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No. 2009/022

May 20, 2009

TO COUNTY ASSESSORS AND INTERESTED PARTIES:

PROPERTY TAX RULES—BUSINESS PROPERTY AUDITS

Board staff recently initiated a project to review and revise, as appropriate, Property Tax Rules pertaining to business property audits of locally assessed properties. Some revisions to the rules are necessary to implement the provisions of Assembly Bill 550 (Ch. 297, Stats. 2008) which amended Revenue and Taxation Code section 469, effective January 1, 2009.

Enclosed are drafts of three Property Tax Rules:

- Rule 192, *Audit Selection* [revised rule]
- Rule 193, *Scope of Audit* [revised rule]
- Rule 371, *Significant Assessment Problems* [revised rule]

Interested parties are encouraged to participate in the rulemaking process for the above rules. Suggested revisions to the drafts, in the form of alternative text, should be provided to Mrs. Ladeena Ford at ladeena.ford@boe.ca.gov or mailed to the above address by July 2, 2009. Upon reviewing the submitted suggestions, it is anticipated that this project will proceed as follows:

- Staff will meet with interested parties to discuss the language for the rules.
- The Board will hear presentations on issues regarding the language for the rules and vote to place the rules into the formal rulemaking process.

All document regarding this project will be posted on the Board's website at www.boe.ca.gov/proptaxes/auditrulestimeline.htm. If you have questions regarding this project, you may contact Mrs. Ford at 916-445-0208.

Sincerely,

/s/ David J. Gau

David J. Gau
Deputy Director
Property and Special Taxes Department

DJG:sk
Enclosures

2 BOARD OF EQUALIZATION

3 PROPERTY TAX RULES

4 Chapter 1. State Board of Equalization — Property Tax

5 Subchapter 2. Assessment

6 Article 4. Information from Taxpayers and Audits

7 **8 Rule 192. ~~MANDATORY AUDITS. SELECTION.~~**

9 Reference: Sections 106, 469 and 470, Revenue and Taxation Code.

10 Authority: Section 15606, Government Code.

11 **(a) DEFINITIONS.** For purposes of this regulation:

12 (1) "Personal property" means all property except real property.

13 (2) "Business tangible personal property" means personal property used in a profession, trade, or business, and
14 shall include vessels and/or aircraft if used in a profession, trade, or business.

15 (3) "Trade fixtures" means any fixtures that are used in connection with a trade or business.

16 (4) "Farming" is a business. When making an audit pursuant to this section of a farming or ranching operation,
17 the assessor must determine whether any racehorses taxable to the same taxpayer pursuant to Part 12 of Division 1
18 of the Revenue and Taxation Code have been underreported or escaped assessment.

19 (5) "Significant number of audits" means at least 75 percent of the fiscal year average of the total number of
20 audits the assessor was required to have conducted from the 2002–03 fiscal year to the 2005–06 fiscal year,
21 inclusive, on those taxpayers in the county that had a full value of four hundred thousand dollars (\$400,000) or more
22 of locally assessable trade fixtures and business tangible personal property.

23 (6) "Taxpayers with largest assessments" means taxpayers that have the largest assessments of locally
24 assessable trade fixtures and business tangible personal property in the county for the applicable year of audit
25 selection.

26 **(b) GENERAL PROVISIONS.** ~~(a) HOLDINGS EQUALING OR EXCEEDING THE MINIMUM IN FOUR~~
27 ~~CONSECUTIVE YEARS. The assessor must annually conduct a significant number of audits of the books and~~
28 ~~records of When a taxpayers engaged in a profession, trade or business who owns, claims, possesses, or controls~~
29 ~~locally assessable trade fixtures and business tangible personal property in the any county which according to the~~
30 ~~assessor's records, has a combined full value that equals or exceeds the amount specified by Section 469 of the~~
31 ~~Revenue and Taxation Code for each of four consecutive lien dates, the assessor shall complete an audit of the~~
32 ~~taxpayer's books and records to encourage the accurate and proper reporting of property.~~

