party may introduce new material relating to the information received from the other party. If a party introduces such new material at the hearing, the other party, upon request, shall be granted a continuance for a reasonable period of time.

(d) NONRESPONSE TO REQUEST FOR INFORMATION. If one party initiates a request for information and the other party does not comply within the time specified in subsection (b), the board may grant a postponement for a reasonable period of time. The postponement shall extend the time for responding to the request. If the board finds willful noncompliance on the part of the noncomplying party, the hearing will be convened as originally scheduled and the noncomplying party may comment on evidence presented by the other party but shall not be permitted to introduce other evidence unless the other party consents to such introduction.

History: Adopted May 6, 1970, effective June 6, 1970.
Amended May 5, 1971, effective June 10, 1971.
Amended June 13, 1974, effective June 14, 1974.
Amended July 27, 1982, effective February 10, 1983.
Amended January 5, 2000, effective April 22, 2000.
Amended and effective September 19, 2002.

Rule 305.2. PREHEARING CONFERENCE.

Reference: Article XIII, section 16, California Constitution.
Section 1601 et seq., Revenue and Taxation Code.

(a) A county board of supervisors may establish prehearing conferences. If prehearing conferences are established, the county board of supervisors shall adopt rules of procedure for prehearing conferences. A prehearing conference may be set by the clerk at the request of the applicant or the applicant's agent, the assessor, or at the direction of the appeals board. The purpose of a prehearing conference is to resolve issues such as, but not limited to, clarifying and defining the issues, determining the status of exchange of information requests, stipulating to matters on which agreement has been reached, combining applications into a single hearing, bifurcating the hearing issues, and scheduling a date for a hearing officer or the board to consider evidence on the merits of the application.

(b) The clerk of the board shall set the matter for a prehearing conference and notify the applicant or the applicant's agent and the assessor of the time and date of the conference. Notice of the time, date, and place of the conference shall be given not less than 30 days prior to the conference, unless the assessor and the applicant stipulate orally or in writing to a shorter notice period.

History: Adopted January 5, 2000, effective April 22, 2000.

Rule 305.3. APPLICATION FOR EQUALIZATION UNDER REVENUE AND TAXATION CODE SECTION 469.

Reference: Sections 23, 408, 469, 531, 531.8, 533, 534, 1603, 1605, Revenue and Taxation Code.

(a) **GENERAL.** In addition to any rights of appeal of escape or supplemental assessments as described in Rule 305(d)(2) of the subchapter, if the result of an audit discloses property subject to an escape assessment for any year covered by the audit, then, pursuant to section 1605 of the Revenue and Taxation Code, an application may be filed for review, equalization, and adjustment of the original assessment of all property of the assessee at the location of the profession, trade, or business for that year, except any property that has previously been equalized for the year in question.

(b) **DEFINITIONS.** For purposes of subsection (a) of this regulation:

(1) "Audit" means any audit of the books and records of a taxpayer engaged in a profession, trade, or business who owns, claims, possesses, or controls locally assessable business tangible personal property and trade fixtures within the county.

(2) "Property subject to an escape assessment" means any individual item of the assessee's property that was underassessed or not assessed at all when the assessor made the original assessment of the assessee's property, and which has not been previously equalized by an appeals board, regardless of whether the assessor actually makes or enrolls an escape assessment. Property is subject to an escape assessment even if the audit discloses an overassessment of another portion of an item of the property, and the amount of the underassessment could be offset completely by the amount of overassessment. If the audit discloses that any property was subject to an escape assessment, the assessor shall include that fact as a finding presented to the taxpayer as required by Rule 191. If no such finding is made by the assessor, the taxpayer may file an application and present evidence to the board of the existence and disclosure of property subject to escape assessment. If the board determines that property subject to escape assessment was disclosed as a result of an audit, the board shall permit the taxpayer's section 469 appeal.

(3) "Result of an audit" means the final conclusions reached by the assessor during the audit process as described in Rule 191 and shall include a description of any property subject to escape assessment as noted in the audit work papers or as identified in writing by the taxpayer.

(4) "Original assessment" means the assessment and any subsequent roll corrections or roll changes prior to the date of the commencement of the audit for the roll year for which the result of the audit discloses property subject to an escape assessment.

(5) "All property of the assessee" means any property, real or personal, assessed to the assessee, or the assessee's statutory or legal predecessor in interest, at the location of the profession, trade, or business for the year of the audit.

(6) "Location of the profession, trade, or business" means a site, as determined by the board, where the property subject to the escape assessment is located. Site includes all property within the same appraisal unit as the property that is subject to escape assessment. Site also includes other property not within the same appraisal unit as the property that is subject to escape assessment, when the other property and the property that escaped assessment function as part of the same economic unit of the profession, trade, or business. A "location of the profession, trade, or business" may include multiple parcels of real property, noncontiguous parcels, parcels with separate addresses, and parcels in separate revenue districts within the county.

(7) "Property that has been previously equalized for the year in question" means that the board has previously made a final determination of full value for that item, category, or class of property that was the subject of an assessment appeals hearing or was the subject of a stipulated agreement approved by the board. An item, category, or class of property, or portion thereof, shall be deemed to have been the subject of a hearing or of a stipulated agreement only to the extent the board's decision or the stipulated agreement specifically identifies the value of such item, category, or class, or portion thereof, as having been contested and resolved at hearing or as having been agreed to by the parties in stipulation.

(c) **NOTICE OF AUDIT RESULTS.** Upon completion of an audit of the assessee's books and records, the assessor shall notify the assessee in writing of the results of the audit as defined in subsection (b)(3) of this rule for all property, locations, and years that were the subject of the audit. At the request of the assessee, the assessor shall permit the assessee or his or her designated representative to inspect or copy any information, documents, or records relating to the audit in accordance with the provisions of Revenue and Taxation Code section 408.

(d) **NOTICE FOR FILING AN APPLICATION.** An application shall be filed with the clerk no later than 60 days after the date of mailing by which the assessee is notified that the result of the audit has disclosed property subject to escape assessment. The notice shall be mailed to the assessee by regular United States mail directed to the assessee at the assessee's latest address known to the assessor, unless, prior to the mailing of the notice, the assessor is notified in writing by the assessee of a change in address. The notice for purposes of filing an application shall be one of the following, depending upon the conclusion(s) of the audit:

(1) Where an escape assessment is enrolled by the assessor, the notice shall be the tax bill based upon the results of the audit and resulting escape assessment(s) for counties of the first class or any county that has adopted a resolution pursuant to Revenue and Taxation Code section 1605, subdivision (c). If the county is not a county of the first class or has not adopted a resolution pursuant to Revenue and Taxation Code section 1605, subdivision (c), the notice of escape assessment pursuant to Revenue and Taxation Code section 534 shall serve as the notice.

(2) Where the assessor does not enroll an escape assessment resulting from the audit or when the escape assessment is enrolled but offset pursuant to Revenue and Taxation Code section 533, the assessor's written notification of the audit results for the property, locations, and each year that were the subject of the audit as described in subsection (c) of this rule shall be the notice. The notice of audit results showing property subject to escape assessment for each year shall indicate that it is the notice of the assessee's right to file an application.

(e) **EXAMPLES.** The following examples are illustrative of the foregoing criteria. Examples 1 and 2 concern "who may file" an application on the assessee's property. Examples 3, 4, and 5 clarify the "location" of the profession, trade, or business.

Example 1: Taxpayer DRK owns and is assessed for land, a building, and business property. DRK leases the entire business to RCJ. The county assessor conducts an audit of DRK, and the result of the audit discloses property subject to an escape assessment. DRK, as the assessee, can file an application for equalization for all property, real and personal, where the property subject to the escape assessment is located. In addition, RCJ may file an application for equalization of DRK's property if RCJ qualifies as a person affected pursuant to rule 302 of this subchapter.

Example 2: Taxpayer DRK owns and is assessed for land and a building. DRK leases the land and building to RCJ. RCJ operates a business in DRK's building and is assessed for business tangible personal property and trade fixtures. The county assessor conducts an audit of RCJ, and the result of the audit discloses property subject to an escape assessment. RCJ, as the assessee, can file an application for equalization on his personal property and trade fixtures only. RCJ cannot file an application on DRK's land and building, as this is not property of the assessee. In addition, since DRK is not a person affected pursuant to rule 302 of the subchapter, he cannot file an application on either his land and building or RCJ's personal property and fixtures.

Example 3: An assessee conducts a profession, trade, or business on a campus-like setting that is composed of three separate buildings. Each building has its own address and assessor's parcel number and is owned and operated by the same assessee. If an audit discloses any property subject to an escape assessment, then all property of the

assessee on the campus is eligible for equalization if the board determines that it functions and is operated as one economic unit of a profession, trade, or business.

Example 4: An assessee operates five grocery stores in a county. Although the stores are owned and operated by one assessee, carry the same type of merchandise, and share in common advertising, each store operates independently. If property subject to an escape assessment is discovered only at one store, the property at that store's location is subject to equalization following an audit. The other four stores are not considered property at the site of the profession, trade, or business where the escape assessment occurred, as they operate independently as separate economic units.

