STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0080
916-322-9569 • FAX 916-324-3984
www.boe.ca.gov

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Executive Director

October 27, 2004

CORRECTION TO LTA NO. 2004/061

LTA NO. 2004/066

TO COUNTY ASSESSORS,
COUNTY COUNSELS, AND
OTHER INTERESTED PARTIES:

NOTICE OF PROPOSED REGULATORY ACTION
BY THE
STATE BOARD OF EQUALIZATION
AMEND PROPERTY TAX RULE 305.3 – APPLICATION FOR EQUALIZATION UNDER REVENUE AND TAXATION CODE SECTION 469

PUBLIC HEARING: TUESDAY, DECEMBER 14, 2004 AT 9:30 A.M.

NOTICE IS HEREBY GIVEN:

The State Board of Equalization, pursuant to the authority vested in the Board by section 15606 (c) of the Government Code, proposes to amend Rule 305.3 Application for Equalization under Revenue and Taxation Code Section 469. A public hearing on the proposed amendments of the regulation will be held in Room 121, 450 N Street, Sacramento, at 9:30 a.m., or as soon thereafter as the matter may be heard, on December 14, 2004. Any person interested may present statements or arguments orally at that time and place. Written statements or arguments will be considered by the Board if received by December 14, 2004.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Rule 305.3 interprets, implements and makes specific Revenue and Taxation Code section 469 which provides that, if the result of a business property audit discloses property subject to escape assessment, the assessee may file an application for review, equalization and adjustment of the original assessment of all property, except property that has been previously equalized, at the location of the profession, trade or business. If the assessor makes a finding that the audit did not disclose property subject to escape assessment, then the assessee may file an application with the assessment appeals board requesting that the appeals board make such a determination. As a prerequisite to an appeals board's consideration of such an application, the proposed amendments (1) require that the assessee must present evidence of property of material value subject to escape assessment and (2) define such property value as property with a value no less than one percent of the audited value of the assessee's trade fixtures and tangible personal property for the year under audit. The amendments also specify that the results of the audit are the assessor's final conclusions as described in a referenced regulation.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The State Board of Equalization has determined that proposed amendments to Rule 305.3 do not impose a mandate on local agencies or school districts. Further, the Board has determined that the proposed rule amendments will not result in direct or indirect costs or savings to any State agency, any costs to local agencies or school districts that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code, or other non-discretionary costs or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

EFFECT ON BUSINESS

Pursuant to Government Code section 11346.5(a)(8), the Board of Equalization makes an initial determination that the adoption of the proposed amendments to Rule 305.3 will not have a significant statewide adverse economic impact directly affecting business because the proposed rule amendments merely clarify and interpret existing code provisions.

The proposed rule amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

The rule amendments as proposed will not be detrimental to California businesses in competing with businesses in other states.

The proposed rule amendments will not affect small business because the amendments interpret and make specific existing statutory law and do not impose any additional compliance or reporting requirements on taxpayers.

COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

There will be no adverse economic impact on private businesses or persons because the proposed rule amendments interpret and make specific existing statutory law and do not impose any additional compliance or reporting requirements on private businesses or persons.

SIGNIFICANT EFFECT ON HOUSING COSTS

No significant effect.

FEDERAL REGULATIONS

Rule 305.3 has no comparable Federal regulations.

AUTHORITY

Government Code section 15606, subdivision (c).

REFERENCE

Section 469, Revenue and Taxation Code.

CONTACT

Questions regarding the substance of the proposed rule amendments should be directed to: Mr. Louis Ambrose, Supervising Tax Counsel, at the State Board of Equalization at P.O. Box 942879, 450 N Street, MIC:82, Sacramento, CA 94279-0082. Telephone: (916) 445-5580; FAX (916) 323-3387, e-mail Lou.Ambrose@boe.ca.gov .

Written comments for the Board's consideration, requests to present testimony, bring witnesses to the public hearing and inquiries concerning the proposed administrative action should be directed to Ms. Diane Olson, Regulations Coordinator, telephone (916) 322-9569, fax (916) 324-3984, e-mail Diane.Olson@boe.ca.gov or Ms. Joann Richmond, Property Taxes Analyst, telephone (916) 322-1931, e-mail Joann.Richmond@boe.ca.gov or by mail to the State Board of Equalization, Attn: Diane Olson or Joan Richmond, MIC: 80, P.O. Box 942879, 450 N Street, MIC:80, Sacramento, CA 94279-0080.

