Senate Bill 1329 (Hertzberg)
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Program: Property Tax
Sponsor: Author
RTC Sections 401.17, 441, 1153.5, 5170
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Summary: Extends for an unspecified number of years existing property tax law provisions related to commercial air carriers[1] that detail certificated aircraft[2] assessment methodology and allow centralized administrative procedures at the local level using a "lead county" system. In addition, allows trial *de novo* at the local level limited in scope to commercial air carrier related assessments.

Purpose: To extend aircraft valuation methodology provisions and streamlined administrative procedures for counties and airlines that will otherwise sunset this year. During the period the lead county system is in effect, allows trial *de novo* for these assessments.

Fiscal Impact Summary:

Sunset of Commercial Air Carrier Provisions: Unknown, but maintains the status quo.

Trial *de novo* for Commercial Air Carriers: Indeterminable.

Certificated Aircraft Assessment Methodology and Lead County System
Revenue and Taxation Code Sections 401.17, 441, and 1153.5

Existing Law: The law permits assessors and commercial air carriers to use a streamlined administrative procedure. In addition, the law details the assessment methodology to value certificated aircraft. These provisions, which will sunset this year, are as follows:

Centralized System - One Return/One Audit.[3] The law allows commercial air carriers operating in multiple California airports to file a single consolidated property statement (tax return) with a designated "lead" county. The law outlines the lead county selection process for each air carrier. The selected county notifies the air carrier it will serve as the lead county,[4] and each air carrier files its annual tax return with that lead county. The tax return details necessary information about the air carrier's property holdings (both certificated aircraft and other business personal property and fixtures)[5] that are subject to property tax in California. The lead county transmits return information related to non-aircraft personal property and fixtures to other relevant counties where the air carrier operates. The law requires an audit team directed by the lead county to audit the air carriers. After these laws sunset on December 31, 2016, air carriers will file returns with each individual county. In addition, each county will be required to audit the air carrier if the air carrier's assessment qualifies as a mandatory audit in that county.

Lead County Calculates Fleet Value.[6] The lead county calculates the total unallocated fleet value of the air carrier's certificated aircraft for each make, model, and series and transmits the calculated fleet value to the other counties, as described below.[7] To assess the aircraft, each county determines its

[1] Commercial air carriers include both passenger airlines and freight delivery services.
[2] Certificated aircraft includes certificated aircraft per Revenue and Taxation Code (RTC) Section 1150 and scheduled air taxi operators per RTC Section 1154 (a) and (b).
[3] RTC Section 441(m).
[4] RTC Section 1153.5.
[5] Business personal property subject to property tax includes items such as unlicensed surface vehicles, ground and cargo handling equipment, ramp equipment, machinery and other equipment, spare parts, rotables, computers, furniture, fuel and other supplies.
[6] RTC Section 1153.5.
[7] RTC Section 401.17.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.

allocated portion of the calculated fleet value based on the flight data for its particular county. The allocation process limits each county's assessment to reflect the aircraft's physical presence in that county. The law repeals these provisions on December 31, 2016.

Aircraft Valuation Methodology.[8] The law specifies a mandatory aircraft valuation methodology that expires this year. Next year, the law will be silent on assessment methodology for certificated aircraft. The law provides that preallocated fair market value will be the lowest of:

- Trended acquisition cost less depreciation,
- Wholesale prices listed in the *Airliner Price Guide*, a commercially published value guide, less 10%, or,[9]
- Original price paid.

The resulting value is rebuttably presumed to be correct. After the 2015-16 fiscal year, these provisions are no longer effective. Assessors will assess aircraft at the "fair market value," using any valid approach for determining value, as generally provided under Property Tax Law.[10]

Proposed Law: This bill extends the commercial air carrier administrative provisions and aircraft valuation methodology for use for an unspecified number of future fiscal years.

In General: **Business Personal Property.** All property, real and personal, is subject to property tax, unless a specific constitutional or statutory exemption applies. Generally, taxability is determined on the lien date, which is January 1 of each year. The Constitution allows the Legislature to exempt or provide for differential taxation of any personal property with a 2/3 vote.[11]

Personal property used in a trade or business is taxable. Proposition 13's valuation limitations do not apply to business personal property. Consequently, the law requires the assessor to determine its current fair market value every year as of January 1. Mass appraisal techniques generally are necessary given the enormity of this task. To aid in the task, the law requires property owners to annually report their personal property holdings with an aggregate acquisition cost of $100,000 or more on a business property statement.[12]

The assessor determines the fair market value of most business personal property using the property's acquisition cost. The assessor multiplies acquisition cost by a price index (an inflation trending factor based on acquisition year) to estimate reproduction cost new. Next, the assessor multiplies reproduction cost new by a percent good factor (from BOE-issued percent good tables) to estimate depreciated reproduction cost (reproduction cost new less depreciation). The assessor uses the reproduction cost new less depreciation value as the property's taxable value for the fiscal year. The personal property tax rate is the same as the real property tax rate, which is 1% plus voter approved indebtedness in the locality. The BOE's Assessors' Handbook Section 504 *Assessment of Personal Property* provides more detailed guidance.