Example 5: An assessee owns and operates a department store with a parking garage on an adjacent parcel. The parcel that houses the parking garage has no personal property or fixtures located on it. If an audit discloses personal property subject to an escape assessment for the department store, the parking garage would also be eligible for equalization if the board determines that the parcels with the garage and the store are part of the same appraisal unit or economic unit of the profession, trade, or business.

(f) JURISDICTION OF THE BOARD. Nothing in this rule shall be interpreted to limit or enlarge a board's jurisdiction under specific statutory provisions or other rules of this subchapter.

History: Adopted November 28, 2001, effective May 17, 2002.

Rule 305.5. BASE YEAR VALUE PRESUMPTION.

Reference: Sections 80, 81, 110.1, 1603, 1605, Revenue and Taxation Code.

(a) The appeals board decision that the full cash value, as defined in section 110 of the Revenue and Taxation Code, is lower than the adjusted base year value (the base year value adjusted to reflect inflation as prescribed by section 110.1, subdivision (f), of the Revenue and Taxation Code) will not establish a new base year value, unless the base year value is the subject of the appeal.

(b) Any base year value determined by a local board of equalization, an assessment appeals board, or by a court for any 1975 assessment shall be conclusively presumed to be the base year value for the property assessed.

(c) The full cash value determined for property that is purchased, is newly constructed, or changes ownership after the 1975 lien date, shall be conclusively presumed to be the base year value, unless an application for equalization is filed:

(1) Within the time period specified in section 1605 of the Revenue and Taxation Code following a determination of new construction or change in ownership;

(2) During the regular equalization period provided for in section 1603 of the Revenue and Taxation Code for the year in which the assessment is placed on the assessment roll, or is filed during the regular equalization period in any of the three succeeding years. Any determination of full cash value by a local board of equalization, an assessment appeals board, or by a court of law resulting from such filing shall be conclusively presumed to be the base year value beginning with the lien date of the assessment year in which the appeal is filed; or

(3) At any time after the time period specified in (1) or (2) if the applicant claims that an erroneous change in ownership determination occurred.

(d) Any base year value determined pursuant to section 51.5 of the Revenue and Taxation Code shall be conclusively presumed to be the base year value unless an application is filed during the regular equalization period in the year in which the error was corrected or during the regular equalization period in any of the three succeeding years. Once an application is filed, the base year value determined pursuant to that application shall be conclusively presumed to be the base year value for that assessment event.

(e) An application for equalization made pursuant to sections 1603 or 1605 of the Revenue and Taxation Code, when determined, shall be conclusively presumed to be the base year value for that assessment event.

History: Adopted November 20, 1968, effective November 22, 1968.
Amended June 4, 1969, effective June 6, 1969.
Amended May 6, 1970, effective June 6, 1970.
Amended May 5, 1971, effective June 10, 1971.
Amended April 14, 1972, effective May 14, 1972.
Amended December 17, 1975, effective January 25, 1976.
Amended July 31, 1980, effective November 19, 1980.
Amended October 6, 1999, effective April 22, 2000.

Rule 306. COPY OF APPLICATION, AMENDMENT, AND CORRECTION TO ASSESSOR.

Reference: Sections 1603, 1606, Revenue and Taxation Code.

The clerk shall transmit to the assessor a copy of each application for a change in assessment and each written request for amendment or correction that is received. A reasonable time shall be allowed before the hearing for the assessor to obtain information relative to the property and the assessment thereof.

History: Adopted May 11, 1967, effective June 11, 1967.
Amended April 5, 2000, effective June 30, 2000.

Rule 307. NOTICE OF HEARING.

Reference: Sections 50, 51, 1601, 1603, 1606, 1610.8, 1620, Revenue and Taxation Code.

(a) After the filing of an application for reduction of an assessment, the clerk shall set the matter for hearing and notify the applicant or the applicant's agent in writing by personal delivery or by depositing the notice in the United States mail directed to the address given in the application. If requested by the assessor or the applicant, the clerk of the board may electronically transmit the notice to the requesting party. The notice shall designate the time and place of the hearing. It shall also include a statement that the board is required to find the full value of the property from the evidence presented at the hearing and that the board can raise, under certain circumstances, as well as lower or confirm the assessment being appealed. The notice shall include a statement that an application for a reduction in the assessment of a portion of an improved real property (e.g., land only or improvements only) or a portion of installations which are partly real property and partly personal property (e.g., only the improvement portion or only the personal property portion of machinery and equipment) may result in a reappraisal of all property of the applicant at the site which may result in an increase in the unprotested assessment of the other portion or portions of the property, which increase will offset, in whole or in part, any reduction in the protested assessment.

(b) The notice shall be given no less than forty-five days prior to the hearing unless a shorter notice period has been stipulated to by the assessor and the applicant or the applicant's agent pursuant to section 1605.6 of the Revenue and Taxation Code.

(c) The clerk shall notify the assessor of the time and place of the hearing.

(d) When proposing to raise an assessment on its own motion without an application for reduction pending before it, the board shall give notice of the hearing in the manner provided herein below not less than 20 days prior to the hearing unless notice is waived by the assessee or the assessee's agent in writing in advance of the hearing or orally at the time of the hearing or a shorter notice period is stipulated to by the assessor and assessee or the assessee's agent. The notice shall be given to the assessee as shown on the latest assessment roll by depositing the notice in the United States mail directed to the assessee at the latest address of the assessee available to the assessor on file in the records in the assessor's office. It shall contain:

- (1) A statement that a hearing will be held before the local board to determine whether or not the assessment shall be raised;
- (2) The time and place of the hearing;
- (3) The assessor's parcel number or numbers of the property as shown on the local roll;
- (4) A statement that the board is required to find the full value of the property from the evidence presented at the hearing;
- (5) The amount by which it is proposed to raise the assessment.

History: Adopted May 11, 1967, effective June 11, 1967.
 Amended October 4, 1967, effective October 5, 1967.
 Amended May 21, 1968, effective June 26, 1968.
 Amended November 20, 1968, effective November 22, 1968.
 Amended June 4, 1969, effective June 6, 1969.
 Amended May 6, 1970, effective June 6, 1970.
 Amended April 14, 1972, effective May 14, 1972.
 Amended March 1, 1984, effective June 8, 1984.
 Amended and effective December 13, 1995.
 Amended and effective August 1, 1996.
 Amended October 6, 1999, effective April 22, 2000.

Rule 308. REQUEST FOR FINDINGS.

Reference: Sections 1603, 1611.5, 1611.6, Revenue and Taxation Code.

(a) If an applicant or the assessor desires written findings of fact, the request must be in writing and submitted to the clerk before commencement of the hearing. The requesting party may abandon the request and waive findings at the conclusion of the hearing. If the requesting party abandons the request at this time, the other party may orally or in writing renew the request at the conclusion of the hearing and accompany the request with payment of the required fee or deposit. The county may impose a reasonable fee, as determined by the board of supervisors, to cover the expense of preparing the findings and conclusions and may require a deposit to be paid prior to the end of the hearing. If, at the conclusion of the hearing, a party requesting written findings has failed to pay the required fee or deposit, the board need not prepare written findings. The board may deny a request made after the conclusion of the hearing that seeks to waive written findings.

(b) The written findings of fact shall fairly disclose the board's findings on all material points raised in the application and at the hearing. The findings shall also include a statement of the method or methods of valuation used in determining the full cash value of the property. The county shall provide findings within 45 days after the final determination of the board is entered into the record pursuant to regulation 325 of this subchapter, and shall accompany them with a notice that a request for a transcript of the hearing must be made within 60 days after the final determination.

(c) If the county board fails to make findings upon request, or if findings made are found by a reviewing court to be so deficient that a remand to the county board is ordered to secure reasonable compliance with the elements of findings required by section 1611.5 of the Revenue and Taxation Code, the action of the county board shall be deemed to be arbitrary and capricious within the meaning of section 800 of the Government Code, so as to support an allowance of reasonable attorney's fees against the county for the services necessary to obtain proper findings. The dollar limitation set forth in section 800 of the Government Code shall not apply to an allowance of attorney's fees pursuant to this section.

History: Adopted May 11, 1967, effective June 11, 1967.
 Amended November 20, 1968, effective November 22, 1968.
 Amended April 14, 1972, effective May 14, 1972.

Amended June 23, 1981, effective September 19, 1981.
 Amended November 18, 1987, effective January 28, 1988.
 Amended October 6, 1999, effective April 22, 2000.

Rule 308.5. DISQUALIFICATION OF A BOARD MEMBER OR HEARING OFFICER.

Reference: Section 1624.4, 1641.2, Revenue and Taxation Code.

