

Title 18. Public Revenue
Property Tax
Rules 192, *Mandatory Audits*,
193, *Scope of Audit*, and
371, *Significant Assessment Problems*

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**State of California
Office of Administrative Law**

In re:
Board of Equalization

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Regulatory Action:

Government Code Section 11349.3

Title 18, California Code of Regulations

OAL File No. 2010-0302-01 S

Adopt sections:

Amend sections: 192, 193, 371

Repeal sections:

This rulemaking amends three sections within Title 18 to amend the mandatory audit requirements currently found in regulation to reflect the changes implemented by AB 550, CH 297 Statutes of 2008. AB 550 changed the requirement from mandatory audits to requiring assessors to conduct a "significant number of audits" as defined in statute. There are also several other non-substantive changes made to the regulations

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 5/14/2010.

Date: 4/14/2010

for Elizabeth A. Hurdley
Peggy J. Gibson
Staff Counsel

For: SUSAN LAPSLEY
Director

Original: Ramon Hirsig
Copy: Richard Bennion

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APR 15 2010
proceedings

OFFICE OF ADMINISTRATIVE LAW

300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 323-6225 FAX (916) 323-6826



SUSAN LAPSLEY
Director

MEMORANDUM

TO: Richard Bennion
FROM: OAL Front Desk ↘
DATE: 4/15/2010
RE: Return of Approved Rulemaking Materials
OAL File No. 2010-0302-01S

OAL hereby returns this file your agency submitted for our review (OAL File No. 2010-0302-01S regarding Mandatory Audits).

If this is an approved file, it contains a copy of the regulation(s) stamped "ENDORSED APPROVED" by the Office of Administrative Law and "ENDORSED FILED" by the Secretary of State. The effective date of an approved file is specified on the Form 400 (see item B.5). (Please Note: The 30th Day after filing with the Secretary of State is calculated from the date the Form 400 was stamped "ENDORSED FILED" by the Secretary of State.)

DO NOT DISCARD OR DESTROY THIS FILE

Due to its legal significance, you are required by law to preserve this rulemaking record. Government Code section 11347.3(d) requires that this record be available to the public and to the courts for possible later review. Government Code section 11347.3(e) further provides that "...no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of." See also the Records Management Act (Government Code section 14740 et seq.) and the State Administrative Manual (SAM) section 1600 et seq.) regarding retention of your records.

If you decide not to keep the rulemaking records at your agency/office or at the State Records Center, you may transmit it to the State Archives with instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. See Government Code section 11347.3(f).

Enclosures

STD. 400 (REV. 01-09)

OAL FILE NUMBER Z-2009-1080-01	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER 2010-0302-01 S	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

ENDORSED FILED
IN THE OFFICE OF

2010 APR 14 PM 2:39

Diana Bowen
DIANA BOWEN
SECRETARY OF STATE

2010 MAR -2 AM 9:53
OFFICE OF
ADMINISTRATIVE LAW

AGENCY WITH RULEMAKING AUTHORITY
State Board of Equalization

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn			NOTICE REGISTER NUMBER 2009, #46-2	PUBLICATION DATE 11-13-2009

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Mandatory Audits	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
--	--

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 192, 193, 371
	REPEAL

TITLE(S)
18

3. TYPE OF FILING

<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify)	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input checked="" type="checkbox"/> Effective 30th day after filing with Secretary of State	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify)		

7. CONTACT PERSON Richard E. Bennion	TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984	E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov
---	------------------------------------	---	--

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Diane G. Olson</i>	DATE February 25, 2010
TYPED NAME AND TITLE OF SIGNATORY Diane G. Olson, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

APR 14 2010

Office of Administrative Law

**Final Text of
Proposed Amendments to California Code of Regulations,
Title 18, Section 192**

2. Mandatory Audits Selection.

(a) Definitions. For purposes of this regulation:

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

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

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

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

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

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

(b) General Provisions. (a) The assessor must annually conduct a significant number of audits of the books and records of~~When a taxpayer~~ engaged in a profession, trade, or business who owns, claims, possesses, or controls locally assessable trade fixtures and business tangible personal property in the~~any county which according to the assessor's records, has a combined full value that equals or exceeds the amount specified by Section 469 of the Revenue and Taxation Code for each of four consecutive lien dates, the assessor shall complete an audit of the taxpayer's books and records to encourage the accurate and proper reporting of property.~~

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

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

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

(c) Significant Number of Audits. If the computation of the significant number of audits, as defined in subdivision (a)(5), does not result in a whole number, the number must be rounded before calculating the number of audits that must be performed on taxpayers selected from the pool of taxpayers with the largest assessments and the number of audits that must be performed on taxpayers selected from the pool of all other taxpayers in the county.

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

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

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

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

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

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

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

(A) These audits must be selected in a fair and equitable manner.

(B) These audits may be based on evidence of underreporting as determined by the assessor.

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

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

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

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

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

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

(f) Examples. The following hypothetical examples illustrate the audit selection process.

Example 1: Prior to January 1, 2009, a county with a total number of mandatory audits of 800 during the 2002-2003 fiscal year to the 2005-2006 fiscal year was required to conduct 200 audits (800 ÷ 4) per year.

This county's significant number of audits that must be conducted annually is 150 (75% x 200). Of the 150 annual significant number of audits, 75 (50% x 150) must be from the pool of the taxpayers with the largest assessments, and 75 (50% x 150) must be selected from among the pool of all other taxpayers in the county. The number of taxpayers with the largest assessments that must be audited on a four year cycle is 300 (150 x 50% x 4).

Example 2: Prior to January 1, 2009, a county with a total number of mandatory audits of 61 during the 2002-2003 fiscal year to the 2005-2006 fiscal year was required to conduct 15 audits ($61 \div 4 = 15.25$, rounded) per year. This county's significant number of audits that must be conducted annually is 11 ($75\% \times 15.25 = 11.4375$, rounded). Of the 11 annual significant number of audits, 5.5 ($50\% \times 11$) must be from the pool of the taxpayers with the largest assessments, and 5.5 ($50\% \times 11$) must be selected from among the pool of all other taxpayers in the county. The county assessor must determine how to split the odd number audit. The number of taxpayers with the largest assessments that must be audited on a four-year cycle is 22 ($11 \times 50\% \times 4$). Therefore, during a four-year cycle, the county assessor would be required to audit five from the pool of taxpayers with the largest assessments in the county and six from among the pool of all other taxpayers in the county each year for two years; and six from the pool of taxpayers with the largest assessments in the county and five from among the pool of all other taxpayers in the county each year for the remaining two years.

Note: Authority cited: Section 15606, Government Code. Reference: Sections 106, 469 and 470, Revenue and Taxation Code.

**Final Text of
Proposed Amendments to California Code of Regulations,
Title 18, Section 193**

13. Scope of Audit.

(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 unless one of the provisions of subdivision (b) apply.

(b) 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~~expired unless the assessor documents in the audit report his/her conclusion both that:

(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:

(A) an escape assessment under the provisions of Revenue and Taxation Code sections 469, 502, 503, 531.3, or 531.4; or

(B) 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. The error that caused the property to be assessed at a higher value than would have been on the roll must be of "material value" as defined in Rule 305.3. under the provisions of sections 502, 503, 531.3 or 531.4 of the Revenue and Taxation Code.

~~(c)~~(c) If property of a taxpayer who meets the requirements of ~~section~~Rule 192 is selected by the California State Board of Equalization (B~~oard)~~oard) 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.~~

~~(d)~~(d) 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~~expired or to define the circumstances in which property that has escaped assessment can be added to the roll.

(e) The statute of limitations may be extended through the execution of a mutually agreed upon waiver pursuant to Revenue and Taxation Code section 532.1.

Note: Authority cited: Section 15606, Government Code. Reference: Sections 469, 502, 503, 531, 531.3, 531.4, 532 and 532.1, Revenue and Taxation Code.

**Final Text of
Proposed Amendments to California Code of Regulations,
Title 18, Section 371**

371. Significant Assessment Problems.

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

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

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

(b) For purposes of this regulation, "areas of an assessor's assessment operation" means, but is not limited to, an assessor's programs for:

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

(2) Discovering and assessing newly constructed property.

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

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

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

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

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

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

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

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

Note: Authority cited: Section 75.60, subdivision (b)(3), Revenue and Taxation Code; and Sections 15606, subdivisions (a), (c), and (g), 15640, subdivision (f), and 15643, subdivision (b), Government Code. Reference: Section 75.60, Revenue and Taxation Code; and Section 15643, Government Code.

**SUMMARY OF REGULATORY
ACTIONS**

**REGULATIONS FILED WITH
SECRETARY OF STATE**

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2010-0302-01
BOARD OF EQUALIZATION
Mandatory Audits

This rulemaking amends three sections within Title 18 to amend the mandatory audit requirements currently found in regulation to reflect the changes implemented by AB 550, CH 297 Statutes of 2008. AB 550 changed the requirement from mandatory audits to requiring assessors to conduct a "significant number of audits" as defined in statute. There are also several other non-substantive changes made to the regulations

Title 18
California Code of Regulations
AMEND: 192, 193, 371
Filed 04/14/2010
Effective 05/14/2010
Agency Contact:
Richard Bennion (916) 445-2130

File# 2010-0226-02
BUREAU OF AUTOMOTIVE REPAIR
Exhaust System Certificate of Compliance Fee

The Bureau of Automotive Repair (Bureau) adopts section 3340.36.1 to Title 16 of the California Code of Regulations to specify and set the fee for the neutral testing centers (referee stations) for vehicle owners disputing the results of tests for vehicular exhaust system noise citations. Vehicle Code section 27150.2 requires the referee stations to provide testing and certification for vehicles that receive a citation from law enforcement for violation of Vehicle Code section 27150 or 27151. Vehicle Code section 27150.2 requires the referee station to charge a fee to recover the costs incurred by the Bureau in providing exhaust system noise citation testing and certification. Currently, the referee station provides the inspection and certification at no cost to the vehicle owner. This regulatory action sets the fee at \$108.

Title 16
California Code of Regulations
ADOPT: 3340.36.1
Filed 04/12/2010
Effective 05/12/2010
Agency Contact: Tracy Brazil (916) 255-2279

File# 2010-0301-01
CALIFORNIA GAMBLING CONTROL
COMMISSION
Portable Personal Key Employee Licenses

This rulemaking action implements Senate Bill 730 (Chap. 438 of 2007) by establishing, as a separate Article within Division 18 of Title 4 of the California Code of Regulations, a program for the portability of Key Employee gambling enterprise licenses. The rulemaking specifies the criteria and fees for portable Key Employee licenses and also adopts four new forms and amends one other form for use in the program.

Title 4
California Code of Regulations
ADOPT: 12350, 12351, 12352, 12353, 12354, 12355 AMEND: 12008, 12335, 12340, 12342, 12343 renumbered as and merged with amended 12342, 12344 renumbered as and merged with amended 12345, and 12348 renumbered as 12346
REPEAL: 12347
Filed 04/13/2010
Effective 05/13/2010
Agency Contact: James Allen (916) 263-4024

File# 2010-0301-04
CALIFORNIA HIGHWAY PATROL
Drivers' Hours of Service — Motion Picture
Productions

This regulatory action adopts an exemption from the existing driver hours of service (HOS) regulations that allows drivers of property-carrying commercial vehicles, operated to or from a theatrical or television motion picture production site, to operate under HOS rules in effect prior to November 11, 2007.

Title 13
California Code of Regulations
AMEND: 1201, 1212, 1213
Filed 04/13/2010
Effective 05/13/2010
Agency Contact: Gary Ritz (916) 445-1865

File# 2010-0329-04
CALIFORNIA STATE UNIVERSITY
Assignment of Priority

This is the amendment of CSU's regulation regarding priorities for housing. This matter is exempt from OAL review pursuant to Education Code section 89030.1.

Rulemaking File Index
Title 18. Public Revenue
Property Tax
Rules 192, *Mandatory Audits*,
193, *Scope of Audit*, and
371, *Significant Assessment Problems*

1. *Final Statement of Reasons*
2. *Updated Informative Digest*
3. *Property Tax Committee Meeting, October 6, 2009, Item 1*
 - Property Tax Committee Meeting Agenda
 - Formal Issue Paper Number 09-004
4. *Reporter's Transcript Property Tax Committee Meeting, October 6, 2009*
5. *Statues 2008, chapter 297 (Assembly bill No. 550 (2007-2008 Reg. Sess.))*
6. *Estimate of Cost or Savings, January 14, 2010*
7. *Economic and Fiscal Impact Statements, October 29, 2009*
8. *Notice of Publications*
 - Form 400 submitted to OAL October 30, 2009
 - Notice and Proposed Text of Rule 192, 193, and 371
 - Email sent to Interested Parties, November 13, 2009
 - CA Regulatory Notice Register 2009, Volume No. 46-Z
9. *Notice to Interested Parties, November 13, 2009*

The following items are exhibited:

 - Notice of Hearing
 - Initial Statement of Reasons
 - Proposed Text of Rule 192, 193, and 371
 - Regulation History
10. *Statement of Compliance*
11. *Reporter's Transcript, Item F1, Public Hearing, January 26, 2010*
12. *Minutes, January 26, 2010, and Exhibits*

The following items are exhibited:

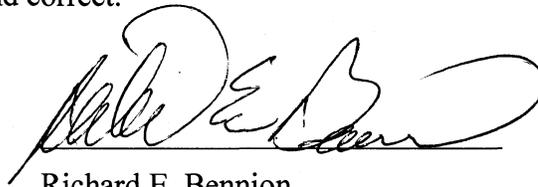
- Notice of Proposed Regulatory Action
- Initial Statement of Reasons
- Proposed Text of Rule 192, 193, and 371
- Regulation History

VERIFICATION

I, Richard E. Bennion, Regulations Coordinator of the State Board of Equalization, state that the rulemaking file of which the contents as listed in the index is complete, and that the record was closed on April 2, 2009 and that the attached copy is complete. The file was reopened on April 14, 2010 and updates were made to the text, and enhancements to the justifications. The file was reclosed on April 14, 2010.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

April 14, 2010

A handwritten signature in black ink, appearing to read 'Richard E. Bennion', written over a horizontal line.

Richard E. Bennion
Regulations Coordinator
State Board of Equalization

**Final Statement of Reasons for
Proposed Amendments to California Code of Regulations,
Title 18, Sections:**

192, *Mandatory Audits*,
193, *Scope of Audit*, and
371, *Significant Assessment Problems*

Update of Information in the Initial Statement of Reasons

The factual basis, specific purpose, and necessity for the proposed amendments to California Code of Regulations, title 18, sections (Rules) 192, *Mandatory Audits*, 193, *Scope of Audit*, and 371, *Significant Assessment Problems*, are the same as provided in the Initial Statement of Reasons.

The Board did not rely on any data or any technical, theoretical, or empirical study, report, or similar document in proposing or adopting the amendments to Rules 192, 193, and 371 that was not identified in the Initial Statement of Reasons, or which was otherwise not identified or made available for public review prior to the close of the public comment period.

The Board did not reject any reasonable alternatives to the proposed amendments to Rules 192, 193, and 371 or any alternatives that would lessen the adverse economic impact on small businesses. No alternative amendments were presented to the Board for consideration.

