

Memorandum

To: Honorable John Chiang, Chair
Honorable Claude Parrish, Vice Chairman
Ms. Betty T. Yee, Acting Member
Honorable Bill Leonard
Honorable Steve Westly

Date: May 4, 2006

From: Kristine Cazadd (MIC:83)
Chief Counsel



Subject: **Board Meeting – May 17, 2006**
Chief Counsel Matters – Item J1

Concept Approval of Revised Procedures for Property Tax Appeals and Chapter 3, Property Taxes

This memorandum presents for your approval the Legal Department's proposed revised procedures for the Appeals Division review of all property tax appeals, commencing with petitions for reassessment of 2006 state-assessed unitary property values and all other property tax petitions filed on or after July 20, 2006.

As the Board directed last year on April 12, 2005, the Appeals Division reviews all property tax petitions scheduled for Board action. This review however, currently includes Appeals Conferences for only *some* property tax petitions, not all. Staff's proposal herein is that Appeals Conferences will be held for *all* petitions that have requested oral hearings before the Board, including state assessee and private railroad car petitions. The purpose of Appeals Conferences is to further utilize the independent review function of the Appeals Division by enabling conference holders to independently develop the factual record, and narrow and resolve issues raised in the petition, to the greatest extent possible prior to the Board's decision on the petition. (BEAM Section 0311, Publication 17, *Appeals Procedures*.)

Staff requests approval of these revised procedures for implementation this year so that we may ensure that they are properly integrated into the language setting forth the property tax appeals process during the promulgation of the New Rules of Practice regulations.¹ Staff also requests that the Board approve these revised concepts for incorporation into the regulations - to be formally proposed for the Board's approval as Chapter 3, *Rules for California Tax Administration and Appellate Review*.²

¹ State assessees will be notified of the details of the new procedures shortly after the Board's notices of unitary value are sent. Private railroad car taxpayers will be notified after the notices of assessment are sent. Filers of all other property tax petitions will be notified when the receipt of the petition is acknowledged by the Board Proceedings Division.

² Staff is currently developing an alternative title for the new rules as directed by the Board.

A revision of Chapter 3 incorporating these concepts will be published for review and comment as part of the interested parties process in the near future.

I. Overview

This memorandum outlines the proposed Appeals Division procedures for all property tax appeals, which, - in addition to petitions for reassessment of state-assessed property and private railroad cars, - include petitions for denial of claims for welfare exemption, applications for review, equalization, and adjustment of assessments of taxable property owned by local governments pursuant to article 13, section 11 of the California Constitution (Section 11), and petitions filed with the Board by county assessors pursuant to section 15640 of the Government Code (Property Tax Sampling Program). Set forth below is a summary of the revised procedures proposed.

A. Procedures Applicable to All Property Tax Petitions

1. Discussion and Resolution With Board Staff

For all property tax petitions, the Property and Special Taxes Department staff (i.e., Valuation, Assessment Policy and Standards, and County Property Tax Divisions) will continue the established practice of conducting pre-hearing meetings and making informal contact with petitioners' representatives to request information and resolve issues prior to and in the course of the appeals process.

2. Hearing Summary or Summary Decision

A "Hearing Summary" (for oral hearings) or a "Summary Decision" (for non-appearance matters) will be prepared for each petition presented for the Board's consideration. Both a Hearing Summary and a Summary Decision set forth an objective statement of facts and a neutral analysis of the legal and valuation issues to assist the Board in taking action on the petition. If the Appeals Division determines that the Hearing Summary requires any corrections or changes based on subsequently obtained information, the Appeals Division will prepare a "Revised Hearing Summary."³

B. Review of State Assessee and Private Railroad Car Petitions

1. Appeals Conference

An Appeals Conference will be held in the following circumstances:

- For each petition that requests an oral hearing;

³ If time does not permit the Appeals Division to prepare a "Revised Hearing Summary" the Appeals Division will orally advise the Board regarding any corrections or changes. For non-appearance matters, a "Revised Summary Decision" would be prepared if necessary.

- For each petition that requests an Appeals Conference, but not an oral hearing;
- At a Board Member's request for petitions that do not request an oral hearing or Appeals Conference.