(a) In those counties having assessment appeals boards or hearing officers, the party affected or the party's agent, or the assessor, may file with the clerk a written statement objecting to the hearing of a matter before a member of the board or a hearing officer. The statement shall set forth the facts constituting the ground of the disqualification of the member or hearing officer and shall be signed by the party affected or the party's agent, or by the assessor, and shall be filed with the clerk at the earliest practicable opportunity after discovery of the facts constituting the ground of the member's or hearing officer's disqualification, and in any event before the commencement of the hearing of any issue of fact in the proceeding before such member or hearing officer. Copies of the statement shall be served by the presenting party on each party to the proceeding and on the board member or hearing officer alleged to be disqualified. Within 10 days after filing of the statement or 10 days after service of it on him or her, whichever is later, the board member or hearing officer may file with the clerk a written answer:

(1) Consenting to the proceeding being heard by another member or hearing officer, in which event the clerk shall appoint a replacement member or hearing officer, or

(2) Denying his or her disqualification, which answer may admit or deny any or all of the facts alleged in the statement and set forth any additional facts relevant to his or her disqualifications.

The clerk shall forthwith transmit a copy of such answer to each party.

Every statement and answer shall be verified by oath in the manner prescribed by section 446 of the Code of Civil Procedure.

(b) The question of the member's or hearing officer's disqualification shall be heard and determined by a board member, other than the member subject to the disqualification challenge, agreed upon by the parties who have appeared in the proceeding, or, in the event of their failing to agree, by a member assigned to act by the clerk. Within five days after the expiration of the time allowed by this regulation for the member to answer, the clerk shall assign a member to hear and determine the matter of the disqualification.

Once the member has been selected pursuant to subsection (b), that member shall determine the qualification of the challenged member or hearing officer.

(c) In a county whose board of supervisors has adopted a resolution implementing the provisions of sections 1640.1 and 1641.1 of the Revenue and Taxation Code, the board may elect to schedule the application before the board in lieu of following the procedures prescribed above.

History: Adopted May 6, 1970, effective June 6, 1970.
 Amended June 13, 1974, effective June 14, 1974.
 Amended October 6, 1999, effective April 22, 2000.

Rule 308.6. APPLICATION FOR EQUALIZATION BY MEMBER, ALTERNATE MEMBER, OR HEARING OFFICER.

Reference: Section 1622.6 and 1636.5, Revenue and Taxation Code.

(a) An application for equalization filed pursuant to sections 1603 or 1605 of the Revenue and Taxation Code by a member or alternate member of an assessment appeals board or an appointed hearing officer shall be heard before an

assessment appeals board panel consisting of three special alternate assessment appeals board members appointed by order of the presiding judge of the superior court in the county in which the application is filed.

(b) A special alternate assessment appeals board member may hear only the application or applications for equalization set forth in the superior court order appointing such member.

(c) Any person shall be eligible for appointment as a special alternate assessment appeals board member who meets the qualifications set forth in section 1624 of the Revenue and Taxation Code.

(d) Sections 1624.1 and 1624.2 of the Revenue and Taxation Code shall be applicable to the appointment of a special assessment appeals board member.

History: Adopted June 13, 1974, effective June 14, 1974.
Amended December 17, 1975, effective January 25, 1976.
Amended October 6, 1999, effective April 22, 2000.
Amended February 13, 2001, effective February 13, 2001.

Rule 309. HEARING.

Reference: Sections 441, 1603, 1604, 1606, 1624.4, 1641.1, 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 assessments 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.

(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.

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) and (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) 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) 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.

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.

History: Adopted May 11, 1967, effective June 11, 1967.
Amended June 13, 1974, effective June 14, 1974.
Amended April 4, 1984, effective June 30, 1984.
Amended June 25, 1997, effective September 6, 1997.
Amended January 5, 2000, effective April 22, 2000.

Rule 310. SELECTION OF BOARD CHAIR.

Reference: Section 1609, Revenue and Taxation Code.

The board shall select one of its members to act as chair and preside over all hearings. This function may be rotated among board members. The chair shall exercise such control over the hearings as is reasonable and necessary. He or she shall make all rulings regarding procedural matters and regarding the admission or exclusion of evidence.

History: Adopted May 11, 1967, effective June 11, 1967.
Amended October 6, 1999, effective April 22, 2000.

Rule 311. QUORUM AND VOTE REQUIRED.

Reference: Sections 1601, 1620, 1622.1, 1622.5, 1622.6, Revenue and Taxation Code.

(a) No hearing before the board shall be held unless a quorum is present. Except as otherwise provided in regulation 310 of this subchapter, no decision, determination or order shall be made by the board by less than a majority vote of all the members of the board who have been in attendance throughout the hearing.

(b) If either party so demands, a hearing must be held before the full board or, for assessment appeals boards appointed pursuant to Revenue and Taxation Code section 1622.1, a full three member panel. In the event that only a quorum is present and the applicant demands a hearing before the full board, or full three member panel designated pursuant to Revenue and Taxation Code section 1622.1, the board may request that the applicant extend the two-year period provided in section 1604 of the Revenue and Taxation Code if the demand precludes the matter from being heard and decided before the expiration of the two-year period. If the applicant does not extend the two-year period as requested, the board may deny the applicant's demand for a hearing before a full board or a full three member panel.

(c) If a hearing takes place before a board consisting of an even number of members and they are unable to reach a majority decision, the application shall be reheard before the full board. In any case wherein the hearing takes place before less than the full board, the parties may stipulate that the absent member or members may read or otherwise become familiar with the record and participate in the vote on the decision.

History: Adopted May 11, 1967, effective June 11, 1967.
Amended May 21, 1968, effective June 26, 1968.
Amended July 27, 1982, effective February 10, 1983.
Amended October 6, 1999, effective April 22, 2000.

Rule 312. HEARINGS RECORDED.

Reference: Section 1611, Revenue and Taxation Code.

(a) All hearings of the board shall be recorded or reported, or videotaped subject to the conditions set forth in Code of Civil Procedure section 2025, subsection (1)(2).

(b) Any person may purchase a transcript of that portion of a hearing that is open to the public upon payment of a reasonable fee, provided the request to purchase has been made within 60 days after the final determination of the board.

(c) In a county which does not regularly provide a stenographic reporter, the applicant, at the applicant's own expense, may have the hearing reported by a stenographer.

(d) In a county which does provide a stenographic reporter, if the applicant desires the clerk to arrange for a stenographer, the applicant must make the request in writing at least 10 days before the hearing.

(e) If a stenographic reporter is present, the county may designate the reporter's transcript as the official record upon being filed with the board.

History: Adopted May 11, 1967, effective June 11, 1967.
Amended April 14, 1972, effective May 14, 1972.
Amended June 13, 1974, effective June 14, 1974.
Amended October 6, 1999, effective April 22, 2000.

Rule 313. HEARING PROCEDURE.

References: Article XIII A, California Constitution.
 Sections 110, 167, 1605.4, 1607, 1609, 1609.4, 1637, Revenue and Taxation Code.
 Section 664, Evidence Code.

Hearings on applications shall proceed as follows:

(a) The chair or the clerk shall announce the number of the application and the name of the applicant. The chair shall then determine if the applicant or the applicant's agent is present. If neither is present, the chair shall ascertain whether the clerk has notified the applicant of the time and place of the hearing. If the notice has been given and neither the applicant nor the applicant's agent is present, the application shall be denied for lack of appearance, or, for good cause of which the board is timely informed prior to the hearing date, the board may postpone the hearing. If the notice has not been given, the hearing shall be postponed to a later date and the clerk directed to give proper notice thereof to the applicant.

The denial of an application for lack of appearance by the applicant, or the applicant's agent, is not a decision on the merits of the application and is not subject to the provisions of regulation 326 of this subchapter. The board of supervisors may adopt a procedure which authorizes reconsideration of the denial where the applicant furnishes evidence of good cause for the failure to appear or to make a timely request for postponement and files a written request for reconsideration within a period set by the board, not to exceed 60 days from the date of mailing of the notification of denial due to lack of appearance. Applicants who fail to request reconsideration within the period set, or whose requests for reconsideration are denied, may refile an appeal of the base year value during the next regular filing period in accordance with Revenue and Taxation Code section 80.

(b) If the applicant or the applicant's agent is present, the chair or the clerk shall announce the nature of the application, the assessed value as it appears on the local roll and the applicant's opinion of the value of the property. The chair may request that either or both parties briefly describe the subject property, the issues the board will be requested to determine, and any agreements or stipulations agreed to by the parties.

(c) In applications where the applicant has the burden of proof, the board shall require the applicant or the applicant's agent to present his or her evidence first, and then the board shall determine whether the applicant has presented proper evidence supporting his or her position. This is sometimes referred to as the burden of production. In the event the applicant has met the burden of production, the board shall then require the assessor to present his or her evidence. The board shall not require the applicant to present evidence first when the hearing involves:

(1) A penalty portion of an assessment.