Furthermore, the Board has determined that the proposed amendments to Rules 192, 193, and 371 will not have a significant adverse economic impact on business.

No Mandate on Local Agencies or School Districts

The Board has determined that the proposed amendments to Rules 192, 193, and 371 do not impose a mandate on local agencies or school districts.

Response to Public Comment

On January 26, 2010, the Board held a public hearing on the proposed amendments to Rules 192, 193, and 371. No one appeared at the public hearing and no written comments were received.

Alternatives Considered

By its motion, the Board determined that no alternative to the proposed amendments to Rules 192, 193, and 371 would be more effective in carrying out the purpose for which the amendments are proposed or would be as effective and less burdensome to affected private persons than the proposed amendments.

No Federal Mandate

The adoption of the proposed amendments was not mandated by federal statutes or regulations and there is no federal regulation that is similar to Rules 192, 193, or 371.

**Updated Informative Digest for
Proposed Amendments to California Code of Regulations,
Title 18, Sections:**

192, *Mandatory Audits*,
193, *Scope of Audit*, and
371, *Significant Assessment Problems*

On January 26, 2010, the Board of Equalization (Board) held a public hearing on and adopted the proposed amendments to California Code of Regulations, title 18, sections (Rules) 192, *Mandatory Audits*, 193, *Scope of Audit*, and 371, *Significant Assessment Problems*, described in the Notice of Proposed Regulatory Action. There have not been any changes to the applicable laws or the effect of the proposed amendments to Rules 192, 193, and 371 described in the Informative Digest included in the Notice of Proposed Regulatory Action.

Prior to its amendment by Statutes 2008, chapter 297, section 2 (Assem. Bill No. 550 (2007-2008 Reg. Sess.), effective January 1, 2009, Revenue and Taxation Code (RTC) section 469 required county assessors to audit taxpayers that own, claim, possess, or control locally assessable trade fixtures and business tangible personal property with a full value of at least \$400,000, at least once every four years. The Board adopted Rule 192 to provide guidance to county assessors regarding the mandatory audit requirement and the Board adopted Rule 193 to provide guidance regarding the scope of audits performed pursuant to Rule 192. The Board adopted Rule 371 to provide guidance to county assessors regarding the assessment practices surveys the Board conducts pursuant to Government Code section 15640, and Rule 371, subdivision (b)(4), refers to mandatory audits conducted in accordance with Rule 192.

Statutes 2008, chapter 297 (Assem. Bill No. 550 (2007-2008 Reg. Sess.), section 2, amended RTC section 469, effective January 1, 2009. The amendments deleted the mandatory audit requirement and replaced the mandatory audit requirement with a new requirement that county assessors conduct a "significant number of audits" of taxpayers that own, claim, possess, or control locally assessable trade fixtures and business tangible personal property as specified in RTC section 469.

The proposed amendments to Rule 192 replace the mandatory audit requirement with the new requirement that county assessors conduct a "significant number of audits" of taxpayers that own, claim, possess, or control locally assessable trade fixtures and business tangible personal property as specified in RTC section 469. The proposed amendments also add a citation to RTC section 106, which defines personal property, to the reference note for Rule 192.

The proposed amendments to Rule 193 clarify the scope of the new audit requirement. The proposed amendments to Rule 193 clarify the circumstances under which the disclosure of a discrepancy or irregularity during a taxpayer's audit will require a county assessor to perform additional audits. The proposed amendments to Rule 193 divide

subdivision (a) into two smaller subdivisions, make the references to the Board consistent, replace the word “section” with the word “Rule,” and make the rule gender neutral. In addition, the proposed amendments add citations to RTC sections 502, 503, 531, 531.3, 531.4, 532, and 532.1 to the reference note for Rule 193.

The proposed amendments to Rule 371 delete the word “mandatory” and the reference to Rule 192 from subdivision (b)(4). The proposed amendments to Rule 371 capitalize the first letter in the word “board’s” in subdivision (a)(2), make the first letter of the word “Section” lower case in subdivisions (a), (b), and (c), and change the word “Sections” to “section” and delete the period in “et.” in subdivision (b)(5) and (6). The proposed amendments also add citations to Revenue and Taxation Code section 75.60, subdivision (b)(3), and Government Code sections 15606, subdivisions (a) and (g), 15640, subdivision (f), and 15643, subdivision (b), to the authority note for Rule 371.

The purposes of the proposed amendments are to make Rules 192, 193, and 371 consistent with the recent amendments to RTC section 469, make other grammatical and formatting changes, update the citations in the rules’ authority and reference notes, and make the rules gender neutral. The proposed amendments to Rules 192, 193, and 371 are necessary to provide guidance to county assessors that is consistent with the recent amendments to RTC section 469, make grammatical and formatting changes, update the citations in the rules’ authority and reference notes, and make the rules gender neutral.



BOARD OF EQUALIZATION

PROPERTY TAX COMMITTEE MEETING AGENDA

HONORABLE MICHELLE STEEL, COMMITTEE CHAIRWOMAN

450 N STREET, SACRAMENTO - ROOM 121

OCTOBER 6, 2009 - 10:30 A.M.

- 1. Consideration of Proposed Amendments to Property Tax Rule 192, *Mandatory Audits*, Property Tax Rule 193, *Scope of Audit*, and Property Tax Rule 371, *Significant Assessment Problems*.**

Issue Paper Number 09-004



- Board Meeting
- Business Taxes Committee
- Customer Services and Administrative Efficiency Committee
- Legislative Committee
- Property Tax Committee
- Other

Amendments to Property Tax Rules 192, 193, and 371

I. Issue

Should the State Board of Equalization (Board) authorize publication of amendments to Property Tax Rule 192, *Mandatory Audits*, Property Tax Rule 193, *Scope of Audit*, and Property Tax Rule 371, *Significant Assessment Problems*?

II. Alternative 1 - Staff Recommendation

Staff recommends that the attached proposed amendments to Property Tax Rule 192, *Mandatory Audits*, Property Tax Rule 193, *Scope of Audit*, and Property Tax Rule 371, *Significant Assessment Problems*, be adopted and authorized for publication (see Attachment A).

III. Other Alternative(s) Considered

None

IV. Background

Under Government Code section 15606, subdivision (c), the Board is given the power and duty to prescribe rules and regulations to govern local boards of equalization and assessment appeals boards when equalizing and county assessors when assessing. In compliance with this duty, the Board has adopted Property Tax Rules relative to the business personal property audit programs within the county assessors' offices.

Assembly Bill 550 (Ch. 297, Stats. of 2008) amended Revenue and Taxation Code section 469 and became effective on January 1, 2009. This bill changed the requirements for what was commonly known as a *mandatory audit* by county assessors. The bill deleted the requirement that an assessor must audit every four years taxpayers that own, claim, possess, or control locally assessable trade fixtures and business tangible personal property with a full value of at least \$400,000. Instead, an audit program must be established by county assessors consisting of a "significant number of audits" as specified in Revenue and Taxation Code section 469.

V. Discussion

Staff of the Property and Special Taxes Department, County-Assessed Properties Division, initiated a project to amend Property Tax Rules 192, 193, and 371 to clarify the amendments to Revenue and Taxation Code section 469. Interested parties were provided with proposed draft language for the rules on May 20, 2009 (Letter To Assessors 2009/022) and invited to participate in the rulemaking effort. All comments received were incorporated into the revised drafts (Attachment A). On July 9, 2009, the California Assessors' Association, Executive Ad Hoc Committee—Mandatory Audit Level, advised that the revised rule language was acceptable.

VI. Alternative 1 - Staff Recommendation

Adopt and authorize for publication amendments to Property Tax Rule 192, *Mandatory Audits*, Property Tax Rule 193, *Scope of Audit*, and Property Tax Rule 371, *Significant Assessment Problems*. The primary focus of the proposed amendments is to reflect changes to Revenue and Taxation Code section 469.

A. Description of Alternative 1

Staff recommends that the attached proposed amendments to Property Tax Rule 192, *Mandatory Audits*, Property Tax Rule 193, *Scope of Audit*, and Property Tax Rule 371, *Significant Assessment Problems*, be adopted and authorized for publication (see Attachment A). Proposed amendments to the rules include:

1. Changing the title of Property Tax Rule 192 to eliminate the word "mandatory" from the title.
2. Adding language to define terms used in recently amended Revenue and Taxation Code section 469.
3. Deleting language that requires county assessors to audit every four years taxpayers that own, claim, possess, or control locally assessable trade fixtures and business tangible personal property with a full value of at least \$400,000.
4. Adding language that clarifies the new "significant number of audit" procedures required by Revenue and Taxation Code section 469.
5. Adding language to Rule 193 to clarify that a county assessor cannot forego an audit if in the fiscal year first selected for audit no escape was found but an overassessment did occur.
6. Adding language to provide examples of the new audit procedures.

FORMAL ISSUE PAPER

B. Pros of Alternative 1

Amendments to Property Tax Rules 192, 193, and 371 will provide clarification for county assessors regarding new audit procedures required by the amendments to Revenue and Taxation Code section 469.

C. Cons of Alternative 1

None

D. Statutory or Regulatory Change for Alternative 1

Action by the Board to adopt changes to Property Tax Rules 192 and 193 will amend Title 18 of the California Code of Regulations, chapter 1, subchapter 2, sections 192 and 193. Action by the Board to adopt changes to Property Tax Rule 371 will amend Title 18 of the California Code of Regulations, chapter 1, subchapter 4, section 371.

E. Operational Impact of Alternative 1

None

F. Administrative Impact of Alternative 1

1. Cost Impact

Development of Property Tax Rules is within the scope of the statutory duties of the County-Assessed Properties Division and will be absorbed by existing staff.

2. Revenue Impact

None

G. Taxpayer/Customer Impact of Alternative 1

None

H. Critical Time Frames of Alternative 1

None

VII. Other Alternatives

A. Description of Alternative

N/A

Preparer/Reviewer Information

Prepared by: Property and Special Taxes Department; County-Assessed Properties Division

Current as of: August 28, 2009

Rule 192. MANDATORY AUDITS. SELECTION.

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

Authority: Section 15606, Government Code.

(a) DEFINITIONS. For purposes of this regulation:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FORMAL ISSUE PAPER

(A) These audits must be selected in a fair and equitable manner.

(B) These audits may be based on evidence of underreporting as determined by the assessor.

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

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

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

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

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

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

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

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

Example 2: Prior to January 1, 2009, a county with a total number of mandatory audits of 61 during the 2002-2003 fiscal year to the 2005-2006 fiscal year was required to conduct 15 audits ($61 \div 4 = 15.25$, rounded) per year. This county's significant number of audits that must be conducted annually is 11 ($75\% \times 15.25 = 11.4375$, rounded). Of the 11 annual significant number of audits, 5.5 ($50\% \times 11$) must be from the pool of the taxpayers with the largest assessments, and 5.5 ($50\% \times 11$) must be selected from among the pool of all other taxpayers in the county. The county assessor must determine how to split the odd number audit. The number of taxpayers with the largest assessments that must be audited on a four-year cycle is 22 ($11 \times 50\% \times 4$). Therefore, during a four-year cycle, the county assessor would be required to audit five from the pool of taxpayers with the largest assessments in the county and six from among the pool of all other taxpayers in the county each year for two years; and six from the pool of taxpayers with the largest assessments in the county and five from among the pool of all other taxpayers in the county each year for the remaining two years.

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

Amended December 22, 1997, effective January 21, 1998.

Rule 193. SCOPE OF AUDIT.

Reference: Sections 469, 502, 503, 531, 531.3, 531.4, 532, and 532.1, 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 unless one of the provisions of subdivision (b) apply.

(b) 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~~ expired unless ~~he~~ the assessor documents in the audit report his/her conclusion both that:

- (1) the discrepancy or irregularity in the fiscal year first selected is peculiar to that fiscal year; and
- (2) the discrepancy or irregularity did not permit the ~~assessment of~~ disclose:

(A) an escape assessment under the provisions of Revenue and Taxation Code sections 469, 502, 503, 531.3, or 531.4; or

(B) 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. The error that caused the property to be assessed at a higher value than would have been on the roll must be of "material value" as defined in Rule 305.3, under the provisions of sections 502, 503, 531.3 or 531.4 of the Revenue and Taxation Code.

(b) (c) 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.~~

(e) (d) 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~~ expired or to define the circumstances in which property that has escaped assessment can be added to the roll.

(e) The statute of limitations may be extended through the execution of a mutually agreed upon waiver pursuant to Revenue and Taxation Code section 532.1.

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.

Rule 371. SIGNIFICANT ASSESSMENT PROBLEMS.

Reference: Section 75.60, Revenue and Taxation Code.
 Authority: Sections 15643 and 15606, Government Code.

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

- (1) the average assessment level in the county is less than 95 percent of the assessment level required by statute; or
- (2) the sum of all the differences between the Board's appraisals and the assessor's values (without regard to whether the differences are underassessments or overassessments), expanded statistically over the assessor's entire roll, exceeds 7.5 percent of the assessment level required by statute.

(b) For purposes of this regulation, "areas of an assessor's assessment operation" means, but is not limited to, an assessor's programs for:

- (1) Uniformity of treatment for all classes of property.
- (2) Discovering and assessing newly constructed property.
- (3) Discovering and assessing real property that has undergone a change in ownership.
- (4) Conducting mandatory audits in accordance with Revenue and Taxation Code Section 469 and Property Tax Rule 192.
- (5) Assessing open-space land subject to enforceable restriction, in accordance with Revenue and Taxation Code Sections 421 et. seq.
- (6) Discovering and assessing taxable possessory interests in accordance with Revenue and Taxation Code Sections 107 et. seq.
- (7) Discovering and assessing mineral-producing properties in accordance with Property Tax Rule 469.
- (8) Discovering and assessing property that has suffered a decline in value.
- (9) Reviewing, adjusting, and, if appropriate, defending assessments for which taxpayers have filed applications for reduction with the local assessment appeals board.

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

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

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N Street, Room 121

Sacramento, California

REPORTER'S TRANSCRIPT

OCTOBER 6, 2009

PROPERTY TAX COMMITTEE

Reported by: Beverly D. Toms

No. CSR 1662

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P R E S E N T

For the Committee

Michelle Steel
Chair

Jerome E. Horton
Member

Bill Leonard
Member

Betty T. Yee
Member

Marcy Jo Mandel
Appearing for John
Chiang, State Controller
(per Government Code
Section 7.9)

Diane Olson
Chief, Board
Proceedings Division

Board of Equalization
Staff:

Dean Kinnee
Property and Special Taxes
Department

Ladeena Ford

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Sacramento, California

October 6, 2009

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MS. YEE: Good morning. We will call today's Board of Equalization meeting to order. And before we get started, I would like to welcome our newest member to the Board, the Honorable Jerome Horton.

And please give him a round of applause. He's really --

(Applause)

MS. YEE: He's going to be a terrific addition to this Board and I think what I want to say to you, Jerome, is welcome home to the Board of Equalization.

We also -- just let me announce to the staff your colleagues and I have decided to host a reception for you at the noontime hour in the Dronenburg room, and we invite the staff to come down and meet Mr. Horton. So, welcome.

MR. HORTON: Thank you.

MS. YEE: Ms. Olson, what do we have on tap?

