

Memorandum

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

Date: May 13, 2008

From: Kristine Cazadd
Chief Counsel 

Subject: **Chief Counsel Matters, Item J, May 29, 2008, Board Meeting**
Proposed Rule 100 Changes to Board of Equalization Rules for Tax Appeals
(Cal. Code Regs., tit 18, section 5000 et seq.)

The Board of Equalization (Board) recently promulgated the Rules for Tax Appeals (RTA), California Code of Regulations, title 18, section 5000 et seq., to create a comprehensive set of procedural regulations which cover all of the Board's administrative review functions with regard to Board-administered tax and fee programs and the Board's appellate duties with regard to appeals from the actions of the Franchise Tax Board (FTB).

During the process of reviewing the new RTA, Board staff discovered typographical and grammatical errors in California Code of Regulations, title 18, sections 5216, 5310, 5311, 5326.4, 5326.6, 5333, 5333.4, 5333.6, and 5523.4 and determined that the amendments noted in Attachments A, B, and C were necessary. These amendments are appropriate for processing under California Code of Regulations, title 1, section 100 (Rule 100) because they are solely grammatical or typographical corrections and do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of the regulations.

1. Rule 100 Changes to Chapter 2 of the RTA

Staff made Rule 100 changes to section 5216, subdivision (b)(2) to correct a typographical error that resulted in the insertion of a period instead of a comma, as noted in Attachment A.

2. Rule 100 Changes to Chapter 3 of the RTA

Staff made Rule 100 changes to correct a typographical error in the placement of an apostrophe in section 5310, subdivision (a)(3). Staff made Rule 100 changes to correct a typographical error in a cross-reference to section 5310 contained in section 5311, subdivision (b)(7)(B). Staff made Rule 100 changes to deleted hyphens for the word “non-unitary” in section 5326.4, subdivisions (a)(2) and (b). Staff made Rule 100 changes to renumber section 5326.6, subdivision (d)(i) and (d)(ii), as subdivision (d)(1) and (d)(2), respectively, in order to correct typographical errors. Staff made a Rule 100 change to delete a comma from section 5333, subdivision (a). Staff also made Rule 100 changes to the notes sections of sections 5333, 5333.4 and 5333.6 to correct typographical errors in the references to Revenue and Taxation Code section 254.6. The Rules 100 changes to chapter 3 of the RTA are noted in Attachment B.

3. Rule 100 Changes to Chapter 5 of the RTA

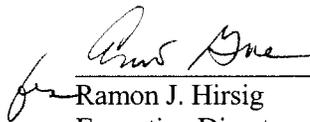
Staff made Rule 100 changes to renumber section 5523.4, subdivisions (e) and (f), as subdivisions (d) and (e), respectively, to correct typographical errors, as noted in Attachment C.

Staff will submit the Rule 100 changes to chapters 2, 3, and 5 of the RTA to the Office of Administrative Law for publication by the Secretary of State, unless the Board disagrees with staff and determines that the changes are incorrect or beyond the scope of Rule 100.

If you have any questions, please telephone Tax Counsel III (Specialist) Windie O. Scott at (916) 323-2267.

KC:ws

Approved:



Ramon J. Hirsig
Executive Director

cc: Mr. Ramon J. Hirsig (MIC: 73)
Mr. Jefferson Vest (MIC: 85)
Ms. Jean Ograd (MIC: 87)
Mr. Tim Treichelt (MIC: 82)
Ms. Windie Scott (MIC: 82)
Ms. Diane Olson (MIC: 80)
Mr. Richard Bennion (MIC 80)

Attachment A to Memorandum for Item J1

Board of Equalization Rules for Tax Appeals

California Code of Regulations
Title 18, Public Revenues
Division 2.1 State Board of Equalization – Rules for Tax Appeals

Note: The Board made “nonsubstantial or solely grammatical” changes to sections 5216, subdivision (b)(2) which were authorized by Government Code section 11346.8, subdivision (c)(1) and noted using double strikeouts and double underlines in accordance with California Code of Regulations, title 18, section 46, subdivision (b)(3).

