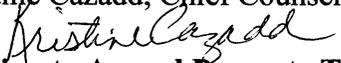


## M e m o r a n d u m

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Honorable John Chiang, Controller

From : Kristine Cazadd, Chief Counsel  


Subject : **Petition to Amend Property Tax Rule 325**  
***Notice and Clarification of Decision***  
**September 12, 2007 Board Meeting – Chief Counsel Matters – Item J2 – Rulemaking**

Date : August 22, 2007

On July 24, 2007, the Board received Mr. Stephen Bennett's second petition,<sup>1</sup> pursuant to Government Code section 11340.6, to amend Property Tax Rule<sup>2</sup> 325, *Notice and Clarification of Decision*, to provide that the failure of a local assessment appeals board to render a notice of written decision within 120 days of the conclusion of a hearing will result in: (1) the loss of the jurisdiction of the local assessment appeals board to render a decision on the matter; and (2) the grant of the taxpayer's application for a reduction in assessment and/or refund claim. This matter is scheduled for the Board's consideration at the September 12, 2007 meeting<sup>3</sup> on the Chief Counsel Matters Agenda. On September 12, the Board may: (1) deny the petition; (2) grant the petition in part or in whole and commence the official rulemaking process by ordering publication of the notice pursuant to Government Code section 11346.5; (3) direct staff to commence an interested parties process to consider the requested amendment in part or in whole; or (4) take any other action as it may determine to be warranted by the petition. Staff recommends that the Board deny the petition because the current version of Rule 325 is consistent with the California Constitution and Revenue and Taxation Code<sup>4</sup> section 1604.

This memorandum sets forth: (1) general background on Rule 325; (2) a discussion of the petition and the requested amendment; and (3) staff's recommendation that the Board deny the petition.

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<sup>1</sup> Mr. Bennett's first petition, filed on July 5, 2007, was withdrawn at the July 17, 2007 Board meeting.

<sup>2</sup> All "Property Tax Rule" or "Rule" references are to title 18 of the California Code of Regulations.

<sup>3</sup> Petitioner has waived the requirement under Government Code section 11340.7 that the Board take action within 30 days of receiving the petition.

<sup>4</sup> All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

## I. General Background of Rule 325

California Constitution article XIII, section 16 authorizes a county board of supervisors or assessment appeals board created by the county board of supervisors, to act as the county board of equalization for a county.<sup>5</sup> It further states that each “county board of equalization, under such rules of notice as the county board may prescribe, shall equalize the values of all property on the local assessment roll by adjusting individual assessments.” Therefore, each county board of equalization has the constitutional duty to adjust individual assessments. The rules and procedures governing local appeals are set forth in the Revenue and Taxation Code and interpreted by rules promulgated by the State Board of Equalization under authority granted by Government Code section 15606.

### A. Revenue and Taxation Code section 1604

Section 1604, subdivision (c) requires that an assessment appeals board make a final determination on an application for a reduction in assessment of property within two years of the timely filing of the application, subject to certain exceptions. If it fails to do so:

. . . the taxpayer's opinion of market value as reflected on the application for reduction in assessment shall be the value upon which taxes are to be levied for the tax year covered by the application.

In such situation, however, section 1604, subdivision (d) provides that the applicant’s “opinion of value shall remain on the roll *until the county board makes a final determination on the application.*” (Emphasis added.) (See also Rule 309, subd. (c).) Thus, if an assessment appeals board fails to make a final determination within two years of the application filing date, section 1604, subdivision (d) does not deprive the board of jurisdiction to make a final determination on the application. Instead, the taxpayer’s opinion of value is on the roll only until the board makes its final determination.

The courts have concurred with this construction of section 1604, subdivision (d). For example, the Court of Appeal, in *Helene Curtis v. Los Angeles County Assessment Appeals Board*, stated that the:

. . . two-year period is not a ‘limitation,’ except upon the [assessment appeals] board’s power to impose a different valuation than the applicant’s *until the board decides the application for reduction.* Expiration of the period does not prevent the board from acting on an application in the manner of a statute of limitations. Rather, it operates as a milestone to encourage completion of the process.<sup>6</sup> (Emphasis added.)