MS. OLSON: Good morning, Madam Chair and Members. The first item on today's agenda is Property Tax Committee. Ms. Steel.

MS. STEEL: I call the Property Tax Committee to order and we have only one item in our committee and

1 Dean Kinnee will providing us with a report.

2 MR. KINNEE: Good morning, Board Members. Dean
3 Kinnee with Property and Special Taxes Department.
4 Also with me here today is Ms. Ladeena Ford of our
5 staff.

6 Today we're asking the committee to recommend
7 to the Board offer to publish the proposed rules to
8 Property Tax -- Property Tax rules 191 -- I'm sorry,
9 192, 193 and 371. Staff proposed changes to these rules
10 as a result of Assembly Bill 550, Chapter 297, Statutes
11 of 2008, that made changes to Section 469 of the Revenue
12 and Taxation Code dealing with mandatory audits for
13 Assessor staff.

14 Staff disseminated to interested parties the
15 proposed changes, received only very minor comments
16 back. We've incorporated all those changes into the
17 rules before the Board that are attached to the issue
18 paper.

19 At this time we're not aware of any comments.
20 We're available to answer any questions staff -- the
21 Board may have of staff and as I'm sure the Board knows,
22 this just commences the official rulemaking process. If
23 the Board authorizes publication of this it would start
24 the rulemaking process. The rules would go out to
25 interested parties. They have 45 days to get comments
26 back and it would come back before the Board.

27 MS. YEE: Okay.

28 MS. STEEL: Thank you very much.

1 Any comments?

2 MR. LEONARD: Move adoption and publication.

3 MS. YEE: I'll second.

4 MR. HORTON: Second.

5 MS. STEEL: Wow. This is really good and fast.
6 Actually, it's not really perfect because I want to get
7 rid of all the mandatory audits all together, but --

8 MR. HORTON: In that case I withdraw my second.

9 MS. STEEL: I accept yours, yeah. But with
10 Member Leonard making motion and Member Horton, thank
11 you very much for making the second, this motion has
12 been adopted and the motion passes.

13 And we conclude this Property Tax Committee at
14 this point. Thank you very much.

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REPORTER'S CERTIFICATE.

State of California)
) ss
County of Sacramento)

I, BEVERLY D. TOMS, Hearing Reporter for the California State Board of Equalization certify that on October 6, 2009 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding 5 pages constitute a complete and accurate transcription of the shorthand writing.

Dated: November 3, 2009.

BEVERLY D. TOMS
Hearing Reporter

Assembly Bill No. 550

CHAPTER 297

An act to amend Section 469 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 25, 2008. Filed with Secretary of State September 25, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

AB 550, Ma. Property taxation: business property: audit.

Existing property tax law requires the county assessor to audit the books and records of a profession, trade, or business at least once every 4 years in the case of a taxpayer engaged in a profession, trade, or business that is not fully exempt from property taxation and that owns, claims, possesses, or controls locally assessable trade fixtures and business tangible property with a full value of at least \$400,000.

This bill would delete the requirement that a taxpayer own, claim, possess, or control locally assessable trade fixtures and business tangible property with a full value of at least \$400,000 in order to be audited. This bill would require the county assessor to annually conduct a significant number of audits, as specified, to encourage accurate and proper reporting. This bill would require 50% of the required audits, as specified, to be performed on those taxpayers that have the largest assessments of locally assessable trade fixtures and business tangible personal property in the county, as provided.

By changing the manner in which county assessors audit the books and records of taxpayers engaged in a profession, trade, or business, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Businesses having an aggregate cost of one hundred thousand dollars (\$100,000) or more in personal property are required to file annually a statement with the assessor identifying the property to facilitate its proper and uniform assessment.

(b) Existing law requires assessors to conduct audits to encourage accurate reporting.

(c) Therefore, it is the intent of the Legislature in enacting this act to provide assessors with discretion in selecting which business taxpayers to audit, thereby adding an element of unpredictability to the audit process and ultimately advancing the policy goals of the audit process, and furthering the constitutional requirement of equal and uniform assessment.

SEC. 2. Section 469 of the Revenue and Taxation Code is amended to read:

469. (a) The assessor shall annually conduct a significant number of audits of the books and records of taxpayers engaged in a profession, trade, or business who own, claim, possess, or control locally assessable trade fixtures and business tangible personal property in the county to encourage the accurate and proper reporting of property as required by this article. The assessor shall conduct an audit of those taxpayers as provided by subdivision (b).

(1) For purposes of this section, “significant number of audits” means at least 75 percent of the fiscal year average of the total number of audits the assessor was required to have conducted during the 2002–03 fiscal year to the 2005–06 fiscal year, inclusive, on those taxpayers in the county that had a full value of four hundred thousand dollars (\$400,000) or more of locally assessable trade fixtures and business tangible personal property.

(2) The assessor is not required to audit a taxpayer that is fully exempt from property taxation under other provisions of law for purposes of the requirements of this section.

(3) If the board audits a taxpayer because the taxpayer’s assessment was selected in a sampling of assessments from the local assessment rolls pursuant to Section 15640 of the Government Code, that audit may be deemed an audit by the assessor for purposes of the requirements of this section.

(b) Each year the audits required by subdivision (a) shall be conducted in the following manner:

(1) Fifty percent of the audits required by subdivision (a) shall be performed on taxpayers selected from a pool of those taxpayers that have the largest assessments of locally assessable trade fixtures and business tangible personal property in the county.

(A) This pool of taxpayers shall be determined as follows:

(i) The assessor shall rank all of the taxpayers in the county in descending order by the total locally assessed value of both trade fixtures and business tangible personal property.

(ii) The assessor shall select a qualified number of those taxpayers with the largest assessments for inclusion in the pool. The qualified number shall be that number equal to 50 percent of the audits required by subdivision (a) multiplied by four.

(B) Taxpayers in the pool shall be audited at least once within each four-year period following the latest fiscal year covered by a preceding audit and the audit may combine multiple fiscal years. The assessor is relieved

of the requirement to audit the taxpayer at least once every four years if the assessor determines that the taxpayer's assessments are no longer large enough for inclusion in the pool.

(2) The remaining 50 percent of the required audits, as determined by paragraph (1) of subdivision (a), shall be selected in a manner that is fair and equitable to all taxpayers and may be based on evidence of underreporting as determined by the assessor.

(3) Nothing in this subdivision is intended to prohibit the audit of any taxpayer more frequently than once every four years.

(c) With respect to any audit of the books of a profession, trade, or business, regardless of the full value of the trade fixtures and business tangible personal property owned, claimed, possessed, or controlled by the taxpayer, the following shall apply:

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

(2) Equalization of the property by a county board of equalization or assessment appeals board pursuant to Chapter 1 (commencing with Section 1601) of Part 3 of this division shall not preclude a subsequent audit and shall not preclude the assessor from levying an escape assessment in appropriate instances, but shall preclude an escape assessment being levied on that portion of the assessment that was the subject of the equalization hearing.

(3) If the result of an audit for any year discloses property subject to an escape assessment, then the original assessment of all property of the assessee at the location of the profession, trade, or business for that year shall be subject to review, equalization and adjustment by the county board of equalization or assessment appeals board pursuant to Chapter 1 (commencing with Section 1601) of Part 3 of this division, except in those instances when the property had previously been equalized for the year in question.

(4) If the audit for any particular tax year discloses that the property of the taxpayer was incorrectly valued or misclassified for any cause, to the extent that this error caused the property to be assessed at a higher value than the assessor would have entered on the roll had the incorrect valuation or misclassification not occurred, then the assessor shall notify the taxpayer of the amount of the excess valuation or misclassification, and the fact that a claim for cancellation or refund may be filed with the county as provided by Sections 4986 and 5096.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

O

**ESTIMATE OF COST OR SAVINGS RESULTING
FROM PROPOSED REGULATORY ACTION**

**Proposed Amendment of Sales and Use Tax Regulations 192, *Mandatory Audits*,
193, *Scope of Audit*, and 371, *Significant Assessment Problems*, 1698.5, *Audit Procedures***

STATEMENT OF COST OR SAVINGS FOR NOTICE OF PUBLIC HEARING

The State Board of Equalization has determined that the proposed action does not impose a mandate on local agencies or school districts. Further, the Board has determined that the action will result in no direct or indirect cost or savings to any State agency, any local agency or school district that is 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 cost or savings imposed on local agencies, or cost or savings in Federal funding to the State of California.

The cost impact on private persons or businesses will be insignificant. This proposal will not have a significant adverse economic impact on businesses.

This proposal will not be detrimental to California businesses in competing with businesses in other states.

This proposal will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand business in the State of California.

Statement
Prepared by  Date 1-6-2010
Regulations Coordinator

Approved by  Date 1/14/10
Chief Counsel

**If Costs or Savings are Identified, Signatures of Chief, Fiscal Management Division, and
Chief, Board Proceedings Division, are Required**

Approved by _____ Date _____
Chief, Financial Management Division

Approved by _____ Date _____
Chief, Board Proceedings Division

NOTE: SAM Section 6660 requires that estimates resulting in cost or savings be submitted for Department of Finance concurrence before the notice of proposed regulatory action is released.

ECONOMIC AND FISCAL IMPACT STATEMENT

(REGULATIONS AND ORDERS)

C. 399 (REV. 12/2008)

See SAM Section 6601 - 6616 for Instructions and Code Citations

DEPARTMENT NAME Board of Equalization	CONTACT PERSON Toya P. Davis	TELEPHONE NUMBER 916-327-1798
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Title 18, Section 192-Mandatory Audits, 193-Scope of Audit, 371-Significant Assessment Problems		NOTICE FILE NUMBER Z

ECONOMIC IMPACT STATEMENT

A. ESTIMATED PRIVATE SECTOR COST IMPACTS (Include calculations and assumptions in the rulemaking record.)

1. Check the appropriate box(es) below to indicate whether this regulation:

- | | |
|---|--|
| <input type="checkbox"/> a. Impacts businesses and/or employees | <input type="checkbox"/> e. Imposes reporting requirements |
| <input type="checkbox"/> b. Impacts small businesses | <input type="checkbox"/> f. Imposes prescriptive instead of performance |
| <input type="checkbox"/> c. Impacts jobs or occupations | <input type="checkbox"/> g. Impacts individuals |
| <input type="checkbox"/> d. Impacts California competitiveness | <input checked="" type="checkbox"/> h. None of the above (Explain below. Complete the Fiscal Impact Statement as appropriate.) |

h. (cont.) _____

(If any box in Items 1 a through g is checked, complete this Economic Impact Statement.)

2. Enter the total number of businesses impacted: _____ Describe the types of businesses (Include nonprofits.): _____

Enter the number or percentage of total businesses impacted that are small businesses: _____

Enter the number of businesses that will be created: _____ eliminated: _____

Explain: _____

4. Indicate the geographic extent of impacts: Statewide Local or regional (List areas.): _____

5. Enter the number of jobs created: _____ or eliminated: _____ Describe the types of jobs or occupations impacted: _____

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

Yes No If yes, explain briefly: _____

B. ESTIMATED COSTS (Include calculations and assumptions in the rulemaking record.)

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ _____

a. Initial costs for a small business: \$ _____ Annual ongoing costs: \$ _____ Years: _____

b. Initial costs for a typical business: \$ _____ Annual ongoing costs: \$ _____ Years: _____

c. Initial costs for an individual: \$ _____ Annual ongoing costs: \$ _____ Years: _____

d. Describe other economic costs that may occur: _____

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

If multiple industries are impacted, enter the share of total costs for each industry: _____

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. (Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.): \$ _____

4. Will this regulation directly impact housing costs? Yes No If yes, enter the annual dollar cost per housing unit: _____ and the number of units: _____

5. Are there comparable Federal regulations? Yes No Explain the need for State regulation given the existence or absence of Federal regulations: _____

Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ _____

C. ESTIMATED BENEFITS (Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. Briefly summarize the benefits that may result from this regulation and who will benefit: _____

2. Are the benefits the result of: specific statutory requirements, or goals developed by the agency based on broad statutory authority?

Explain: _____

3. What are the total statewide benefits from this regulation over its lifetime? \$ _____

D. ALTERNATIVES TO THE REGULATION (Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: _____

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation:	Benefit: \$ _____	Cost: \$ _____
Alternative 1:	Benefit: \$ _____	Cost: \$ _____
Alternative 2:	Benefit: \$ _____	Cost: \$ _____

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: _____

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? Yes No

Explain: _____

E. MAJOR REGULATIONS (Include calculations and assumptions in the rulemaking record.) Cal/EPA boards, offices, and departments are subject to the following additional requirements per Health and Safety Code section 57005.

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

Will the estimated costs of this regulation to California business enterprises exceed \$10 million ? Yes No (If No, skip the rest of this section.)

2. Briefly describe each equally as an effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____

Alternative 2: _____

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: \$ _____ Cost-effectiveness ratio: \$ _____
Alternative 1: \$ _____ Cost-effectiveness ratio: \$ _____
Alternative 2: \$ _____ Cost-effectiveness ratio: \$ _____

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT (Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:

a. is provided in _____, Budget Act of _____ or Chapter _____, Statutes of _____

b. will be requested in the _____ Governor's Budget for appropriation in Budget Act of _____ (FISCAL YEAR)

2. Additional expenditures of approximately \$ _____ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:

a. implements the Federal mandate contained in _____

b. implements the court mandate set forth by the _____ court in the case of _____ vs. _____

c. implements a mandate of the people of this State expressed in their approval of Proposition No. _____ at the _____ election; (DATE)

d. is issued only in response to a specific request from the _____, which is/are the only local entity(s) affected;

e. will be fully financed from the _____ (FEES, REVENUE, ETC.) authorized by Section _____ of the _____ Code;

f. provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each such unit;

g. creates, eliminates, or changes the penalty for a new crime or infraction contained in _____

3. Savings of approximately \$ _____ annually.

4. No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current law regulations.

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

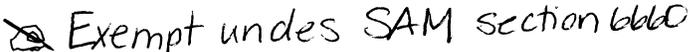
5. No fiscal impact exists because this regulation does not affect any local entity or program.
6. Other.

B. FISCAL EFFECT ON STATE GOVERNMENT (Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year. It is anticipated that State agencies will:
- a. be able to absorb these additional costs within their existing budgets and resources.
- b. request an increase in the currently authorized budget level for the _____ fiscal year.
2. Savings of approximately \$ _____ in the current State Fiscal Year.
3. No fiscal impact exists because this regulation does not affect any State agency or program.
4. Other.

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS (Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year.
2. Savings of approximately \$ _____ in the current State Fiscal Year.
3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.
4. Other.

SCAL OFFICER SIGNATURE 		DATE 10/29/09
AGENCY SECRETARY ¹ APPROVAL/CONCURRENCE		DATE 10/29/09
DEPARTMENT OF FINANCE ² APPROVAL/CONCURRENCE	PROGRAM BUDGET MANAGER  Exempt under SAM section 6660	DATE 10/29/09

1. The signature attests that the agency has completed the STD.399 according to the instructions in SAM sections 6601-6616, and understands the impacts of the proposed rulemaking. State boards, offices, or department not under an Agency Secretary must have the form signed by the highest ranking official in the organization.
2. Finance approval and signature is required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD.399.

