STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
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Executive Director

October 22, 2004

LTA NO. 2004/062

TO COUNTY ASSESSORS,
COUNTY COUNSELS, AND
OTHER INTERESTED PARTIES:

NOTICE OF PROPOSED REGULATORY ACTION
BY THE
STATE BOARD OF EQUALIZATION
AMEND PROPERTY TAX RULE 1045 – ADMINISTRATION OF THE ANNUAL RACEHORSE TAX

PUBLIC HEARING: WEDNESDAY, DECEMBER 14, 2004 AT 9:30 A.M.

NOTICE IS HEREBY GIVEN:

The State Board of Equalization, pursuant to the authority vested in the Board by section 15606 (c) of the Government Code, proposes to amend Rule 1045 Administration of the Annual Racehorse Tax. A public hearing on the proposed amendments of the 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 December 14, 2004. Any person interested may present statements or arguments orally at that time and place. Written statements or arguments will be considered by the Board if received by December 14, 2004.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Rule 1045 interprets and implements the requirements and procedures for administration of the annual racehorse tax. The rule currently provides for a mandatory audit of each racehorse owner with a gross tax liability in excess of $2,000 for each of the four consecutive calendar years. The current statutory minimum value of business personal property and fixtures subject to mandatory audit is $400,000 or a tax liability of $4,000 at the property tax rate of 1 percent. The rule is amended to increase the gross tax liability amount to $4000. The rule subparts are also relettered and renumbered, masculine pronouns are changed to gender neutral terms, outdated or incorrect terms and citations are replaced by proper terms and citations and rule provisions relating to functions of the auditor and tax collector are deleted.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The State Board of Equalization has determined that proposed amendments to Rule 1045 do not impose a mandate on local agencies or school districts. Further, the Board has determined that the proposed rule amendments will not result in direct or indirect costs or savings to any 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.

EFFECT ON BUSINESS

Pursuant to Government Code section 11346.5(a)(8), the Board of Equalization makes an initial determination that the adoption of the proposed amendments to Rule 1045 will not have a significant statewide adverse economic impact directly affecting business because the proposed rule amendments merely clarify and interpret existing code provisions.

The proposed rule amendments 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.

The rule amendments as proposed will not be detrimental to California businesses in competing with businesses in other states.

The proposed rule amendments will not affect small business because the amendments interpret and make specific existing statutory law and do not impose any additional compliance or reporting requirements on taxpayers.

COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

There will be no adverse economic impact on private businesses or persons because the proposed rule amendments interpret and make specific existing statutory law and do not impose any additional compliance or reporting requirements on privates businesses or persons.

SIGNIFICANT EFFECT ON HOUSING COSTS

No significant effect.

FEDERAL REGULATIONS

Rule 1045 has no comparable Federal regulations.

AUTHORITY

Government Code section 15606, subdivision (c).

REFERENCE

Section 5781, Revenue and Taxation Code.

CONTACT

Questions regarding the substance of the proposed rule amendments should be directed to: Mr. Louis Ambrose, Supervising Tax Counsel, at the State Board of Equalization at P.O. Box 942879, 450 N Street, MIC:82, Sacramento, CA 94279-0082. Telephone: (916) 445-5580; FAX (916) 323-3387, e-mail Lou.Ambrose@boe.ca.gov .

Written comments for the Board's consideration, requests to present testimony, bring witnesses to the public hearing and inquiries concerning the proposed administrative action should be directed to Ms. Diane Olson, Regulations Coordinator, telephone (916) 322-9569, fax (916) 324-3984, e-mail Diane.Olson@boe.ca.gov or Ms. Joann Richmond, Property Taxes Analyst, telephone (916) 322-1931, e-mail Joann.Richmond@boe.ca.gov or by mail to the State Board of Equalization, Attn: Diane Olson or Joan Richmond, MIC: 80, P.O. Box 942879, 450 N Street, MIC:80, 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 be as effective 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 an underscored version (express terms) of the proposed rule amendments. Those 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. Requests for copies should be addressed to Ms. Diane Olson, Regulations Coordinator, (916) 322-9569, at P. O. Box 942879, 450 N Street, MIC:80, Sacramento, CA 94279-0080. The express terms of the proposed regulation (rule) amendments are available on the Internet at the Board's website http://www.boe.ca.gov.

AVAILABILITY OF FINAL STATEMENT OF REASONS

The final statement of reasons will be made available on the Internet at the Board's web site following its public hearing of the proposed rule amendments. It is also available for public inspection at 450 N Street, Sacramento, California.

ADDITIONAL COMMENTS

Following the hearing, the State Board of Equalization may, in accordance with law, adopt the proposed rule amendments if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the rule amendments. The text of the modified rule amendments will be mailed to those interested parties who commented on the proposed regulatory action orally or in

writing or who asked to be informed of such changes. The modified rule amendments will be available to the public from Ms. Olson. The State Board of Equalization will consider written comments on the modified rule amendments for fifteen days after the date on which the modified rule amendments are made available to the public.