Certificated Aircraft. Certificated aircraft used by air carriers is subject to taxation when in revenue service in California. Generally, certificated aircraft are commercial aircraft operated by air carriers for passenger or freight service. California law[13] defines "certificated aircraft" as

> [A]ircraft operated by an air carrier or foreign air carrier engaged in air transportation, as defined in Section 40102(a)(2), (5), (6), and (21) of Title 49 of the United States Code, while there is in force a certificate or permit issued by the Federal Aviation Administration, or its

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[8] RTC Section 401.17.
[9] Generally, the "Used Price of Average Aircraft Wholesale" listed guide value less 10% for a fleet discount.
[10] RTC Section 110 defines "fair market value" as the amount of cash … that property would bring if exposed for sale in the open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other…"
[11] California Constitution, Article XIII, Section 2.
[12] RTC Section 441.
[13] RTC Section 1150

successor, authorizing such air carrier to engage in such transportation.

Certificated aircraft are valued under a "fleet" concept. This means that the assessed value basis is not the value of any single aircraft owned by an air carrier, but rather the value of *all* aircraft of each type that is flown into the state. Aircraft regularly fly in and out of California and the various California counties with major airports; typically no single or particular aircraft remains located in the state on a permanent basis. Under the "fleet" concept, aircraft types that have gained situs in California by their entry into revenue service in this state are valued as a fleet, while only an allocated portion of the entire fleet's value is ultimately taxed to reflect actual presence in California's counties.[14] Under the federal Due Process and Commerce Clauses, personal property taxes on these aircraft must be fairly allocated.

The Fleet Concept - Example. An individual air carrier, Blue Sky Airlines, operates the following aircraft types in its overall fleet: Boeing 737-300s and 737-500s; Boeing 747-400s; and Boeing 767-200s and 767-300s. Each of these aircraft types (Boeing 737, 747, 767) is considered to be a fleet type. Thus, Blue Sky Airlines may have a fleet of 100 Boeing 737-500s, but only 30 of those aircraft make any contact in Sacramento County during the year. For purposes of property taxation in Sacramento County, the full cash value of all 100 of Blue Sky Airline's Boeing 737-500 aircraft is determined and then the computed allocation ratio is applied to that value.

Valuation and Allocation. For fiscal years 2005-06 to 2015-16,[15] the law details the assessor's assessment methodology for determining the market value of commercial air carrier-owned certificated aircraft.[16] The law provides an allocation formula to determine the frequency and the amount of time that an air carrier's aircraft makes contact and maintains situs within a county.[17] A BOE regulation provides further explanation of the allocation procedure.[18] The allocation ratio is made up of two components: a ground and flight time factor, which accounts for 75% of the ratio, and an arrivals-and-departures factor, which accounts for 25% of the ratio. The sum of these two factors yields the allocation ratio, which is applied to the full cash value of a fleet of a particular aircraft type operated by an air carrier and, thus, the assessed value calculation for that aircraft type. The sum of the assessed allocated values for each make and model used by an air carrier results in the total assessed value of the aircraft for that air carrier for a particular county.

Background: Settlement Agreement. Prior to January 1, 1999, California law did not specify an assessment methodology for valuing certificated aircraft, or for valuing the carrier's taxable possessory interest in the publicly owned airport in which the aircraft operated. In 1997-98, a group of counties and air carrier industry representatives met to resolve property tax issues associated with air carrier-owned and -used property. The end result was a written settlement agreement to dispose of outstanding litigation and appeals over the valuation of airport possessory interest assessments and certificated aircraft. The Legislature codified the settlement agreement in a three-piece package:

Aircraft Valuation Methodology and Monetary Settlement. AB 1807 (Stats. 1998, Ch. 86; Takasugi) outlined the valuation procedures[19] for certificated aircraft during a six-year period and provided $50 million in tax credits against future tax liabilities,[20] as well as extensive uncodified legislative findings and declarations.

