

## Memorandum

**To:** Mr. Ramon J. Hirsig  
Executive Director, MIC:73

**Date:** January 5, 2010

**From:** Kristine Cazadd, Chief Counsel  
Legal Department

David Gau, Deputy Director  
Property and Special Taxes Department

**Subject:** Rule 100 Change to Property Tax Rule 312  
Chief Counsel's Rulemaking Calendar  
Board Meeting—January 26, 2010

We request your approval to place a proposed Rule 100 change to Property Tax Rule (Rule) 312, *Hearings Recorded*, on the Chief Counsel's Rulemaking Calendar for the January 26, 2010, Board meeting in order to request the Board's authorization to complete the change. The change replaces the reference to Code of Civil Procedure section "2025, subsection (1)(2)," in Rule 312, subdivision (a), with a reference to Code of Civil Procedure section "2025.340," to update the cross-reference to refer to the current section of the Code of Civil Procedure that prescribes the manner in which depositions are recorded in civil proceedings.

The attached Statement of Explanation includes a detailed description of the proposed change to Rule 312 and a strikeout and underline version of the rule showing the change. The change is appropriate for processing under Rule 100 without the normal notice and public hearing process because the change is without regulatory effect and does not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, the change is necessary to bring Rule 312 into conformity with the current provisions of the Code of Civil Procedure prescribing the manner in which depositions are recorded in civil proceedings.

If you have any questions regarding this request, please let me know or contact Mr. Bradley Heller at 324-2657.

Recommendation by:



Kristine Cazadd, Chief Counsel

Approved:



Ramon J. Hirsig, Executive Director

Approved:



David Gau, Deputy Director  
Property and Special Taxes Department

BOARD APPROVED

At the 1/27/10 Board Meeting



Diane Olson, Chief  
Board Proceedings Division

Attachment: Statement of Explanation  
Changes to Title 18. Public Revenue, Regulation 312, *Hearings Recorded*

cc (with attachment):

- Ms. Diane Olson (MIC: 80)
- Mr. Randy Ferris (MIC: 82)
- Mr. Richard Moon (MIC: 82)
- Mr. Bradley Heller (MIC: 82)
- Ms. Sherrie Kinkle (MIC: 64)
- Mr. Dean Kinnee (MIC: 64)

CHANGES WITHOUT REGULATORY EFFECT UNDER  
CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

Statement of Explanation

Changes to Title 18. Public Revenue

Regulation 312, *Hearings Recorded*

**A. Factual Basis**

Chapter 3 (beginning with section 301) of division 1 of title 18 of the California Code of Regulations contains Property Tax Rules applicable to the equalization of local property values by local boards of equalization or assessment appeals boards. California Code of Regulations, title 18, section (Property Tax Rule) 312, subdivision (a), requires local board of equalization or local assessment appeals board hearings to be “recorded or reported, or videotaped subject to the conditions set forth in Code of Civil Procedure section 2025, subsection ( 1)(2).”

Statutes 2004, chapter 182 (Assem. Bill No. 3081 (2003-04 Reg. Sess.)), sections 22 and 23, repealed Code of Civil Procedure section 2025, subdivision (1)(2), and enacted Code of Civil Procedure section 2025.340, effective July 1, 2005. Prior to its repeal, former section 2025, subdivision (1)(2), prescribed the manner in which depositions were recorded in civil proceedings, and provided that:

(2) If the deposition is being recorded by means of audio or video technology by, or at the direction of, any party, the following procedure shall be observed:

(A) The area used for recording the deponent's oral testimony shall be suitably large, adequately lighted, and reasonably quiet.