2. Hearing Summary and Summary Decision

A Hearing Summary or Summary Decision will prepared for each petition presented for the Board's consideration, as follows:

- a) Appeals Conference Held (Oral Hearing and Nonappearance). The Appeals Division will prepare the Hearing Summary or Summary Decision. (See sections II.D and III.A below.)
- b) No Appeals Conference (All Issues Resolved). When an Appeals Conference is not held and all issues are resolved, the Tax and Fee Program Division of the Board's Legal Department will prepare the Summary Decision for the Board's consideration on the Property Tax Matters Nonappearance calendar. (See section III.B below.)
- c) No Appeals Conference (Unresolved Issues). When an Appeals Conference is not held and one or more issues are unresolved, the Appeals Division will review the petition, the Valuation Division Summary, and the petitioner's optional response prior to preparing the Summary Decision for the Board's consideration on the Legal Appeals Matters Nonappearance calendar. (See section III.C below.)

C. Review of All Other Property Tax Petitions

For all other property tax petitions (i.e., welfare exemption and Property Tax Sampling Program petitions and Section 11 applications), the Appeals Division review will include an Appeals Conference, regardless of whether the petition will be decided by the Board at an oral hearing or as a written-only, nonappearance item. A Hearing Summary (for oral hearings) or a Summary Decision (for nonappearance matters) will be prepared by the Appeals Division. (See section IV below.)

II. Appeals Conference Process for State Assessee and Private Railroad Car Company Petitions

A. Scheduling

Petitioners are required to make a request for an oral hearing or Appeals Conference at the time the petition is filed. If an oral hearing or Appeals Conference is requested, an Appeals Conference is mandatory. This means that the Appeals Conference

will be held whether or not the petitioner attends, unless the petitioner waives its request for an oral hearing or its request for an Appeals Conference prior to the date of the Appeals Conference. A petitioner that requested an oral hearing may waive its oral hearing without waiving its Appeals Conference, and, even if a petitioner waives its right to an oral hearing and its Appeals Conference, an Appeals Conference will still be held if requested by a Board Member. For these reasons, staff is proposing to modify the state assessee petition for reassessment form by adding a space for the petitioner to request an Appeals Conference without requesting an oral hearing. Attached to this memo is a copy of the form with the proposed modification.

The Board Proceedings Division will schedule an Appeals Conference no less than 30 days before the oral hearing on the petition. Since the Board must hear and decide all petitions for reassessment by the end of the calendar year, the Board Proceedings Division has a narrow window of time within which to schedule all Appeals Conferences. For that reason, the Board Proceedings Division will schedule all 2006 oral hearings and all nonappearance matters for which an Appeals Conference is held for the November and December 2006 Board meetings. It is anticipated that the Appeals Conferences for the November oral hearings will be scheduled on or about the week of October 16 and 20, 2006, and the Appeals Conferences for the December oral hearings will be scheduled on or about the week of November 6 and 10, 2006.

The Board Proceedings Division will notify the petitioner, the Valuation Division, and the Tax and Fee Programs Division of the date, time and place of the Appeals Conference by mail, electronic mail or facsimile. The parties will be asked to confirm their attendance at the Appeals Conference. If possible, the Board Proceedings Division will attempt to accommodate a request for rescheduling. Once a party has confirmed its attendance at the Appeals Conference, however, the Appeals Division will hold the Appeals Conference even if that party does not appear.

The typical Appeals Conference will be allotted one hour, while Appeals Conferences for petitions involving more complex issues will be allotted 90 minutes or more. Petitions for related companies involving the same issues may be consolidated for one Appeals Conference and, if the petitions are consolidated, the time allotment for the Appeals conference will be adjusted, if necessary.

B. Conference Briefing Process

The petition shall constitute the petitioner's opening brief. The Valuation Division will prepare and submit the "Valuation Division Summary" to the Board Proceedings Division, which will transmit a copy to the petitioner, no less than 30 days prior to the scheduled date of the Appeals Conference. The petitioner may file an optional response within 15 days after the Board Proceedings Division mails the Valuation Division Summary to the petitioner. The Appeals Division may also request additional information or briefing from the parties before, during, or after the Appeals Conference. If additional information or briefing is orally requested at the Appeals Conference, the conference holder will confirm the request in writing no later than two business days after the Appeals Conference. Unless otherwise permitted by the Appeals Division, all additional information and briefing requested at the Appeals Conference must be submitted no later than seven days after the Appeals Conference was held.

C. Conduct of the Appeals Conference

To open the conference, the conference holder will state the name of the case, the matters that are at issue, and briefly explain the Appeals Conference process. While the Appeals Conference will be held in an informal manner that encourages the free exchange of information and opinions, as a general rule the petitioner will be allowed to make a brief opening statement and to make the first presentation. The Valuation Division will then have an opportunity to respond to each issue raised by petitioner. The conference holder will have broad discretion to control the scope of the presentations and to ask questions at any point in the presentations in order to develop as complete a factual record as possible, narrow the issues in dispute, and facilitate the resolution of as many issues as possible.