(2) The assessment of an owner-occupied single-family dwelling or the appeal of an escape assessment, and the applicant has filed an application that provides all of the information required in regulation 305(c) of this subchapter and has supplied all information as required by law to the assessor. In those instances, the chair shall require the assessor to present his or her case to the board first. With respect to escape assessments, the presumption in favor of the applicant provided in regulation 321(d) of this subchapter does not apply to appeals resulting from situations where an applicant failed to file a change in ownership statement, a business property statement, or to obtain a permit for new construction.

(3) A change in ownership and the assessor has not enrolled the purchase price, and the applicant has provided the change of ownership statement required by law. The assessor bears the burden of proving by a preponderance of the evidence that the purchase price, whether paid in money or otherwise, is not the full cash value of the property.

(d) All testimony shall be taken under oath or affirmation.

(e) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the

conduct of serious affairs. Failure to enter timely objection to evidence constitutes a waiver of the objection. The board may act only upon the basis of proper evidence admitted into the record. Board members or hearing officers may not act or decide an application based upon consideration of prior knowledge of the subject property, information presented outside of the hearing, or personal research. A full and fair hearing shall be accorded the application. There shall be reasonable opportunity for the presentation of evidence, for cross-examination of all witnesses and materials proffered as evidence, for argument, and for rebuttal. The party having the burden of proof shall have the right to open and close the argument.

(f) When the assessor requests the board find a higher assessed value than he or she placed on the roll and offers evidence to support the higher value, the chair shall determine whether or not the assessor gave notice in writing to the applicant or the applicant's agent by personal delivery or by deposit in the United States mail directed to the address given on the application. If notice and a copy of the evidence offered has been supplied at least 10 days prior to the hearing, the assessor may introduce such evidence at the hearing. When the assessor proposes to introduce evidence to support a higher assessed value than the value on the roll, the assessor no longer has the presumption accorded in regulation 321(a) of this subchapter and the assessor shall present evidence first at the hearing, unless the applicant has failed to supply all the information required by law to the assessor. The foregoing notice requirement shall not prohibit the board from a finding of a higher assessed value when it has not been requested by the assessor.

(g) Hearings by boards and hearing officers shall be open, accessible, and audible to the public except that:

(1) Upon conclusion of the evidentiary portion of the hearing, the board or hearing officer may take the matter under submission and deliberate in private in reaching a decision, and

(2) The board or hearing officer may grant a request by the applicant or the assessor to close to the public a portion of the hearing relating to trade secrets. For purposes of this regulation, a "trade secret" is that information defined by section 3426.1 of the Civil Code. Such a request may be made by filing with the clerk a declaration under penalty of perjury that evidence is to be presented by the assessor of the applicant that relates to trade secrets whose disclosure to the public will be detrimental to the business interests of the owner of the trade secrets. The declaration shall state the estimated time it will take to present the evidence. Only evidence relating to the trade secrets may be presented during the time the hearing is closed, and such evidence shall be confidential unless otherwise agreed by the party to whom it relates.

History:

- Adopted May 11, 1967, effective June 11, 1967.
- Amended October 4, 1967, effective October 5, 1967.
- Amended May 21, 1968, effective June 26, 1968.
- Amended November 20, 1968, effective November 22, 1968.
- Amended June 4, 1969, effective June 6, 1969.
- Amended May 6, 1970, effective June 6, 1970.
- Amended April 14, 1972, effective May 14, 1972.
- Amended June 7, 1973, effective July 15, 1973.
- Amended June 13, 1974, effective June 14, 1974.
- Amended November 4, 1976, effective January 1, 1977.
- Amended April 7, 1977, effective May 22, 1977, applicable to 1977 assessment appeals.
- Amended December 7, 1982, effective March 16, 1983.
- Amended November 14, 1984, effective March 1, 1985.
- Amended January 5, 2000, effective April 22, 2000.
- Amended November 20, 2000, effective November 20, 2000.

Rule 314. LEGAL COUNSEL FOR APPLICANT AND ASSESSOR.

Reference: Sections 1620 et seq., 1638, Revenue and Taxation Code.

The applicant and the assessor may be represented by legal counsel, except that when an assessment protest is heard by a hearing officer appointed pursuant to section 1636 of the Revenue and Taxation Code, the assessor may have legal counsel only if the applicant is represented by an attorney.

History: Adopted May 11, 1967, effective June 11, 1967.
Amended June 13, 1974, effective June 14, 1974.

Rule 316. EXAMINATION OF APPLICANT BY BOARD.

Reference: Sections 1605.5, 1607, 1608, 1620 et seq., Revenue and Taxation Code.

(a) Except as hereinafter provided, no reduction of an assessment or change in ownership or new construction determination shall be made unless the board examines, on oath, the applicant or the applicant's agent concerning the value of the property and/or the facts upon which the change in ownership or new construction determination is based, and the applicant or the applicant's agent attends and answers all questions pertinent to the inquiry.

(b) In the event there is filed with the board a written stipulation, signed by the assessor and county legal advisor on behalf of the county and by the person affected or the authorized agent making the application, as to the full value and assessed value of the property and/or a determination regarding a change in ownership or new construction, which stipulation sets forth the facts upon which the agreed upon value is premised, the board may, at a public hearing,

(1) accept the stipulation, waive the appearance of the person affected or the agent and change the assessed value in accordance with section 1610.8 of the Revenue and Taxation Code, or,

(2) reject the stipulation or set or reset the application for reduction for hearing.

(c) The board may in its discretion, waive the examination of the applicant or the applicant's agent if the board and the assessor are satisfied that the issues raised by the application and the facts pertaining thereto have been fully considered by the board in previous years or fully presented in the application, and if the applicant or the applicant's agent requests such waiver in the application. The board shall consult with the assessor and shall act promptly on any request for waiver and give written notice of its decision no less than 30 days before commencement of the hearing on the application. If the board waives the examination of the applicant or the applicant's agent, it shall decide the case on the merits of the application and on the basis of any evidence properly produced at the hearing by the assessor.

History: Adopted May 11, 1967, effective June 11, 1967.
Amended October 4, 1967, effective October 5, 1967.
Amended May 21, 1968, effective June 26, 1968.
Amended December 17, 1975, effective January 25, 1976.
Amended July 27, 1982, effective February 10, 1983.
Amended October 6, 1999, effective April 22, 2000.

Rule 317. PERSONAL APPEARANCE BY APPLICANT; APPEARANCE BY AGENT.

Reference: Section 1601, 1607, 1608, Revenue and Taxation Code.

(a) The applicant must appear personally at the hearing or be represented by an agent, unless the applicant's appearance has been waived by the board in accordance with regulation 316 of this subchapter. If the applicant is

represented by an agent, the agent shall be thoroughly familiar with the facts pertaining to the matter before the board.

(b)(1) If the application was filed by the applicant, any person (other than a California licensed attorney retained by the applicant or a person mentioned in subsections (c), (d) except an agent, or (e)) who appears at the hearing purporting to act as agent for the applicant shall first file with the clerk a written authorization, signed by the applicant, to represent the applicant at the hearing.

(2) If at the hearing the applicant is represented by a person other than the person who was originally authorized by the applicant to appear at the hearing, that person shall present to the board a written authorization signed by the applicant indicating the applicant's consent to the change in representation.

(3) The written authorization required pursuant to this regulation shall include the information required by regulation 305(a) of this subchapter and shall clearly state that the agent is authorized by the applicant to appear at hearings before the board.

(c) If the property is held in joint or common ownership or in co-ownership, the presence of the applicant or any one of the owners shall constitute a sufficient appearance.

(d) Where the applicant is a corporation, limited partnership, or a limited liability company, the business entity shall make an appearance by the presence of any officer, employee, or an authorized agent, thoroughly familiar with the facts pertaining to the matter before the board.

(e) A husband may appear for his wife, or a wife for her husband, and sons or daughters for parents or vice versa.

(f) If an agent is previously authorized by the applicant to file an application, no further authorization is required for that agent to represent the applicant at the subsequent hearing.

History: Adopted May 11, 1967, effective June 11, 1967.
 Amended May 7, 1986, effective August 15, 1986.
 Amended January 5, 2000, effective April 22, 2000.

Rule 321. BURDEN OF PROOF.

Reference: Sections 110, 167, 1601 et seq., Revenue and Taxation Code.
 Section 664, Evidence Code.

(a) Subject to exceptions set by law, it is presumed that the assessor has properly performed his or her duties. The effect of this presumption is to impose upon the applicant the burden of proving that the value on the assessment roll is not correct, or, where applicable, the property in question has not been otherwise correctly assessed. The law requires that the applicant present independent evidence relevant to the full value of the property or other issue presented by the application.

(b) If the applicant has presented evidence, and the assessor has also presented evidence, then the board must weigh all of the evidence to determine whether it has been established by a preponderance of the evidence that the assessor's determination is incorrect. The presumption that the assessor has properly performed his or her duties is not evidence and shall not be considered by the board in its deliberations.

(c) The assessor has the burden of establishing the basis for imposition of a penalty assessment.