Chapter 2: Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees

**Article 2A: Petitioning Notices of Determination and Notices of Deficiency
Assessment**

5216 Filing Petitions for Redetermination.

(b)(2) Hazardous Substances Tax Law (Except Childhood Lead Poisoning Prevention Fee), Occupational Lead Poisoning Prevention Fee, Water Rights Fee, Covered Electronic Waste Recycling Fee, Tire Recycling Fee, Integrated Waste Management Fee₂, and Marine Invasive Species Fee Collection Law

Attachment B to Memorandum for Item J1

Board of Equalization Rules for Tax Appeals

California Code of Regulations
Title 18, Public Revenues
Division 2.1 State Board of Equalization – Rules for Tax Appeals

Note: The Board made “nonsubstantial or solely grammatical” changes to sections 5310, subdivision (a)(3), section 5311, subdivision (b)(7)(B), subdivision 5326.4, subdivisions (a)(2) and (b), subdivision 5329.9, subdivision (d)(i) and (d)(ii) and subdivision 5333, subdivision (a) which were authorized by Government Code section 11346.8, subdivision (c)(1) and noted using double strikeouts and double underlines in accordance with California Code of Regulations, title 18, section 46, subdivision (b)(3).

Chapter 3: Property Taxes

Article 1: Application of Chapter and Definitions

5310 Application of Chapter.

(a) This chapter applies to:

(3) Petitions objecting to the County-Assessed Properties Division’s findings of ineligibility for an organizational clearance certificate under section 254.6 of the Revenue and Taxation Code, denials of claims for supplemental clearance certificates under Revenue and Taxation Code section 214, subdivision (g), and claims for the veteran’s organization exemption under Revenue and Taxation Code section 215.1.

5311 Definitions.

(b) The following definitions also apply to this chapter:

(7) “Party” means:

(B) For applications described in section 5310, subdivision (a)(2), the petitioner and the county assessor and tax agency whose assessment is questioned by a petition described in section 53100, subdivision (a)(2);

5326.4 General Appeals Conference Procedures.

- (a) An appeals conference will be held if requested by any of the following:
 - (2). By the State-Assessed Properties Division no later than August 15 for petitions for reassessment of unitary value or October 15 for petitions for reassessment of non-unitary value;
- (b) If an appeals conference is requested under subdivision (a)(3) or (a)(4), or for a petition for reassessment of non-unitary value under subdivision (a)(2), the Chief Counsel may modify the time periods provided in sections 5326.6 and 5327.

5326.6 Scheduling of Appeals Conference; Briefing Schedule for Petitions for which an Appeals Conference is Scheduled.

- (d) The Appeals Division may request additional information or briefing to be provided by the petitioner or the State-Assessed Properties Division before, during, or after the Appeals conference.
 - (i) (1) The Appeals Division should provide written confirmation of its request for additional information within two business days of the request.
 - (ii) (2) Unless otherwise permitted by the Appeals Division, all requested information must be provided no later than seven days after the date of the request.

5333 Time for Filing of Petitions.

- (a) A petitioner has 60 days from the date of mailing of a final notice denying a claim for an Organizational Clearance Certificate or Supplemental Clearance Certificate or from the date of mailing of a notice of revocation of an Organizational Clearance Certificate or Supplemental Clearance Certificate to petition the Board for hearing on the denial of the claim or revocation of the certificate.

5333 Time for Filing of Petitions.

Note: Authority cited: Government Code section 15606. Reference: Revenue and Taxation Code sections 214, 2454.6, 270.

5333.4 Contents of Petition.

Note: Authority cited: Government Code section 15606. Reference: Revenue and Taxation Code sections 214, 2454.6, 270.

5333.6 Submission of Petition.

Note: Authority cited: Government Code section 15606. Reference: Revenue and Taxation Code sections 214, 2454.6, 270.

Attachment C to Memorandum for Item J1

Board of Equalization Rules for Tax Appeals

California Code of Regulations
Title 18, Public Revenues
Division 2.1 State Board of Equalization – Rules for Tax Appeals

Note: The Board made “nonsubstantial or solely grammatical” changes to section 5523.4, subdivisions (e) and (f) which were authorized by Government Code section 11346.8, subdivision (c)(1) and noted using double strikeouts and double underlines in accordance with California Code of Regulations, title 18, section 46, subdivision (b)(3).

Chapter 5: General Board Hearing Procedures

Article 1: Application of Chapter and Definitions

5523.4 Additional Briefing

- (~~e~~) (d) Appeals from the Actions of the Franchise Tax Board: This section does not apply to additional briefing in matters that are subject to the provisions of chapter 4 of this division. Section 5435 of chapter 4 of this division applies to such additional briefing.
- (~~f~~) (e) Property Tax Matters. This section applies to additional briefing in matters that are subject to chapter 3, article 3 of this division, and does not apply to matters subject to chapter 3, article 2 of this division.