The petitioner will be represented at the Appeals Conference by an agent or employee who is thoroughly familiar with the facts and issues and has been authorized to represent the petitioner. The Valuation Division will be represented by an appraiser and a Tax and Fee Program Division attorney. If a petitioner's representative is not able to appear in person, the representative may request a conference by telephone or, if facilities are available, by videoconference. If a petitioner waives its appearance or if its agent fails to appear for an Appeals Conference, the Appeals Conference will be held with only the representatives for the Valuation Division. Petitioners will be advised that a party's nonappearance will be reflected in the conference holder's Hearing Summary or Summary Decision, discussed below.

The conference holder will not make an audio, video, or stenographic recording of the Appeals Conference proceedings. Any party may arrange for a recording, at that party's expense. If such a recording is made, a copy of the recording or transcript shall be made available to the conference holder and the other party. Such recording or transcript

shall become a public record when made, and shall be subject to disclosure to the public at the conclusion of the petitioner's oral hearing, if one is held.⁴

D. Appeals Hearing Summaries for Oral Hearings

The conference holder will prepare a Hearing Summary for each Appeals Conference held for a petition that has requested an oral hearing, similar to the hearing summaries prepared by the Appeals Division for last year's oral hearings. The Hearing Summary will objectively summarize the Appeals Conference proceedings, state the issues presented, including those that have been narrowed and resolved, and establish a factual record either through stipulation or independent recommendations of findings based on the evidence. The Hearing Summary will also present a neutral analysis of the legal and valuation issues and provide the Appeals Division's comments to assist the Board at the oral hearing. The Hearing Summary will be submitted to the Board Proceedings Division no less than 10 days before the oral hearing and the Board Proceedings Division will distribute copies to the Board Members and to the parties. If the Hearing Summary requires correction or clarification, the Appeals Division will prepare and submit a Revised Hearing Summary to the Board Proceedings Division prior to the oral hearing. If the Appeals Division does not determine that a correction or clarification is required prior to the day of the oral hearing, the Appeals Division shall orally inform the Board and the parties about the correction or clarification at the beginning of the oral hearing.

III. Nonappearance Matters

A. Appeals Conference Held - Appeals Division Summary Decision

After each Appeals Conference held for a petition that did not request an oral hearing, the Appeals Division will prepare a Summary Decision entitled "Appeals Division's Summary and Recommendation for Property Tax Petition on Legal Appeals Matters Calendar." The Summary Decision will be submitted for consideration and adoption by the Board Members, similar to the summary decisions issued for appeals from the Franchise Tax Board. The Summary Decision will objectively summarize the Appeals Conference proceedings, set forth the issues, the factual background, the contentions of the petitioner and the Valuation Division, the applicable law and an analysis of the issues, and the Appeals Division's recommended resolution of the issues presented. The Summary Decision will be submitted to the Board Proceedings Division, which will distribute copies to the Board Members and to the parties. If the Summary Decision requires correction or clarification, the Appeals Division will prepare and submit a Revised Summary Decision to the Board Proceedings Division prior to the meeting at which the petition is scheduled for decision by the Board.

⁴ Chapter 5 of the Rules for California Tax Administration and Appellate Review would make such records or transcripts disclosable public records on the date the Public Agenda Notice is issued for the petitioner's oral hearing.

**B. No Appeals Conference – Agreement on all Issues - Property Tax Matters
Nonappearance Calendar**

If the petitioner has not requested an oral hearing or an Appeals Conference, or has waived its oral hearing and Appeals Conference, and the parties agree on a joint recommendation to the Board on all the issues raised in the petition, the Tax and Fee Program Division will submit a Summary Decision entitled “Valuation Division’s Recommendation on Property Tax Petition on the Property Tax Matters Nonappearance Calendar” to the Chief of Board Proceedings, setting forth an analysis of the petition, the related supporting documents, and a staff recommendation for Board Action. Under these circumstances, the “Valuation Division’s Recommendation on Property Tax Petition on the Property Tax Matters Nonappearance Calendar” constitutes the only staff recommendation to the Board for its decision on the petition and will be distributed by the Board Proceedings Division to the Board Members and the petitioner.