33 ~~(1) at least once within the four fiscal years following the first of such four consecutive lien dates, and~~

34 ~~(2) at least once thereafter within each four-year period following the latest fiscal year covered by the preceding~~
35 ~~audit until relieved of this responsibility by subdivision (b) of this section.~~

36 ~~Upon completion of an audit of the taxpayer's books and records, the taxpayer shall be given the assessor's findings~~
37 ~~in writing with respect to data that would alter any previously enrolled assessment.~~

38 **(c) BREAKDOWN OF SIGNIFICANT NUMBER OF AUDITS.** If the computation of the significant number of audits,
39 as defined in subdivision (a)(5), does not result in a whole number, the number must be rounded before calculating
40 the number of audits that must be performed on taxpayers selected from the pool of taxpayers with the largest
41 assessments and the number of audits that must be performed on taxpayers selected from the pool of all taxpayers in
42 the county.

43 (1) Fifty percent of the significant number of audits must be performed on taxpayers selected from the pool of
44 taxpayers with largest assessments.

Rule 192 (Contd.)

1 (A) This pool of taxpayers must be selected from a list of taxpayers in the county, ranked in descending
2 order by the total locally assessed value of both trade fixtures and business tangible personal property.

3 (B) The qualified number of those taxpayers for inclusion in the pool must be that number equal to 50
4 percent of the significant number of audits multiplied by four.

5 (C) All taxpayers in the pool must be audited at least once within each four-year period following the latest
6 fiscal year covered by a preceding audit and the audit may combine multiple fiscal years.

7 (D) The assessor is relieved of the requirement to audit the taxpayer at least once every four years if the
8 assessor determines that the taxpayer's assessments are no longer large enough for inclusion in the pool. If such is
9 determined, then the next ranking taxpayer not currently within the pool of taxpayers with the largest assessments
10 must be added to the pool.

11 (E) The assessor is not required to audit a taxpayer that is fully exempt from property taxation under other
12 provisions of law for purposes of the requirements of this section. Therefore, a taxpayer fully exempt from property
13 taxation must not be included in the pool of taxpayers with the largest assessments.

14 (2) The remaining 50 percent of the significant number of audits must be selected by the assessor from among
15 the pool of all taxpayers.

16 (A) This pool of taxpayers must be selected in a fair and equitable manner.

17 (B) This pool of taxpayers may be based on evidence of underreporting as determined by the assessor.

18 (3) If the significant number of audits is an odd number, the assessor must determine how to split the odd
19 number audit.

20 ~~**(b) HOLDINGS FALLING BELOW THE MINIMUM.** After such a taxpayer's holdings fall below the amount specified~~
21 ~~by Section 469 of the Revenue and Taxation Code on any one lien date, the assessor shall not be required to audit~~
22 ~~the taxpayer's books and records for that lien date and subsequent lien dates until the taxpayer's holdings again~~
23 ~~equal or exceed the amount specified by Section 469 of such code on four consecutive lien dates.~~

24 ~~**(c) FARMING.** For purposes of this rule, farming is a business. The assessor, when making an audit pursuant to this~~
25 ~~section of a farming or ranching operation, shall determine whether any racehorses taxable to the same taxpayer~~
26 ~~pursuant to Part 12 of Division 1 of the Revenue and Taxation Code have been underreported or escaped~~
27 ~~assessment.~~

28 ~~**(d) DEFINITIONS.** "Holdings" means the taxable value of locally assessable fixtures and the full cash value of locally~~
29 ~~assessable business personal property in the county.~~

30 ~~A "fiscal year" is the governmental fiscal year of July 1 through June 30. "Fixtures" means any fixtures whose use or~~
31 ~~purpose directly applies to or augments the process or function of a profession, trade, or business.~~

32 ~~**(ed) OTHER AUDITS.** Nothing herein shall be construed to prohibit an assessor from auditing the books and~~
33 ~~records of any taxpayer or for any period for which audits are not required by paragraph (a) more frequently than~~
34 ~~once every four years.~~

35 **(e) EXAMPLES.** The following examples illustrate the audit selection process.

