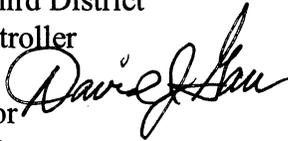


Memorandum

Date: March 1, 2007

To: Honorable Betty T. Yee, Chairwoman
Honorable Judy Chu, Ph.D., Vice-Chair
Honorable Bill Leonard, Second District
Honorable Michelle Steel, Third District
Honorable John Chiang, Controller

From: David J. Gau, Deputy Director 
Property and Special Taxes Department

Kristine Cazadd
Chief Counsel 

Subject: **March 20, 2007 Board Meeting**
Item J1 – Chief Counsel Matters
Board of Equalization Rules for Tax Appeals
Chapter 3: Property Taxes
State Assessee Appeals Conference Alternatives

At the February 1, 2007 Board meeting, the Board directed staff to present alternatives to the current appeals conference process for state assessee and private railroad car (state assessee) petitions for reassessment of unitary and non-unitary values (petitions). Additionally, the form of the hearing summary prepared by the Appeals Division for oral hearings of state assessee petitions was discussed. Staff has prepared a staff recommendation and alternative to address the issue raised by this discussion. After receiving direction from the Board, staff will incorporate the relevant provisions into the next draft of Chapter 3, Property Taxes, of the proposed Rules for Tax Appeals prior to presenting Chapter 3 to the Board for approval at the April, 2007 Board meeting.

Staff Recommendations and Alternatives

1. Appeals Conferences

Staff presents three alternatives¹ for consideration by the Board. All three alternatives provide that appeals conferences will be discretionary, not mandatory, for all state assessees, and that the State-Assessed Properties Division (SAPD) will submit its SAPD Analysis directly to the Appeals Division 45 days prior to the Board meeting date at which the petition will be decided (if no appeals conference is held) or 35 days prior to

¹ See Attachment for a table comparing the 2006 procedures with all three alternatives.

the appeals conference (if one is held). The petitioner would be allowed to submit an optional response no later than 15 days after the SAPD Analysis is submitted to the Board Proceedings Division. The difference between the three alternatives is in who can request an appeals conference.

Under **Alternative 1 (staff recommendation)**, appeals conferences may be requested by any party, the Appeals Division, or any Board Member. This alternative provides the most access to appeals conferences.

Under **Alternative 2**, appeals conferences could be requested only by the Appeals Division or any Board Member. This alternative should result in the most efficient use of resources for the Appeals Division, petitioners, and SAPD, since conferences would only be held for appeals involving complex issues, where clarification is needed, or where staff-level resolution seems possible. However, a petitioner would not be able to request an appeals conference.

Under **Alternative 3**, presented by the Controller's representative at the February 1 meeting, an appeals conference would only be held if requested by the petitioner.

2. Form of Hearing Summary for Property Tax Petitions

Background

No later than June 1 of each year, the Board adopts the values for property tax purposes of the unitary and non-unitary property of all state assessees. These Board-adopted values are final unless a state assessee files a timely petition for reassessment. By December 31 of each year, the Board is required to make a final decision on each petition.

Under current procedures² and the Rules for Tax Appeals (Rules), virtually all³ property tax petitions are reviewed by the Appeals Division before being presented to the Board for decision. If a petition is scheduled for oral hearing, a "hearing summary" is prepared. After the oral hearing is held, this document becomes publicly-available.⁴ If a petition is scheduled for decision without an oral hearing, a "summary decision" is prepared. This document does not become publicly available. These documents are prepared by the Appeals Division and submitted to the Board to assist in its consideration of the petitions.

² *Guidelines for Property Tax Appeals Division Review and Appeals Conference Process*, June 5, 2006.

³ A small number of state assessee petitions (those in which issues are completely resolved early in the petition process) are not reviewed by the Appeals Division. The Tax and Fee Program Division of the Legal Department prepares a staff recommendation for consideration by the Board.

⁴ Under the current (11/20/06) version of Chapter 5 of the Rules for Tax Appeals, this document would become publicly-available as of the date that the public agenda notice is published, regardless of whether the oral hearing is actually held.

In 2006, the property tax hearing summaries for state assessee oral hearings presented analysis, comments, and questions for the parties to address or the Board Members to ask at the hearing, but generally did not provide conclusions or recommendations of the Appeals Division on facts or legal issues. Board staff believes that this format, which is also used in hearing summaries for appeals from actions of the Franchise Tax Board, most effectively assists the Board in conducting an oral hearing in which the Board as a whole interacts with the parties. In contrast, the property tax summary decisions for nonappearance petitions presented conclusions and recommendations on both facts and legal issues. Board staff believes that this format most effectively assists the Board in making a decision primarily or exclusively on the documents submitted by the parties and the independent, neutral review of the Appeals Division. Therefore, staff recommends no change to the current form of the hearing summaries prepared by the Appeals Division for property tax petitions.

By way of comparison with other tax and fee programs, the involvement of the Appeals Division in resolving business taxes petitions occurs much earlier in the process than is the case with state assessee petitions. The Appeals Division holds an appeals conference and thereafter prepares a Decision and Recommendation (D&R). The D&R makes specific conclusions of fact and recommendations (e.g., full or partial grant of the petition, denial of the petition, or the Department to perform a reaudit with directions). Where the taxpayer does not request a Board hearing, the recommendation of the D&R is generally adopted as the Board's final decision.⁵ Where the taxpayer does appeal the D&R by requesting a Board hearing, the Appeals Division prepares a hearing summary to summarize the matter and set forth the remaining issues in dispute that the Board must decide. The summary includes copies of the D&R and any supplemental D&R, and explains any relevant updated information since their issuance.