**C. No Appeals Conference - Unresolved Issues - Legal Appeals Matters
Nonappearance Calendar**

If the petitioner has not requested an oral hearing or an Appeals Conference, or has waived its oral hearing and Appeals Conference, and the parties do not reach an agreement for a joint recommendation to the Board, the Valuation Division will submit a “Valuation Division Summary,” setting forth an analysis of the petition, the related supporting documents, and a staff recommendation for Board action.⁵ In such a case, the petitioner may file a response addressing issues raised in the Valuation Division Summary. The Board Proceedings Division will distribute a copy of the Valuation Division Summary and petitioner’s response to the petitioner, the Appeals Division, the Board Members, the Valuation Division and the Tax and Fee Program Division. Once the briefing process is completed, the Appeals Division will review the petition, Valuation Division Summary, and petitioner’s response, if any, and prepare a Summary Decision, as described above, entitled the “Appeals Division’s Summary and Recommendation for Property Tax Petition on Legal Appeals Matters Calendar.” The Summary Decision will be objective and set forth the issues, the factual background, the contentions of the petitioner and the Valuation Division, the applicable law and an analysis, and the Appeals Division’s recommended resolution of the issues presented. The Board Proceedings Division will distribute a copy of the Summary Decision to the petitioner, the Board Members, the Valuation Division, and the Tax and Fee Program Division.

⁵ “Valuation Division Summary” was previously entitled “Staff Recommendation on Property Tax Petition on the Nonappearance Calendar.”

IV. Appeals Division Review Process for All Other Property Tax Petitions

The Appeals Division's review of all other property tax petitions would be substantially the same as set forth in the proposed Chapter 3 of the Rules for California Tax Administration and Appellate Review presented to interested parties at the meeting on February 23, 2006. This process provides for full briefing prior to the Appeals Conference, followed by preparation of a Hearing Summary (for oral hearings) or a Summary Decision (for non-appearance matters). The proposed regulations also provide for supplemental briefing at the request of the Appeals Division, any Board Member, or the Board as a whole, as well as the submittal of briefs by non-parties.

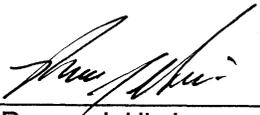
CONCLUSION

Providing Appeals Conferences for most property tax petitions will enable the Appeals Division to conduct a more complete examination of the facts and issues raised in each petition. Moreover, the Appeals Conference process will expand the time afforded petitioners to present their arguments and evidence to a neutral conference holder. Finally, the Appeals Conference process will enable the Appeals Division to present a clearer and more complete factual record to the Board on each petition, and help the parties narrow and resolve issues prior to hearing, which will result in a more efficient and focused hearing calendar.

If you have any questions, please contact Tax Counsel IV Louis Ambrose at (916) 445-5580.

cc:	Mr. Ramon J. Hirsig	MIC:73
	Mr. David Gau	MIC:63
	Mr. Stanley Siu	MIC:61
	Mr. Jefferson Vest	MIC:85
	Mr. Robert Lambert	MIC:82
	Mr. Gary Evans	MIC:80
	Mr. Todd Gilman	MIC:70
	Mr. Ken Thompson	MIC:61
	Mr. Bradley Heller	MIC:82
	Ms. Carole Ruwart	MIC:82
	Ms. Kiren Chohan	MIC:85
	Ms. Hee Kim	MIC:85

KC:LA:tsc
Chief Counsel/PTAppeals Proposed Guidelines - CCmemo

Approved: 

Ramon J. Hirsig
Executive Director

STATE BOARD OF EQUALIZATION
 PETITION FOR UNITARY PROPERTY REASSESSMENT
 PETITION FOR PENALTY ABATEMENT
ON ASSESSMENT ROLL 20 ___ / 20 ___

Internal Use Only
Appeal No. _____
Case ID: _____

1. PETITIONER

COMPANY NAME (please print)
SBE COMPANY NUMBER
NAME OF PERSON TO CONTACT
BUSINESS PHONE
()
AGENT (if any)
MAILING ADDRESS (street, city, state, zip code)
BUSINESS PHONE
()

2. PROPERTY IDENTIFICATION INFORMATION

- Gas & Electric
- Telephone — Local
- Telephone — Interexchange
- Telephone — Cellular
- Railroad
- Pipeline
- Mobile Radio
- Other

Check counties in which unitary property is located.

- 1. Alameda
- 2. Alpine
- 3. Amador
- 4. Butte
- 5. Calaveras
- 6. Colusa
- 7. Contra Costa
- 8. Del Norte
- 9. El Dorado
- 10. Fresno
- 11. Glenn
- 12. Humboldt
- 13. Imperial
- 14. Inyo
- 15. Kern
- 16. Kings
- 17. Lake
- 18. Lassen
- 19. Los Angeles
- 20. Madera
- 21. Marin
- 22. Mariposa
- 23. Mendocino
- 24. Merced
- 25. Modoc
- 26. Mono
- 27. Monterey
- 28. Napa
- 29. Nevada
- 30. Orange
- 31. Placer
- 32. Plumas
- 33. Riverside
- 34. Sacramento
- 35. San Benito
- 36. San Bernardino
- 37. San Diego
- 38. San Francisco
- 39. San Joaquin
- 40. San Luis Obispo
- 41. San Mateo
- 42. Santa Barbara
- 43. Santa Clara
- 44. Santa Cruz
- 45. Shasta
- 46. Sierra
- 47. Siskiyou
- 48. Solano
- 49. Sonoma
- 50. Stanislaus
- 51. Sutter
- 52. Tehama
- 53. Trinity
- 54. Tulare
- 55. Tuolumne
- 56. Ventura
- 57. Yolo
- 58. Yuba