Airport Possessory Interests. AB 2318 (Stats. 1998, Ch. 85; Knox) specified the assessment methodology for valuing the air carrier's taxable possessory interest in publicly-owned airports.[21]

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[14] Article 6 (RTC Sections 1150 to 1156) enacted in 1968 after the BOE requested the Legislature determine an allocation method that would be uniform. Assembly Revenue and Taxation Committee, Volume 4, Number 22, *A Study of Aircraft Assessment in California* (January, 1968).

[15] For fiscal years 1997-98 to 2003-04, assessors used another detailed methodology outlined in RTC Section 401.15.

[16] RTC Section 401.17.

[17] RTC Section 1152.

[18] Property Tax Rule 202, subdivision (c).

[19] RTC Section 401.15.

[20] RTC Section 5096.3. The settlement agreement also contained the tax credit provisions.

[21] RTC Section 107.9.

Tax Credits. SB 30 (Stats. 1998, Ch. 87; Kopp) added general purpose provisions to allow counties and taxpayers to enter into written settlement agreements granting taxpayers tax credits.[22]

Centralized System and Valuation Refinements. Beginning in 2006, AB 964 (Stats. 2005, Ch. 699; J. Horton) established the centralized administrative procedure for air carriers and counties using the lead county system. AB 964 also added a new valuation methodology and specified that the lead county would calculate total unallocated fleet value. The new methodology refined and built upon the first valuation methodology as follows:

- **Aircraft Types.** It distinguished between passenger aircraft (main-line jets or regional jets) and freighter aircraft (production or converted).
- **Variable Components.** It added detail for the variable components. To calculate a reproduction cost new less depreciation value indicator (i.e., the historical cost basis) each variable component was addressed; specifically: (1) acquisition cost, (2) price index, (3) percent good factor, and (4) economic obsolescence.
- **Airliner Price Guide.** It changed the prices used in the *Airliner Price Guide*, (APG) a "blue book" value guide for aircraft from the average of retail and wholesale prices to the wholesale price and additionally provided a 10% discount from the wholesale price to recognize that air carriers generally receive a fleet discount not reflected in the guide's listed wholesale prices.
- **Economic Obsolescence Adjustment.** It added detailed procedures to make economic obsolescence adjustments to capture significant market value changes (such as occurred after 9/11) due to severe airline industry economic condition changes.

Another written settlement agreement between counties and airlines accompanied AB 964. The agreement provided airlines with tax credits worth $25 million. Additionally, the parties agreed not to pursue embedded software issues[23] until after the 2010-11 fiscal year. The agreement extended the valuation methodology for use in the 2004-05 fiscal year, a period not otherwise covered in the statute due to the sunset.

In 2009, AB 311 (Ma), as introduced, would have made the valuation methodology and centralized provisions permanent and, as amended, would have extended the effective date. However, Governor Schwarzenegger vetoed AB 311 because one airline disagreed with extending the valuation methodology, and the timing of the sunset allowed another year for all the parties to reach consensus before the provisions sunset.

In 2010, AB 384 (Stats. 2010, Ch. 228; Ma) extended these provisions to the 2015-16 fiscal year and extended the repeal date provisions to December 31, 2015. In addition, AB 384 changed the valuation provisions as follows:

- **Rebuttable Presumption of Correctness.** Expressly provided that the fair market value of certificated aircraft determined using the specified assessment methodology only enjoys a *rebuttable* presumption of correctness. Previously, the methodology-produced value was deemed to be the aircraft's fair market value.
- **Evidence for Rebutting Presumption.** Specified that the preallocated aircraft fair market value produced using the delineated methodology may be rebutted by evidence including, but not limited to, appraisals, invoices, and expert testimony.
- **Original Cost - Maximum Value for Original Owner.** Provided that the value of an individual aircraft assessed to the original owner of that aircraft is not to exceed its original cost from the manufacturer.

The maximum value cap provision was added to appease the airline that opposed AB 311 in the prior year. In calculating total fleet values, this provision requires the county to substitute the original price

[22] RTC Section 5103.
[23] A computer program that is not a basic operational program under RTC Section 995 and 995.2.

paid when it is lower than wholesale price less 10% for any individual aircraft in the fleet. This reduces the total fleet value for any airline able to purchase new planes at deeper discounts.

Last year, AB 1157 (Stats. 2015, Ch. 440, Nazarian) extended the sunset date for one year.

