



STATE BOARD OF EQUALIZATION
PROPERTY AND SPECIAL TAXES DEPARTMENT
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No. 2014/021

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TO COUNTY ASSESSORS AND INTERESTED PARTIES:

**PROPERTY TAX RULEMAKING BY THE
STATE BOARD OF EQUALIZATION**

Recently, we have received a number of inquiries regarding the rulemaking process for Property Tax Rules. Government Code section 15606 contains the relevant powers and duties of the State Board of Equalization (Board). Section 15606 provides:

The State Board of Equalization shall do all of the following:

- (a) Prescribe rules for its own government and for the transaction of its business.
- (b) Keep a record of all its proceedings.
- (c) Prescribe rules and regulations to govern local boards of equalization when equalizing, and assessors when assessing, including uniform procedures for the consideration and adoption of written findings of fact by local boards of equalization as required by Section 1611.5 of the Revenue and Taxation Code.
- (d) Prescribe and enforce the use of all forms for the assessment of property for taxation, including forms to be used for the application for reduction in assessment.
- (e) Prepare and issue instructions to assessors designed to promote uniformity throughout the state and its local taxing jurisdictions in the assessment of property for the purposes of taxation. It may adapt the instructions to varying local circumstances and to differences in the character and conditions of property subject to taxation as in its judgment is necessary to attain this uniformity.
- (f) Subdivisions (c), (d) and (e) shall include, but are not limited to, rules, regulations, instructions, and forms relating to classifications of kinds of property and evaluation procedures.
- (g) Prescribe rules and regulations to govern local boards of equalization when equalizing and assessors when assessing with respect to the assessment and equalization of possessory interests.
- (h) Bring an action in a court of competent jurisdiction to compel an assessor or any city or county tax official to comply with any provision of law, or any rule or regulation of the board adopted in accordance with subdivision (c), governing the assessment or taxation of property. The Attorney General shall represent the board in the action.

This section is mandatory.

When a project involves the adoption, amendment, or repeal of a Property Tax Rule,¹ generally the project will go through two processes:

- An *informal process*—commonly referred to as the *interested parties process*—to solicit input and resolve any differences of interested parties. In general, the Board is permitted, but not required, to informally consult with interested parties regarding a rulemaking project.
- The *formal rulemaking process*—the procedures required by the Administrative Procedures Act² (APA) administered by the Office of Administrative Law (OAL). The formal rulemaking process is mandated by statute, and all rulemaking efforts must abide by the provisions of the APA.

Informal Interested Parties Process

The interested parties process was developed by the Board in the mid-1990s and has proven to be a very effective method of drafting comprehensive proposed Property Tax Rules for consideration by the Board. Interested parties are provided an opportunity to comment on and to offer proposed changes on draft rules. All interested parties are encouraged to participate in the drafting process. Each project will have a specific interested parties list, primarily based on the subject matter of the rule. Generally, all projects will initially include:

- Subscribers to Letters To Assessors
- County Assessors
- County Counsels
- Clerks of the County Boards of Supervisors
- Individuals on the Property Tax *general* mailing list
- Interested parties identified by the project subject matter (for example, lobbyists for specific industries)

The *general* mailing list contains individuals who usually participate in most Property Tax projects—tax attorneys, tax representatives, and members of the California Taxpayers Association. Occasionally, the California Assessors' Association (CAA) will designate one or more county assessors to be the lead for a specific project, or the CAA may appoint an ad hoc committee to oversee the project on behalf of the county assessors.

Once a project has been announced, the continuing list of interested parties will be limited to those who have expressed an interest in being included or who have submitted suggested edits to the draft rule. All projects are announced/begun by the issuance of a Letter To Assessors (LTA), and all projects are culminated with another LTA transmitting the final document. There are two primary reasons for the use of LTAs to announce and conclude projects:

¹ Property Tax Rules are contained in Title 18 of the California Code of Regulations.

² Government Code section 11340 et seq. as of March 26, 2014 (oal.ca.gov/Administrative_Procedure_Act.htm).

- LTAs are posted on the Board's website³ and represent a permanent way to memorialize projects.
- The LTA email subscription list⁴ currently encompasses over 3,000 individuals, thereby ensuring that the project reaches a wide audience.

Once a project has begun, Interested Parties Letters are used to advise everyone during the various stages of a project. A matrix is generally provided after each stage to inform interested parties of any outstanding and/or contentious issues. All documents regarding a project are posted on the Board's website at a designated location for the project.

After receiving comments from interested parties, when appropriate, Board staff holds a meeting(s) with interested parties to discuss the proposed language for the rule. Following the interested parties process, the rule is generally sent to the Board's Property Tax Committee for discussion of any outstanding issues and to obtain the Board's approval to *publish* the proposed adoption/revisions to the rule. To *publish* means that a notice of proposed regulatory action for the proposed adoption/revision to a rule is transmitted to OAL to begin the formal rulemaking process.

Formal Rulemaking Process

OAL is responsible for reviewing administrative rules/regulations proposed by over 200 state agencies. OAL is required to review the text of each proposed rule/regulation to ensure that it is clear, consistent, and nonduplicative, and to ensure that it identifies the law or laws being implemented, interpreted, or made specific by the proposed rule/regulation and identifies the authority or authorities permitting or obligating the agency to adopt the proposed rule/regulation. OAL is required to review the rulemaking file for the adoption of each proposed rule/regulation to ensure that the adopting agency established the necessity for the proposed rule/regulation and complied with all of the APA's procedural requirements in adopting the proposed rule/regulation, including the requirement for making formal rulemaking documents available to the public. OAL is also responsible for transmitting approved rules/regulations to the Secretary of State, and for publishing approved rules/regulations in the California Code of Regulations.

