



STATE BOARD OF EQUALIZATION

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October 24, 1984

County Assessors:

Property Tax Rule 313
Hearing Procedure

No. 84/105

On October 10, 1984, the Board of Equalization heard proposed amendments to Property Tax Rule 313, Hearing Procedure.

The amendments were proposed by the Ventura County Board of Equalization for the purpose of adding a procedure to allow a local Board of Equalization to reconsider the denial of an assessment appeals hearing application in cases where the denial was based solely upon the failure of the applicant to appear at the hearing and when the applicant had good cause for failure to make an appearance. Apparently, Ventura County felt that such an express provision authorizing reconsideration was necessary in light of the provisions of Property Tax Rule 326, Reconsideration and Rehearing, which states that the decision of the Board on an application is final and reconsideration or rehearing shall not be granted.

Before the public hearing, comments on the proposed amendments were received from several counties. Some counties, based upon experience, expressed the view that the rule change was unnecessary. In their view, an application denial based upon non-appearance was not a decision upon the merits and, thus, reconsideration was not prevented by Rule 326. Other counties expressed support for the idea, pointing out that they already had procedural rules allowing reconsideration under these circumstances, and requesting that the regulation language be changed to more nearly conform to the local rules. It was also pointed out that the 30-day period for requesting reconsideration was unnecessarily short and a 60-day period from the date of notice of denial of the application was recommended.

In order to satisfy the various objections and suggestions submitted, the Board's legal staff changed the proposed regulation amendment. Under this change, all of the original amending language is deleted. The new language being added first specifically states that the denial of an application for lack of appearance is not a decision on the merits and, thus, is not subject to the provisions of Rule 326. Rather than mandating a specific reconsideration procedure, the rule merely authorizes each County Board of Equalization to adopt a reconsideration procedure if it desires to

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do so. The only limitation is that the time for requesting reconsideration cannot exceed 60 days from the date of mailing the notification of denial. The amendment also adds an explanation that applicants who do not receive reconsideration may refile an appeal of the base year values during the next regular filing period.

The changed language satisfies the various objections and suggestions because it merely permits, rather than mandates, a procedure for reconsideration. Each county may decide, based upon its own experience, whether such a procedure is appropriate for its assessment appeal hearing process. Further, each county choosing to permit reconsideration may choose a procedure which best fits its needs.

At the public hearing, the Board approved the changed version of Rule 313 and directed the Executive Secretary to make it available for comment for 15 days before final Board adoption. Accordingly, a copy of the changed version of the rule is enclosed. If you wish to comment on the changed version, please send me your comments by November 14, 1984. The changed version of the rule is scheduled for Board adoption on that date.

Sincerely,



Janice Masterton
Regulations Coordinator and
Assistant to Executive Secretary

JM:md

Enclosure

Rule 313. HEARING PROCEDURE.

References: Article XIII A, California Constitution.
Sections 167, 1665, 1605.4, 1607, 1609, 1609.4, Revenue and Taxation Code.

Hearings on applications shall proceed as follows:

(a) The clerk shall announce the number of the application and the name of the applicant. The chairman shall then determine if the applicant or his agent is present. If neither is present, the chairman shall ascertain whether the clerk has notified the applicant of the time and place of the hearing. If the notice has been given and neither the applicant nor his agent is present, the application shall be denied for lack of appearance, or, for good cause of which the board is timely informed, the board may postpone the hearing. If the notice has not been given, the hearing shall be postponed to a later date and the clerk directed to give proper notice thereof to the applicant.

The board may set aside its denial of an application for hearing for lack of appearance and hear the application at a future date if, within 30 days of the date set for the hearing, the applicant or the applicant's agent files with the clerk of the board a request that the board set aside the denial. The request shall be supported by evidence of good cause for the lack of appearance.

The denial of an application for lack of appearance by the applicant, or his agent, is not a decision on the merits of the application and is not subject to the provisions of Section 326. The board may adopt a procedure which authorizes reconsideration of the denial where the applicant furnishes evidence of good cause for the failure to appear or to make a timely request

* Changes to published version noted by strike-out and underline within brackets.

for postponement and files a written request for reconsideration within a period set by the board, not to exceed 60 days from the date of mailing of the notification of denial due to lack of appearance. Applicants who fail to request reconsideration within the period set, or whose requests for reconsideration are denied, may refile an appeal of the base year value during the next regular filing period in accordance with Revenue and Taxation Code Section 80.]

(b) If the applicant or his agent is present the clerk shall announce the nature of the application, the assessed value as it appears on the local roll and the applicant's opinion of the taxable value of the property.

(c) The chairman shall then require the applicant or his agent to present his case to the board except when the hearing involves a penalty portion. If the applicant fails to present evidence of value of the property, the presumption set forth in section 321(a) applies and the board shall not require the assessor to present his case.

(d) When a hearing involves the assessment of an owner-occupied single-family dwelling, and the applicant has complied with section 305(c) and, if applicable, section 305.1, then the presumption in section 321(b) applies. In such instances the chairman shall require the assessor to present appraisal data that supports the taxable value he has determined for the property subject of the hearing.

(e) When a hearing involves a penalty portion of an assessment, the assessor shall present his evidence notwithstanding the failure of the assessee or his agent to present evidence, to appear, or to request postponement of the hearing.

(f) All testimony shall be taken under oath or affirmation.

(g) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Failure to enter timely objection to evidence constitutes a waiver of the objection. The board may act only upon the basis of evidence properly admitted into the record. A full and fair hearing shall be accorded the application. There shall be reasonable opportunity for the presentation of evidence, for the cross-examination of all witnesses, for argument, and for rebuttal.

(h) When the assessor requests the board find a higher assessed value than he placed on the roll and offers evidence to support the higher value, the chairman shall determine whether or not the assessor gave notice in writing to the applicant or his agent by personal delivery or by deposit in the United States mail directed to the address given on the application. If notice and a copy of the evidence offered has been supplied at least 10 days prior to the hearing the assessor may introduce such evidence at the hearing. The foregoing notice requirement shall not prohibit the board from a finding of a higher assessed value when it has not been requested by the assessor.

(i) Hearings shall be open except that

(1) Upon conclusion of the hearing, the board may take the matter under submission and deliberate in private in reaching a decision, and

(2) The board may grant a request by the applicant to close to the public a portion of the hearing relating to trade secrets. Such a request may be made by filing with the clerk a declaration under penalty of perjury that evidence is to be presented by the applicant which relates to trade secrets whose disclosure to the public will be detrimental to the business interests of the owner of the trade secrets. The declaration shall state the estimated time it will take to present the evidence. Only evidence relating to the trade secrets may be presented during the time the hearing is closed, and such evidence shall be confidential unless otherwise agreed by the applicant.