BOE State Assessment of Aircraft. In 2005, AB 964 (J. Horton) initially proposed transferring assessment responsibility for commercial air carriers from the local county assessor to the BOE. Those provisions were amended out of the bill on May 26, 2005. In 2003, SB 593 (Ackerman) also proposed transferring these assessments to the BOE. The Senate Appropriations Committee held the bill in committee. In 2004, the California Performance Review Report[24] recommended to Governor Schwarzenegger that the BOE assess commercial airline-owned aircraft to address certain inefficiencies, which were subsequently mitigated in 2005 by AB 964's new centralized lead county system.

In 2015, SB 661 (Hill) proposed transferring assessment jurisdiction for commercial air carrier personal property, including certificated aircraft, to the BOE using the existing valuation methodology for certificated aircraft. This bill was held in the Assembly.

Commentary:

1. **Last year, these provisions were also scheduled to sunset.** The sunset date was extended for one year with the desire that the airline industry and county assessors could reach consensus on air carrier assessments in the interim. To date, a series of meetings between airlines, counties, Senate, and Assembly staff have been held at the Capitol, however the parties remain unable to reach consensus.

2. **Certificated aircraft valuation is complex and contentious.** This year, the statute that codifies aircraft valuation methodology expires. Extending the provisions provides a period of stability, and a sunset date allows for evaluation and adjustment of methodology. A statutory methodology has been in place for 17 years and has helped reduce some conflict. While prior statutory methodologies have not eliminated conflict, they have narrowed its scope.[25] As noted in the legislative findings and declarations of both AB 1807 and AB 964 (see above), the certificated aircraft assessments are a difficult and contentious property tax assessment issue that has given rise to litigation and appeals challenging assessments. The findings noted the Legislature's need to address the uncertainty because of the disruption to both airline industry tax planning and local government and school finance.

3. **How have aircraft been valued historically?**
   - **Trended Cost.** Before 1998, assessors based aircraft values on trended costs pursuant to RTC 110 fair market value standard and Assessors' Handbook guidelines on personal property assessments.
   - **Blue Book – Average Wholesale and Retail Prices.** Between 1998 and 2004, assessors based aircraft values on the average wholesale and retail APG value pursuant to RTC 401.15.
   - **Blue Book – Wholesale Prices Less 10%.** Between 2005 and 2010, assessors based aircraft values at the lower of (1) trended cost or (2) wholesale APG value less 10% pursuant to RTC 401.17.
   - **Blue Book – Wholesale Prices Less 10%.** Between 2010 and 2015, pursuant to RTC Section 401.17 assessors based aircraft values at the lowest of (1) trended cost, (2) wholesale APG value less 10%, or (3) original cost, but only if the aircraft is stilled owned by the original owner. Most air carriers currently have an assessment based on the wholesale price less 10%, as that method

[24] GG19 – Centralize for Efficiency the Assessment of Commercial Aircraft and CAA response.

[25] Beginning in August 2013, some airlines filed numerous appeals, lawsuits and claims for refund related to economic obsolescence calculations under RTC Section 401.17(a)(1)(C) and (D). Counties report that they have prevailed and their assessments have been upheld in cases before the local assessment appeals boards. Airlines report that the 44 lawsuits have been consolidated into one case which is pending in Orange County Superior Court.

produces the lowest value.

4. **Lead-county fleet value calculation ensures statewide consistency in the base valuation of the fleet.** Extending the centralized procedure's sunset date ensures continued uniform certificated aircraft assessments for each carrier statewide. Before the centralized procedures, air carriers contended that although counties used the same assessment methodology, the fleet value calculations differed. Counties countered that the value discrepancies could be traced to (1) differences in the air-carrier-reported-information provided to different counties and (2) audit-related changes resulting from an individual county audit.

5. **The lead county system promotes administrative efficiency for both air carriers and counties.**
   - **One Return.** This eliminates any airline-reporting discrepancies to counties. Since air carriers may report all information to a single county, which is then distributed, all counties can receive the same information. This also reduces airline tax return compliance costs by eliminating duplicative reporting. Non-aircraft personal property must still be identified by tax rate area to ensure that local jurisdictions receive their share of property tax revenue for property located within their boundaries.
   - **One Audit.** This limits the airline to a single audit by one multi-county audit team and reduces auditing costs incurred by both counties and air carriers for duplicative audits.

