Updated Informative Digest for

Adoption of Proposed Amendments to California Code of Regulations,

Title 18, Section 313, *Hearing Procedure*, and

Section 321, *Burden of Proof*

On August 21, 2012, the State Board of Equalization (Board) held a public hearing on and unanimously voted to adopt the original text of the proposed amendments to California Code of Regulations, title 18, sections (Property Tax Rules) 313, *Hearing Procedure*, and 321, *Burden of Proof*, described in the notice of proposed regulatory action. The proposed amendments clarify and make both Property Tax Rules 313 and 321 consistent with Assembly Bill No. (AB) 711 (Stats. 2011, ch. 220), which defined the term "owner-occupied single-family dwelling" for purposes of the rebuttable presumption regarding the burden of proof in hearings on specified property tax applications provided by Revenue and Taxation Code (RTC) section 167.

The Board received a letter dated August 14, 2012, from Dale Hough, Chief Appraiser in the Assessment Services Division of the Los Angeles County Assessor's Office. The letter indicated that the Los Angeles County Assessor agrees with the proposed amendments. No other interested parties submitted written comments regarding the proposed amendments and no interested parties appeared at the public hearing on August 21, 2012, to comment on the proposed amendments.

There have not been any changes to the applicable laws or the effect of the adoption of the proposed amendments to Property Tax Rules 313 and 321 described in the informative digest included in the notice of proposed regulatory action.
The informative digest included in the notice of proposed regulatory action provides:

"Prior Law

"RTC section 167, subdivision (a), establishes a rebuttable presumption regarding the burden of proof in county boards' hearings on property tax applications regarding owner-occupied single-family dwellings. RTC section 167, subdivision (a) provides that 'Notwithstanding any other provision of law to the contrary, and except as provided in subdivision (b), there shall be a rebuttable presumption affecting the burden of proof in favor of the taxpayer or assessee who has supplied all information as required by law to the assessor in any administrative hearing involving the imposition of a tax on an owner-occupied single-family dwelling, the assessment of an owner-occupied single-family dwelling pursuant to this division, or the appeal of an escape assessment.'

"Property Tax Rule 313 prescribes the procedures county boards must follow when conducting hearings on property tax applications. Property Tax Rule 313, subdivision (c)(2), incorporates the rebuttable presumption in RTC section 167 and provides, in relevant part, that 'The board shall not require the applicant to present evidence first when the hearing involves: . . . (2) The assessment of an owner-occupied single-family dwelling or the appeal of an escape assessment, and the applicant has filed an application

that provides all of the information required in regulation 305(c) of this subchapter and has supplied all information as required by law to the assessor. In those instances, the chair shall require the assessor to present his or her case to the board first.'

"In addition, Property Tax Rule 321 prescribes the burden of proof in county boards' hearings regarding property tax applications. Property Tax Rule 321, subdivision (d), also incorporates the rebuttable presumption in RTC section 167 and provides that 'in any hearing involving the assessment of an owner-occupied single-family dwelling . . . the presumption in section 167 of the Revenue and Taxation Code affecting the burden of proof in favor of the applicant who has supplied all information to the assessor as required by law imposes upon the assessor the duty of rebutting the presumption by the submission of evidence supporting the assessment.'

"Amendments Made by AB 711

"AB 711 added subdivision (c) to RTC section 167 to define the term 'owner-occupied single-family dwelling' as used in the rebuttable presumption. New subdivision (c) provides that:

> For the purposes of this section, an owner-occupied single-family dwelling means a single-family dwelling that satisfies both of the following:
> (1) The dwelling is the owner's principal place of residence.
> (2) The dwelling qualifies for a homeowners' property tax exemption.

"Effect, Objectives, and Benefits of the Proposed Amendments

"Board staff initiated a project the objective of which was to recommend language that could be added to Property Tax Rules 313 and 321 to incorporate the definition of owner-occupied single-family dwelling added to RTC section 167, subdivision (c), by AB 711, and thereby make the rules consistent with the new subdivision. As a result, Board staff issued Letter to Assessors No. (LTA) 2012/007 on January 30, 2012, which recommended amending Property Tax Rule 313, subdivision (c)(2), and Property Tax Rule 321, subdivision (d), to add the following sentence, and solicited comments regarding the recommendation from county assessors, county boards, and other interested parties:

> An owner-occupied single-family dwelling means a single-family dwelling that is the owner's principal place of residence and qualifies for a homeowners' property tax exemption.

"Board staff received one comment in response to LTA 2012/007. The comment explained that real property that is the owner's principal residence and qualifies for the $100,000 disabled veterans' exemption provided by RTC section 205.5 also qualifies for the $7,000 homeowners' property tax exemption provided by RTC section 218, even though taxpayers that are eligible for both exemptions choose to claim the larger disabled veterans' exemption, and that such property is therefore subject to the rebuttable presumption in RTC section 167, subdivision (a). The comment also recommended

adding a sentence to the proposed amendments to both Property Tax Rules 313 and 321 to clarify that property that qualifies for a homeowners' property tax exemption includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by RTC section 205.5.

"Board staff agreed with the above comment because RTC section 218, subdivision (b)(1), expressly provides that the homeowners' property tax exemption does not 'apply to property on which the owner receives the veterans' exemption' specified by RTC section 205, but RTC section 218 does not contain similar language providing that property on which the owner receives the disabled veterans' exemption provided by RTC section 205.5 cannot qualify for the homeowners' property tax exemption. Subsequently, Board staff prepared Formal Issue Paper 12-004 and submitted it to the Board for consideration at its May 30, 2012, Property Tax Committee meeting. The issue paper recommended that the Board add references to RTC sections 205.5 and 218, which respectively prescribe the disabled veterans exemption and homeowners' property tax exemption, to the reference notes to Property Tax Rules 313 and 321, and add the following two sentences to Property Tax Rule 313, subdivision (c)(2), and Property Tax Rule 321, subdivision (d), to incorporate and clarify the definition of owner-occupied single-family dwelling added to RTC section 167, subdivision (c), by AB 711:

> An owner-occupied single-family dwelling means a single-family dwelling that is the owner's principal place of residence and qualifies for a homeowners' property tax exemption pursuant to Revenue and Taxation Code section 218. 'Property that qualifies for a homeowners' property tax exemption' also includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by Revenue and Taxation Code section 205.5.

"During its May 30, 2012, Property Tax Committee meeting, the Board determined that staff's recommended amendments are reasonably necessary to accomplish the objectives of making Property Tax Rules 313 and 321 consistent with the provisions of RTC section 167, subdivision (c), as added by AB 711, and further clarifying the meaning of the phrase 'qualifies for a homeowners' property tax exemption,' as used in RTC section 167, subdivision (c), as added by AB 711. Therefore, the Board unanimously voted to propose the adoption of the recommended amendments.

"The proposed amendments are anticipated to provide the following specific benefits:

- Make Property Tax Rules 312 and 321 consistent with the provisions of RTC section 167, subdivision (c), as added by AB 711; and
- Clarify the meaning of the phrase 'qualifies for a homeowners' property tax exemption,' as used in RTC section 167, subdivision (c), as added by AB 711.

"The Board has performed an evaluation of whether the proposed amendments to Property Tax Rules 313 and 321 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or

incompatible with existing state regulations because Property Tax Rules 313 and 321 are the only existing state regulations prescribing the burden of proof in county boards' hearings on property tax applications regarding owner-occupied single-family dwellings. In addition, there is no federal property tax and there are no comparable federal regulations or statutes to Property Tax Rules 313 and 321."