Sincerely,

/s/ Deborah Pellegrini

Deborah Pellegrini, Chief
Board Proceedings Division

Enclosures

DP:dgo

RULE 1045. ADMINISTRATION OF THE ANNUAL RACEHORSE TAX.

Authority Cited: Section 15606, Government Code; and Section 5781, Revenue and Taxation Code.
References: ~~Article XIII, Section 1 and Article XIII A, Section I, California Constitution.~~
Sections ~~93, 135,~~ 469, 5701, 5721, 5765, 5768, 5781, and 5790, Revenue and Taxation Code.

(a) The annual tax imposed by ~~S~~section 5721 of the Revenue and Taxation Code on the privilege of breeding, training, caring for, or racing racehorses in this state shall be administered as provided herein.

~~(a) Assessor's Responsibilities.~~

~~(1)~~(b) Submission of Forms for Board Approval. (1) Annually, on or before October 15, the assessor shall notify the board, on a form provided by the board~~,~~:

~~(1)~~(i) of ~~his~~ the assessor's intent to reproduce (a) the Annual Racehorse Tax Return form (BOE-571-J) and (b) the Annual Report of Boarded Racehorses form (BOE-571-J1) by a photocopy process from the current prototype forms and instructions distributed by the board for use for the succeeding reporting period~~,~~; or

~~(2)~~(ii) of the forms and/or instructions which ~~he~~ the assessor will produce by means other than a photocopy of the prototype for use for that period~~,~~; or

~~(3)~~(iii) that ~~he~~ the assessor will have no need for the forms.

(2) When filing a notification that ~~he~~ the assessor will use a form and/or instructions which ~~he~~ the assessor will produce by means other than a photocopy of the prototype, ~~he~~ the assessor shall submit to the board in duplicate for approval a draft copy of each ~~such~~ form and/or instructions. The copies shall be submitted together with the board-prescribed property statement forms required to be submitted by ~~section~~ Regulation 171 of this title. The provisions of ~~section~~ Regulation 171 relative to arrangement and variation of content of such property statement forms shall also be applicable to these forms.

~~(2)~~(c) Distribution of Forms and Retention of Reports. (1) Copies of the forms prescribed by the board for reporting the tax due and for reporting the names of persons whose racehorses are boarded with others shall be furnished by the assessor no later than December 15 prior to the calendar year in which the tax is due by mailing them to persons believed to be required to use them and by making them available at the assessor's office to any person requesting them.

(2) The assessor shall maintain a record of those persons believed to be liable for the annual racehorse tax to whom ~~he~~ the assessor has furnished copies of the forms. A copy of the record shall be delivered to the tax collector within 10 days of the date when copies of the forms are furnished so that the tax collector can be cognizant of the taxpayers who can reasonably be expected to file returns.

(3) The assessor shall retain ~~his~~ a copy of all tax returns filed by taxpayers for a period of five years from the date the returns became due. They shall be arranged or identified so as to indicate whether or not an audit is required under subsection ~~(3)~~ (d) of this ~~rule~~regulation.

~~(3)~~(d) Audits. (1) The assessor shall audit the tax records relative to his or her county of any racehorse owner who, according to the assessor's records, had a gross tax liability (before addition of any penalties) that exceeds ~~$2,000~~ $4,000 for each of four consecutive calendar years. This audit shall be performed within five years of the date on which the annual racehorse tax first became due and shall include, but need not be limited to, a comparison of the annual racehorse tax return with records maintained by the taxpayer. The assessor, when performing an audit pursuant to this ~~section~~ regulation of a taxpayer's records of racehorses taxable at a home ranch or other business location, ~~shall~~ may also audit records of the same taxpayer pertaining to ~~(1)~~ personal property ~~taxes~~ and fixtures on property having tax situs at the same location~~ and (2) livestock taxable at the same location~~.

(2) When an assessor schedules an audit of the records of any racehorse owner, whether as part of an audit required by section ~~192 of this title~~ 469 of the Revenue and Taxation Code or independently thereof, ~~he~~ the assessor shall advise the assessor of any other county in which racehorses of ~~this~~ the taxpayer were taxable, as shown in the ~~a~~Annual ~~r~~Racehorse ~~t~~Tax ~~returns~~ Return or in any other source, of the date on which the audit will be performed. Upon completion of the audit, ~~he~~ the assessor shall make that portion of the audit findings relevant to the annual racehorse tax available to ~~any such~~ the assessor of any other county in which racehorses of the taxpayer were taxable.

(3) On discovery that horses escaped taxation, the assessor shall determine whether they were subject to the annual racehorse tax, were subject to the property tax, or were exempt. ~~and, if they were~~ If determined taxable, the

assessor shall either provide the tax collector with copies of the audit workpapers so that a determination of additional racehorse tax due can be calculated, or enroll an ad valorem assessment of escaped personal property.

(e) Nothing herein shall be construed to prohibit the assessor from auditing the records of taxpayers for which audits are not required by this ~~rule~~ regulation.