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<sup>5</sup> For purposes of this memorandum, “assessment appeals board” or “board” refers to either a local assessment appeals board or a county board of supervisors sitting as the county board of equalization.

<sup>6</sup> *Helene Curtis v. Los Angeles County Assessment Appeal Board* (2004) 121 Cal.App.4th 29, 40 (granting taxpayer’s writ of mandate to have its application for reduction in assessment heard on the merits even after the expiration of the two-year period prescribed by section 1604, subdivision (c)).

Further, in *William Bunker v. County of Orange*, the court stated that:

When the county has been stuck with the taxpayer's valuation in subdivision (c) if it doesn't act in two years, subdivision (d) limits the damage. The taxpayer's value remains on the roll only until the county finally does make a final determination of the property's value.<sup>7</sup>

Finally, in *Mission Housing Dev. Co. v. City & County of San Francisco*, the city challenged the constitutionality of section 1604, subdivision (c) as an attempt by the Legislature to divest an assessment appeals board of its constitutional duty by allowing the taxpayer's opinion of value to control upon the board's failure of the assessment appeals board to hold a timely hearing. The court disagreed, upholding the constitutionality of section 1604, subdivision (c) stating that:

The City ignores, however, the plain language of section 1604. Section 1604, subdivision (d) provides that '[i]f, pursuant to subdivision (c), the applicant's opinion of value has been placed on the assessment roll, that value shall remain on the roll until the county board makes a final determination on the application. The value so determined by the county board, plus appropriate adjustments for the inflation factor, shall be entered on the assessment roll for the fiscal year in which the value is determined. . . .' This unambiguous language makes clear that, *notwithstanding section 1604, subdivision (c), the board retains both the power and the duty to determine assessed value.*<sup>8</sup> (Emphasis added.)

#### B. Property Tax Rule 325

Rule 325, *Notice and Clarification of Decision*, was adopted by the Board in 1967 and amended in 1999 to set forth the date the decision of an assessment appeals board becomes final. Prior to the 1999 amendment, Rule 325 did not state whether a decision by an assessment appeals board was final upon conclusion of the hearing or upon the provision of written notification of the decision to the taxpayer, which could include written findings. The former rule provided that:

A Board may announce its decision to the applicant and the assessor at the conclusion of the hearing, or it may take the matter under submission. If the matter is taken under submission, the clerk shall notify the applicant in

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<sup>7</sup> *William Bunker v. County of Orange* (2002) 103 Cal.App.4th 542, 548 (granting taxpayer's writ of mandate to compel the county to enroll its opinion of value for property where applications for reduction in assessment were not decided within the section 1604, subdivision (c) two-year period); see also *Flight Safety International, Inc. v. Los Angeles County Assessment Appeals Board* (2003) 105 Cal.App.4th 620 (court ordered the county to enroll taxpayer's opinion of value for years 1993 through 1998, the year a decision was made on a 1992 application for reduction in assessment).

<sup>8</sup> *Mission Housing Dev. Co. v. City & County of San Francisco* (1997) 59 Cal.App.4th 55, 80 (the court held that taxpayers were entitled to have their opinions of value of their properties, as stated in their applications for reductions in assessment, enrolled for those tax years that were not decided within the section 1604, subdivision (c) timeframe).

writing of the decision of the board by United States mail addressed to the applicant or to his agent at the address given in the application.