(B) The operator of the recording equipment shall be competent to set up, operate, and monitor the equipment in the manner prescribed in this subdivision. The operator may be an employee of the attorney taking the deposition unless the operator is also the deposition officer. However, if a video recording of deposition testimony is to be used under paragraph (4) of subdivision (u), the operator of the recording equipment shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties, unless all parties attending the deposition agree on the record to waive these qualifications and restrictions. Services and products offered or provided by the deposition officer or the entity providing the services of the deposition officer to any party or to any party's attorney or third party who is financing all or part of the action shall be offered or provided to all parties or their attorneys attending the deposition. No service or product may be offered or provided by the deposition officer or by the entity providing the services of the deposition officer to any party or any party's attorney or third party who is financing all or part of the action unless the service or product is offered or provided to all parties or their attorneys attending the deposition. All services and

products offered or provided shall be made available at the same time to all parties or their attorneys. The deposition officer or the entity providing the services of the deposition officer shall not provide to any party or any other person or entity any service or product consisting of the deposition officer's notations or comments regarding the demeanor of any witness, attorney, or party present at the deposition. The deposition officer or the entity providing the services of the deposition officer shall not collect any personal identifying information about the witness as a service or product to be provided to any party or third party who is financing all or part of the action. Upon the request of any party or any party's attorney attending a deposition, any party or any party's attorney attending the deposition shall enter in the record of the deposition all services and products made available to that party or party's attorney or third party who is financing all or part of the action by the deposition officer or by the entity providing the services of the deposition officer. A party in the action who is not represented by an attorney shall be informed by the noticing party that the unrepresented party may request this statement.

(C) The operator shall not distort the appearance or the demeanor of participants in the deposition by the use of camera or sound recording techniques.

(D) The deposition shall begin with an oral or written statement on camera or on the audio recording that includes the operator's name and business address, the name and business address of the operator's employer, the date, time, and place of the deposition, the caption of the case, the name of the deponent, a specification of the party on whose behalf the deposition is being taken, and any stipulations by the parties.

(E) Counsel for the parties shall identify themselves on camera or on the audio recording.

(F) The oath shall be administered to the deponent on camera or on the audio recording.

(G) If the length of a deposition requires the use of more than one unit of tape or electronic storage, the end of each unit and the beginning of each succeeding unit shall be announced on camera or on the audio recording.

(H) At the conclusion of a deposition, a statement shall be made on camera or on the audio recording that the deposition is ended and shall set forth any stipulations made by counsel concerning the custody of the audiotape or videotape recording and the exhibits, or concerning other pertinent matters.

(I) A party intending to offer an audio or video recording of a deposition in evidence under subdivision (u) shall notify the court and all parties in writing of that intent and of the parts of the deposition to be offered within sufficient time for objections to be made and ruled on by the judge to whom the case is assigned for trial or hearing, and for any editing of the recording. Objections to all or part of the deposition shall be made in writing. The court may permit further designations of testimony and objections as justice may require. With respect to

those portions of an audio or video record of deposition testimony that are not designated by any party or that are ruled to be objectionable, the court may order that the party offering the recording of the deposition at the trial or hearing suppress those portions, or that an edited version of the deposition recording be prepared for use at the trial or hearing. The original audio or video record of the deposition shall be preserved unaltered. If no stenographic record of the deposition testimony has previously been made, the party offering a videotape or an audiotape recording of that testimony under subdivision (u) shall accompany that offer with a stenographic transcript prepared from that recording.

Since its enactment, Code of Civil Procedure section 2025.340 has prescribed the manner in which depositions are recorded in civil proceedings and has provided that:

If a deposition is being recorded by means of audio or video technology by, or at the direction of, any party, the following procedure shall be observed:

(a) The area used for recording the deponent's oral testimony shall be suitably large, adequately lighted, and reasonably quiet.

(b) The operator of the recording equipment shall be competent to set up, operate, and monitor the equipment in the manner prescribed in this section. Except as provided in subdivision (c), the operator may be an employee of the attorney taking the deposition unless the operator is also the deposition officer.

(c) If a video recording of deposition testimony is to be used under subdivision (d) of Section 2025.620, the operator of the recording equipment shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties, unless all parties attending the deposition agree on the record to waive these qualifications and restrictions.