(d) Exceptions to subsection (a) apply in any hearing involving the assessment of an owner-occupied single-family dwelling or an escape assessment. In such instances, the presumption in section 167 of the Revenue and Taxation Code affecting the burden of proof in favor of the applicant who has supplied all information to the assessor as required by law imposes upon the assessor the duty of rebutting the presumption by the submission of evidence supporting the assessment.

(e) In hearings involving change in ownership, except as provided in section 110 of the Revenue and Taxation Code, the purchase price is rebuttably presumed to be the full cash value. The party seeking to rebut the presumption bears the burden of proof by a preponderance of the evidence.

(f) In weighing evidence, the board shall apply the same evidentiary standard to the testimony and documentary evidence presented by the applicant and the assessor. No greater relief may be granted than is justified by the evidence produced during the hearing.

History: Adopted May 11, 1967, effective June 11, 1967.
Amended October 4, 1967, effective October 5, 1967.
Amended November 20, 1968, effective November 22, 1968.
Amended April 14, 1972, effective May 14, 1972.
Amended November 4, 1976, effective January 1, 1977.
Amended July 27, 1982, effective February 10, 1983.
Amended January 5, 2000, effective April 22, 2000.

Rule 322. SUBPOENAS.

Reference: Sections 1609, 1609.4, 1609.5, Revenue and Taxation Code.

(a) At the request of the applicant or the assessor in advance of the hearing or at the time of the hearing, the board or the clerk on authorization from the board may issue subpoenas for the attendance of witnesses at the hearing. The board may issue a subpoena on its own motion. A subpoena may be served on any resident of the State of California or any person or business entity found within the state. All subpoenas shall be obtained from the board.

(b) If a subpoena is issued at the request of the applicant, the applicant is responsible for serving it and for the payment of witness fees and mileage.

(c) An application for a subpoena for the production of books, records, maps, and documents shall be supported by an affidavit such as is prescribed by Section 1985 of the Code of Civil Procedure.

(d) In the event a State Board of Equalization employee is subpoenaed pursuant to section 1609.5 of the Revenue and Taxation Code at the request of the applicant and the county board grants a reduction in the assessment, the county board may reimburse the applicant in whole or in part for the actual witness fees paid pursuant to section 1609.5.

(e) If a party desires the board to issue a subpoena, the party shall make the written request sufficiently in advance of the scheduled hearing date so that the subpoenaed party has an adequate opportunity to fully comply with the subpoena prior to the commencement of the hearing. Upon such request, the board may, whenever possible, issue subpoenas pursuant to sections 1609.4 and 1609.5 of the Revenue and Taxation Code. Subpoenas shall be restricted to compelling the appearance of a person or the production of things at the hearing and shall not be utilized for purposes of prehearing discovery. A subpoena issued near in time to or after commencement of the hearing should be as limited as possible, and a continuance of the hearing may be granted, if requested, for a reasonable period of time.

(f) No subpoena to take a deposition shall be issued nor shall deposition be considered for any purpose by the board.

History: Adopted May 11, 1967, effective June 11, 1967.
Amended October 4, 1967, effective October 5, 1967.
Amended May 21, 1968, effective June 26, 1968.
Amended October 6, 1999, effective April 22, 2000.

Rule 323. POSTPONEMENTS AND CONTINUANCES.

Reference: Section 1605.6, 1606, Revenue and Taxation Code.

(a) The applicant and/or the assessor shall be allowed one postponement as a matter of right, the request for which must be made not later than 21 days before the hearing is scheduled to commence. If the applicant requests a postponement as a matter of right within 120 days of the expiration of the two-year limitation period provided in section 1604 of the Revenue and Taxation Code, the postponement shall be contingent upon the applicant's written agreement to extend and toll indefinitely the two-year period subject to termination of the agreement by 120 days written notice by the applicant. The assessor is not entitled to a postponement as a matter of right if the request is made within 120 days of the expiration of the two-year period, but the board, in its discretion, may grant such a request. Any subsequent requests for a postponement must be made in writing, and good cause must be shown for the proposed postponement. A stipulation by an applicant and the assessor shall be deemed to constitute good cause, but shall result in extending and tolling indefinitely the two-year limitation period subject to termination of the agreement by 120 days written notice by the applicant. Any information exchange dates remain in effect based on the originally scheduled hearing date notwithstanding the hearing postponement, except as provided in regulation 305.1(d) of this subchapter.

(b) A board of supervisors may delegate decisions concerning postponement to the clerk in accordance with locally adopted rules. Requests for postponement shall be considered as far in advance of the hearing date as is practicable.

(c) At the hearing, the board or a hearing officer may continue a hearing to a later date. If the applicant requests a continuance within 90 days of the expiration of the two-year period specified in section 1604 of the Revenue and Taxation Code, the board may require a written extension signed by the applicant extending and tolling the two-year period indefinitely subject to termination of the agreement by 120 days written notice by the applicant. The clerk shall inform the applicant or the applicant's agent and the assessor in writing of the time and place of the continued hearing not less than 10 days prior to the new hearing date, unless the parties agree in writing or on the record to waive written notice.

History: Adopted May 11, 1967, effective June 11, 1967.
Amended May 21, 1968, effective June 26, 1968.
Amended November 20, 1968, effective November 22, 1968.
Amended October 6, 1999, effective April 22, 2000.

Rule 324. DECISION.

References: Article XIII A, California Constitution, Section 15606 Government Code, Sections 402.1, 402.5, 1609, 1610.8, 1611.5, Revenue and Taxation Code.

(a) DETERMINATION OF FULL VALUE, CLASSIFICATION, CHANGE IN OWNERSHIP, OR OTHER ISSUES. Acting upon proper evidence before it, the board shall determine the full value of the property, including land, improvements, and personal property, that is the subject of the hearing. The determination of the full value shall be supported by a preponderance of the evidence presented during the hearing. The board shall consider evidence of value derived by the use of any of the valuation methods described in regulation 3 of subchapter 1 of this chapter. It shall determine whether the method(s) used was (were) properly applied, considering the type of property assessed, governmentally imposed land use restrictions, and any recorded conservation easements as described in Civil Code section 815.1 et seq., by examining the factual data, the presumptions, and the estimates relied upon. The board shall also determine the classification, amount, and description of the property that is the subject of the hearing, the existence of a change in ownership or new construction, or any other issue that is properly before the board, or that is necessary to determine the full value of the property. The board shall provide to the clerk such details as are necessary for the implementation of the board's decision.

(b) JURISDICTION. The board's authority to determine the full value of property or other issues, while limited by the laws of this state and the laws of the United States and usually exercised in response to an application for equalization, is not predicated on the filing of an application nor limited by the applicant's request for relief. When

an application for review includes only a portion of an appraisal unit, whether real property, personal property, or both, the board may nevertheless determine the full value, classification, or other facts relating to other portions that have undergone a change in ownership, new construction or a change in value. Additionally, the board shall determine the full value of the entire appraisal unit whenever that is necessary to the determination of the full value of any portion thereof.

The board is not required to choose between the opinions of value promoted by the parties to the appeal, but shall make its own determination of value based upon the evidence properly admitted at the hearing.

An appraisal unit of property is a collection of assets that functions together, and that persons in the marketplace commonly buy and sell as a single unit or that is normally valued in the marketplace separately from other property, or that is specifically designated as such by law.

(c) **VALUATION PRINCIPLES.** The board, the applicant, and appraisal witnesses shall be bound by the same principles of valuation that are legally applicable to the assessor.

(d) **COMPARABLE SALES.** When valuing a property by a comparison with sales of other properties, the board may consider those sales that, in its judgment, involve properties similar in size, quality, age, condition, utility, amenities, site location, legally permitted use, or other physical attributes to the property being valued. When valuing property for purposes of either the regular roll or the supplemental roll, the board shall not consider a sale if it occurred more than 90 days after the date for which value is being estimated. The provisions for exclusion of any sale occurring more than 90 days after the valuation date do not apply to the sale of the subject property.

The board shall presume that zoning or other legal restrictions, of the types described in Revenue and Taxation Code section 402.1, on the use of either the property sold or the property being valued will not be removed or substantially modified in the predictable future unless sufficient grounds as set forth in that section are presented to the board to overcome that presumption.

(e) **FINDINGS OF FACT.** When written findings of fact are made, they shall fairly disclose the board's findings on all material points raised in the application and at the hearing. The findings shall also include a statement of the method or methods of valuation used in determining the full value of the property or its components.

History: Adopted May 11, 1967, effective June 11, 1967.
 Amended October 4, 1967, effective October 5, 1967.
 Amended May 21, 1968, effective June 26, 1968.
 Amended November 20, 1968, effective November 22, 1968.
 Amended May 6, 1970, effective June 6, 1970.
 Amended May 5, 1971, effective June 10, 1971.
 Amended April 14, 1972, effective May 14, 1972.
 Amended December 17, 1975, effective January 25, 1976.
 Amended July 27, 1982, effective February 10, 1983.
 Amended March 6, 1990, effective May 23, 1990.
 Amended November 19, 1999, effective April 22, 2000.