~~(b) Tax Collector. The tax collector shall accept returns and payments, verify the mathematical accuracy of the tax returns, and issue receipts upon request and for all cash payments. He shall forward to the assessor and to the auditor their respective copies of each return within 15 days of receipt.~~

~~The tax collector shall issue bills when his review of the tax return indicates additional tax due or when he has determined that additional tax is due under (a) above. He shall also take such action as is appropriate to insure collection of taxes due his county. He shall inform the auditor and the tax collector of any other county of additional tax found to be due that county.~~

~~(c) Auditor. The auditor will receive his copy of all tax returns filed in his county from the tax collector. He shall within 15 days of receipt transmit, in duplicate, to the auditors of other counties copies of returns which show tax liabilities in their respective counties. He will receive tax returns from the auditors of other counties and, on receipt thereof, shall forward copies of each return to both the assessor and the tax collector.~~

~~The auditor shall use the information on the forms to allocate taxes as prescribed in Section 5790 of the Revenue and Taxation Code. Amounts due to other counties may be forwarded periodically rather than as received, but must under any method chosen be accompanied by information which will enable the auditor of the receiving county to make a proper allocation in his county.~~

~~(d) Claims for Refund. Overpayments of this tax are subject to refund pursuant to the provisions of Chapter 1 of Part 3 of Division 3.6 of Title 1 (commencing with § 900) and Chapter 4 of Division 3 of Title 3 (commencing with § 29700) of the Government Code.~~

History: Adopted October 26, 1972, effective December 1, 1972.
Amended October 18, 1973, effective November 25, 1973.
Amended December 7, 1982, effective March 4, 1983.

INITIAL STATEMENT OF REASONS/NON-CONTROLLING SUMMARY

Property Tax Rule 1045, Administration of the Annual Racehorse Tax

Specific Purpose

The specific purpose of the proposed amendments is to conform the dollar amount of the minimum tax liability of a racehorse owner required for a mandatory audit to the minimum dollar amount of value required for a mandatory audit of business property. The amendments also make organizational and technical language changes for purposes of greater clarity and precision. The provisions governing functions of the auditor and tax collector are deleted as outside the scope of the authority of the Board of Equalization to prescribe rules and regulations for assessors and assessment appeals boards.

Factual Basis

Rule 1045 interprets and implements the requirements and procedures for administration of the annual racehorse tax, including tax audits of racehorse owners. Revenue and Taxation Code section 5765 provides, in relevant part, that if the Board determines that an audit of a racehorse owner would have been required under Revenue and Taxation Code section 469 if the racehorses were subject to property taxation, then the assessor shall perform such an audit. Section 469 requires that an assessor perform a mandatory audit of each business, trade or profession taxpayers with personal property and fixtures with a value in excess of $400,000. At a property tax rate of 1 percent, the minimum tax liability for a business taxpayer subject to mandatory audit is $4,000. The rule currently requires an assessor to audit the tax records of each racehorse owner with a gross tax liability in excess of $2,000 for each of the four consecutive calendar years. In order to conform the minimum gross tax liability for mandatory audits to the current statutory minimum set forth in section 469, the $2,000 gross tax liability amount in subsection (d) is changed to $4000.

The subsections and subparagraphs of the rule are relettered and renumbered for organizational clarity, the masculine pronouns “he” and “his” that refer to the assessor are changed to “the assessor” and “the assessor’s” for gender neutrality, and proper terms and citations are substituted for outdated or incorrect terms and citations.

Pursuant to Government Code section 15606, subdivision (c) the Board of Equalization has the authority to “[p]rescribe rules and regulations to govern local boards of equalization when equalizing, and assessors when assessing, . . .” Current subsections (b),(c), and (d) govern functions performed by the tax collector and auditor. The deletion of these subsections is necessary because those functions are outside the scope of the Board’s rulemaking authority.

REGULATION HISTORY

TYPE OF REGULATION: Property Tax
REGULATION: 1045
TITLE: Administration of the Annual Racehorse Tax
PREPARATION: Kristine Cazadd/Lou Ambrose
LEGAL CONTACT: Kristine Cazadd/Lou Ambrose

Rule 1045 interprets and implements the requirements and procedures for administration of the annual racehorse tax. The rule currently provides for a mandatory audit of each racehorse owner with a gross tax liability in excess of $2,000 for each of the four consecutive calendar years. The current statutory minimum value of business personal property and fixtures subject to mandatory audit is $400,000 or a tax liability of $4,000 at the property tax rate of 1 percent. The rule is amended to increase the gross tax liability amount to $4000. The rule subparts are also relettered and renumbered, masculine pronouns are changed to gender neutral terms, outdated or incorrect terms and citations are replaced by proper terms and citations and rule provisions relating to functions of the auditor and tax collector are deleted.

REGULATION HISTORY

December 14, 2004:	Public hearing.
October 23, 2004:	45-Day public comment begins.
October 22, 2004:	Notice of public hearing published in California Regulatory Notice Register, Register 2004, No. 43-Z, e-mailed and mailed to interested parties.
August 24, 2004:	Property Tax Committee, Board authorized publication of rule. (Vote 5-0)
March 23, 2004:	Staff released proposed text of rule to interested parties.

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Sponsor:	Board staff
Support:	None
Oppose:	None