



STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	02/23/01	Bill No:	AB 934
Tax:	Property	Author:	Hertzberg
Board Position:	Support	Related Bills:	

BILL SUMMARY

This bill would give local assessesees the right to trial *de novo*.

ANALYSIS

Current Law

Under current law, in a refund action for locally assessed property taxes, where the issue is a question of law, the taxpayer has a right to a trial *de novo*, with the court being able to receive and consider new evidence. However, where the issue is a question of fact, the court is restricted to a review of the assessment appeals board findings and decisions (the administrative record). Essentially, the appeals board is the “trial court” and the superior court is the “appellate court” that reviews the action of the appeals board. With respect to factual issues, the superior court’s level of review is limited to a determination of whether there exists “substantial evidence” in the record to support the appeals board’s decision.

Revenue and Taxation Code Section 5170 provides state assesees with a right to a trial *de novo* in a suit for the refund of state-assessed property taxes. In these refund actions, the trial court is not restricted to a “substantial evidence” review of the administrative record, but is required to consider all admissible evidence relating to the valuation of the subject property. It also requires the trial court to base its decision according to the preponderance of the evidence before it.

Proposed Law

This bill would amend Section 5170 of the Revenue and Taxation Code to extend its “trial *de novo*” provisions to a suit for the refund of locally assessed property taxes. Specifically, the trial court “may not be restricted to the administrative record, but shall consider all the evidence relating to the valuation of the property admissible under the rules of evidence. The court shall base its decision upon the preponderance of the evidence.”

In General

The following discussion is from Legislative Counsel Opinion #7065, dated December 9, 1987.

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“Section 16 of Article XIII of the California Constitution imposes on county boards of equalization the duty to equalize the values of locally assessed property within each county by the adjustment of individual assessments. In accordance with an appeal procedure prescribed by statute (see Ch. 1 (commencing with §1601), Pt. 3, Div. 1, R.& T.C.), county boards of equalization discharge this constitutional duty by the review of contested assessments made by the assessor and by the review of recommendations of assessment hearing officers in connection with assessment protests.

The courts have held that county boards of equalization, in conducting reviews of assessments of locally assessed property, are creatures of the Constitution and pursuant thereto constitute quasi-judicial agencies which function as the fact-finding bodies designated by law to remedy excessive assessments (*Universal Cons. Oil Co. v. Byram*, 25 Cal. 2d 353, 362; *Eastern-Columbia, Inc. v. County of L.A.*, 61 Cal. App. 2d 734, 745). Accordingly, it has been held that the duty of determining the value of locally assessed property and the fairness of its assessment is confided to the appropriate county board of equalization and, in discharging this duty, the board's determination upon the merits of the controversy is conclusive; that is, the taxpayer has no right to a trial *de novo* in the superior court to resolve conflicting issues of fact as to the taxable value of his or her property (*Bank of America v. Mundo*, 37 Cal. 2d 1, 5; *Universal Cons. Oil Co. v. Byram*, supra, p. 362; *Eastern-Columbia, Inc. v. County of L.A.*, supra, p. 745).

The term trial *de novo* is not always accorded the same meaning (*Fried land v. Superior Court*, 67 Cal. App. 2d 619, 627). However, in the present context the term contemplates a trial which entails the taking of independent evidence by the court and the making of an independent determination in light of this evidence, which might be referred to as a "full weight of evidence review," as opposed to a more limited review to determine if the administrative agency's decision is supported by substantial evidence.

The cases have held that the decision of a county board of equalization is equivalent to the determination of a trial court and may be reviewed only for arbitrariness, abuse of discretion, or failure to follow the standards prescribed by law (*Bret Harte Inn. Inc. v. City and County of San Francisco*, 16 Cal. 3d 14, 22; *DeLuz Homes, Inc. v. County of San Diego*, 45 Cal. 2d 546, 564). Thus, the scope of judicial review in this area includes only inquiry into whether the county board's findings are supported by substantial evidence. A decision which is not so supported is deemed arbitrary and a deprivation of due process (*Bret Harte Inn. Inc. v. City and County of San Francisco*, supra, p. 23; *Hunt-Wesson Foods Inc. v. County of Alameda*, 41 Cal. App. 3d 163, 177). This "substantial evidence" test requires only that the county board's decision be supported by some credible evidence.