ALTERNATIVES CONSIDERED

The Board must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared an initial statement of reasons and an underscored version (express terms) of the proposed rule amendments. Those documents and all information on which the proposal is based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. Requests for copies should be addressed to Ms. Diane Olson, Regulations Coordinator, (916) 322-9569, at P. O. Box 942879, 450 N Street, MIC:80, Sacramento, CA 94279-0080. The express terms of the proposed regulation (rule) amendments are available on the Internet at the Board's website http://www.boe.ca.gov.

AVAILABILITY OF FINAL STATEMENT OF REASONS

The final statement of reasons will be made available on the Internet at the Board's web site following its public hearing of the proposed rule amendments. It is also available for public inspection at 450 N Street, Sacramento, California.

ADDITIONAL COMMENTS

Following the hearing, the State Board of Equalization may, in accordance with law, adopt the proposed rule amendments if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the rule amendments. The text of the modified rule amendments will be mailed to those interested parties who commented on the proposed regulatory action orally or in

writing or who asked to be informed of such changes. The modified rule amendments will be available to the public from Ms. Olson. The State Board of Equalization will consider written comments on the modified rule amendments for fifteen days after the date on which the modified rule amendments are made available to the public.

Sincerely,

/s/ Deborah Pellegrini

Deborah Pellegrini, Chief
Board Proceedings Division

Enclosures

DP:dgo

INITIAL STATEMENT OF REASONS/NON-CONTROLLING SUMMARY

Property Tax Rule 305.3, Application for Equalization under Revenue and Taxation Code section 469

Specific Purpose

The specific purpose of the proposed amendments is to provide an assessee with the right to appeal the original assessment consistent with the purpose of section 469 and to specify that the audit results are determined by the assessor as required by law. To that end, the proposed amendment to subsection (b)(2) requires an assessee to present evidence of property of material value subject to escape assessment to an appeals board when the results of the audit do not disclose property subject to escape assessment. The appeals provision of section 469 is intended to provide a property owner a right of appeal when an audit discloses property of one component subject to escape assessment to ensure that the value original assessment is allocated correctly to other components of the property appraisal unit. In that event, only property of material value that is subject to escape assessment would affect the overall assessment of the appraisal unit. The proposed amendment to subsection (b)(3) redefines the result of the audit to clarify that the assessor determines the final conclusions of the audit and to make the definition consistent with the referenced rule governing audits.

Factual Basis

Rule 305.3 interprets and implements the appeal provision of section 469 of the Revenue and Taxation Code by specifying the conditions under which an assessee may file an application to appeal property values based on the result of an audit. When the result of an audit discloses property subject to escape assessment, section 469 provides that the assessee may appeal the original assessment of all property at the location of the business, trade or profession.

The legislative history discloses that the purpose of allowing an appeal of the original assessment of all property is to ensure that value is correctly allocated among the components of the property appraisal unit. Many assessees do not appeal the original assessment of a property appraisal unit composed of multiple components when the overall assessment seems fair, even though some components are over-assessed and some under-assessed. When a subsequent audit discloses property subject to escape assessment in the under-assessed component, the regular period for filing an application to appeal the original assessment of the over-assessed component has expired. The provision of section 469 allowing an appeal of the original assessment of all property provides a taxpayer with a means of seeking a reduction of the original assessment that over-assessed another component. Thus, the provision was intended to apply only when an audit discloses property subject to escape assessment that results in an increase in the overall assessment of the property appraisal unit.

Subdivision (a) of the rule provides the general purpose and scope of the rule whereby an application may be filed for review, equalization and adjustment of the

original assessment if the result of an audit discloses property subject to escape assessment. Subdivision (b)(2) defines property subject to escape assessment and provides that if the audit discloses property subject to escape assessment then the assessor shall make such a finding. If the assessor fails to make a finding, the taxpayer may file an application for equalization and present evidence of property subject to escape assessment to the appeals board.