The current (11/20/06) version of the proposed Rules for Tax Appeals does not prescribe any particular content for a hearing summary for property and business tax⁶ purposes, except that the hearing summary must be "objective," and be intended to assist the Board in making its decision. A property tax summary decision must contain "analysis and recommendations." The elements of a business taxes D&R are set out in greater detail, but with the exception of the requirement that a D&R provide "Appeals Staff's conclusions and recommendations after applying the relevant law to all of the relevant information," its elements are consistent with the contents of the hearing summaries prepared for state assessee petitions.

⁵ Where the adjustment from the determined tax does not exceed \$50,000, the Sales and Use Tax Department processes the determination, under a delegation of authority from the Board, in accordance with the recommendation in the D&R. Where the adjustment from the determined tax exceeds \$50,000, the matter is presented to the Board for approval on a nonappearance calendar.

⁶ Because a D&R is supplied to the Board Members for each business taxes matter under consideration, a business taxes hearing summary is a supplemental document. In contrast, for property tax appeals, the hearing summary is the only document prepared by the Appeals Division that is submitted to the Board.

Staff Recommendation and Alternative

The staff recommendation represents the current practice of the Appeals Division. Under the staff recommendation and alternative, both hearing summaries and summary decisions⁷ for property taxes contain the following elements:

- Concise statement of each issue raised by the petitioner;
- Position of Board staff on each issue raised by the petitioner;
- Statement of the relevant law applicable to each issue raised by the petitioner;
- Clear application of the relevant law to all the relevant information presented to Appeals staff;
- Summary of any additional information or documentation that was not presented to Appeals staff, which might be relevant to a resolution of the issues raised by the petitioner.

Under the staff recommendation, a hearing summary would not provide specific conclusions or recommendations; under the alternative, these conclusions and recommendations would generally be provided. The following table provides a comparison:

Staff Recommendation: No Change to Hearing Summary		Alternative: Conclusions and Recommendations in Hearing Summary	
Hearing Summary	Summary Decision	Hearing Summary	Summary Decision
Appeals Staff's <i>comments and suggested questions</i> for parties to address or Board Members to ask at the hearing.	Appeals Staff's conclusions and recommendations after applying the relevant law to all of the relevant information.	Appeals Staff's <i>conclusions and recommendations</i> after applying the relevant law to all of the relevant information.	Appeals Staff's conclusions and recommendations after applying the relevant law to all of the relevant information.

KC/DJG:jlh

cc: Mr. Ramon J. Hirsig MIC:73
 Mr. Todd Gillman MIC:70

Approved: 
 Ramon J. Hirsig
 Executive Director

⁷ Under the staff recommendation and alternative, a summary decision for property tax purposes would continue to provide conclusions and recommendations of the Appeals Division.

ATTACHMENT

Stage of Process	2006 State Assessee Proc.	Alternative 1 (Staff Rec.)	Alternative 2	Alternative 3 (Controller)
Appeals Division Review¹	Yes	Yes	Yes	Yes
Availability of Appeals Conference	Mandatory for oral hearings Discretionary for nonappearance matters – at request of Petitioner or Board Member	Discretionary – at request of Petitioner, SAPD, Appeals Division, ² or Board Member	Discretionary – at request of Appeals Division or Board Member	Discretionary – at request of Petitioner
Time of request	Petition No specific requirements for other requesters	Petition No specific requirements for other requesters	Petition No specific requirements for other requesters	Petition
At appeals conference	Petitioner, SAPD, TFP	Petitioner, SAPD	Petitioner, SAPD	Petitioner, SAPD
Documents submitted to Appeals Division	Petition SAPD Analysis (by TFP) Optional Response	Petition SAPD Analysis (by SAPD) Optional Response	Petition SAPD Analysis (by SAPD) Optional Response	Petition SAPD Analysis (by SAPD) Optional Response
Documents prepared by Appeals Division and submitted to Board	Hearing Summary/Summary Decision ³ (by Appeals)	Hearing Summary/Summary Decision (by Appeals)	Hearing Summary/Summary Decision (by Appeals)	Hearing Summary/Summary Decision (by Appeals)
Participation in Board hearing	Petitioner TFP (representing SAPD) SAPD Appeals Division	Petitioner TFP (representing SAPD) SAPD Appeals Division	Petitioner TFP (representing SAPD) SAPD Appeals Division	Petitioner TFP (representing SAPD) SAPD Appeals Division

Appeals Division: The Appeals Division of the Board's Legal Department.

SAPD: The "State-Assessed Properties Division" of the Property and Special Taxes Department (the unit formerly known as the "Valuation Division").

SAPD Analysis: A technical document summarizing the appraised value of the petitioner's property.

TFP: Tax and Fee Program Division of the Board's Legal Department.

¹ All state assessee petitions (except those where all issues are resolved very early in the petition process) are reviewed by the Appeals Division. If no appeals conference is held, the Appeals Division prepares its Summary Decision based on review of the petition and SAPD Analysis. Additional information or analysis can be obtained from either party.

² Under Alternatives 1 and 2, the Appeals Division would request a conference only when a conference would be likely to assist the Appeals Division's development of the factual record or analysis of the issues presented. Examples include petitions involving complex facts, unclear issues or legal arguments, or other factors that make the petition amenable to staff-level resolution.

³ Under all procedures, a hearing summary is prepared for an oral hearing; a summary decision is prepared for a nonappearance matter.