The "substantial evidence review" has been consistently applied by the courts in reviewing the exercise of quasi-judicial or adjudicatory powers of local administrative agencies conferred by statute. In this connection, the courts have held that *local* administrative agencies may properly exercise quasi-judicial powers because the constitutional doctrine of separation of powers does not reach the local governmental level, but instead is limited in its application to statewide agencies (*People v. Provines*, 34 Cal. 520, 534; *Savage v. Sox*, 118 Cal. App. 2d 479, 485-487; *Dierssen v. Civil*
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Service Commission, 43 Cal. App. 2d 53, 59-61). Accordingly, the courts have upheld the exercise of quasi-judicial powers by local administrative agencies with regard to a wide variety of subjects (see e.g., *Miller v. Board of Supervisors of Sacramento County*, 25 Cal. 93, 97 (approval of official bonds); *Moody v. Shuffleton*, 203 Cal. 100, 103 (passing upon claims); *Grumbach v. Lelande*, 154 Cal. 679, 683; *In re Bickerstaff*, 70 Cal. 35, 39 (issuance or revocation of licenses or permits)).”

Questions of Law vs. Fact

Question of Law (Local and State Assesseees) – Trial *de Novo*. In a refund action where the issue is a question of law, the taxpayer has a right to a trial *de novo*, with the court being able to receive and consider new evidence. Examples of legal issues include whether a transfer of property meets the definition of a change in ownership, whether a property qualifies for various property tax exemptions, the constitutionality of a statute, the classification of an item as a real property fixture or personal property, broad questions involving the application of Proposition 13, or the *method* of valuation (the application of a valuation method is a question of fact).¹

Question of Fact (State Assesseees) – Trial *de Novo*. With respect to a question of fact, state-assesseees are granted a trial *de novo*. The trial court is not restricted to a review of the administrative record, but is required to consider all admissible evidence relating to the valuation of the subject property.

Question of Fact (Local Assesseees) – Substantial Evidence Test. The court must uphold the county board's factual determinations if they are supported by substantial evidence, which means that the decision must be supported by credible evidence in the administrative record. The trial court is confined to the record presented by the appeals board, with no new evidence introduced. Furthermore, the court has no authority to exercise its independent judgment to weigh the evidence in the record. Issues of fact generally relate to the issue of whether the assessment method used to value the property was applied correctly.

Assessment Appeals Boards

Makeup. Under current law, the elected county board of supervisors may sit as the “county board of equalization” or it may create one or more assessment appeals boards to function as the county board of equalization. There are 19 counties² in California where the elected board of supervisors also sits as the county board of equalization. In the remaining 39 counties, assessment appeals board members are appointed directly by majority vote of the board of supervisors. Appointments last for a term of three years and members may be reappointed an unlimited number of terms. The three-year

¹ Revenue and Taxation Code Section 1605.5 provides that assessment appeals boards can hear appeals related to whether or not a change in ownership or new construction occurred. It also makes clear that although appeals boards may hear and rule on these cases, it is not to “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.”

² Alpine, Amador, Calaveras, Colusa, Del Norte, Glenn, Imperial, Inyo, Kings, Madera, Mendocino, Modoc, Napa, Plumas, San Benito, Sierra, Tehama, Trinity, and Tuolumne.

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terms are staggered to ensure a board will not be compromised by members with no prior experience. Assessment appeals boards may be comprised of either three or five members. In the case of a five-member assessment appeals board, a three-member panel hears individual appeals.