After the Board authorizes publication of a proposed rule, the Board Proceedings Division submits the *Notice of Proposed Regulatory Action* to OAL for publication in the California Regulatory Notice Register, and subsequently mails the notice⁵ to interested parties advising how comments on the proposed rulemaking effort may be submitted (distributed via LTA). **IMPORTANT NOTE:** Interested parties who wish to comment on a proposed rule *must* submit their comments during the formal rulemaking process even if they made comments during the informal interested parties process. The two processes are independent of each other—one is

³ LTAs from 1978 forward are posted at <http://www.boe.ca.gov/proptaxes/ltacont.htm>.

⁴ To subscribe to the LTA email list, go to <http://www.boe.ca.gov/proptaxes/letters/index.htm>.

⁵ To subscribe to notification of rulemaking efforts by the Board, go to <http://www.boe.ca.gov/aprc/index.htm>.

administered by Property Taxes and Legal Department staff of the Board, and one is administered by OAL and staff of the Board Proceedings Division and Legal Department.

The notice for a proposed rule must be published in the California Regulatory Notice Register at least 45 days prior to a public hearing and close of the public comment period.

No sooner than 45 days after the date of publication, the Board holds a public hearing(s) on the proposed rule. The Board considers written and oral testimony and ultimately decides to adopt the proposed rule, make changes to the original text of the proposed rule, or take no action on the proposed rule. If the Board adopts a proposed rule without making changes or with solely grammatical and/or non-substantial changes, the rulemaking file for the proposed rule is finalized and forwarded to OAL for approval. Once the rulemaking file is approved, OAL files the adopted and approved rule with the Secretary of State.

If the Board decides to make changes to a proposed rule that are sufficiently related to the original proposed text for which the public was adequately placed on notice that such changes could result, the full text of the proposed rule with the changes indicated must be made available to the public for at least 15 days before the Board again considers adoption of the proposed rule. The Board Proceedings Division sends the changed version of the proposed rule to the interested parties who commented orally or in writing. At the next Board meeting following the end of 15 days from the date the changed text was made available to the public, the Board may adopt the changed version of the proposed rule. After adoption, the rulemaking file for the rule is finalized and filed with OAL.

If the Board decides to make changes to a proposed rule that are not grammatical, non-substantial, or sufficiently related to the original proposed text, the Board must begin the formal rulemaking process again.

A *Final Statement of Reasons* document must be included in the rulemaking file submitted to OAL for approval. The document must include a response to every public comment submitted either orally or in writing regarding the proposed rule. OAL has 30 working days to review the rulemaking file for a proposed rule. If OAL fails to act within the 30-day period, the proposed rule is deemed approved. Once approved or deemed approved, OAL sends the rule to the Secretary of State for filing.⁶

Beginning January 1, 2013, unless an exemption applies, Government Code section 11343.4 states the effective date of an approved rule is determined by the date the rule is filed with the Secretary of State as follows:

- January 1 if the rule or order of repeal is filed on September 1 to November 30, inclusive.

⁶ The Board may request that OAL return a rulemaking file prior to OAL's approval or disapproval (Government Code section 11349.3). The APA grants the Board 120 days to rewrite and resubmit the text of any disapproved rule under specified circumstances (Government Code section 11349.4). The APA permits the Board to appeal the initial disapproval by OAL of any proposed rule (Government Code section 11349.5).

- April 1 if the rule or order of repeal is filed on December 1 to February 29, inclusive.
- July 1 if the rule or order of repeal is filed on March 1 to May 31, inclusive.
- October 1 if the rule or order of repeal is filed on June 1 to August 31, inclusive.

Once a Property Tax Rule becomes effective, it governs assessors when assessing, county boards of equalization and assessment appeals boards when equalizing, and the Board, including all divisions of the Property Tax Department.⁷

Rule 100 Changes

Title 1, section (Rule) 100 of the California Code of Regulations provides a means whereby a state agency can make changes to rules/regulations without complying with the formal rulemaking process under specified circumstances. Rule 100 provides:

(a) Subject to the approval of OAL as provided in subsections (c) and (d), an agency may add to, revise or delete text published in the California Code of Regulations without complying with the rulemaking procedure specified in Article 5 of the APA only if the change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision. . .Changes without regulatory effect include, but are not limited to:

- (1) renumbering, reordering, or relocating a regulatory provision;
- (2) deleting a regulatory provision for which all statutory or constitutional authority has been repealed;
- (3) deleting a regulatory provision held invalid in a judgment that has become final, entered by a California court of competent jurisdiction, a United States District Court located in the State of California, the United States Court of Appeals for the Ninth Circuit, or the United States Supreme Court; however, OAL shall not approve any proposed change without regulatory effect if the change is based on a superior court decision which invalidated the regulatory provision solely on the grounds that the underlying statute was unconstitutional;
- (4) revising structure, syntax, cross-reference, grammar, or punctuation;
- (5) changing an "authority" or "reference" citation for a regulation; and,
- (6) making a regulatory provision consistent with a changed California statute if both of the following conditions are met:
 - (A) the regulatory provision is inconsistent with and superseded by the changed statute, and
 - (B) the adopting agency has no discretion to adopt a change which differs in substance from the one chosen. . . .

⁷ Property Tax Rule 1, *General Application*.

Generally, proposed Rule 100 changes to Property Tax Rules are announced to interested parties via an LTA.

If you have questions regarding the rulemaking process, you may contact the County-Assessed Properties Division at 1-916-274-3350.

Sincerely,

/s/ David J. Gau

David J. Gau
Deputy Director
Property and Special Taxes Department

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