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-209-1030-01	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

<p>RECEIVED FOR FILING PUBLICATION DATE</p> <p>OCT 30 '09 NOV 13 '09</p> <p>Office of Administrative Law</p> <p style="text-align: center;">NOTICE</p>	<p style="text-align: center;">REGULATIONS</p>
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AGENCY WITH RULEMAKING AUTHORITY State Board of Equalization	AGENCY FILE NUMBER (if any)
---	-----------------------------

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Mandatory Audits, Scope of Audits		TITLE(S) 18	FIRST SECTION AFFECTED 192	2. REQUESTED PUBLICATION DATE 11/13/09
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON Toya P. Davis	TELEPHONE NUMBER (916) 327-1798	FAX NUMBER (Optional) (916) 324-3984
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
------------------------------	--

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND
	REPEAL
TITLE(S)	

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
--	--	---	--

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
-------------------	------------------	-----------------------	---------------------------

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

For use by Office of Administrative Law (OAL) only

SIGNATURE OF AGENCY HEAD OR DESIGNEE	DATE
--------------------------------------	------

TYPED NAME AND TITLE OF SIGNATORY

October 30, 2009

Notice of Proposed Regulatory Action

The State Board of Equalization Proposes to Adopt Amendments to
California Code of Regulations, Title 18, Sections

192, *Mandatory Audits*,
193, *Scope of Audit*, and
371, *Significant Assessment Problems*

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Government Code sections 15606, subdivisions (a), (c), and (g), 15640, subdivision (f), and 15643, subdivision (b), and Revenue and Taxation Code section 75.60, subdivision (b)(3), proposes to amend California Code of Regulations, title 18, sections (Rules) 192, *Mandatory Audits*, 193, *Scope of Audit*, and 371, *Significant Assessment Problems*. The proposed amendments to Rule 192 implement, interpret, and make specific Revenue and Taxation Code (RTC) sections 106, 469, and 470. The proposed amendments to Rule 193 implement, interpret, and make specific RTC sections 469, 502, 503, 531, 531.3, 531.4, 532, and 532.1. The proposed amendments to Rule 371 implement, interpret, and make specific RTC section 75.60 and Government Code section 15643. The proposed amendments to Rules 192, 193, and 371 reflect and provide guidance to county assessors regarding the new procedures for auditing taxpayers engaged in a profession, trade, or business who own, claim, possess, or control locally assessable trade fixtures and business tangible personal property required by recent amendments to RTC section 469 made by Statutes 2008, chapter 297 (Assem. Bill No. 550 (2007-2008 Reg. Sess.), section 2, effective January 1, 2009). The proposed amendments to Rules 192, 193, and 371 also make grammatical and formatting changes, update the citations in the authority and reference notes, and make the rules gender neutral.

A public hearing on the proposed amendments 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 January 26, 2010. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the proposed amendments. In addition, if the Board receives written comments prior to the hearing on January 26, 2010, the statements, arguments, and/or contentions contained in those comments will be presented to and considered by the Board before the Board decides whether to adopt the proposed amendments to Rules 192, 193, and 370.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Prior to its amendment by Statutes 2008, chapter 297, section 2 (Assem. Bill No. 550 (2007-2008 Reg. Sess.), effective January 1, 2009, RTC section 469 required county assessors to audit taxpayers that own, claim, possess, or control locally assessable trade fixtures and business tangible personal property with a full value of at least \$400,000, at least once every four years. The Board adopted Rule 192 to provide guidance to county assessors regarding the mandatory audit requirement and the Board adopted Rule 193 to provide guidance regarding the scope of audits performed pursuant to Rule 192. The Board adopted Rule 371 to provide guidance to county assessors regarding the assessment practices surveys the Board conducts pursuant to Government Code section 15640, and Rule 371, subdivision (b)(4), refers to mandatory audits conducted in accordance with Rule 192.

Statutes 2008, chapter 297 (Assem. Bill No. 550 (2007-2008 Reg. Sess.), section 2, amended RTC section 469, effective January 1, 2009. The amendments deleted the mandatory audit requirement and replaced the mandatory audit requirement with a new requirement that county assessors conduct a "significant number of audits" of taxpayers that own, claim, possess, or control locally assessable trade fixtures and business tangible personal property as specified in RTC section 469.

The proposed amendments to Rule 192 replace the mandatory audit requirement with the new requirement that county assessors conduct a "significant number of audits" of taxpayers that own, claim, possess, or control locally assessable trade fixtures and business tangible personal property as specified in RTC section 469. The proposed amendments also add a citation to RTC section 106, which defines personal property, to the reference note for Rule 192.

The proposed amendments to Rule 193 clarify the scope of the new audit requirement. The proposed amendments to Rule 193 clarify the circumstances under which the disclosure of a discrepancy or irregularity during a taxpayer's audit will require a county assessor to perform additional audits. The proposed amendments to Rule 193 divide subdivision (a) into two smaller subdivisions, make the references to the Board consistent, replace the word "section" with the word "Rule," and make the rule gender neutral. In addition, the proposed amendments add citations to RTC sections 502, 503, 531, 531.3, 531.4, 532, and 532.1 to the reference note for Rule 193.

The proposed amendments to Rule 371 delete the word "mandatory" and the reference to Rule 192 from subdivision (b)(4). The proposed amendments to Rule 371 capitalize the first letter in the word "board's" in subdivision (a)(2), make the first letter of the word "Section" lower case in subdivisions (a), (b), and (c), and change the word "Sections" to "section" and delete the period in "et." in subdivision (b)(5) and (6). The proposed amendments also add citations to Revenue and Taxation Code section 75.60, subdivision (b)(3), and Government Code sections 15606, subdivisions (a) and (g), 15640, subdivision (f), and 15643, subdivision (b), to the authority note for Rule 371.

The purposes of the proposed amendments are to make Rules 192, 193, and 371 consistent with the recent amendments to RTC section 469, make other grammatical and formatting changes,

update the citations in the rules' authority and reference notes, and make the rules gender neutral. The proposed amendments to Rules 192, 193, and 371 are necessary to provide guidance to county assessors that is consistent with the recent amendments to RTC section 469, make grammatical and formatting changes, update the citations in the rules' authority and reference notes, and make the rules gender neutral.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the proposed amendments to Rules 192, 193, and 371 do not impose a mandate on 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.

NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the proposed amendments to Rules 192, 193, and 371 will result in no direct or indirect cost or savings to a 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.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The proposed amendments to Rules 192, 193, and 371 make the rules consistent with recent amendments to RTC section 469, make grammatical and formatting changes, update the citations in the rules' authority and reference notes, and make the rules gender neutral. Therefore, pursuant to Government Code section 11346.5, subdivision (a)(8), the Board has made an initial determination that the adoption of the proposed amendments to Rules 192, 193, and 371 will have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed regulation may affect small business.

RESULTS OF THE ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The adoption of the proposed amendments to Rules 192, 193, and 371 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.

COST IMPACT ON PRIVATE PERSON OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of the proposed amendments to Rules 192, 193, and 371 will not have a significant effect on housing costs.

FEDERAL REGULATIONS

Rules 192, 193, and 371 have no comparable federal regulations.

AUTHORITIES

Rule 192: Government Code section 15606.

Rule 193: Government Code section 15606.

Rule 371: Revenue and Taxation Code section 75.60, subdivision (b)(3); and Government Code sections 15606, subdivisions (a), (c), and (g), 15640, subdivision (f), and 15643, subdivision (b).

REFERENCES

Rule 192: Revenue and Taxation Code sections 106, 469, and 470.

Rule 193: Revenue and Taxation Code sections 469, 502, 503, 531, 531.3, 531.4, 532, and 532.1

Rule 371: Revenue and Taxation Code section 75.60; and Government Code section 15643.

CONTACT

Questions regarding the substance of the proposed regulation should be directed to Mr. Bradley Heller, telephone (916) 324-2657, at 450 N Street, Sacramento, CA 95814, email Bradley.Heller@boe.ca.gov or MIC: 82, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Ms. Toya Davis, Regulations Coordinator, telephone (916) 327-1798, fax (916) 324-3984, email Toya.Davis@boe.ca.gov or MIC: 80, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0080. Alternative contact, Mr. Richard Bennion, telephone (916) 445-2130, fax (916) 324-3984, email Richard.Bennion@boe.ca.gov or MIC: 80, P.O. Box 942879, 450 N Street, 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 would be as effective as 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 underscored and strikethrough versions of the text of Rules 192, 193, and 371, which illustrate the proposed amendments. These 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. The express terms of the proposed amendments and the Initial Statement of Reasons are also available on the Board's Web site at <http://www.boe.ca.gov>.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Rules 192, 193, and 371 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the resulting amendments, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting amendments will be mailed to those interested parties who commented on the proposed amendments orally or in writing or who asked to be informed of such changes. The text of the resulting amendments will also be available to the public from Ms. Davis. The Board will consider written comments on the resulting amendments that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Rules 192, 193, and 371 the Board will prepare a Final Statement of Reasons. The Final Statement of Reasons will be made available on the Board's Website at <http://www.boe.ca.gov>. It will also be available for public inspection at 450 N Street, Sacramento, California.

Bennion, Richard

From: BOE-Board Meeting Material**Sent:** Friday, November 13, 2009 4:41 PM**To:** Alonzo, Mary Ann; Anderson, Karen E.; Baland, Tabitha; Barnett, Louis; Bartolo, Lynn; Bennion, Richard; Blake, Sue; Boring, Dilara; Cazadd, Kristine; Chinn, Elan; Chung, Sophia; Davis, Toya; Delgado, Maria; Epolite, Anthony; Ferris, Randy; Gaffney, Peter; Garcia, Laura; Gau, David; Gilman, Todd; Gore, Anita; Hale, Mike; Harvill, Mai; He, Mengjun; Heller, Bradley; Hellmuth, Leila; Henry, Randie; Hirsig, Ramon; Hudson, Tom; Ingenito, Robert; Jacobson, Andrew; Kinkle, Sherrie; Lambert, Robert; Levine, David H. - Legal; LoFaso, Alan; Maddox, Ken; Maeng, Elizabeth; Mannering, Shari; MarcyJo.Mandel@boe.ca.gov; Matsumoto, Sid; mmandel@sco.ca.gov; Moon, Richard; Ogrod, Jean; Olson, Diane; Pennington, Margaret; Qualset, Gary; Ralston, NaTasha; Riley, Denise; Rueck, Christina; Ruwart, Carole; Shah, Neil; Shea, Steve; Silva, Monica; Smith, Rose; Stowers, Yvette; Tran, Mai; Treichelt, Tim; Whitaker, Lynn; Williams, Lee**Subject:** State Board of Equalization - Announcement of Regulatory Change to Property Tax Rules 192, 193, and 371

The State Board of Equalization will hold a public hearing with regard to amending sections 192, Mandatory Audits, 193, Scope of Audit, and 371, Significant Assessment Problems. The amendments are proposed to be adopted to implement, interpret, and make specific Revenue Tax Code, sections 106, 469, 470, 502, 503, 531, 531.3, 531.4, 532, 532.1, 75.60 and Government Code section 15643. The public hearing on the proposed regulations 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 Tuesday, January 26, 2010.

To view the notice of hearing, initial statement of reasons, proposed text, and history click on the following link:
http://www.boe.ca.gov/regs/rule192_193_371.htm

Questions regarding the substance of the proposed amendments to Rules 192, 193, and 371 should be directed to: Ms. Sherrie Kinkle (916) 322-2921, at 450 N Street, Sacramento, CA 95814, e-mail Sherrie.Kinkle@boe.ca.gov or by mail at State Board of Equalization, Attn: Sherrie Kinkle, MIC: 64, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0064.

Written comments for the Board's consideration, notices of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed regulatory action should be directed to Rick Bennion, Regulations Coordinator, telephone (916) 445-2130, fax (916) 324-3984, e-mail Richard.Bennion@boe.ca.gov or by mail to: State Board of Equalization, Attn: Rick Bennion, MIC: 80, P.O. Box 942879-0080, Sacramento, CA 94279-0080.

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REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict of interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict of interest code(s) should be made to Alexandra Castillo, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

AVAILABILITY OF PROPOSED CONFLICT OF INTEREST CODES

Copies of the proposed conflict of interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to Alexandra Castillo, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

TITLE 18. BOARD OF EQUALIZATION

Notice of Proposed Regulatory Action

The State Board of Equalization Proposes to Adopt Amendments to California Code of Regulations, Title 18, Sections

192, *Mandatory Audits*,
193, *Scope of Audit*, and
371, *Significant Assessment Problems*

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Government Code sections 15606, subdivisions (a), (c), and (g), 15640, subdivision (f), and 15643, subdivision (b), and Revenue and Taxation Code (RTC) section 75.60, subdivision (b)(3), proposes to amend California Code of Regulations, title 18, sections (Rules) 192, *Mandatory Audits*, 193, *Scope of Audit*, and 371, *Significant Assessment Problems*. The proposed amendments to Rule 192 implement, in-

terpret, and make specific RTC sections 106, 469, and 470. The proposed amendments to Rule 193 implement, interpret, and make specific RTC sections 469, 502, 503, 531, 531.3, 531.4, 532, and 532.1. The proposed amendments to Rule 371 implement, interpret, and make specific RTC section 75.60 and Government Code section 15643. The proposed amendments to Rules 192, 193, and 371 reflect and provide guidance to county assessors regarding the new procedures for auditing taxpayers engaged in a profession, trade, or business who own, claim, possess, or control locally assessable trade fixtures and business tangible personal property required by recent amendments to RTC section 469 made by Statutes 2008, chapter 297 (Assembly Bill No. 550 (2007-2008 Reg. Sess.), section 2, effective January 1, 2009). The proposed amendments to Rules 192, 193, and 371 also make grammatical and formatting changes, update the citations in the authority and reference notes, and make the rules gender neutral.

A public hearing on the proposed amendments 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 January 26, 2010. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the proposed amendments. In addition, if the Board receives written comments prior to the hearing on January 26, 2010, the statements, arguments, and/or contentions contained in those comments will be presented to and considered by the Board before the Board decides whether to adopt the proposed amendments to Rules 192, 193, and 370.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Prior to its amendment by Statutes 2008, chapter 297, section 2 (Assembly Bill No. 550 (2007-2008 Reg. Sess.), effective January 1, 2009), RTC section 469 required county assessors to audit taxpayers that own, claim, possess, or control locally assessable trade fixtures and business tangible personal property with a full value of at least \$400,000, at least once every four years. The Board adopted Rule 192 to provide guidance to county assessors regarding the mandatory audit requirement and the Board adopted Rule 193 to provide guidance regarding the scope of audits performed pursuant to Rule 192. The Board adopted Rule 371 to provide guidance to county assessors regarding the assessment practices surveys the Board conducts pursuant to Government Code section 15640, and Rule 371, subdivision (b)(4), refers to mandatory audits conducted in accordance with Rule 192.

Statutes 2008, chapter 297 (Assembly Bill No. 550 (2007-2008 Reg. Sess.), section 2, amended RTC section 469, effective January 1, 2009). The amendments

deleted the mandatory audit requirement and replaced the mandatory audit requirement with a new requirement that county assessors conduct a “significant number of audits” of taxpayers that own, claim, possess, or control locally assessable trade fixtures and business tangible personal property as specified in RTC section 469.