Eligibility. The eligibility requirements for appointment as an assessment appeals board member are a minimum of five years' professional experience in California in the following professions: certified public accountant or public accountant, licensed real estate broker, attorney, property appraiser accredited by a nationally recognized professional organization, or property appraiser certified the California Office of Real Estate Appraisers. In counties with a population under 200,000, a person who does not meet these requirements can still be appointed if the nominating board of supervisor member has reason to believe the person is "possessed of competent knowledge of property appraisal and taxation." §1624, §1624.05

Training. Beginning in January 1, 2001 an introductory training course is mandatory for newly selected or appointed assessment appeals board members. §1624.01, §1624.02

Background

Related Legislation. Senate Bill 2601 (Chap. 1372, Stats. 1988, Garamendi) added §5170 to the Revenue and Taxation Code in 1988 to provide trial *de novo* to state assessees (public utilities and other specified properties operating as a unit and lying in two or more counties). This bill would have also provided trial *de novo* to local assessees but was amended out when heard in the Assembly Judiciary Subcommittee on the Administration of Justice.

Senate Constitutional Amendment 6 (Garamendi) in 1989 would have extended trial *de novo* to local assessees. This measure failed on the Senate floor.

Senate Constitution Amendment 26 (Morgan) in 1991 would have proposed a constitutional amendment to authorize a statute similar to §5170 that would apply to both appeals from hearings of state assessees by the Board of Equalization and to appeals from hearings of local assessees by the assessment appeals boards but this measure failed.

Senate Bill 657 (Chap. 498, Stats. 1995, Maddy) would have established the right to a trial *de novo* for local assessees, but that provision was deleted by May 23, 1995 amendments when the bill was heard in the Senate Judiciary Committee. The California Taxpayer's Association sponsored this bill.

Senate Bill 1903 (Maddy) in 1996, as introduced, would have given local assessees full trial *de novo*. It was later amended to provide a modified form of review where the superior court would be limited to a review of the record produced in the hearing before the local board of equalization, unless the court found that additional evidence should be admitted for certain reasons. The California Taxpayers Association sponsored this bill. It failed in the Senate.

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Assembly Bill 1027 (Caldera) in 1997 would have provided, with respect to any suit for the refund of property taxes (both locally assessed property and state assessed property), that the trial court is limited to the administrative record, and would require the trial court in a suit so described to uphold administrative findings of fact and value if there is substantial evidence in the administrative record to support those findings. This bill would have authorized the trial court in a suit for refund of property taxes to remand the matter to the administrative body in certain cases in which the trial court finds that relevant evidence was improperly excluded at the prior administrative hearing. The California Assessors' Association sponsored this bill. It failed in the Assembly.

Senate Bill 1293 (Schiff) in 1999, as introduced, would have provided trial *de novo* for local assessesees. It was subsequently amended to instead provide that the trial court in reviewing the assessment appeals board's findings of fact, could exercise its *independent* judgment on the evidence in accordance with subdivision (c) of Code of Civil Procedure Section 1094.5. With this amendment, the court could reweigh the evidence presented to the appeals board (but not accept new evidence) and substitute its judgment for that of the appeals board in making its decision. In its modified form, this bill failed in the Senate Revenue and Taxation Committee. The California Chamber of Commerce sponsored this bill. After Senate Bill 1293 failed, Senator Schiff instead authored Senate Bill 1234 (Chap. 942, Stats. 1999) to require mandatory training for new assessment appeal board members and reduce from 1,000,000 to 200,000, the population threshold where a person could be appointed to the appeals board merely upon the recommendation of a member of the board of supervisors.

COMMENTS

1. **Sponsor and purpose.** This measure is sponsored by the author. Its purpose is to provide all California taxpayers with a right to an independent and complete judicial review of their property tax disputes.
2. **A number of studies and reports have urged trial *de novo* for property taxpayers.** These include a 1966 report by the Assembly Revenue and Taxation Committee, (which recommended *de novo* review in the limited basis where the elected Board of Supervisors sits as the assessment appeals board), a 1979 report by the Little Hoover Commission, and a 1985 report by the Governor's Tax Reform Advisory Commission.
3. **Constitutionality issues.** One of the core issues raised in trial *de novo* discussions is whether such a change requires a constitutional amendment.
 - Opponents of extending trial *de novo* to local assessesees note that judicial deference is given to the decisions made by assessment appeals boards, in part, because they are constitutional agencies granted quasi-judicial powers delegated to them by the constitution, with special expertise in property valuation (Article XIII, Sec. 16 of the California Constitution). Opponents argue that the

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assessment appeal board is the fact-finding body designated in law to remedy excessive assessments.