Comments received during the 1999 interested-parties process to amend Rule 325 indicated that taxpayers were concerned with the lack of a clear final determination date because the assessment appeals board could delay making a final decision indefinitely and potentially prejudice taxpayers from filing a timely court action.<sup>9</sup> Thus, the Final Statement of Reasons submitted to the Office of Administrative Law states the following as the reason for Rule 325's 1999 amendment:

The rule currently provides that a board may announce its decision at the conclusion of the hearing or may take the matter under submission for later decision. The rule is silent on the date on which the decision becomes final. It is necessary to specify a date the decision becomes final because the time limitations period for appealing a board decision commences on that date.

To resolve this issue, after an extensive interested parties process, all participants, including both counties and taxpayer representatives, agreed to the amendment to Rule 325 that established the following dates as the day a decision becomes final:

1. The date the vote is entered into the record at the conclusion of the hearing provided that no findings of fact are requested;<sup>10</sup>
2. The date a written notice of the decision is issued provided no findings of fact are requested, in which case the written notice of decision shall be issued no later than 120 days after the conclusion of the hearing;<sup>11</sup>
3. The date a written notice of the decision is issued or the findings of fact are issued, whichever is earlier, provided findings of fact are requested. The written notice of decision shall be issued no later than 120 days after the conclusion of the hearing;<sup>12</sup> or
4. Upon issuance of the findings of fact if the applicant makes such a request, in which case the findings of fact must be issued no later than 180 days after the conclusion of the hearing. However, if such a request is made and the conclusion of the hearing is within 180 days of the expiration of the two-year period specified in section 1604, the applicant must agree to waive the two-year period.<sup>13</sup>

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<sup>9</sup> Section 1615 provides that "No action or proceeding shall be brought in any court on behalf of any governmental officer, agency or entity to review a decision of the county board of equalization or an assessment appeals board unless such action or proceeding is commenced within six months from the date the board makes its final determination."

<sup>10</sup> Rev. & Tax. Code, § 1604, subd. (a)(1).

<sup>11</sup> Rev. & Tax. Code, § 1604, subd. (a)(2).

<sup>12</sup> Rev. & Tax. Code, § 1604, subd. (a)(3).

<sup>13</sup> Rev. & Tax. Code, § 1604, subd. (a)(3).

C. Interplay of Section 1604 and Rule 325

Government Code section 11342.2 provides that when a state agency has, by the express or implied terms of a statute, the authority to adopt regulations to implement, interpret, make specific, or otherwise carry out the provisions of a statute, the regulation must both be consistent and not in conflict with the statute and be reasonably necessary to effectuate the statute's purpose.<sup>14</sup> Accordingly, agencies do not have discretion to promulgate regulations that are inconsistent with the governing statute.<sup>15</sup>

As discussed above, the plain language of section 1604, subdivision (c) is clear in giving assessment appeals boards two years from the timely filing of an application within which to render a final decision. In its present form, Rule 325 does not purport to limit or shorten the section 1604, subdivision (c) two-year time period. To the contrary, Rule 325, subdivision (a)(3), specifically states that if a request is made to have the date of final decision be the date that findings of fact are issued, and the hearing is within 180 days of the expiration of the two-year period, then the taxpayer is required to agree in writing to extend the two-year period to allow the board a full 180 days to issue findings of fact.<sup>16</sup> Thus, in its present form, Rule 325 cannot be read or interpreted to in any way limit or shorten the statutorily prescribed two-year period under any circumstance.

Furthermore, while Rule 325 does not expressly outline specific consequences for a failure to meet the 120-day or 180-day deadlines, the setting of a final determination date nevertheless serves two important policy purposes: first, it provides a standard that county clerks and county boards of supervisors can use to hold their assessment appeals boards administratively accountable for performing their duties in a timely manner; and, second, it provides clarity as to when an assessment appeals board has failed to timely act, thereby providing support for taxpayers that wish to seek judicial relief via a writ compelling a delinquent assessment appeals board to take action.<sup>17</sup> (See Code Civ. Proc., § 1085 et seq.)<sup>18</sup>

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<sup>14</sup> Well-settled principles of statutory construction instruct courts to ascertain the Legislature's intent so as to effectuate the purpose of the law in question, looking first to the language of the statute itself and giving effect to statutes according to the ordinary, usual import of the language used in framing them. (*Slocum v. State Board of Equalization* (2005) 134 Cal.App.4th 969, 970.)