36 **Example 1:** Prior to January 1, 2009, a county with a total number of mandatory audits of 800 during the 2002-
37 2003 fiscal year to the 2005-2006 fiscal year was required to conduct 200 audits ($800 \div 4$) per year. This county's
38 significant number of audits that must be conducted annually is 150 ($75\% \times 200$). Of the 150 annual significant
39 number of audits, 75 ($50\% \times 150$) must be from the pool of the taxpayers with the largest assessments, and 75
40 ($50\% \times 150$) must be selected from among the pool of all taxpayers in the county. The number of taxpayers with
41 the largest assessments that must be audited on a four year cycle is 300 ($150 \times 50\% \times 4$).

42 **Example 2:** Prior to January 1, 2009, a county with a total number of mandatory audits of 61 during the 2002-
43 2003 fiscal year to the 2005-2006 fiscal year was required to conduct 15 audits ($61 \div 4 = 15.25$, rounded) per
44 year. This county's significant number of audits that must be conducted annually is 11 ($75\% \times 15.25 = 11.4375$,
45 rounded). Of the 11 annual significant number of audits 5.5 ($50\% \times 11$) must be from the pool of the taxpayers
46 with the largest assessments, and 5.5 ($50\% \times 11$) must be selected from among the pool of all taxpayers in the
47 county. The county assessor must determine how to split the odd number audit. The number of taxpayers with

Rule 192 (Contd.)

1 the largest assessments must be audited on a four-year cycle is 22 (11 x 50% x 4). Therefore, during a four-year
2 cycle, the county assessor would be required to audit five from the pool of taxpayers with the largest
3 assessments in the county and six from among the pool of all taxpayers in the county each year for two years;
4 and six from the pool of taxpayers with the largest assessments in the county and five from among the pool of all
5 taxpayers in the county each year for the remaining two years.

6 History: Adopted April 10, 1968, effective May 12, 1968.
7 Amended January 8, 1969, effective February 12, 1969.
8 Amended December 12, 1969, effective January 11, 1970.
9 Amended March 24, 1971, effective April 25, 1971.
10 Amended October 18, 1973, effective November 25, 1973.
11 Amended December 15, 1976, effective January 21, 1977.
12 Amended July 31, 1980, effective November 19, 1980.
13 Amended July 27, 1982, effective February 10, 1983.
14 Amended and effective May 29, 1996.
15 Amended December 22, 1997, effective January 21, 1998.

BOARD OF EQUALIZATION

PROPERTY TAX RULES

Chapter 1. State Board of Equalization — Property Tax
Subchapter 2. Assessment
Article 4. Information from Taxpayers and Audits

Rule 193. SCOPE OF AUDIT.

Reference: Sections 469 and ~~531~~, Revenue and Taxation Code.
Authority: Section 15606, Government Code.

(a) When auditing a taxpayer under the requirements of ~~section~~ Rule 192, an assessor may audit for only one of the fiscal years within the period specified in section 532 of the Revenue and Taxation Code if no discrepancy or irregularity is found in the fiscal year selected for audit. When a discrepancy or irregularity is found in the fiscal year first selected for audit, the assessor shall audit the remaining fiscal years for which the statute of limitations has not run unless ~~he~~ the assessor documents in the audit report his/her conclusion both (1) that the discrepancy or irregularity in the fiscal year first selected is peculiar to that fiscal year and (2) that the discrepancy or irregularity did not ~~permit the assessment of~~ disclose an escape assessment, and/or an error that resulted in property being incorrectly valued or misclassified that caused the property to be assessed at a higher value than would have been on the roll if the error had not occurred under the provisions of sections ~~502, 503, 531.3 or 531.4~~ of the Revenue and Taxation Code.