Rule 325. NOTICE AND CLARIFICATION OF DECISION.

Reference: Section 1601 et seq., Revenue and Taxation Code.

(a) A board may announce its decision to the applicant and the assessor at the conclusion of the hearing, or it may take the matter under submission. The decision becomes final when:

(1) The vote is entered into the record at the conclusion of the hearing provided no findings of fact are requested by either party, and all parties are present at the hearing or the hearing is subject to stipulation by both parties. The county may provide a written notice of the decision.

(2) A written notice of the decision is issued provided no findings of fact are requested by either party, and the decision is taken under submission by the board at the conclusion of the hearing. The county shall issue a written notice of the decision no later than 120 days after the conclusion of the hearing. The clerk shall notify the applicant in writing of the decision of the board by United States mail addressed to the applicant or to the applicant's agent at the address given in the application.

(3) A written notice of the decision is issued or the findings of fact are issued, whichever is earlier, provided findings of fact are requested. The county shall issue a written notice of the decision no later than 120 days after the conclusion of the hearing. If so requested by an applicant or an applicant's agent, the determination shall become final upon issuance of the findings of fact which the county shall issue no later than 180 days after the conclusion of the hearing. Such a request must be made by the applicant or the applicant's agent prior to or at the conclusion of the hearing. If the conclusion of the hearing is within 180 days of the expiration of the two-year period specified in section 1604 of the Revenue and Taxation Code, the applicant shall agree in writing to extend the two-year period. The extension shall be for a period equal to 180 days from the date of the conclusion of the hearing.

(b) The board may request any party to submit proposed written findings of fact and shall provide the other party the opportunity to review and comment on the proposed finding submitted. If both parties prepare proposed findings of fact, no opportunity to review and comment need be provided.

(c) When findings of fact have been prepared, either party or the clerk may submit a written request for clarification about the details of the decision, but such clarification shall not alter the final determination of the board.

History: Adopted May 11, 1967, effective June 11, 1967.
Amended October 6, 1999, effective April 22, 2000.

Rule 326. RECONSIDERATION AND REHEARING.

Reference: Section 1601 et seq., Revenue and Taxation Code.

(a) The decision of the board upon an application is final. The board shall not reconsider or rehear an application or modify a decision unless:

(1) The decision reflects a ministerial clerical error; or

(2) The decision was entered as the result of the applicant's failure to appear for the hearing and within the period established pursuant to regulation 313 of this subchapter, the applicant furnishes evidence establishing, to the satisfaction of the board, excusable good cause for the failure to appear.

History: Adopted May 11, 1967, effective June 11, 1967.
Amended October 6, 1999, effective April 22, 2000.

APPENDIX 4: SUMMARY OF COURT CASES

***Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450.** Under the doctrine of *stare decisis*, all tribunals exercising inferior jurisdiction are required to follow decisions of courts exercising superior jurisdiction and may not attempt to overrule the decisions of the higher courts.

***Bandini Estate Co. v. County of Los Angeles* (1938) 28 Cal.App.2d 224.** To comport with due process, an assessment appeal hearing must be held before a local board of equalization composed of at least a majority of the five members of the board of supervisors as required by the constitution and statute. Additionally, an appeals board may not consider evidence received subsequent to the hearing and out of the presence of the opposing party.

***Bank of America v. County of Fresno* (1981) 127 Cal.App.3d 295.** Revenue and Taxation Code section 1606 does not require that the details of the evidence to be introduced must be exchanged; the purpose of that section is satisfied if the information exchanged provides the opposing party with reasonable notice of the subject matter to be presented at the hearing through the testimony of witnesses and evidence.

***Bret Harte Inn, Inc. v. City and County of San Francisco* (1976) 16 Cal.3d 14.** An assessor's practice of employing the cost method by discounting original acquisition cost by a uniform "depreciation factor" of 50 percent for all properties, regardless of age or condition, is arbitrary, in excess of the assessor's discretion, and in violation of the constitutional and statutory requirements that all property subject to taxation be assessed at its full cash value because it effectively abandons any attempt to distinguish among individual properties with respect to their then current value.

***Cabral v. State Board of Control* (1980) 112 Cal.App.3d 1012.** An administrative agency has no power to adopt a regulation that imposes eligibility requirements in addition to fundamental requirements imposed by statute and, if promulgated, such an administrative regulation is invalid.

***California Welfare Rights Organization v. Carleson* (1971) 4 Cal.3d 445.** To preserve an orderly system of government, administrative regulations must conform to legislative intent. Regulations in violation of acts of the Legislature are void and may not be justified as an exercise of administrative discretion.

***Campbell Chain Co. v. County of Alameda* (1970) 12 Cal.App.3d 248.** It is assumed that assessing officers have properly performed their duties and the taxpayer has the burden of showing the appeals board that the assessor's figures are improper and the assessments are not fair and equitable. To sustain this burden, the taxpayer must at least introduce some evidence of assessment inequality before the assessor is obligated to go forward with any evidence.

***Carlson v. Assessment Appeals Bd.* (1985) 167 Cal.App.3d 1004.** When valuing property, section 402.1 provides that the assessor is required to consider *enforceable restrictions* and the

codified statement of legislative intent in that section makes clear that such enforceable restrictions include only those restrictions imposed by government. Thus, the appeals board erred by considering privately imposed restrictions in its full cash value determination of the fee simple absolute interest in the property.

Chanslor-Western Oil v. Cook (1980) 101 Cal.App.3d 407. An assessor does not have discretion to disclose at an appeals hearing confidential information relating to property owned by another taxpayer and that is not the subject of the appeal. While an assessor may introduce information obtained pursuant to section 441, such information is limited to either market data or information obtained from the taxpayer seeking the reduction.

Coca-Cola Co. v. State Board of Equalization (1945) 25 Cal.2d 918. The contemporaneous administrative construction of an enactment by an agency charged with its enforcement and interpretation is entitled to great weight and courts generally will not depart from such a construction unless it is clearly erroneous or unauthorized.

De Luz Homes, Inc. v. County of San Diego (1955) 45 Cal.2d 546. For property tax assessment purposes, under California law the standard of valuation is "the price that property would bring to its owner if it were offered for sale on an open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other."

Dennis v. County of Santa Clara (1989) 215 Cal.App.3d 1019. For purposes of determining the fair market value of real property, other than possessory interests, being appraised upon a purchase, fair market value is the purchase price paid in the transaction unless it is established by a preponderance of the evidence that the real property would not have transferred for that purchase price in an open market transaction. Market value is generally established by numerous sales of the same or comparable property and, although the price paid for property may be admissible to prove its market value, that fact alone is not conclusive.

Domenghini v. County of San Luis Obispo (1974) 40 Cal.App.3d 689. If a taxpayer fails to provide information requested by the assessor, the assessor may make an escape assessment under section 501 in the form of an "estimate" based upon the information in his or her possession, that is, on the best information then available to him or her.

E. Clemens Horst v. Industrial Accident Commission (1920) 184 Cal. 180. Generally, corporate officers include those who are elected or whose office has been provided for by articles of incorporation or the bylaws.

E. E. McCalla Co. v. Sleeper (1930) 105 Cal.App. 562. The assessor was presumed to have regularly and correctly assessed property where he or she prepared the assessment book in accordance with existing law which required identifying the assessee's land with a description sufficient to identify it. Moreover, the assessee who provided the only map and description of the assessed property was estopped from challenging the sufficiency of the description that it had given to the assessor.

El Tejon Cattle Co. v. County of San Diego (1967) 252 Cal.App.2d 449. A local board of equalization is a quasi-judicial body created for the purpose of ensuring that all taxable property in the county is on the assessment roll and of determining the correct assessed values of that taxable property.

Exchange Bank v. County of Sonoma (1976) 59 Cal.App.3d 608. A taxpayer is not required to exhaust the administrative remedy of an assessment appeal hearing if the facts are not in dispute and the single question under appeal involves the legal issue of a classification which, if decided in favor of the taxpayer, would result in an exemption.

Fujitsu Microelectronics, Inc. v. Assessment Appeals Bd. (1997) 55 Cal.App.4th 1120. If a taxpayer fails to present evidence sufficient to overcome the presumption that the assessor has properly performed his or her duties and assessed all properties fairly, then the burden of proof does not shift to the assessor and he or she may stand on the presumption that the assessment was fair and equitable.

Georgia-Pacific Corp. v. County of Butte (1974) 37 Cal.App.3d 461. A challenge to the assessor's method of valuation presents a legal issue which a trial court may consider and decide unrestricted by any consideration of the scope of review. Thus, the trial court did not abuse its discretion by permitting testimony of an additional witness, whose testimony was limited to the specific legal issue involved.