The proposed amendment would require an assessee who seeks an appeals board's determination of property subject to escape assessment to present to the appeals board evidence of property of material value, as specified, subject to escape assessment. The material value standard is needed to ensure that an assessee is afforded a right to appeal the original assessment only when the result of the audit discloses property subject to escape assessment that would cause an increase in the overall assessment of the property appraisal unit. Stated differently, an assessee's evidence of property not of material value subject to escape assessment would not be relevant for the purpose of the appealing the original assessment because such property would not affect the overall assessment.

Additionally, a material value standard ensures that the assessor, and not the assessee, determines the result of the audit. Without such a standard, a business property owner could appeal the original assessment of all of its property by producing evidence of escaped property of negligible value even though the assessor has concluded that the property was not subject to escape assessment due to its the negligible value and that the original assessment was within a reasonable range of value. The proposed amendment reduces the potential for manipulation and abuse by business property owners who want to reopen assessment appeals filing periods years after the regular filing period has closed.

The definition of material value as "no less than 1% of the audited value of the taxpayer's trade fixtures and tangible personal property for the year under audit" is necessary to provide a clear standard for appeals boards to determine whether the evidence of escaped property submitted by the property owner is sufficient for the board to consider the application. Following an audit, the existence of property subject to escape assessment is the basis of the board's jurisdiction over the original assessment of all property of the taxpayer at the location of the taxpayer's profession, trade or business. The board's determination as to whether some property is subject to escape assessment is a jurisdictional determination. Because a jurisdictional determination hearing functions only to elicit information from the audited taxpayer, there is a need for a material value threshold for evidence presented to an appeals board. The standard prescribed by the proposed amendment would govern an appeals board in exercising its inherent authority to decide whether it has jurisdiction to equalize a particular assessment. The requirement that the taxpayer present evidence of property of material value of at least one percent of the audited value will ensure that the board has competent, relevant evidence upon which to make its determination.

The proposed amendment to subdivision (b)(3) defines the phrase "result of an audit" to mean the assessor's final conclusions as defined by Rule 191. Rule 191 provides

a description of the assessor's final conclusions and requires that the assessor notify the taxpayer of those conclusions. The amendment clarifies that the assessor determines the result of an audit by deleting from the definition preliminary findings such as a description of any property subject to escape assessment as noted in the audit work papers or as identified in writing by the taxpayer. The deletion was necessary to avoid a misinterpretation that the taxpayer may determine the results of an audit by merely stating in writing the taxpayer's contentions as to what property has escaped assessment. Two published opinions of the court of appeal *Heavenly Valley* v. *El Dorado County Board of Equ*alization (2000) 84 Cal.App4th 1323; *Apple Computer, Inc*. v. *County of Santa Clara Assessment Appeals Board* 105 Cal.App.4th 1355 make clear that the assessor, and not the taxpayer, determines the results of an audit conducted pursuant to Revenue and Taxation Code section 469.

RULE 305.3. APPLICATION FOR EQUALIZATION UNDER REVENUE AND TAXATION CODE SECTION 469

(a) GENERAL. In addition to any rights of appeal of escape or supplemental assessments as described in Rule 305(d)(2) of this subchapter, if the result of an audit discloses property subject to an escape assessment for any year covered by the audit, then, pursuant to section 1605 of the Revenue and Taxation Code, an application may be filed for review, equalization, and adjustment of the original assessment of all property of the assessee at the location of the profession, trade, or business for that year, except any property that has previously been equalized for the year in question.

(b) DEFINITIONS. For purposes of subsection (a) of this regulation:

(1) "Audit" means any audit of the books and records of a taxpayer engaged in a profession, trade, or business who owns, claims, possesses, or controls locally assessable business tangible personal property and trade fixtures within the county.

(2) "Property subject to an escape assessment" means any individual item of the assessee's property that was underassessed or not assessed at all when the assessor made the original assessment of the assessee's property, and which has not been previously equalized by an appeals board, regardless of whether the assessor actually makes or enrolls an escape assessment. Property is subject to an escape assessment even if the audit discloses an overassessment of another portion of an item of the property, and the amount of the underassessment could be offset completely by the amount of overassessment. If the audit discloses that any property was subject to an escape assessment, the assessor shall include that fact as a finding presented to the taxpayer as required by Rule 191. If no such finding is made by the assessor, the taxpayer may file an application and present evidence to the board of the existence and disclosure of property <u>of material value</u> subject to escape assessment. <u>For purposes of this regulation only, "material value" means value of no less than 1 percent of the audited value of the taxpayer's trade fixtures and tangible personal property for the year under audit.</u> If the board determines that property subject to escape assessment was disclosed as a result of an audit, the board shall permit the taxpayer's section 469 appeal.