The proposed amendments to Rule 192 replace the mandatory audit requirement with the new requirement that county assessors conduct a “significant number of audits” of taxpayers that own, claim, possess, or control locally assessable trade fixtures and business tangible personal property as specified in RTC section 469. The proposed amendments also add a citation to RTC section 106, which defines personal property, to the reference note for Rule 192.

The proposed amendments to Rule 193 clarify the scope of the new audit requirement. The proposed amendments to Rule 193 clarify the circumstances under which the disclosure of a discrepancy or irregularity during a taxpayer’s audit will require a county assessor to perform additional audits. The proposed amendments to Rule 193 divide subdivision (a) into two smaller subdivisions, make the references to the Board consistent, replace the word “section” with the word “Rule,” and make the rule gender neutral. In addition, the proposed amendments add citations to RTC sections 502, 503, 531, 531.3, 531.4, 532, and 532.1 to the reference note for Rule 193.

The proposed amendments to Rule 371 delete the word “mandatory” and the reference to Rule 192 from subdivision (b)(4). The proposed amendments to Rule 371 capitalize the first letter in the word “board’s” in subdivision (a)(2), make the first letter of the word “Section” lower case in subdivisions (a), (b), and (c), and change the word “Sections” to “section” and delete the period in “et.” in subdivision (b)(5) and (6). The proposed amendments also add citations to Revenue and Taxation Code section 75.60, subdivision (b)(3), and Government Code sections 15606, subdivisions (a) and (g), 15640, subdivision (f), and 15643, subdivision (b), to the authority note for Rule 371.

The purposes of the proposed amendments are to make Rules 192, 193, and 371 consistent with the recent amendments to RTC section 469, make other grammatical and formatting changes, update the citations in the rules’ authority and reference notes, and make the rules gender neutral. The proposed amendments to Rules 192, 193, and 371 are necessary to provide guidance to county assessors that is consistent with the recent amendments to RTC section 469, make grammatical and formatting changes, update the citations in the

rules’ authority and reference notes, and make the rules gender neutral.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the proposed amendments to Rules 192, 193, and 371 do not impose a mandate on 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.

NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the proposed amendments to Rules 192, 193, and 371 will result in no direct or indirect cost or savings to a 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.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The proposed amendments to Rules 192, 193, and 371 make the rules consistent with recent amendments to RTC section 469, make grammatical and formatting changes, update the citations in the rules’ authority and reference notes, and make the rules gender neutral. Therefore, pursuant to Government Code section 11346.5, subdivision (a)(8), the Board has made an initial determination that the adoption of the proposed amendments to Rules 192, 193, and 371 will have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed regulation may affect small business.

RESULTS OF THE ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The adoption of the proposed amendments to Rules 192, 193, and 371 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.

COST IMPACT ON PRIVATE PERSON OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of the proposed amendments to Rules 192, 193, and 371 will not have a significant effect on housing costs.

FEDERAL REGULATIONS

Rules 192, 193, and 371 have no comparable federal regulations.

AUTHORITIES

Rule 192: Government Code section 15606.
Rule 193: Government Code section 15606.
Rule 371: Revenue and Taxation Code section 75.60, subdivision (b)(3); and Government Code sections 15606, subdivisions (a), (c), and (g), 15640, subdivision (f), and 15643, subdivision (b).

REFERENCES

Rule 192: Revenue and Taxation Code sections 106, 469, and 470.
Rule 193: Revenue and Taxation Code sections 469, 502, 503, 531, 531.3, 531.4, 532, and 532.1
Rule 371: Revenue and Taxation Code section 75.60; and Government Code section 15643.

CONTACT

Questions regarding the substance of the proposed regulation should be directed to Mr. Bradley Heller, telephone (916) 324-2657, at 450 N Street, Sacramento, CA 95814, email Bradley.Heller@boe.ca.gov or MIC: 82, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed

administrative action should be directed to Ms. Toya Davis, Regulations Coordinator, telephone (916) 327-1798, fax (916) 324-3984, email Toya.Davis@boe.ca.gov or MIC: 80, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0080. Alternative contact, Mr. Richard Bennion, telephone (916) 445-2130, fax (916) 324-3984, email Richard.Bennion@boe.ca.gov or MIC: 80, P.O. Box 942879, 450 N Street, 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 would be as effective as 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 underscored and strikeout versions of the text of Rules 192, 193, and 371, which illustrate the proposed amendments. These 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. The express terms of the proposed amendments and the Initial Statement of Reasons are also available on the Board's Web site at <http://www.boe.ca.gov>.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Rules 192, 193, and 371 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the resulting amendments, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting amendments will be mailed to those interested parties who commented on the proposed amendments orally or in writing or who asked to be informed of such changes. The text of the resulting amendments will also be available to the public from Ms. Davis. The Board will consider written comments on the resulting amendments that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT
OF REASONS

If the Board adopts the proposed amendments to Rules 192, 193, and 371 the Board will prepare a Final Statement of Reasons. The Final Statement of Reasons will be made available on the Board's Website at <http://www.boe.ca.gov>. It will also be available for public inspection at 450 N Street, Sacramento, California. Sincerely

/s/
Diane G. Olson, Chief
Board Proceedings Division

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND GAME

**Department of Fish and Game —
Public Interest Notice**

For Publication November 13, 2009
CESA CONSISTENCY DETERMINATION FOR
Railroad Avenue Bridge Replacement Project
Mendocino County 2080–2009–019–01

The Department of Fish and Game (Department) received notice on October 28, 2009, that the City of Willits proposes to rely on consultation between federal agencies to carry out a project that may adversely affect species protected by the California Endangered Species Act (CESA). The project consists of bridge removal and construction replacing a bridge spanning Baechtel Creek approximately 107 meters south of the Railroad Avenue and Oak Avenue intersection within the City of Willits in Mendocino County (Project). Project involves dewatering, fish relocation, bridge removal, channel modification and bridge construction. Project activities may result in impacts to Southern Oregon/Northern California Coast (SONCC) coho salmon (*Oncorhynchus kisutch*).

The National Marine Fisheries Service (NMFS) issued a "no jeopardy" federal biological opinion (151422SWR04SR9205:TKD)(BO) and incidental take statement (ITS) to the Federal Highway Administration (FWHA) on July 19, 2004, which considered the effects of the project on the Federally and State threatened SONCC coho salmon. Pursuant to California Fish and Game Code Section 2080.1, the City of Willits is requesting a determination that the BO and ITS are consistent with the requirements of CESA. If the Depart-

ment determines that the BO and ITS are consistent with CESA for the proposed project, the City of Willits will not be required to obtain a separate permit under Fish and Game Code Section 2081 for the proposed project.

**OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

**California Environmental Protection Agency
Office of Environmental Health
Hazard Assessment
Notice to Interested Parties**

November 13, 2009

**ANNOUNCEMENT OF FIRST
PUBLIC COMMENT PERIOD
AND WORKSHOP**

**Draft Technical Support Document on
Proposed Public Health Goal for
Benzo(a)pyrene in Drinking Water**

The Office of Environmental Health Hazard Assessment (OEHHA) within the California Environmental Protection Agency is announcing the availability of the draft technical support document for the proposed Public Health Goal (PHG) for benzo(a)pyrene in drinking water. This is an update of the risk assessment for benzo(a)pyrene published in 1997. OEHHA proposes to increase the PHG to 0.013 parts per billion (ppb) from the current value of 0.004 ppb, based on new and better studies. The draft document is posted on the OEHHA Web site (www.oehha.ca.gov). OEHHA is soliciting comments on the draft report during a 45-day comment period. The Office will also hold a public workshop on January 6, 2010 at the Elihu Harris Building, 1515 Clay Street, Oakland, 94612, Room 11, 10 a.m.–12 noon, or until business is concluded. OEHHA follows the requirements set forth in Health and Safety Code Sections 57003(a) and 116365 for conducting the workshop and receiving public input.

Written comments must be received at the OEHHA address below by 5:00 p.m. on January 6, 2010 to be considered during this document revision period. The workshop is provided to encourage a dialogue between OEHHA scientists and the public, to discuss the scientific basis of the proposed PHG, and to receive comments. Following the workshop, OEHHA will evaluate



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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Fourth District, Los Angeles

JOHN CHIANG
State Controller

RAMON J. HIRSIG
Executive Director

November 13, 2009

To Interested Parties:

**Notice of Proposed Regulatory Action
by the
State Board of Equalization**

Notice of Proposed Regulatory Action

**The State Board of Equalization Proposes to Adopt Amendments to
California Code of Regulations, Title 18, Sections:**

**192, *Mandatory Audits*,
193, *Scope of Audit*, and
371, *Significant Assessment Problems***

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Government Code sections 15606, subdivisions (a), (c), and (g), 15640, subdivision (f), and 15643, subdivision (b), and Revenue and Taxation Code (RTC) section 75.60, subdivision (b)(3), proposes to amend California Code of Regulations, title 18, sections (Rules) 192, *Mandatory Audits*, 193, *Scope of Audit*, and 371, *Significant Assessment Problems*. The proposed amendments to Rule 192 implement, interpret, and make specific RTC sections 106, 469, and 470. The proposed amendments to Rule 193 implement, interpret, and make specific RTC sections 469, 502, 503, 531, 531.3, 531.4, 532, and 532.1. The proposed amendments to Rule 371 implement, interpret, and make specific RTC section 75.60 and Government Code section 15643. The proposed amendments to Rules 192, 193, and 371 reflect and provide guidance to county assessors regarding the new procedures for auditing taxpayers engaged in a profession, trade, or business who own, claim, possess, or control locally assessable trade fixtures and business tangible personal property required by recent amendments to RTC section 469 made by Statutes 2008, chapter 297 (Assembly Bill No. 550 (2007-2008 Reg. Sess.)), section 2, effective January 1, 2009. The proposed amendments to

Rules 192, 193, and 371 also make grammatical and formatting changes, update the citations in the authority and reference notes, and make the rules gender neutral.

A public hearing on the proposed amendments 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 January 26, 2010. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the proposed amendments. In addition, if the Board receives written comments prior to the hearing on January 26, 2010, the statements, arguments, and/or contentions contained in those comments will be presented to and considered by the Board before the Board decides whether to adopt the proposed amendments to Rules 192, 193, and 370.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Prior to its amendment by Statutes 2008, chapter 297, section 2 (Assembly Bill No. 550 (2007-2008 Reg. Sess.), effective January 1, 2009, RTC section 469 required county assessors to audit taxpayers that own, claim, possess, or control locally assessable trade fixtures and business tangible personal property with a full value of at least \$400,000, at least once every four years. The Board adopted Rule 192 to provide guidance to county assessors regarding the mandatory audit requirement and the Board adopted Rule 193 to provide guidance regarding the scope of audits performed pursuant to Rule 192. The Board adopted Rule 371 to provide guidance to county assessors regarding the assessment practices surveys the Board conducts pursuant to Government Code section 15640, and Rule 371, subdivision (b)(4), refers to mandatory audits conducted in accordance with Rule 192.

Statutes 2008, chapter 297 (Assembly Bill No. 550 (2007-2008 Reg. Sess.), section 2, amended RTC section 469, effective January 1, 2009. The amendments deleted the mandatory audit requirement and replaced the mandatory audit requirement with a new requirement that county assessors conduct a "significant number of audits" of taxpayers that own, claim, possess, or control locally assessable trade fixtures and business tangible personal property as specified in RTC section 469.

The proposed amendments to Rule 192 replace the mandatory audit requirement with the new requirement that county assessors conduct a "significant number of audits" of taxpayers that own, claim, possess, or control locally assessable trade fixtures and business tangible personal property as specified in RTC section 469. The proposed amendments also add a citation to RTC section 106, which defines personal property, to the reference note for Rule 192.

The proposed amendments to Rule 193 clarify the scope of the new audit requirement. The proposed amendments to Rule 193 clarify the circumstances under which the disclosure of a discrepancy or irregularity during a taxpayer's audit will require a county assessor to perform additional audits. The proposed amendments to Rule 193 divide

subdivision (a) into two smaller subdivisions, make the references to the Board consistent, replace the word "section" with the word "Rule," and make the rule gender neutral. In addition, the proposed amendments add citations to RTC sections 502, 503, 531, 531.3, 531.4, 532, and 532.1 to the reference note for Rule 193.

The proposed amendments to Rule 371 delete the word "mandatory" and the reference to Rule 192 from subdivision (b)(4). The proposed amendments to Rule 371 capitalize the first letter in the word "board's" in subdivision (a)(2), make the first letter of the word "Section" lower case in subdivisions (a), (b), and (c), and change the word "Sections" to "section" and delete the period in "et." in subdivision (b)(5) and (6). The proposed amendments also add citations to Revenue and Taxation Code section 75.60, subdivision (b)(3), and Government Code sections 15606, subdivisions (a) and (g), 15640, subdivision (f), and 15643, subdivision (b), to the authority note for Rule 371.

The purposes of the proposed amendments are to make Rules 192, 193, and 371 consistent with the recent amendments to RTC section 469, make other grammatical and formatting changes, update the citations in the rules' authority and reference notes, and make the rules gender neutral. The proposed amendments to Rules 192, 193, and 371 are necessary to provide guidance to county assessors that is consistent with the recent amendments to RTC section 469, make grammatical and formatting changes, update the citations in the rules' authority and reference notes, and make the rules gender neutral.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the proposed amendments to Rules 192, 193, and 371 do not impose a mandate on 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.

NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the proposed amendments to Rules 192, 193, and 371 will result in no direct or indirect cost or savings to a 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.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The proposed amendments to Rules 192, 193, and 371 make the rules consistent with recent amendments to RTC section 469, make grammatical and formatting changes, update the citations in the rules' authority and reference notes, and make the rules gender neutral. Therefore, pursuant to Government Code section 11346.5, subdivision (a)(8), the Board has made an initial determination that the adoption of the proposed amendments to Rules 192, 193, and 371 will have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed regulation may affect small business.

RESULTS OF THE ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The adoption of the proposed amendments to Rules 192, 193, and 371 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.

COST IMPACT ON PRIVATE PERSON OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of the proposed amendments to Rules 192, 193, and 371 will not have a significant effect on housing costs.

FEDERAL REGULATIONS

Rules 192, 193, and 371 have no comparable federal regulations.

AUTHORITIES

Rule 192: Government Code section 15606.

Rule 193: Government Code section 15606.

Rule 371: Revenue and Taxation Code section 75.60, subdivision (b)(3); and Government Code sections 15606, subdivisions (a), (c), and (g), 15640, subdivision (f), and 15643, subdivision (b).

REFERENCES

Rule 192: Revenue and Taxation Code sections 106, 469, and 470.

Rule 193: Revenue and Taxation Code sections 469, 502, 503, 531, 531.3, 531.4, 532, and 532.1

Rule 371: Revenue and Taxation Code section 75.60; and Government Code section 15643.