<sup>15</sup> *Slocum v. State Board of Equalization*, *supra*, 134 Cal.App.4th 969; see also *Ontario Community Foundations, Inc. v. State Bd. of Equalization* (1984) 35 Cal.3d 811, 816-817.

<sup>16</sup> See Rev. & Tax. Code, § 1604, subd. (c)(1).

<sup>17</sup> Regulations promulgated by the State Board of Equalization are mandatory on counties. (*Main & Von Karman Associates v. County of Orange* (1994) 23 Cal.App.4th 337, 343.) Government Code section 15606, subdivision (h) requires the Board of Equalization to bring an action against any local tax official not complying with a Board regulation. However, we are not aware of any lawsuits instituted by the Board under this provision. While the Board has contacted counties in the past to request voluntary compliance with Board rules, those matters were resolved without the need for court action. Further, while a taxpayer may request that the Board file suit under section 15606, subdivision (h), the decision as to whether or not a lawsuit will be filed ultimately rests with the Board.

<sup>18</sup> In this respect, we note that section 1611.6 authorizes the payment of reasonable attorney's fees when a board fails to make findings upon request.

Thus, in staff's view, the Rule 325 deadlines were not intended to in any way impact either assessment board jurisdiction or the outcome of a petition. While the deadlines operate independently of each other, only the statutory deadline can impact an assessment, albeit only for a limited time period. In staff's opinion, the deadlines operate as follows:

- If either the 120-day or 180-day Rule 325 time limits have expired but the section 1604, subdivision (c) two-year period is still open, then the taxpayer has the potential remedy of filing a petition seeking a writ of mandate to compel the assessment appeals board to issue a written notice of decision or findings of fact, respectively;
- Regardless of whether or not the Rule 325 120-day or 180-day time limits have expired, if the section 1604, subdivision (c) two-year period has expired, then the taxpayer's opinion of value must be enrolled for the fiscal year of the application for reduction in assessment in accordance with section 1604, subdivision (c); and
- If the 180-day Rule 325 time limit will not expire prior to expiration of the section 1604, subdivision (c) two-year period, then the two-year period must be extended – pursuant to a section 1604, subdivision (c)(1) time waiver – to be coextensive with the 180-day period.

## II. Discussion of Petition

The petitioner requests that the Board amend Rule 325 as shown below in the underlined text:

(a) A board may announce its decision to the applicant and the assessor at the conclusion of the hearing, or it may take the matter under submission. The decision becomes final when:

(1) The vote is entered into the record at the conclusion of the hearing provided no findings of fact are requested by either party, and all parties are present at the hearing or the hearing is subject to stipulation by both parties. The county may provide a written notice of the decision.

(2) A written notice of the decision is issued provided no findings of fact are requested by either party, and the decision is taken under submission by the board at the conclusion of the hearing. The county shall issue a written notice of the decision no later than 120 days after the conclusion of the hearing. The clerk shall notify the applicant in writing of the decision of the board by United States mail addressed to the applicant or to the applicant's agent at the address given in the application.

(3) A written notice of the decision is issued or the findings of fact are issued, whichever is earlier, provided findings of fact are requested. The

county shall issue a written notice of the decision no later than 120 days after the conclusion of the hearing. If so requested by an applicant or an applicant's agent, the determination shall become final, upon issuance of the findings of fact which the county shall issue no later than 180 days after the conclusion of the hearing. Such a request must be made by the applicant or the applicant's agent prior to or at the conclusion of the hearing. If the conclusion of the hearing is within 180 days of the expiration of the two-year period specified in section 1604 of the Revenue and Taxation Code, the applicant shall agree in writing to extend the two-year period. The extension shall be for a period equal to 180 days from the date of the conclusion of the hearing.