(3) "Result of an audit" means the final conclusions reached by the assessor during the audit process as described in Rule 191 ~~and shall include a description of any property subject to escape assessment as noted in the audit work papers or as identified in writing by the taxpayer~~.

(4) "Original assessment" means the assessment and any subsequent roll corrections or roll changes prior to the date of the commencement of the audit for the roll year for which the result of the audit discloses property subject to an escape assessment.

(5) "All property of the assessee" means any property, real or personal, assessed to the assessee, or the assessee's statutory or legal predecessor in interest, at the location of the profession, trade, or business for the year of the audit.

(6) "Location of the profession, trade, or business" means a site, as determined by the board, where the property subject to the escape assessment is located. Site includes all property within the same appraisal unit as the property that is subject to escape assessment.

Site also includes other property not within the same appraisal unit as the property that is subject to escape assessment, when the other property and the property that escaped assessment function as part of the same economic unit of the profession, trade, or business. A

"location of the profession, trade, or business" may include multiple parcels of real property, noncontiguous parcels, parcels with separate addresses, and parcels in separate revenue districts within the county.

(7) "Property that has been previously equalized for the year in question" means that the board has previously made a final determination of full value for that item, category, or class of property that was the subject of an assessment appeals hearing or was the subject of a stipulated agreement approved by the board. An item, category, or class of property, or portion thereof, shall be deemed to have been the subject of a hearing or of a stipulated agreement only to the extent the board's decision or the stipulated agreement specifically identify the value of such item, category, or class, or portion thereof, as having been contested and resolved at hearing or as having been agreed to by the parties in stipulation.

(c) NOTICE OF AUDIT RESULTS. Upon completion of an audit of the assessee's books and records, the assessor shall notify the assessee in writing of the results of the audit as defined in subsection (b)(3) of this rule for all property, locations, and years that were the subject of the audit. At the request of the assessee, the assessor shall permit the assessee or his or her designated representative to inspect or copy any information, documents, or records relating to the audit in accordance with the provisions of Revenue and Taxation Code section 408.

(d) NOTICE FOR FILING AN APPLICATION. An application shall be filed with the clerk no later than 60 days after the date of mailing by which the assessee is notified that the result of the audit has disclosed property subject to escape assessment. The notice shall be mailed to the assessee by regular United States mail directed to the assessee at the assessee's latest address known to the assessor, unless, prior to the mailing of the notice, the assessor is notified in writing by the assessee of a change in address. The notice for purposes of filing an application shall be one of the following, depending upon the conclusion(s) of the audit:

(1) Where an escape assessment is enrolled by the assessor, the notice shall be the tax bill based upon the results of the audit and resulting escape assessment(s) for counties of the first class or any county that has adopted a resolution pursuant to Revenue and Taxation Code section 1605, subdivision (c). If the county is not a county of the first class or has not adopted a resolution pursuant to Revenue and Taxation Code section 1605, subdivision (c), the notice of escape assessment pursuant to Revenue and Taxation Code section 534 shall serve as the notice.

(2) Where the assessor does not enroll an escape assessment resulting from the audit or when the escape assessment is enrolled but offset pursuant to Revenue and Taxation Code section 533, the assessor's written notification of the audit results for the property, locations, and each year that were the subject of the audit as described in subsection (c) of this rule shall be the notice. The notice of audit results showing property subject to escape assessment for each year shall indicate that it is the notice of the assessee's right to file an application.

(e) EXAMPLES. The following examples are illustrative of the foregoing criteria. Examples 1 and 2 concern "who may file" an application on the assessee's property. Examples 3, 4, and 5 clarify the "location" of the profession, trade, or business.