CONTACT

Questions regarding the substance of the proposed regulation should be directed to Mr. Bradley Heller, telephone (916) 324-2657, at 450 N Street, Sacramento, CA 95814, email Bradley.Heller@boe.ca.gov or MIC: 82, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Ms. Toya Davis, Regulations Coordinator, telephone (916) 327-1798, fax (916) 324-3984, email Toya.Davis@boe.ca.gov or MIC: 80, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0080. Alternative contact, Mr. Richard Bennion, telephone (916) 445-2130, fax (916) 324-3984, email Richard.Bennion@boe.ca.gov or MIC: 80, P.O. Box 942879, 450 N Street, 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 would be as effective as 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 underscored and strikethrough versions of the text of Rules 192, 193, and 371, which illustrate the proposed amendments. These 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. The express terms of the proposed amendments and the Initial Statement of Reasons are also available on the Board's Web site at www.boe.ca.gov.

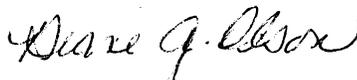
SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Rules 192, 193, and 371 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the resulting amendments, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting amendments will be mailed to those interested parties who commented on the proposed amendments orally or in writing or who asked to be informed of such changes. The text of the resulting amendments will also be available to the public from Ms. Davis. The Board will consider written comments on the resulting amendments that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Rules 192, 193, and 371 the Board will prepare a Final Statement of Reasons. The Final Statement of Reasons will be made available on the Board's Website at www.boe.ca.gov. It will also be available for public inspection at 450 N Street, Sacramento, California.

Sincerely



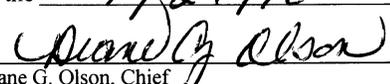
Diane G. Olson, Chief
Board Proceedings Division

STATE BOARD OF EQUALIZATION



BOARD APPROVED

At the 1/27/10 Board Meeting



Diane G. Olson, Chief
Board Proceedings Division

INITIAL STATEMENT OF REASONS

Proposed Amendments to California Code of Regulations, Title 18, Sections:

192, *Mandatory Audits*,
193, *Scope of Audit*, and
371, *Significant Assessment Problems*

Factual Basis

Prior to its amendment by Statutes 2008, chapter 297, section 2 (Assem. Bill No. 550 (2007-2008 Reg. Sess.), effective January 1, 2009, Revenue and Taxation Code (RTC) section 469 required county assessors to audit taxpayers that own, claim, possess, or control locally assessable trade fixtures and business tangible personal property with a full value of at least \$400,000, at least once every four years. The Board adopted California Code of Regulation, title 18, section (Rule) 192 to provide guidance to county assessors regarding the mandatory audit requirement and the Board adopted Rule 193 to provide guidance regarding the scope of audits performed pursuant to Rule 192. The Board adopted Rule 371 to provide guidance to county assessors regarding the assessment practices surveys the Board conducts pursuant to Government Code section 15640, and Rule 371, subdivision (b)(4), refers to mandatory audits conducted in accordance with Rule 192.

Statutes 2008, chapter 297 (Assem. Bill No. 550 (2007-2008 Reg. Sess.), section 2, amended RTC section 469, effective January 1, 2009. The amendments deleted the mandatory audit requirement and replaced the mandatory audit requirement with a new requirement that county assessors conduct a "significant number of audits" of taxpayers that own, claim, possess, or control locally assessable trade fixtures and business tangible personal property as specified in RTC section 469.

The proposed amendments to Rule 192 replace the mandatory audit requirement with the new requirement that county assessors conduct a "significant number of audits" of taxpayers that own, claim, possess, or control locally assessable trade fixtures and business tangible personal property as specified in RTC section 469. The proposed amendments also add a citation to RTC section 106, which defines personal property, to the reference note for Rule 192.

The proposed amendments to Rule 193 clarify the scope of the new audit requirement. The proposed amendments to Rule 193 clarify the circumstances under which the disclosure of a discrepancy or irregularity during a taxpayer's audit will require a county

assessor to perform additional audits. The proposed amendments to Rule 193 divide subdivision (a) into two smaller subdivisions, make the references to the Board consistent, replace the word “section” with the word “Rule,” and make the rule gender neutral. In addition, the proposed amendments add citations to RTC sections 502, 503, 531, 531.3, 531.4, 532, and 532.1 to the reference note for Rule 193.

The proposed amendments to Rule 371 delete the word “mandatory” and the reference to Rule 192 from subdivision (b)(4). The proposed amendments to Rule 371 capitalize the first letter in the word “board’s” in subdivision (a)(2), make the first letter of the word “Section” lower case in subdivisions (a), (b), and (c), and change the word “Sections” to “section” and delete the period in “et.” in subdivision (b)(5) and (6). The proposed amendments also add citations to Revenue and Taxation Code section 75.60, subdivision (b)(3), and Government Code sections 15606, subdivisions (a) and (g), 15640, subdivision (f), and 15643, subdivision (b), to the authority note for Rule 371.

Specific Purpose

The specific purposes of the proposed amendments are to make Rules 192, 193, and 371 consistent with the recent amendments to RTC section 469, make other grammatical and formatting changes, update the citations in the rules’ authority and reference notes, and make the rules gender neutral.

Necessity

The proposed amendments to Rules 192, 193, and 371 are necessary to provide guidance to county assessors that is consistent with the recent amendments to RTC section 469, make grammatical and formatting changes, update the citations in the rules’ authority and reference notes, and make the rules gender neutral.

Documents Relied Upon

Staff in the Board’s County-Assessed Properties Division (CAPD) issued Letter to Assessors Number 2009/022 to county assessors and interested parties on May 20, 2009. The letter advised the county assessors and interest parties about the recent amendments to RTC section 469 and solicited their comments regarding draft amendments to Rules 192, 193, and 371, which were attached to the letter.¹ On August 28, 2009, CAPD staff finalized Issue Paper 09-004,² which requested the Board’s authorization to begin the process of amending Rules 192, 193, and 371 to incorporate the draft amendments. The Board relied upon Issue Paper 09-004 in deciding to authorize staff to amend Rules 192, 193, and 371 to incorporate the draft amendments.

¹ Letter to Assessors 2009/022 is available at <http://www.boe.ca.gov/proptaxes/pdf/lt09022.pdf>.

² Issue Paper 09-004 is available at http://www.boe.ca.gov/proptaxes/pdf/IssuePaper-PTRules192_193_371.pdf.

Reasonable Alternatives

The Board did not reject any reasonable alternatives to the proposed amendments to Rules 192, 193, and 371. No alternative amendments were presented to the Board for consideration.

No Significant Adverse Economic Impact on Business

The proposed amendments to Rules 192, 193, and 371 make the rules consistent with recent amendments to RTC section 469, make grammatical and formatting changes, update the citations in the rules' authority and reference notes, and make the rules gender neutral. Therefore, the Board has determined that the proposed amendments will not have a significant adverse economic impact on business.

**Proposed Amendments to California Code of Regulations,
Title 18, Section 192**

192. ~~MANDATORY AUDITS SELECTION.~~

(a) DEFINITIONS. For purposes of this regulation:

- (1) "Personal property" means all property except real property.
- (2) "Business tangible personal property" means personal property used in a profession, trade, or business, and shall include vessels and/or aircraft if used in a profession, trade, or business.
- (3) "Trade fixtures" means any fixtures that are used in connection with a trade or business.
- (4) "Farming" is a business. When conducting an audit pursuant to this section of a farming or ranching operation, the assessor must determine whether any racehorses taxable to the same taxpayer pursuant to Part 12 of Division 1 of the Revenue and Taxation Code have been underreported or escaped assessment.
- (5) "Significant number of audits" means at least 75 percent of the fiscal year average of the total number of audits the assessor was required to have conducted from the 2002-03 fiscal year to the 2005-06 fiscal year, inclusive, on those taxpayers in the county that had a full value of four hundred thousand dollars (\$400,000) or more of locally assessable trade fixtures and business tangible personal property.
- (6) "Taxpayers with largest assessments" means taxpayers that have the largest assessments of locally assessable trade fixtures and business tangible personal property in the county for the applicable year of audit selection.

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

- ~~(1) at least once within the four fiscal years following the first of such four consecutive lien dates, and~~
- ~~(2) at least once thereafter within each four year period following the latest fiscal year covered by the preceding audit until relieved of this responsibility by subdivision (b) of this section.~~

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

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

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

(A) This pool of taxpayers must be selected from a list of taxpayers in the county, ranked in descending

order by the total locally assessed value of both trade fixtures and business tangible personal property.

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

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

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

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

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

(A) These audits must be selected in a fair and equitable manner.

(B) These audits may be based on evidence of underreporting as determined by the assessor.

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

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

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

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

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

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

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

Example 1: Prior to January 1, 2009, a county with a total number of mandatory audits of 800 during the 2002-2003 fiscal year to the 2005-2006 fiscal year was required to conduct 200 audits (800 ÷ 4) per year. This county's significant number of audits that must be conducted annually is 150 (75% x 200). Of the 150

annual significant number of audits, 75 (50% x 150) must be from the pool of the taxpayers with the largest assessments, and 75 (50% x 150) must be selected from among the pool of all other taxpayers in the county. The number of taxpayers with the largest assessments that must be audited on a four year cycle is 300 (150 x 50% x 4).

Example 2: Prior to January 1, 2009, a county with a total number of mandatory audits of 61 during the 2002-2003 fiscal year to the 2005-2006 fiscal year was required to conduct 15 audits ($61 \div 4 = 15.25$, rounded) per year. This county's significant number of audits that must be conducted annually is 11 ($75\% \times 15.25 = 11.4375$, rounded). Of the 11 annual significant number of audits, 5.5 ($50\% \times 11$) must be from the pool of the taxpayers with the largest assessments, and 5.5 ($50\% \times 11$) must be selected from among the pool of all other taxpayers in the county. The county assessor must determine how to split the odd number audit. The number of taxpayers with the largest assessments that must be audited on a four-year cycle is 22 ($11 \times 50\% \times 4$). Therefore, during a four-year cycle, the county assessor would be required to audit five from the pool of taxpayers with the largest assessments in the county and six from among the pool of all other taxpayers in the county each year for two years; and six from the pool of taxpayers with the largest assessments in the county and five from among the pool of all other taxpayers in the county each year for the remaining two years.

Note: Authority cited: Section 15606, Government Code. Reference: Sections 106, 469 and 470, Revenue and Taxation Code.

**Proposed Amendments to California Code of Regulations,
Title 18, Section 193**

193. SCOPE OF AUDIT.

(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 unless one of the provisions of subdivision (b) apply.

(b) 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~~expired unless ~~he~~the assessor documents in the audit report his/her conclusion both that:

(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:

(A) an escape assessment under the provisions of Revenue and Taxation Code sections 469, 502, 503, 531.3, or 531.4; or

(B) 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. The error that caused the property to be assessed at a higher value than would have been on the roll must be of "material value" as defined in Rule 305.3 under the provisions of sections 502, 503, 531.3 or 531.4 of the Revenue and Taxation Code.

~~(b)~~(c) If property of a taxpayer who meets the requirements of ~~section~~Rule 192 is selected by the California State Board of Equalization (B~~board)~~oard) 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.~~

~~(e)~~(d) 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~~expired or to define the circumstances in which property that has escaped assessment can be added to the roll.

(e) The statute of limitations may be extended through the execution of a mutually agreed upon waiver pursuant to Revenue and Taxation Code section 532.1.

Note: Authority cited: Section 15606, Government Code. Reference: Sections 469, 502, 503, 531, 531.3, 531.4, 532 and 532.1, Revenue and Taxation Code.

**Proposed Amendments to California Code of Regulations,
Title 18, Section 193**

193. SCOPE OF AUDIT.

(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 unless one of the provisions of subdivision (b) apply.

(b) 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~~expired unless ~~he~~the assessor documents in the audit report his/her conclusion both that:

(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:

(A) an escape assessment under the provisions of Revenue and Taxation Code sections 469, 502, 503, 531.3, or 531.4; or

(B) 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. The error that caused the property to be assessed at a higher value than would have been on the roll must be of "material value" as defined in Rule 305.3, under the provisions of sections 502, 503, 531.3 or 531.4 of the Revenue and Taxation Code.

~~(b)(c)~~(c) If property of a taxpayer who meets the requirements of ~~section~~Rule 192 is selected by the California State Board of Equalization (B~~board)~~oard) 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.~~

~~(e)(d)~~(d) 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~~expired or to define the circumstances in which property that has escaped assessment can be added to the roll.

(e) The statute of limitations may be extended through the execution of a mutually agreed upon waiver pursuant to Revenue and Taxation Code section 532.1.

Note: Authority cited: Section 15606, Government Code. Reference: Sections 469, 502, 503, 531, 531.3, 531.4, 532 and 532.1, Revenue and Taxation Code.

**Proposed Amendments to California Code of Regulations,
Title 18, Section 371**

371. SIGNIFICANT ASSESSMENT PROBLEMS.

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

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

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

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

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

(2) Discovering and assessing newly constructed property.

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

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

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

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

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

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

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

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

Note: Authority cited: Section 75.60, subdivision (b)(3), Revenue and Taxation Code; and Sections 15606, subdivisions (a), (c), and (g), 15640, subdivision (f), and 15643, subdivision (b), Government Code. Reference: Section 75.60, Revenue and Taxation Code; and Section 15643, Government Code.

**Proposed Amendments to California Code of Regulations,
Title 18, Section 371**

371. SIGNIFICANT ASSESSMENT PROBLEMS.

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

- (1) the average assessment level in the county is less than 95 percent of the assessment level required by statute; or
- (2) the sum of all the differences between the ~~b~~Board’s appraisals and the assessor’s values (without regard to whether the differences are underassessments or overassessments), expanded statistically over the assessor’s entire roll, exceeds 7.5 percent of the assessment level required by statute.

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

- (1) Uniformity of treatment for all classes of property.
- (2) Discovering and assessing newly constructed property.
- (3) Discovering and assessing real property that has undergone a change in ownership.
- (4) Conducting ~~mandatory~~ audits in accordance with Revenue and Taxation Code ~~Section~~ 469 and ~~Property Tax Rule 192~~.
- (5) Assessing open-space land subject to enforceable restriction, in accordance with Revenue and Taxation Code ~~Sections~~ 421 et. seq.
- (6) Discovering and assessing taxable possessory interests in accordance with Revenue and Taxation Code ~~Sections~~ 107 et. seq.
- (7) Discovering and assessing mineral-producing properties in accordance with Property Tax Rule 469.
- (8) Discovering and assessing property that has suffered a decline in value.
- (9) Reviewing, adjusting, and, if appropriate, defending assessments for which taxpayers have filed applications for reduction with the local assessment appeals board.

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

Note: Authority cited: Section 75.60, subdivision (b)(3), Revenue and Taxation Code; and Sections 15606, subdivisions (a), (c), and (g), 15640, subdivision (f), and 15643, subdivision (b), Government Code. Reference: Section 75.60, Revenue and Taxation Code; and Section 15643, Government Code.

Regulation History

Type of Regulation: Property Tax

Regulation: 192, 193, and 371

Title: 192, Mandatory Audits
193, Scope of Audits
371, Significant Assessment Problems

Preparation: Sherie Kinkle
Legal Contact: Bradley Heller

Clarify that the acceptable resale designation on a purchase order taken by the seller to support a valid qualified resale certificate is not limited to the phrase "for resale" and may include comparable terminology such as "not taxable." The combination of a purchase order with such designation and a valid qualified resale certificate shall be regarded as adequate support for a seller's sale for resale transaction.