(b) The board may request any party to submit proposed written findings of fact and shall provide the other party the opportunity to review and comment on the proposed finding submitted. If both parties prepare proposed findings of fact, no opportunity to review and comment need be provided.

(c) When findings of fact have been prepared, either party or the clerk may submit a written request for clarification about the details of the decision, but such clarification shall not alter the final determination of the board.

(d) The county board loses jurisdiction to make a final determination on the application or its subject matter at the end of the 120th day following the conclusion of the hearing. Any decision made by the board after the 120th day is null and void and has no legal effect.

(e) If the county board fails to make a final determination on the taxpayer's application within 120 days following the conclusion of the hearing, the county shall immediately approve the application. If the application constitutes a claim for refund under Revenue & Taxation Code Section 5097(b), such refund shall be paid to the applicant forthwith.

(f) For purposes of this Rule, "decision", "written decision", "determination", and "final determination" all have the same meaning.

The petitioner contends that the addition of proposed subdivisions (d) and (e) to Rule 325 will clarify the consequences of the failure of an assessment appeals board to issue a written notice of decision within 120 days after the conclusion of a hearing. In staff's view, petitioner's proposed subdivisions (d) and (e), however, contradict the plain language of section 1604, subdivisions (c) and (d), by modifying and potentially shortening the two-year period provided by the statute. As discussed above, regulations that implement and interpret a statute must be consistent with the statute. Thus, administrative agencies do not have the authority to adopt a proposed regulatory amendment that is inconsistent with the express terms of the governing statute.

To summarize, section 1604, subdivision (c) requires an assessment appeals board to hear evidence and make a final determination within two years of a timely filed application for reduction in assessment. If it does not, section 1604, subdivision (d) provides that the taxpayer's opinion of market value is enrolled only until such time as the assessment appeals board makes a final determination on the application. (See also Rule 309, subd. (c)(6).) Thus, the clear language of section 1604 affords assessment appeals boards two years from the date of a timely filed application within which to render a decision on an application, not 120 days from the conclusion of a hearing. A rule depriving an assessment appeals board of jurisdiction to render a decision after expiration of the 120-day period conflicts with the governing statute because it would trump the two-year statutory period. Finally, pursuant to *Mission Housing Dev. Co. v. City & County of San Francisco*, cited above, a rule purporting to remove with finality an assessment appeals board's authority to determine assessed value ultimately may be found to be unconstitutional.

We also note that the proposed amended rule is internally inconsistent. Proposed subdivision (d)'s requirement that, "Any decision made by the board after the 120th day is null and void and has no legal effect" appears to conflict with Rule 325, subdivision (a)(3), which allows an assessment appeals board 180 days from the conclusion of the hearing to issue findings of fact, when a taxpayer requests that the date findings of fact are issued be the final determination date.

Finally, we note that since the adoption of Rule 325, as amended in 1999, staff has received no reports from counties or taxpayers or their representatives that the final decision dates set forth in Rule 325 have given rise to any conflicts or controversies. The Taxpayers' Rights Advocate's Office also reports that no such complaints have been received by its office. Thus, staff believes that Rule 325's time deadlines are serving their intended purpose and that there is no evidence of widespread or endemic disregard of such regulatory time limits.

### **III. Staff's Recommendation**

Staff recommends that the Board deny the petition because the current version of Rule 325 conforms both to the California Constitution and applicable statutes. Furthermore, it is staff's opinion that the proposed amendment to Rule 325 contradicts section 1604, subdivisions (c) and (d), is internally inconsistent, and may be found to be in conflict with the constitutional and statutory grants of authority to local boards of equalization. Therefore, staff recommends that the petition be denied.

If you need more information or have any questions, please contact Acting Assistant Chief Counsel Robert Lambert at (916) 324-6593.

Approved:   
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KEC:RM:jh  
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