Heavenly Valley v. El Dorado County (2000) 84 Cal.App.4th 1323 (opn.mod. 86 Cal.App.4th 25d). A taxpayer is entitled to administrative review, i.e., an assessment appeals hearing, where the assessor's audit pursuant to Revenue and Taxation Code section 469 discloses property that was underassessed or unassessed, regardless of whether an escape assessment is enrolled. Additionally, a hearing and decision by the county board of equalization that the board has no jurisdiction to hear the appeal constitutes a hearing and final determination within the meaning of subdivision (c) of section 1604.

Henderson v. Bettis (1975) 53 Cal.App.3d 486. Section 408 and section 1606 are both available to a taxpayer after an appeal has been filed as alternative procedures to obtain information relating to the appraisal and assessment of his or her property. A taxpayer's ability to use section 408 during the assessment appeals process does not place the assessor at a disadvantage because the assessor has the legal presumption that he or she has performed his or her duties properly and that assessments are both regularly and correctly made. Moreover, an appeals board's determination in favor of the assessor must be affirmed by a reviewing court if there is substantial evidence in the record to support the board's determination.

Howitt v. Superior Court (1992) 3 Cal.App.4th 1575. If an attorney for one party also acts as counsel to the decision maker, that attorney's advice may be unconsciously skewed in favor of the client party. Such a lack of impartiality by an appeal's board counsel is inconsistent with the fundamental requirement that the board remain an objective decision maker.

Hunt-Wesson Foods, Inc. v. County of Alameda (1974) 41 Cal.App.3d 163. *Assessors' Handbooks* are subject to judicial notice by the courts and when the method of valuation is in issue, an *Assessors' Handbook* is properly considered by a trial court.

Huntley v. Board of Trustees (1913) 165 Cal. 289. An appeals board is required by law to provide notice to a property owner prior to taking action to equalize the owner's assessment. Notice to the property owner that the appeals board has, without prior notice, already acted is insufficient to authorize the board of equalization to increase the assessment and, therefore, the assessment increase is invalid.

In Re Jost (1953) 117 Cal.App.2d 379. The phrase *clear and convincing evidence* has been defined as "clear, explicit and unequivocal," "so clear as to leave no substantial doubt," and "sufficiently strong to command the unhesitating assent of every reasonable mind."

International Medication Systems, Inc. v. Assessment Appeals Bd. (1997) 57 Cal.App.4th 991. The section 1605.6 requirement of notice of the time, date, and place of hearing not less than 45 days prior to hearing is a mandatory, not a directory, provision. The notice is in the nature of process by which an appeals board acquires jurisdiction to hear an application and, thus, a board has no jurisdiction to hear an application if it fails to comply with the 45-days notice period requirement.

Los Angeles Gas and Electric Co. v. County of Los Angeles (1912) 162 Cal. 164. The decision of an appeals board constitutes an independent judgment as to value. A board's finding that the property is assessed at the same value proportionately as all the other property in the county is conclusive.

Madonna v. County of San Luis Obispo (1974) 39 Cal.App.3d 57. The board need not adhere to technical evidentiary rules but the record must contain some "legal" evidence to support the board's decision. Thus, an appeals board's valuation determination must fall within an acceptable range of the cognizable evidence before the appeals board.

Main & Von Karman Assocs. v. County of Orange (1994) 23 Cal.App.4th 337. When using the comparable sales approach, Property Tax Rule 4 requires that noncash sales prices will be adjusted to reflect their cash equivalents, and that other adjustments appropriate for such things as differences in physical attributes of the properties, differences in location, and the income which the properties are expected to produce.

McClelland v. Board of Supervisors (1947) 30 Cal.2d 124. In California, an appeals board exercises a judicial function in the performance of its duty of determining property values for tax assessment purposes, and its decision constitutes an independent and conclusive judgment of the tribunal created by law for the determination of that question.

Merchants Trust Co. v. Hopkins (1930) 103 Cal.App. 473. An applicant must present to an appeals board competent evidence relevant to the issues raised in the application as a condition precedent to challenging the board's determination in court.

***Midstate Theatres, Inc. v. Board of Supervisors* (1975) 46 Cal.App.3d 204.** Pursuant to its constitutional duty to equalize the valuations of taxable property, an appeals board has the responsibility of determining the sufficiency of applications. This application processing function may be delegated by the board to the clerk but the responsibility may not be usurped by procedures established by the assessor, county counsel, and the clerk of the board without the advice or consent of the board itself.

***Nickey v. Mississippi* (1934) 292 U.S. 393.** If a taxpayer has an available remedy to contest an assessment before a competent tribunal which may grant appropriate relief, there is no constitutional requirement that an assessor provide notice of the assessment and the opportunity to contest it prior to the making of the assessment.

***City of Oakland v. Southern Pacific Co.* (1900) 131 Cal. 226.** An appeals board is constituted to hear and to determine whether the assessor has correctly performed his or her duty, but the board is not empowered to reassess the property based on the board's opinion or the opinions of its individual members without a proper consideration of evidence.

***County of Orange v. Orange County Assessment Appeals Bd.* (1993) 13 Cal.App.4th 524.** An appeals board's decision which is unsupported by substantial evidence is deemed to be an action of the board so arbitrary as to constitute a deprivation of property without due process.

***Osco Drug, Inc. v. County of Orange* (1990) 221 Cal.App.3d 189.** Pursuant to subdivision (a)(5) of section 80, any reduction in assessment resulting from a reduction in a base year value is effective for the assessment year covered by the application and prospectively thereafter. Section 80 prohibits retroactive reductions in the base year value for years prior to the year appealed and, therefore, an applicant is not entitled to refunds under section 5097.2 for those prior years.

***Pierce v. Superior Court* (1934) 1 Cal.2d 759.** The Attorney General has the power, in the absence of legislative restriction, to file any civil action or proceeding directly involving the rights and interests of the state, or which he deems necessary for the enforcement of the laws of the state, the preservation of order, and the protection of public rights and interests. A statutory remedy afforded to a private individual to bring an action does not deny the Attorney General's authority to bring a similar action.

***Pipoly v. Benson* (1942) 20 Cal.2d 366.** Although local government ordinances and rules are unenforceable if they conflict with controlling statutes, a local government may validly enact additional reasonable regulations to implement and to further statutory purposes as necessary to suit the particular circumstances of the local government. However, such regulations are invalid if they attempt to impose additional requirements in an area which is fully occupied by the statute.

***Prudential Ins. Co. v. City and County of San Francisco* (1987) 191 Cal.App.3d 1142.** *Assessors' Handbooks* issued by the State Board of Equalization have been relied on by the courts in interpreting valuation questions posed by the State Constitution and statutes.

Rancho Santa Margarita v. County of San Diego (1933) 135 Cal.App.134. Appeals boards must act upon the best and most reliable information available to them and are not governed by strict rules of evidence applied by courts of law. With regard to the role of a reviewing court, if there is any material and competent evidence in the record supporting a judgment, it cannot be disturbed on appeal because of conflicting evidence.

Roberts v. Gulf Oil Co. (1983) 147 Cal.App.3d 770. Upon request by an assessor, section 441, subdivision (d), requires an assessee to provide factual as well as interpretive data relevant to an estimate of the fair market value of the assessee's property.

County of Sacramento v. Assessment Appeals Board No. 2 (1973) 32 Cal.App.3d 654. The board's determination of facts cannot be set aside unless fraudulent, arbitrary, an abuse of discretion, or unless the board failed to follow standards prescribed by the Legislature.

County of San Diego v. Assessment Appeals Bd. No. 2 (1983) 148 Cal.App.3d 548. The substantial evidence test now is that a court reviewing the evidentiary basis of an agency's decision must consider all relevant evidence, both contradicted and uncontradicted, in the administrative record including evidence that fairly detracts from the evidence supporting the agency's decision. In general, substantial evidence has been defined in two ways: first, as evidence of "ponderable legal significance . . . reasonable in nature, credible, and of solid value" and second, as "relevant evidence that a reasonable mind might accept as adequate to support a conclusion."

Star-Kist Foods, Inc. v. Quinn (1954) 54 Cal.2d 507. A taxpayer seeking relief for valuation errors must exhaust available administrative remedies before resorting to the courts unless the errors result from assessment of property which is not taxable. If the subject property is not taxable, there is no question of valuation that an appeals board has special competence to decide.

State Board of Equalization v. Cenicerros (1998) 63 Cal.App.4th 122. An assessor's demand for information to prepare for an assessment appeals hearing is a valid assessment purpose as intended by section 441, subdivision (d). Thus, that section authorizes an assessor to make such a demand for information after an application for assessment appeal has been filed.

Stenocord Corp. v. City and County of San Francisco (1970) 2 Cal.3d 984. A taxpayer need not exhaust his or her administrative remedies in those cases wherein the assessment is totally void as an attempt to tax property not subject to taxation, rather than merely an inaccurate assessment of the value of taxable property. However, when the dispute involves valuation, notwithstanding the taxpayer's contention that the assessment is arbitrary or void on constitutional grounds, the taxpayer is required first to seek relief from an appeals board, if the board's determination of the valuation issue could render unnecessary or could modify a decision on the constitutional issue.