- Supporters of trial *de novo* agree that the constitution grants value setting authority to appeals boards, but note that trial *de novo* measures merely change the *judicial standard of review*. They counter that the Legislature has the authority to change the standard by statute pursuant to Article XIII, Section 32 which provides that local taxpayers may bring an action to recover taxes paid “in the manner as may be provided by the Legislature.” Also Section 33 therein provides that the legislature may pass all laws necessary to carry out this article.
 - **State Assesseees.** Further, supporters observe that the Legislature previously exercised this authority by authorizing trial *de novo* for state assesseees and courts have not overturned it on constitutional grounds. Supporters note that the constitutionality of state assessee trial *de novo* was challenged and upheld in *AT&T Communications of California* and *American Telegraph Company Interstate Division v. State Board of Equalization*, Case No. 500802 and 500803 in the Sacramento Superior Court, and that a writ from the Court of Appeal to overturn this finding was denied.
4. **Independent judicial review.** Supporters of trial *de novo* contend that the lack of independent and impartial judicial review is especially unfair given that the qualifications for eligibility to sit on assessment appeals boards do not require expertise in property tax matters. Additionally, where a board of supervisors sits as the appeals board, supporters claim that budgetary pressures may bias their decisions.
 5. **Values: Courts vs. Appeal Boards:** Opponents think that assessment appeals boards are better situated to handle value issues since they specialize in property valuation matters. Supporters counter that the courts currently handle many *de novo* cases involving property valuation issues. Namely, income tax property inheritance cases, bankruptcy cases, eminent domain cases and inverse condemnation cases.
 6. **Privileged Few?** Opponents claim that generally only larger corporations and the wealthy would be able to take advantage of trial *de novo* because of litigation costs. Proponents note the cost barrier to court is not unique to property tax matters. Where valuation decisions are favorable to taxpayers with the means to litigate, all taxpayers might indirectly benefit from the decision because of the precedent set.
 7. **County Costs.** The prospect of the costs incurred to defend themselves in litigation on valuation issues concern many counties. They note that given their share of the property tax revenue, it would not always be in their financial interest to pursue these cases and they would instead settle cases by negotiating with taxpayers for lower values.

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8. **Court Caseloads.** Opponents claim that an increase in number of court cases could worsen existing case backlogs. Supporters discredit this notion by noting that relatively few tax cases where trial *de novo* is permitted ultimately end in the courts.
9. **Other States.** Supporters note that most major states provide trial *de novo*. Opponents note that many of those states have specialized tax courts.
10. **Other California Taxes.** Supporters note that an inability to fully litigate property tax matters is unfair since at least 20 other state and local taxes provide taxpayers with the right to trial *de novo*.
11. **Inequity with State Assesseees.** Supporters state that it is inequitable that state assesseees, but not local assesseees, have a right to trial *de novo*. Opponents state that there is justification for the disparity in trial *de novo* rights because, with state assesseees, the Board of Equalization both sets the value and acts as the appeals board. Thus, the court is the first independent level of review for state assesseees.
12. **Improving appeal hearings.** Supporters state that the possibility of independent judicial review of the administrative record will improve the quality of hearings by assessment appeals boards. In their view, this bill would ensure that taxpayers receive a fair and thorough hearing that protects their due process rights. Opponents argue that if a complete trial *de novo* is granted, then the importance of the administrative review function of the appeals board could be lessened.

COST ESTIMATE

The Board would incur some minor absorbable costs in informing and advising county assessors, the public, and staff of the change in law. Additionally, it is possible that Board of Equalization staff would be subpoenaed to testify in valuation issues in court.

REVENUE ESTIMATE

Any loss or gain would be due to the courts making determinations different from those currently being made by assessment appeals boards. There is no measurable standard upon which to base an estimate of the outcome of court decisions.

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