History of Proposed Regulation:

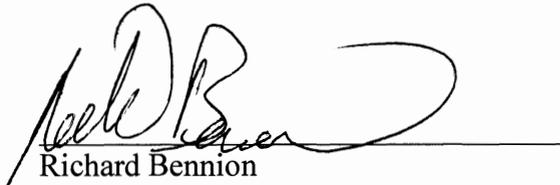
November 13, 2009	OAL publication date; 45-day public comment period begins; IP mailing
October 30, 2009	Notice to OAL
October 6, 2009	PTC, Board Authorized Publication (Vote 5-0)
October 6, 2009	Property Taxes Committee
May 20, 2009	Letter to Assessors 2009/022

Sponsor: NA
Support: NA
Oppose: NA

Statement of Compliance

The State Board of Equalization, in process of adopting Property Tax Rule 192, Mandatory Audits, 193, Scope of Audit, and 371 Significant Assessment Proplems, did comply with the provision of Government Code section 11346.4(a)(1) through (4). A notice to interested parties was mailed on November 13, 2009, 74 days prior to the public hearing.

January 14, 2010

A handwritten signature in black ink, appearing to read "Richard Bennion", written over a horizontal line.

Richard Bennion
Regulations Coordinator
State Board of Equalization

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N Street, Room 121

Sacramento, California

REPORTER'S TRANSCRIPT

JANUARY 26, 2010

ITEM F1

PUBLIC HEARINGS

Reported by: Beverly D. Toms

No. CSR 1662

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P R E S E N T

For the Board
of Equalization:

Betty Yee
Chair

Jerome E. Horton
Vice-Chair

Bill Leonard
Member

Michelle Steel
Member

Marcy Jo Mandel
Appearing for John
Chiang, State Controller
(per Government Code
Section 7.9)

Diane Olson
Chief, Board
Proceedings Division

Board of Equalization
Staff:

Bradley Heller
Legal Department

Ladeena Ford
County Assessed Properties
Division

---oOo---

1 Sacramento, California

2 January 26, 2010

3 ---oOO---

4 MS. OLSON: Our next item on the agenda is F1,
5 Property Tax Rules 192, Mandatory Audits; 193, Scope of
6 Audits; and 371, Significant Assessment Problems.

7 MS. YEE: Okay. Thank you very much. Good
8 morning, Mr. Heller.

9 MR. HELLER: Good morning, Madam Chair, Members
10 of the Board. As -- I'm Bradley Heller, and I'm here
11 with Ladeena Ford from the Board's County Assessed
12 Properties Division. And we're here to request the
13 Board's adoption of the proposed amendments to Property
14 Tax Rules 192, 193 and 194, which is -- excuse me, those
15 are not the correct numbers -- 192, 193 and 371.

16 MS. YEE: Okay.

17 MR. HELLER: And those amendments incorporate
18 recent amendments to Revenue and Taxation Code Section
19 469.

20 If there's any questions we'd be happy to
21 answer those.

22 MS. YEE: Okay. Thank you, Mr. Heller.

23 Questions, Members?

24 Hearing none, is there a motion?

25 MR. HORTON: So moved.

26 MS. STEEL: So moved.

27 MS. YEE: Okay. Motion by Mr. Horton, second
28 by Ms. Steel to adopt the proposed amendments.

1 Mr. Leonard.

2 MR. LEONARD: I assume no comments received.

3 MR. HELLER: No, we haven't received any
4 written comments.

5 MR. LEONARD: For the record.

6 MS. YEE: Great. Thank you.

7 Without objection, the amendments are adopted.

8 Thank you very much.

9 MR. HELLER: Thank you.

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REPORTER'S CERTIFICATE.

State of California)
) ss
County of Sacramento)

I, BEVERLY D. TOMS, Hearing Reporter for the California State Board of Equalization certify that on January 26, 2010 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding 5 pages constitute a complete and accurate transcription of the shorthand writing.

Dated: February 4, 2010.

BEVERLY D. TOMS
Hearing Reporter

2010 MINUTES OF THE STATE BOARD OF EQUALIZATION

Tuesday, January 26, 2010

The Board met at its offices at 450 N Street, Sacramento, at 9:41 a.m., with Ms. Yee, Chairwoman, Mr. Horton, Vice Chair, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

[C] SALES AND USE TAX APPEALS HEARING

Local Tax Reallocation Hearing

C1 City of Irvine, 434851

10-1-1997 to 3-31-2010, 1998, \$5,791,580.00 Amount in dispute

For Petitioner:

Janis Varney, Representative

For Affected Jurisdiction:

Robin Sturdivant, Representative

Cities of Costa Mesa, Mountain View,
Sunnyvale, Oakland

For Affected Jurisdiction:

David McPherson, Representative

City of San Jose

For Sales and Use Tax Department:

Carole Ruwart, Tax Counsel

Issue: Whether local sales tax which should be directly allocated to petitioner applies to sales for which orders were taken at the retailer's Irvine office for goods shipped to California customers from out of state.

Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

PUBLIC HEARINGS

F1 Proposed Amendments to Property Tax Rules 192, *Mandatory Audits*; 193, *Scope of Audit*; and, 371, *Significant Assessment Problems*

Bradley Heller, Tax Counsel, Tax and Fee Program Division, Legal Department, made introductory remarks regarding the adoption of proposed amendments to Property Tax Rules 192, 193, and 371, which incorporate new audit procedures required by recent amendments to Revenue and Taxation Code section 469, make grammatical and formatting changes, and update citations. (Exhibit 1.1.)

Speakers were invited to address the Board, but there were none.

Action: Upon motion of Mr. Horton, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Horton, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the proposed amendments to Property Tax Rules 192, *Mandatory Audits*; 193, *Scope of Audit*; and, 371, *Significant Assessment Problems*, as recommended by staff.

Exhibits to these minutes are incorporated by reference.

Note: These minutes are not final until Board approved.



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA
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BETTY T. YEE
First District, San Francisco

BILL LEONARD
Second District, Ontario/Sacramento

MICHELLE STEEL
Third District, Rolling Hills Estates

JEROME E. HORTON
Fourth District, Los Angeles

JOHN CHIANG
State Controller

RAMON J. HIRSIG
Executive Director

November 13, 2009

To Interested Parties:

**Notice of Proposed Regulatory Action
by the
State Board of Equalization**

Notice of Proposed Regulatory Action

**The State Board of Equalization Proposes to Adopt Amendments to
California Code of Regulations, Title 18, Sections:**

**192, *Mandatory Audits*,
193, *Scope of Audit*, and
371, *Significant Assessment Problems***

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Government Code sections 15606, subdivisions (a), (c), and (g), 15640, subdivision (f), and 15643, subdivision (b), and Revenue and Taxation Code (RTC) section 75.60, subdivision (b)(3), proposes to amend California Code of Regulations, title 18, sections (Rules) 192, *Mandatory Audits*, 193, *Scope of Audit*, and 371, *Significant Assessment Problems*. The proposed amendments to Rule 192 implement, interpret, and make specific RTC sections 106, 469, and 470. The proposed amendments to Rule 193 implement, interpret, and make specific RTC sections 469, 502, 503, 531, 531.3, 531.4, 532, and 532.1. The proposed amendments to Rule 371 implement, interpret, and make specific RTC section 75.60 and Government Code section 15643. The proposed amendments to Rules 192, 193, and 371 reflect and provide guidance to county assessors regarding the new procedures for auditing taxpayers engaged in a profession, trade, or business who own, claim, possess, or control locally assessable trade fixtures and business tangible personal property required by recent amendments to RTC section 469 made by Statutes 2008, chapter 297 (Assembly Bill No. 550 (2007-2008 Reg. Sess.), section 2, effective January 1, 2009. The proposed amendments to

Rules 192, 193, and 371 also make grammatical and formatting changes, update the citations in the authority and reference notes, and make the rules gender neutral.

A public hearing on the proposed amendments 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 January 26, 2010. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the proposed amendments. In addition, if the Board receives written comments prior to the hearing on January 26, 2010, the statements, arguments, and/or contentions contained in those comments will be presented to and considered by the Board before the Board decides whether to adopt the proposed amendments to Rules 192, 193, and 370.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Prior to its amendment by Statutes 2008, chapter 297, section 2 (Assembly Bill No. 550 (2007-2008 Reg. Sess.), effective January 1, 2009, RTC section 469 required county assessors to audit taxpayers that own, claim, possess, or control locally assessable trade fixtures and business tangible personal property with a full value of at least \$400,000, at least once every four years. The Board adopted Rule 192 to provide guidance to county assessors regarding the mandatory audit requirement and the Board adopted Rule 193 to provide guidance regarding the scope of audits performed pursuant to Rule 192. The Board adopted Rule 371 to provide guidance to county assessors regarding the assessment practices surveys the Board conducts pursuant to Government Code section 15640, and Rule 371, subdivision (b)(4), refers to mandatory audits conducted in accordance with Rule 192.

Statutes 2008, chapter 297 (Assembly Bill No. 550 (2007-2008 Reg. Sess.), section 2, amended RTC section 469, effective January 1, 2009. The amendments deleted the mandatory audit requirement and replaced the mandatory audit requirement with a new requirement that county assessors conduct a "significant number of audits" of taxpayers that own, claim, possess, or control locally assessable trade fixtures and business tangible personal property as specified in RTC section 469.

The proposed amendments to Rule 192 replace the mandatory audit requirement with the new requirement that county assessors conduct a "significant number of audits" of taxpayers that own, claim, possess, or control locally assessable trade fixtures and business tangible personal property as specified in RTC section 469. The proposed amendments also add a citation to RTC section 106, which defines personal property, to the reference note for Rule 192.

The proposed amendments to Rule 193 clarify the scope of the new audit requirement. The proposed amendments to Rule 193 clarify the circumstances under which the disclosure of a discrepancy or irregularity during a taxpayer's audit will require a county assessor to perform additional audits. The proposed amendments to Rule 193 divide

subdivision (a) into two smaller subdivisions, make the references to the Board consistent, replace the word “section” with the word “Rule,” and make the rule gender neutral. In addition, the proposed amendments add citations to RTC sections 502, 503, 531, 531.3, 531.4, 532, and 532.1 to the reference note for Rule 193.

The proposed amendments to Rule 371 delete the word “mandatory” and the reference to Rule 192 from subdivision (b)(4). The proposed amendments to Rule 371 capitalize the first letter in the word “board’s” in subdivision (a)(2), make the first letter of the word “Section” lower case in subdivisions (a), (b), and (c), and change the word “Sections” to “section” and delete the period in “et.” in subdivision (b)(5) and (6). The proposed amendments also add citations to Revenue and Taxation Code section 75.60, subdivision (b)(3), and Government Code sections 15606, subdivisions (a) and (g), 15640, subdivision (f), and 15643, subdivision (b), to the authority note for Rule 371.

The purposes of the proposed amendments are to make Rules 192, 193, and 371 consistent with the recent amendments to RTC section 469, make other grammatical and formatting changes, update the citations in the rules’ authority and reference notes, and make the rules gender neutral. The proposed amendments to Rules 192, 193, and 371 are necessary to provide guidance to county assessors that is consistent with the recent amendments to RTC section 469, make grammatical and formatting changes, update the citations in the rules’ authority and reference notes, and make the rules gender neutral.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the proposed amendments to Rules 192, 193, and 371 do not impose a mandate on 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.

NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the proposed amendments to Rules 192, 193, and 371 will result in no direct or indirect cost or savings to a 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.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The proposed amendments to Rules 192, 193, and 371 make the rules consistent with recent amendments to RTC section 469, make grammatical and formatting changes, update the citations in the rules' authority and reference notes, and make the rules gender neutral. Therefore, pursuant to Government Code section 11346.5, subdivision (a)(8), the Board has made an initial determination that the adoption of the proposed amendments to Rules 192, 193, and 371 will have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed regulation may affect small business.

RESULTS OF THE ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The adoption of the proposed amendments to Rules 192, 193, and 371 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.

COST IMPACT ON PRIVATE PERSON OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of the proposed amendments to Rules 192, 193, and 371 will not have a significant effect on housing costs.

FEDERAL REGULATIONS

Rules 192, 193, and 371 have no comparable federal regulations.

AUTHORITIES

Rule 192: Government Code section 15606.

Rule 193: Government Code section 15606.

Rule 371: Revenue and Taxation Code section 75.60, subdivision (b)(3); and Government Code sections 15606, subdivisions (a), (c), and (g), 15640, subdivision (f), and 15643, subdivision (b).

REFERENCES

Rule 192: Revenue and Taxation Code sections 106, 469, and 470.

Rule 193: Revenue and Taxation Code sections 469, 502, 503, 531, 531.3, 531.4, 532, and 532.1

Rule 371: Revenue and Taxation Code section 75.60; and Government Code section 15643.

CONTACT

Questions regarding the substance of the proposed regulation should be directed to Mr. Bradley Heller, telephone (916) 324-2657, at 450 N Street, Sacramento, CA 95814, email Bradley.Heller@boe.ca.gov or MIC: 82, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Ms. Toya Davis, Regulations Coordinator, telephone (916) 327-1798, fax (916) 324-3984, email Toya.Davis@boe.ca.gov or MIC: 80, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0080. Alternative contact, Mr. Richard Bennion, telephone (916) 445-2130, fax (916) 324-3984, email Richard.Bennion@boe.ca.gov or MIC:80, P.O. Box 942879, 450 N Street, 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 would be as effective as 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 underscored and strikethrough versions of the text of Rules 192, 193, and 371, which illustrate the proposed amendments. These documents and all information on which the proposal is based are available to the public upon request. The Rulemaking file is available for public

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared an Initial Statement of Reasons and underscored and strikethrough versions of the text of Rules 192, 193, and 371, which illustrate the proposed amendments. These 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. The express terms of the proposed amendments and the Initial Statement of Reasons are also available on the Board's Web site at www.boe.ca.gov.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Rules 192, 193, and 371 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the resulting amendments, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting amendments will be mailed to those interested parties who commented on the proposed amendments orally or in writing or who asked to be informed of such changes. The text of the resulting amendments will also be available to the public from Ms. Davis. The Board will consider written comments on the resulting amendments that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Rules 192, 193, and 371 the Board will prepare a Final Statement of Reasons. The Final Statement of Reasons will be made available on the Board's Website at www.boe.ca.gov. It will also be available for public inspection at 450 N Street, Sacramento, California.

Sincerely

Diane G. Olson, Chief
Board Proceedings Division

INITIAL STATEMENT OF REASONS

Proposed Amendments to California Code of Regulations, Title 18, Sections:

192, *Mandatory Audits*,
193, *Scope of Audit*, and
371, *Significant Assessment Problems*

Factual Basis

Prior to its amendment by Statutes 2008, chapter 297, section 2 (Assem. Bill No. 550 (2007-2008 Reg. Sess.), effective January 1, 2009, Revenue and Taxation Code (RTC) section 469 required county assessors to audit taxpayers that own, claim, possess, or control locally assessable trade fixtures and business tangible personal property with a full value of at least \$400,000, at least once every four years. The Board adopted California Code of Regulation, title 18, section (Rule) 192 to provide guidance to county assessors regarding the mandatory audit requirement and the Board adopted Rule 193 to provide guidance regarding the scope of audits performed pursuant to Rule 192. The Board adopted Rule 371 to provide guidance to county assessors regarding the assessment practices surveys the Board conducts pursuant to Government Code section 15640, and Rule 371, subdivision (b)(4), refers to mandatory audits conducted in accordance with Rule 192.

