STATE OF CALIFORNIA

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November 9, 2001

NOTICE TO INTERESTED PARTIES:

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

NO. 2001/079

On October 24, 2001, the State Board of Equalization held a public hearing on proposed amendments to Property Tax Rule 305.3 Application for Equalization under Revenue and Taxation Code section 469. In response to public comment, the Board recommends that changes be made to the published version of the regulation.

The changes were made to add a subsection defining the phrase "property that has been previously equalized for the year in question" and to conform certain provisions to legislative changes effective January 1, 2002 under which the equalization provisions of section 469 apply to all audits rather than only audits of business personal property and fixtures meeting the value threshold amount of section 469. These changes are indicated with double underscore and strikeout and brackets ([ ]). A copy of the revised version of the regulation is attached.

In accordance with Government Code section 11346.8(c), the revised version of Rule 305.5 is being placed in the rulemaking file and mailed today to interested parties that commented orally, in writing, or that asked to be informed of such revisions. If you wish to review the rulemaking file, it is available for your inspection at the State Board of Equalization, 450 N Street, Sacramento, CA.

Questions regarding the substance of the proposed regulation should be directed to Mr. Louis Ambrose, Senior Tax Counsel, Property Tax Section, telephone (916) 445-5580, fax (916) 323-3387, email Lou.Ambrose@boe.ca.gov or by mail at State Board of Equalization, Attn: Louis Ambrose MIC:82, P.O. Box 942879, 450 N Street, Sacramento, CA 94729-0082.

The Board will consider comments on the changed Rule if received by November 28, 2001. Written comments for the Board's consideration, notice of intent to present testimony or witnesses, and inquiries concerning the proposed administrative action should be directed to Diane Olson, Regulations Coordinator, telephone (916) 322-9569, fax (916) 324-3984, email Diane.Olson@boe.ca.gov or to Joann Richmond, Property Taxes Analyst, telephone (916) 322-1931, email Joann.Richmond@boe.ca.gov or by mail at State Board of Equalization, Attn: Diane Olson or Joann Richmond, MIC: 80, P.O. Box 942879, Sacramento, CA 94279-0080.

Sincerely,

Deborah Pellegrini, Chief
Board Proceedings Division

DP:dgo
Attachment

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

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

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

(1) "Audit" means any audit of the books and records of a taxpayer engaged in a profession, trade, or business who owns, claims, possesses, or controls locally assessable business tangible personal property and trade fixtures within the county [~~that have a full value in excess of the amount set forth in section 469 of the Revenue and Taxation Code. For a multi-year audit, only those years that are equal to or in excess of the full value threshold of section 469 are eligible for equalization pursuant to subsection (a) of this rule~~].

(2) "Property subject to an escape assessment" means any individual item of the assessee's property that was underassessed or not assessed at all when the assessor made the original assessment of the assessee's property, and which has not been previously equalized by an appeals board, regardless of whether the assessor actually makes or enrolls an escape assessment. Property is subject to an escape assessment even if the audit discloses an overassessment of another portion of an item of the property, and the amount of the underassessment could be offset completely by the amount of overassessment. If the audit discloses that any property was subject to an escape assessment, the assessor shall include that fact as a finding presented to the taxpayer as required by Rule 191. If no such finding is made by the assessor, the taxpayer may file an application and present evidence to the board of the existence and disclosure of property subject to escape assessment. If the board determines that property subject to escape assessment was disclosed as a result of an audit, the board shall permit the taxpayer's section 469 appeal.

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

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

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

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

Site also includes other property not within the same appraisal unit as the property that is subject to escape assessment, when the other property and the property that escaped assessment function as part of the same economic unit of the profession, trade, or business. A "location of the profession, trade, or business" may include multiple parcels of real property, noncontiguous parcels, parcels with separate addresses, and parcels in separate revenue districts within the county.

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

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

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

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

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

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

Example 1: Taxpayer DRK owns and is assessed for land, a building, and business property. [~~The full value of the business tangible personal property and trade fixtures exceeds the dollar threshold in Revenue and Taxation Code section 469.~~] DRK leases the entire business to RCJ. The county assessor conducts an audit of DRK pursuant to section 469, and the result of the audit discloses property subject to an escape assessment. DRK, as the assessee, can file an application for equalization for all property, real and personal, where the property subject to the escape assessment is located. In addition, RCJ may file an application for equalization of DRK's property if RCJ qualifies as a person affected pursuant to rule 302 of this subchapter.

Example 2: Taxpayer DRK owns and is assessed for land and a building. DRK leases the land and building to RCJ. RCJ operates a business in DRK's building and is assessed for business tangible personal property and trade fixtures [~~with a full value that exceeds the dollar threshold in Revenue and Taxation Code section 469~~]. The county assessor conducts an audit of RCJ [~~pursuant to section 469~~], and the result of the audit discloses property subject to an escape assessment. RCJ, as the assessee, can file an application for equalization on his personal property and trade fixtures only. RCJ cannot file an application on DRK's land and building as this is not property of the assessee. In addition, since DRK is not a person affected pursuant to rule 302 of the subchapter, he cannot file an application on either his land and building or RCJ's personal property and fixtures.

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

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

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

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

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

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