3. VALUE INFORMATION

	Unitary Value	Penalty	Total
Board — Adopted	\$	\$	\$
Petitioner's Opinion	\$	\$	\$

4. This is a request for refund according to Revenue and Taxation Code section 5148(f): Yes No

5. The facts that I rely upon to support the requested change in value are as follows:

- a. The unitary value exceeds the full value of the property
- b. Interstate allocation determination is incorrect
- c. Value includes post-lien date property
- d. Value of unitary property has been incorrectly calculated
- e. Penalty assessment is not justified
- f. Determination of exempt value is incorrect
- g. Assessment ratio is incorrect
- h. Other (attach explanation)

You are required to attach a statement of the precise elements of the Board's valuation you contest and include any appraisal reports, financial studies and other material relevant to value. (See Rules of Practice, Regulation 5041.) Failure to do so could result in the dismissal of the petition if it renders the petition incomplete. (See Rule 5042)

6. My appeal will be Written Only Oral Unsworn Amount of Time Needed _____ (See Rules of Practice, Regulation 5076)
 Oral Formal Amount of Time Needed _____

6a. Appeals Conference Requested

7. I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing and all information herein, including any accompanying statements or documents, is true, correct, and complete to the best of my knowledge and belief and that I am: (1) an officer, partner, or employee of the petitioner authorized to sign this petition; (2) an agent authorized by the petitioner; or (3) an agent who is an attorney licensed to practice law in the State of California, State Bar No. _____, who has been retained by the petitioner and has been authorized by the petitioner to file this petition.

SIGNATURE OF PETITIONER, OWNER OR AUTHORIZED REPRESENTATIVE

DATE

2006 Property Tax Appeals Calendar Dates

<u>October – Nonappearance Matters Only</u>		
Due date for filing the Petition	7/20/2006	53 Days to prepare Val. summary
Extension filing date	8/4/2006	38 Days to prepare Val. summary
Valuation Division Recommendation due	9/11/2006	30 Days prior to Hearing
<i>Board Proceedings Distribution</i>	9/12/06	29 Days prior to Hearing
Petitioner's Reply Brief due	9/26/2006	15 Days prior to Hearing
<i>Board Proceedings Distribution</i>	9/27/06	14 Days prior to Hearing
Appeals Summary and Recommendation due	10/2/2006	9 Days prior to Hearing
<i>Board Proceedings Distribution</i>	10/3/06	8 Days prior to Hearing
Board Hearing	10/11/2006	

<u>November</u>		
Due date for filing the Petition	7/20/2006	57 Days to prepare Val. summary
Extension filing date	8/4/2006	42 Days to prepare Val. summary
Valuation Division Summary due	9/11-9/15/06	30 Days prior to Conference
<i>Board Proceedings Distribution</i>	9/18/06	62 Days prior to Hearing
Petitioner Reply Brief due	10/2-10/6/2006	14 Days prior to Conference
<i>Board Proceedings Distribution</i>	10/10/06	40 Days prior to Hearing
Appeals Conference	10/16-10/20/2006	30 Days prior to Hearing
Hearing Summary due	11/9/2006	11 Days prior to Hearing
<i>Board Proceedings Distribution</i>	11/13/06	7
Board Hearing	11/20/2006	

<u>December</u>		
Due date for filing the Petition	7/20/2006	78 Days to prepare Val. summary
Extension filing date	8/4/2006	63 Days to prepare Val. summary
Valuation Division Summary due	10/2-10/6/06	30 Days prior to conference
<i>Board Proceedings Distribution</i>	10/10/06	62 Days prior to Hearing
Petitioner's Reply Brief due	10/25-11/1/06	11 Days prior to conference
<i>Board Proceedings Distribution</i>	11/2/06	39 Days prior to Hearing
Appeals Conference	11/6-11/10/2006	31 Days prior to Hearing
Hearing Summary due	12/1/2006	10 Days prior to Hearing
<i>Board Proceedings Distribution</i>	12/4/06	7 Days prior to Hearing
Board Hearing	12/12/2006	