Statutes 2008, chapter 297 (Assem. Bill No. 550 (2007-2008 Reg. Sess.), section 2, amended RTC section 469, effective January 1, 2009. The amendments deleted the mandatory audit requirement and replaced the mandatory audit requirement with a new requirement that county assessors conduct a "significant number of audits" of taxpayers that own, claim, possess, or control locally assessable trade fixtures and business tangible personal property as specified in RTC section 469.

The proposed amendments to Rule 192 replace the mandatory audit requirement with the new requirement that county assessors conduct a "significant number of audits" of taxpayers that own, claim, possess, or control locally assessable trade fixtures and business tangible personal property as specified in RTC section 469. The proposed amendments also add a citation to RTC section 106, which defines personal property, to the reference note for Rule 192.

The proposed amendments to Rule 193 clarify the scope of the new audit requirement. The proposed amendments to Rule 193 clarify the circumstances under which the disclosure of a discrepancy or irregularity during a taxpayer's audit will require a county

assessor to perform additional audits. The proposed amendments to Rule 193 divide subdivision (a) into two smaller subdivisions, make the references to the Board consistent, replace the word “section” with the word “Rule,” and make the rule gender neutral. In addition, the proposed amendments add citations to RTC sections 502, 503, 531, 531.3, 531.4, 532, and 532.1 to the reference note for Rule 193.

The proposed amendments to Rule 371 delete the word “mandatory” and the reference to Rule 192 from subdivision (b)(4). The proposed amendments to Rule 371 capitalize the first letter in the word “board’s” in subdivision (a)(2), make the first letter of the word “Section” lower case in subdivisions (a), (b), and (c), and change the word “Sections” to “section” and delete the period in “et.” in subdivision (b)(5) and (6). The proposed amendments also add citations to Revenue and Taxation Code section 75.60, subdivision (b)(3), and Government Code sections 15606, subdivisions (a) and (g), 15640, subdivision (f), and 15643, subdivision (b), to the authority note for Rule 371.

Specific Purpose

The specific purposes of the proposed amendments are to make Rules 192, 193, and 371 consistent with the recent amendments to RTC section 469, make other grammatical and formatting changes, update the citations in the rules’ authority and reference notes, and make the rules gender neutral.

Necessity

The proposed amendments to Rules 192, 193, and 371 are necessary to provide guidance to county assessors that is consistent with the recent amendments to RTC section 469, make grammatical and formatting changes, update the citations in the rules’ authority and reference notes, and make the rules gender neutral.

Documents Relied Upon

Staff in the Board’s County-Assessed Properties Division (CAPD) issued Letter to Assessors Number 2009/022 to county assessors and interested parties on May 20, 2009. The letter advised the county assessors and interest parties about the recent amendments to RTC section 469 and solicited their comments regarding draft amendments to Rules 192, 193, and 371, which were attached to the letter.¹ On August 28, 2009, CAPD staff finalized Issue Paper 09-004,² which requested the Board’s authorization to begin the process of amending Rules 192, 193, and 371 to incorporate the draft amendments. The Board relied upon Issue Paper 09-004 in deciding to authorize staff to amend Rules 192, 193, and 371 to incorporate the draft amendments.

¹ Letter to Assessors 2009/022 is available at <http://www.boe.ca.gov/proptaxes/pdf/lta09022.pdf>.

² Issue Paper 09-004 is available at http://www.boe.ca.gov/proptaxes/pdf/IssuePaper-PTRules192_193_371.pdf.

Reasonable Alternatives

The Board did not reject any reasonable alternatives to the proposed amendments to Rules 192, 193, and 371. No alternative amendments were presented to the Board for consideration.

No Significant Adverse Economic Impact on Business

The proposed amendments to Rules 192, 193, and 371 make the rules consistent with recent amendments to RTC section 469, make grammatical and formatting changes, update the citations in the rules' authority and reference notes, and make the rules gender neutral. Therefore, the Board has determined that the proposed amendments will not have a significant adverse economic impact on business.

**Proposed Amendments to California Code of Regulations,
Title 18, Section 192**

192. MANDATORY AUDITS SELECTION.

(a) DEFINITIONS. For purposes of this regulation:

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

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

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

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

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

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

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

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

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

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

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

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

(A) This pool of taxpayers must be selected from a list of taxpayers in the county, ranked in descending

order by the total locally assessed value of both trade fixtures and business tangible personal property.

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

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

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

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

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

(A) These audits must be selected in a fair and equitable manner.

(B) These audits may be based on evidence of underreporting as determined by the assessor.

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

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

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

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

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

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

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

Example 1: Prior to January 1, 2009, a county with a total number of mandatory audits of 800 during the 2002-2003 fiscal year to the 2005-2006 fiscal year was required to conduct 200 audits (800 ÷ 4) per year. This county's significant number of audits that must be conducted annually is 150 (75% x 200). Of the 150

annual significant number of audits, 75 (50% x 150) must be from the pool of the taxpayers with the largest assessments, and 75 (50% x 150) must be selected from among the pool of all other taxpayers in the county. The number of taxpayers with the largest assessments that must be audited on a four year cycle is 300 (150 x 50% x 4).

Example 2: Prior to January 1, 2009, a county with a total number of mandatory audits of 61 during the 2002-2003 fiscal year to the 2005-2006 fiscal year was required to conduct 15 audits ($61 \div 4 = 15.25$, rounded) per year. This county's significant number of audits that must be conducted annually is 11 ($75\% \times 15.25 = 11.4375$, rounded). Of the 11 annual significant number of audits, 5.5 (50% x 11) must be from the pool of the taxpayers with the largest assessments, and 5.5 (50% x 11) must be selected from among the pool of all other taxpayers in the county. The county assessor must determine how to split the odd number audit. The number of taxpayers with the largest assessments that must be audited on a four-year cycle is 22 ($11 \times 50\% \times 4$). Therefore, during a four-year cycle, the county assessor would be required to audit five from the pool of taxpayers with the largest assessments in the county and six from among the pool of all other taxpayers in the county each year for two years; and six from the pool of taxpayers with the largest assessments in the county and five from among the pool of all other taxpayers in the county each year for the remaining two years.

Note: Authority cited: Section 15606, Government Code. Reference: Sections 106, 469 and 470, Revenue and Taxation Code.

**Proposed Amendments to California Code of Regulations,
Title 18, Section 193**

193. SCOPE OF AUDIT.

(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 unless one of the provisions of subdivision (b) apply.

(b) 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~~expired unless ~~he~~the assessor documents in the audit report his/her conclusion both that:

(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:

(A) an escape assessment under the provisions of Revenue and Taxation Code sections 469, 502, 503, 531.3, or 531.4; or

(B) 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. The error that caused the property to be assessed at a higher value than would have been on the roll must be of "material value" as defined in Rule 305.3, under the provisions of sections 502, 503, 531.3 or 531.4 of the Revenue and Taxation Code.

~~(b)~~(c) If property of a taxpayer who meets the requirements of ~~section~~Rule 192 is selected by the California State Board of Equalization (B~~oard)~~ 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.~~

~~(e)~~(d) 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~~expired or to define the circumstances in which property that has escaped assessment can be added to the roll.

(e) The statute of limitations may be extended through the execution of a mutually agreed upon waiver pursuant to Revenue and Taxation Code section 532.1.

Note: Authority cited: Section 15606, Government Code. Reference: Sections 469, 502, 503, 531, 531.3, 531.4, 532 and 532.1, Revenue and Taxation Code.

**Proposed Amendments to California Code of Regulations,
Title 18, Section 371**

371. SIGNIFICANT ASSESSMENT PROBLEMS.

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

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

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

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

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

(2) Discovering and assessing newly constructed property.

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

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

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

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

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

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

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

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

Note: Authority cited: Section 75.60, subdivision (b)(3), Revenue and Taxation Code; and Sections 15606, subdivisions (a), (c), and (g), 15640, subdivision (f), and 15643, subdivision (b), Government Code. Reference: Section 75.60, Revenue and Taxation Code; and Section 15643, Government Code.

Regulation History

Type of Regulation: Property Tax

Regulation: 192, 193, and 371

Title: 192, Mandatory Audits
193, Scope of Audits
371, Significant Assessment Problems

Preparation: Sherie Kinkle

Legal Contact: Bradley Heller

Clarify that the acceptable resale designation on a purchase order taken by the seller to support a valid qualified resale certificate is not limited to the phrase "for resale" and may include comparable terminology such as "not taxable." The combination of a purchase order with such designation and a valid qualified resale certificate shall be regarded as adequate support for a seller's sale for resale transaction.

History of Proposed Regulation:

November 13, 2009	OAL publication date; 45-day public comment period begins; IP mailing
October 30, 2009	Notice to OAL
October 6, 2009	PTC, Board Authorized Publication (Vote 5-0)
October 6, 2009	Property Taxes Committee
May 20, 2009	Letter to Assessors 2009/022

Sponsor: NA

Support: NA

Oppose: NA

**Rule 12 Justification for
Proposed Amendments to California Code of Regulations,
Title 18, Section**

192, Mandatory Audits

The State Board of Equalization (Board) has proposed and adopted amendments to California Code of Regulations, title 18, section (Rule) 192, *Mandatory Audits*. The purpose of the amendments is to make Rule 192 consistent with the recent amendments to Revenue and Taxation Code (RTC) section 469, by Statutes 2008, chapter 297 (Assem. Bill No. 550 (2007-2008 Reg. Sess.), section 2, which deleted the mandatory audit requirement and replaced the mandatory audit requirement with a new requirement that county assessors conduct a "significant number of audits" of taxpayers that own, claim, possess, or control locally assessable trade fixtures and business tangible personal property.

Therefore, the amendments to Rule 192 replaced the mandatory audit requirement with the new requirement that county assessors conduct a "significant number of audits" of taxpayers that own, claim, possess, or control locally assessable trade fixtures and business tangible personal property, as specified in RTC section 469. As a result, the amendments to Rule 192, subdivisions (a), (b), and (c), incorporate and duplicate a number of statutory provisions from RTC section 469. For example, the amendments to Rule 192, subdivision (a)(5), incorporate the statutory definition for the phrase "significant number of audits" provided by RTC section 469, subdivision (a)(1); the amendments to Rule 192, subdivision (b), incorporate the phrases "The assessor must annually conduct a significant number of audits of the books and records of" and "to encourage the accurate and proper reporting of property" from RTC section 469, subdivision (a); and the amendments to Rule 192, subdivision (c), incorporate the formula provided by RTC section 469, subdivision (b), for determining the pools of taxpayers that may be selected for audit.

The Board has determined that the limited duplication of provisions from RTC section 469 in Rule 192 is necessary to make the regulation sufficiently "clear" so that the meaning of the regulation will be easily understood by those persons directly affected by it, as required by Government Code sections 11349, subdivision (c), and 11349.1, subdivision (a)(3). This determination is based upon the fact that Rule 192 is intended to help explain how a county assessor can comply with the requirement from RTC section 469 that "The assessor shall annually conduct a significant number of audits" and neither the statutory phrase "significant number of audits" nor the statutory definition for the phrase "significant number of audits" are susceptible to being paraphrased without changing their mean. This determination is based upon the fact that the regulation explains how to apply the statutory formula for determining the pools of taxpayers that may potentially be audited during a particular year and the statutory formula is not susceptible to being paraphrased without changing its meaning. This determination is also based upon the Board's opinion that, as a matter of policy, it is beneficial for county assessors and taxpayers to be reminded that the audit requirements are intended to

“encourage the accurate and proper reporting of property,” as specified by the Legislature in RTC section 469.

Prior to the enactment of section 6225, the Board exercised its discretion, under section 6455, to require consumers to report their use taxes to the Board on an annual, calendar-year basis, and file their returns by January 31 of the year following the close of each annual reporting period,¹ unless the consumers elected, pursuant to section 6452.1, to report their use taxes on timely income tax returns filed with the Franchise Tax Board (FTB) by April 15. This means that prior to the enactment of section 6225 a consumer would have been required to report use tax for calendar year 2009 on a use tax return filed with the Board by January 31, 2010, or on an income tax return filed with the FTB by April 15, 2010.

The enactment of section 6225, created the statutorily designated sub-class of consumers referred to as “qualified purchasers,” effective January 1, 2010. It also required “qualified purchasers” to register with the Board, which they were not previously required to do, and required all “qualified purchasers” to file their annual use tax returns with the Board by April 15, instead of January 31. Therefore, as of January 1, 2010, section 6225 required “qualified purchasers” to register with the Board on a prospective basis. Section 6225 also extended the due date for filing qualified purchasers’ use tax returns for the calendar year 2009 from January 31, 2010, to April 15, 2010, and similarly extended the due dates of their subsequent years’ returns, on a prospective basis.

The Board believes that section 6225 cannot be interpreted to require “qualified purchasers” to register before it became effective nor effect the due dates of use tax returns for calendar years prior to 2009 because those returns would have already been due well before the effective date of section 6225. For example, use tax returns for calendar years 2007 and 2008, were due on January 31, 2008, and January 31, 2009, respectively. Therefore, the Board does not believe that the proposed Rule 100 changes adding Regulation 1699, subdivision (j), to incorporate the provisions of section 6225 have a retroactive effect, and the Board does not believe that subdivision (j) has any legal effect beyond that of section 6225.

Furthermore, section 7051 provides that:

The board shall enforce the provisions of this part and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this part. The board may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

Therefore, the Board is authorized to adopt retroactive sales and use tax regulations and, for purposes of construction, the Board’s sales and use tax regulations are presumed to be retroactive, unless otherwise specified by the Board. As such, the Board believes that

¹ See Board Publication 79b, *California Use Tax – For Purchases Made from Out-of-State Businesses*, and the use tax return, form BOE-401-DS REV. 2 (3-09), included therein.

any retroactive effect the proposed Rule 100 changes may have, if any, is authorized by section 7051.

IV. Reference Note

The Board has determined that the proposed Rule 100 changes to the reference note for Regulation 1699 may cite statutes that are not being interpreted, implemented, or made specific by Regulation 1699. Therefore, the Board has reviewed the citations and revised the proposed text of the reference note to cite:

- Section 6066 requiring sellers to apply for seller's permits;
- Section 6067 regarding the issuance and display of seller's permits;
- Section 6070 providing for the revocation of seller's permits;
- Section 6071.1 imposing liabilities on inactive permit holders who fail to surrender, and allow others to continue to use, their seller's permits;
- Section 6072 requiring that inactive permit holders surrender their permits forthwith;
- Section 6073 authorizing the Board to require that the operators of swap meets, flea markets, and special events at which tangible personal property are sold (concessionaires) verify that each person selling tangible personal property at their events holds a valid seller's permit;
- Section 6075 exempting specified persons selling feed from the seller's permit requirements; and
- Section 6225 imposing the new registration requirements on "qualified purchasers."

(See attached Final Text of Proposed Changes.) The Board has determined that each of these statutes is being implemented, interpreted, or made specific by the current language of Regulation 1699 or the proposed Rule 100 changes to Regulation 1699.