(b) If property of a taxpayer who meets the requirements of ~~section~~ Rule 192 is selected by the California State Board of Equalization (Bboard) as an assessment sample item as part of its assessment practices surveys, the assessor of the county surveyed may consider the Board's audit findings ~~of the board's Assessment Standards Division~~ as the fulfillment of ~~section~~ Rule 192, providing no discrepancy or irregularity exists between the findings and the corresponding property statement or report and providing ~~he~~ the assessor maintains a copy of such findings in his/her files. If the assessor determines that the findings disclose a discrepancy or irregularity between the taxpayer's books and records and the corresponding property statement or report, ~~he~~ the assessor shall ascertain the cause and audit all years within the statute of limitations ~~applicable to escape assessments~~.

(c) Nothing herein shall be construed to prohibit an assessor from auditing or reauditing any or all statements or reports for which the statute of limitations has not run or to define the circumstances in which property that has escaped assessment can be added to the roll.

History: Adopted April 10, 1968, effective May 12, 1968.
Amended December 12, 1969, effective January 11, 1970.
Amended January 16, 1985, effective February 15, 1985.

2 BOARD OF EQUALIZATION

3 PROPERTY TAX RULES

4 Chapter 1. State Board of Equalization – Property Tax

5 Subchapter 4. Equalization by State Board

6 Article 1. Random Selection of Counties

7 **Rule 371. SIGNIFICANT ASSESSMENT PROBLEMS.**

8 Reference: Section 75.60, Revenue and Taxation Code.

9 Authority: Sections ~~15643~~ and ~~15606~~, Government Code.

10 **(a)** For purposes of Revenue and Taxation Code ~~Section 75.60~~ and Government Code ~~Section 15643~~, “significant
11 assessment problems” means procedure(s) in one or more areas of an assessor’s assessment operation, which
12 alone or in combination, have been found by the Board to indicate a reasonable probability that either:

13 (1) the average assessment level in the county is less than 95 percent of the assessment level required by
14 statute; or

15 (2) the sum of all the differences between the ~~Board’s~~ appraisals and the assessor’s values (without regard to
16 whether the differences are underassessments or overassessments), expanded statistically over the assessor’s
17 entire roll, exceeds 7.5 percent of the assessment level required by statute.

18 **(b)** For purposes of this regulation, “areas of an assessor’s assessment operation” means, but is not limited to, an
19 assessor’s programs for:

20 (1) Uniformity of treatment for all classes of property.

21 (2) Discovering and assessing newly constructed property.

22 (3) Discovering and assessing real property that has undergone a change in ownership.

23 (4) Conducting ~~mandatory~~ audits in accordance with Revenue and Taxation Code ~~Section 469~~ and ~~Property~~
24 ~~Tax Rule 192~~.

25 (5) Assessing open-space land subject to enforceable restriction, in accordance with Revenue and Taxation
26 Code ~~Sections 421 et. seq.~~

27 (6) Discovering and assessing taxable possessory interests in accordance with Revenue and Taxation Code
28 ~~Sections 107 et. seq.~~

29 (7) Discovering and assessing mineral-producing properties in accordance with Property Tax Rule 469.

30 (8) Discovering and assessing property that has suffered a decline in value.

31 (9) Reviewing, adjusting, and, if appropriate, defending assessments for which taxpayers have filed applications
32 for reduction with the local assessment appeals board.

33 **(c)** A finding of “significant assessment problems,” as defined in this regulation, would be limited to the purposes of
34 Revenue and Taxation Code ~~Section 75.60~~ and Government Code ~~Section 15643~~, and shall not be construed as a
35 generalized conclusion about an assessor’s practices.

36 History: Adopted February 4, 1997, effective May 16, 1997.