Stevens v. Fox Realty Corp. (1972) 23 Cal.App.3d 199. There is no law authorizing the filing of an application to increase the assessment on the property of another person. An appeals board may consider such an application as a request that the board invoke its jurisdiction and may

conduct a preliminary hearing to determine whether reasonable cause exists to invoke such jurisdiction. Unlike a regular assessment appeal proceeding, a preliminary hearing is not an adversary proceeding and the applicant may be invited to attend only as a witness and not as a party litigant.

Sunrise Retirement Villa v. Dear (1997) 58 Cal.App.4th 948. An appeals board has jurisdiction to hear an appeal to correct an alleged error in setting a base year value, not involving a judgment of value, in any year in which the error is discovered, if the assessor declines to make the correction pursuant to section 51.5. In such a case, the appeals board's jurisdiction is not subject to the four-year statute of limitations in section 80, subdivision (a)(3).

Universal Construction Oil Co. v. Byram (1944) 25 Cal.2d 353. The constitutional principle of procedural due process requires that a taxpayer who is a party to an assessment appeal hearing have an opportunity to be present at all stages of the proceeding in which the assessor or the assessor's counsel present evidence, witnesses, or argument. Therefore, a taxpayer is denied procedural due process if, after the close of a hearing and particularly if done in secret, the board receives and relies upon the advice of the assessor or the assessor's attorney. Other examples of the denial of procedural due process which have been held to invalidate assessment appeal determinations are: one-person hearings; the refusal to allow reasonable opportunity for cross-examination; the refusal to permit reasonable argument.

Wells Fargo & Co. v. State Board of Equalization (1880) 56 Cal. 194. Assessment appeals boards and the State Board of Equalization exercise exclusive, nonoverlapping equalization functions. Local appeals boards are empowered to equalize property values on their own counties' assessment rolls by lowering or increasing individual assessments; the State Board of Equalization is empowered to lower or increase entire assessment rolls for the purpose of equalizing the taxable value of property among the counties.

Westinghouse Electric Corp. v. County of Los Angeles (1974) 42 Cal.App.3d 32. A taxpayer is not excused from the requirement that he or she exhaust the administrative remedy of an assessment appeal hearing solely based on his or her allegations that compliance (1) would have involved an impossible burden of proof, (2) would have been too expensive, (3) would not have afforded an adequate opportunity for preparation and hearing, and (4) would have denied him or her a means of discovery.

Williamson v. Payne (1938) 25 Cal.App.2d 497. An appeals board may adopt reasonable rules by which the board conducts a full inquiry as to the value of subject properties, including purchase prices, any improvements and their costs, income derived from the property, and any other information that might enable the appeals board to determine the taxable values of subject properties.

GLOSSARY OF TERMS

Term	Definition
Ad Valorem	Latin phrase meaning in proportion to the value. In California, the property tax is considered to be an ad valorem tax.
Appraisal Unit	The unit that people in the market typically buy and sell.
Assessed Value	The taxable value of a property against which the tax rate is applied.
Base Year Value	In accordance with section 110.1, a property's base year value is its fair market value as of either the 1975 lien date or the date the property was last purchased, newly constructed, or underwent a change in ownership after the 1975 lien date.
Change in Ownership	A transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest.
Comparative Sales Approach	An approach to value by reference to sale prices of the subject property or comparable properties; under rule 4, the preferred approach when reliable market data are available.
Cost Approach	A value approach using the following procedures to derive a value indicator: (1) estimate the current cost to reproduce or replace an existing structure without untimely delays; (2) deduct for all accrued depreciation; and (3) add the estimated land value and an amount to compensate for entrepreneurial profit (if present).
Digital Signature	An electronic identifier created by computer intended by the party using it to have the same force and effect as the use of a manual signature. See also <i>Electronic Signature</i> .
Economic Obsolescence	An element of accrued depreciation; a defect, usually incurable, caused by influences outside the site—sometimes called external obsolescence.

Electronic Filing	An <i>Application for Changed Assessment</i> that is electronically filed with the clerk of the board. Such application is an electronic version of information that would otherwise be filed by paper and is subject to the same rules as those for paper submission. Such transmission will be accomplished in conformance with rules set forth by the clerk of the board to insure authenticity of the document by means of verifying that its content has not been altered during transmission. Any electronically filed application should be printable on a State Board of Equalization authorized application form.
Electronic Signature	The means of verifying the authority and authenticity of an <i>Application for Changed Assessment</i> electronically filed by an applicant or by an applicant's agent. Electronic filers must meet the criteria established by the clerk of the board to insure that they conform to specific technological means of identifying the filer and processing electronically filed documents. See also <i>Digital Signature</i> .
Fair Market Value	The amount of cash or its equivalent that property would bring if exposed for sale in the open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other and both with knowledge of all of the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions upon those uses and purposes.
Fee Simple Rights	A title that signifies ownership of all the rights in a parcel of real property, subject only to the limitations of the four powers of government.
Fixture	An item of tangible property, the nature of which was originally personal property, but which is classified as real property for property tax purposes because it is physically or constructively annexed to real property with the intent that it remain annexed indefinitely.
Full Value	The fair market value, full cash value, or such other value standard as is prescribed by the Constitution or the Revenue and Taxation Code.
Functional Obsolescence	Curable: an element of accrued depreciation, a curable defect caused by a defect in the structure, materials, or design. Incurable: an element of accrued depreciation, a defect caused by a deficiency or a superadequacy in the structure, materials, or design, which is not financially feasible or practical to correct.

Highest and Best Use	The most profitable use of a property at the time of the appraisal; that available use and program of future utilization that produces the highest present land value; must be legal, physically possible, financially feasible, and maximally profitable.
Improvements	All buildings, structures, fixtures, and fences erected on or affixed to the land, all fruit, nut bearing, ornamental trees and vines, not of natural growth, and not exempt from taxation, except date palms under eight years of age.
Income Approach	Any method of converting an income stream or a series of future income payments into a indicator of present value.
Leasehold	The lessee's interest in property; the right to use and occupy real property during the term of a lease, subject to any contractual restrictions.
Lien Date	All taxable property (both state and locally assessed) is assessed annually for property tax purposes as of 12:01 a.m. on January 1, which is called the lien date. It is referred to as the lien date because on this date the taxes become a lien against all real property assessed on the secured roll.
New Construction	Any addition to real property, whether land or improvements (including fixtures) since the last lien date; any alteration of land or improvements (including fixtures) since the last lien date that constitutes a major rehabilitation thereof or which converts the property to a different use.
Personal Property	Personal property includes all property except real property.
Possessory Interests	Interests in real property that exist as a result of: (1) a possession of real property that is independent, durable, and exclusive of rights held by others in the real property, and that provides a private benefit to the possessor, except when coupled with ownership of a fee simple or life estate in the real property in the same person; or (2) A right to the possession of real property, or a claim to a right to the possession of real property, that is independent, durable, and exclusive of rights held by others in the real property, and that provides a private benefit to the possessor, except when coupled with ownership of a fee simple or life estate in the real property in the same person; or (3) Taxable improvements on tax-exempt land.

Principle of Substitution	When several similar or commensurate commodities, goods, or services are available, the one with the lowest price attracts the greatest demand and widest distribution. This principle assumes rational, prudent market behavior with no undue cost due to delay. A buyer will not pay more for one property than for another that is equally desirable.
Property	Property includes all matters and things—real, personal, and mixed—that are capable of private ownership.
Purchase Price	The amount of money a buyer agrees to pay and a seller agrees to accept in an exchange of property rights; sale price is based on a particular transaction, not necessarily on what the typical buyer would pay or the typical seller would accept.
Real Property	The possession of, claim to, ownership of, or right to the possession of land; all mines, minerals, and quarries in the land; all standing timber whether or not belonging to the owner of the land, and all rights and privileges appertaining thereto; and improvements. In California property tax law, the term is synonymous with "real estate."
Quasi-judicial	A term applied to the action, discretion, etc., of public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action, and to exercise discretion of a judicial nature.
Supplemental Assessment	An assessment of the full cash value of property as of the date a change in ownership occurs or new construction is completed which establishes a new base year value for the property or for the new construction.
Taxable Possessory Interest	Possessory interests in publicly owned real property. Excluded from the meaning of <i>taxable possessory interests</i> , however, are any possessory interests in real property located within an area to which the United States has exclusive jurisdiction concerning taxation. Such areas are commonly referred to as federal enclaves.
Taxable Value	For real property subject to article XIII A of the California Constitution, the base year full value adjusted for any given lien date as required by law or the full cash value (market value) for the same lien date, whichever is less, as set forth in section 51(a). For personal property, the full cash value for the lien date each year.

Trial de novo A new trial or retrial in which the whole case is retried as if no trial whatever had occurred in the first instance.

Value The power of one commodity to command other commodities in exchange; a ratio of exchange; present worth of future net benefits.

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