Example 1: Taxpayer DRK owns and is assessed for land, a building, and business property. DRK leases the entire business to RCJ. The county assessor conducts an audit of DRK and the result of the audit discloses property subject to an escape assessment. DRK, as the assessee, can file an application for equalization for all property, real and personal, where the property subject to the escape assessment is located. In addition, RCJ may file an application for equalization of DRK's property if RCJ qualifies as a person affected pursuant to rule 302 of this subchapter.

Example 2: Taxpayer DRK owns and is assessed for land and a building. DRK leases the land and building to RCJ. RCJ operates a business in DRK's building and is assessed for business tangible personal property and trade fixtures. The county assessor conducts an audit of RCJ, and the result of the audit discloses property subject to an escape assessment. RCJ, as the assessee, can file an application for equalization on his personal property and trade fixtures only. RCJ cannot file an application on DRK's land and building as this is not property of the assessee. In addition, since DRK is not a person affected pursuant to rule 302 of the subchapter, he cannot file an application on either his land and building or RCJ's personal property and fixtures.

Example 3: An assessee conducts a profession, trade, or business on a campus-like setting that is composed of three separate buildings. Each building has its own address and assessor's parcel number and is owned and operated by the same assessee. If an audit discloses any property subject to an escape assessment, then all property of the assessee on the campus is eligible for equalization if the board determines that it functions and is operated as one economic unit of a profession, trade, or business.

Example 4: An assessee operates five grocery stores in a county. Although the stores are owned and operated by one assessee, carry the same type of merchandise, and share in common advertising, each store operates independently. If property subject to an escape assessment is discovered only at one store, the property at that store's location is subject to equalization following an audit. The other four stores are not considered property at the site of the profession, trade, or business where the escape assessment occurred, as they operate independently as separate economic units.

Example 5: An assessee owns and operates a department store with a parking garage on an adjacent parcel. The parcel that houses the parking garage has no personal property or fixtures located on it. If an audit discloses personal property subject to an escape assessment for the department store, the parking garage would also be eligible for equalization if the board determines that the parcels with the garage and the store are part of the same appraisal unit or economic unit of the profession, trade, or business.

(f) JURISDICTION OF THE BOARD. Nothing in this rule shall be interpreted to limit or enlarge a board's jurisdiction under specific statutory provisions or other rules of this subchapter.

Authority Cited: Section 15606(c), Government Code.
Reference: Sections 23, 408, 469, 531, 531.8, 533, 534, 1603 and 1605, Revenue and Taxation Code.

REGULATION HISTORY

TYPE OF REGULATION: Property Tax
REGULATION: 305.3
TITLE: Application for Equalization Under Revenue and Taxation Code Section 469
PREPARATION: Kristine Cazadd/Lou Ambrose
LEGAL CONTACT: Kristine Cazadd/Lou Ambrose

Rule 305.3 interprets, implements and makes specific Revenue and Taxation Code section 469 which provides that, if the result of a business property audit discloses property subject to escape assessment, the assessee may file an application for review, equalization and adjustment of the original assessment of all property, except property that has been previously equalized, at the location of the profession, trade or business. If the assessor makes a finding that the audit did not disclose property subject to escape assessment, then the assessee may file an application with the assessment appeals board requesting that the appeals board make such a determination. As a prerequisite to an appeals board's consideration of such an application, the proposed amendments (1) require that the assessee must present evidence of property of material value subject to escape assessment and (2) define such property value as property with a value no less than one percent of the audited value of the assessee's trade fixtures and tangible personal property for the year under audit. The amendments also specify that the results of the audit are the assessor's final conclusions as described in a referenced regulation.

REGULATION HISTORY

December 14, 2004:	Public hearing.
October 23, 2004:	45-Day public comment begins.
October 22, 2004:	Notice of public hearing published in California Regulatory Notice Register, Register 2004, No. 43-Z, e-mailed and mailed to interested parties.
August 24, 2004:	Property Tax Committee, Board authorized publication of rule. (Vote 5-0)
June 25, 2004:	Interested Parties Meeting.
December 4, 2003:	Chief Counsel Matters for Board's consideration regarding the amendment of rule. The Rule was referred to the Property Tax Committee, Interested Parties process (Vote 5-0.)
September 29, 2003:	Honorable Chairwomen Carole Midgen received a petition to amend rule submitted by Joan Thayer, President, California Assessors' Association.

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Sponsor:	California Assessors' Association
Support:	None
Oppose:	None