(d) Services and products offered or provided by the deposition officer or the entity providing the services of the deposition officer to any party or to any party's attorney or third party who is financing all or part of the action shall be offered or provided to all parties or their attorneys attending the deposition. No service or product may be offered or provided by the deposition officer or by the entity providing the services of the deposition officer to any party or any party's attorney or third party who is financing all or part of the action unless the service or product is offered or provided to all parties or their attorneys attending the deposition. All services and products offered or provided shall be made available at the same time to all parties or their attorneys.

(e) The deposition officer or the entity providing the services of the deposition officer shall not provide to any party or any other person or entity any service or product consisting of the deposition officer's notations or comments regarding the demeanor of any witness, attorney, or party present at the deposition. The deposition officer or the entity providing the services of the deposition officer shall not collect any personal identifying information about the witness as a service or product to be provided to any party or third party who is financing all

or part of the action.

(f) Upon the request of any party or any party's attorney attending a deposition, any party or any party's attorney attending the deposition shall enter in the record of the deposition all services and products made available to that party or party's attorney or third party who is financing all or part of the action by the deposition officer or by the entity providing the services of the deposition officer. A party in the action who is not represented by an attorney shall be informed by the noticing party that the unrepresented party may request this statement.

(g) The operator shall not distort the appearance or the demeanor of participants in the deposition by the use of camera or sound recording techniques.

(h) The deposition shall begin with an oral or written statement on camera or on the audio recording that includes the operator's name and business address, the name and business address of the operator's employer, the date, time, and place of the deposition, the caption of the case, the name of the deponent, a specification of the party on whose behalf the deposition is being taken, and any stipulations by the parties.

(i) Counsel for the parties shall identify themselves on camera or on the audio recording.

(j) The oath shall be administered to the deponent on camera or on the audio recording.

(k) If the length of a deposition requires the use of more than one unit of tape or electronic storage, the end of each unit and the beginning of each succeeding unit shall be announced on camera or on the audio recording.

(l) At the conclusion of a deposition, a statement shall be made on camera or on the audio recording that the deposition is ended and shall set forth any stipulations made by counsel concerning the custody of the audio or video recording and the exhibits, or concerning other pertinent matters.

(m) A party intending to offer an audio or video recording of a deposition in evidence under Section 2025.620 shall notify the court and all parties in writing of that intent and of the parts of the deposition to be offered. That notice shall be given within sufficient time for objections to be made and ruled on by the judge to whom the case is assigned for trial or hearing, and for any editing of the recording. Objections to all or part of the deposition shall be made in writing. The court may permit further designations of testimony and objections as justice may require. With respect to those portions of an audio or video record of deposition testimony that are not designated by any party or that are ruled to be objectionable, the court may order that the party offering the recording of the deposition at the trial or hearing suppress those portions, or that an edited version of the deposition recording be prepared for use at the trial or hearing. The original audio or video record of the deposition shall be preserved unaltered. If no stenographic record of the deposition testimony has previously been made, the

party offering an audio or video recording of that testimony under Section 2025.620 shall accompany that offer with a stenographic transcript prepared from that recording.

Therefore, the State Board of Equalization (Board) hereby proposes to amend Property Tax Rule 312, subdivision (a), to replace the reference to Code of Civil Procedure section “2025, subsection (1)(2),” with a reference to Code of Civil Procedure section “2025.340” to update the cross-reference to refer to the current section of the Code of Civil Procedure that prescribes the manner in which depositions are recorded in civil proceedings.

The change is appropriate for processing under California Code of Regulations, title 1, section (Rule) 100 because the change is without regulatory effect and does not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, the change is necessary to bring Property Tax Rule 312 into conformity with the current provisions of the Code of Civil Procedure prescribing the manner in which depositions are recorded in civil proceedings.

#### **B. Proposed Amendment**

The Board proposes to amend Property Tax Rule 312 to read as follows:

Property Tax Rule 312, Hearings Recorded

- (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 2025.340~~2025, subsection (1)(2)~~.
- (b) . . . (unchanged).
- (c) . . . (unchanged).
- (d) . . . (unchanged).
- (e) . . . (unchanged).

Note: Authority cited: Section 15606, Government Code. Reference: Section 1611, Revenue and Taxation Code.