6. **The current reporting practices of airlines.** The law[26] requires aircraft information to be filed with the lead county, and all airlines do so. While the law also requires airlines to file "one signed property statement for [the airline's] personal property at all airport locations and fixtures at all airport locations," in practice this does not always occur. With respect to flight activity data, some airlines segregate flight activity information by airport location and file all the information with the lead county. But other airlines report flight activity directly to each county. With respect to non-aircraft personal property and fixtures, many airlines continue to file with each county despite the streamlining provisions in law since 2006. Additionally, the law[27] gives airlines the option to file their returns electronically via the California Assessor's Standard Data Record network.

7. **Rebuttable Presumption of Correctness.** The annual fair market value determined using the proposed methodology only enjoys a rebuttable presumption of correctness. Thus, either the assessor or the air carriers could rebut the presumption.
   - If the assessor deviates from the methodology, the assessor would lose the presumption of correctness before the appeals board should the air carrier appeal the assessment.
   - If the assessor uses the methodology and the taxpayer appeals those assessments, the taxpayer must provide sufficient evidence to overcome the presumption of correctness.

8. **What happens if the provisions sunset?** Administration returns to the pre-2006 system without unallocated fleet value calculations by a lead county. Without centralization, each county would calculate the total aircraft fleet value and audit each airline that lands in their county if the assessment qualifies as a mandatory audit. The valuation method returns to pre-1999 "fair market value" standard without a delineated methodology specific to certificated aircraft.
   - **Property Statements.** Airlines would file separate property statements with every county. Prior to 2006, air carrier' submitted duplicative aircraft fleet information to every county for every location in which they operated. The one-stop reporting to a single lead county should have reduced the carriers' administrative burdens. However, some airlines may not have filed a consolidated return as the law provides.
   - **Value Method.** Assessors could use any valid method (cost, income, comparable sales, published market value guides) to determine fair market value, as defined in RTC Section 110.

[26] RTC Code Section 441(m)(1)
[27] RTC Code Section 441(m)(4)

- **Uniformity**. The CAA Aircraft Advisory subcommittee could continue to recommend valuation methodologies for all assessors to ensure statewide uniformity. Nonetheless, individual assessors still may use different valuation methods, such as trended cost basis or market/comparable sales basis using the *Airliner Pricing Guide.*
- **Audits**. Counties would need to perform multiple audits, which also is burdensome to the airlines.
- **Presumption of Correctness.** Only the assessor would enjoy the presumption of correctness in any appeal. The burden of proof would rest with the airline challenging assessed values.

9. **A codified valuation methodology addresses appraisal process variables.** Codifying a valuation methodology reduces conflict by specifying which of the many variables to use in the valuation process, such as:
   - Cost basis (i.e., trended cost, reproduction/replacement cost new less depreciation, historical cost less depreciation)
   - Trending. (The inflation rate benchmark selected to trend historical cost to current cost or eliminating any trending factor.)
   - Depreciation schedule (i.e., life term selected and method selected such as straight-line depreciation, declining-balance method, or booked depreciation)
   - Minimum value (i.e., floor percentage or remove any floor)
   - Functional and economic obsolescence adjustments
   - Embedded software adjustments
   - Nontaxable intangible adjustments
   - Maintenance costs, capitalized addition costs
   - Market basis:
     - Commercial blue book selected (APG, Avitas, or Avmarkinc)
     - Edition Selected (Winter or Spring)
   - Blue book application:
     - Retail or Wholesale Price, Average, Weighted Average
     - Fleet Discount (amount, if any, applied)
10. **This bill will provide more certainty and predictability in the valuation of aircraft for both assessors and commercial air carriers.** Absent a codified methodology, the values determined by each individual county assessor may be the same, higher, or lower than they would be without this bill.

Administrative Costs:

The BOE would incur minor absorbable costs to update various publications and the BOE's website.

Revenue Impact:

Background, Methodology, and Assumptions. The law requires the assessor to value certificated aircraft annually at fair market value. Absent a codified methodology, the values determined by each individual county assessor may be the same, higher, or lower than they would be without this bill.

Revenue Summary. This bill maintains the status quo. The revenue consequence of extending the sunset date versus allowing these laws to expire is unknown. The revenue realized under the existing valuation methodology might be different from the revenue derived from the methodology used prior to 1998 or some other methodology. Extending the existing valuation methodology, which includes a rebuttable presumption of correctness, may be a reasonable method to determine fair market value of certificated aircraft given the uncertainty that would otherwise exist.

This revenue estimate does not account for any changes in economic activity that may or may not result from enactment of the proposed law.

Trial *de novo* for Airline Commercial Carriers
Revenue and Taxation Code Section 5170

Existing Law: Under current law, in a refund action for locally assessed property taxes, where the issue is a question of law, the taxpayer has a right to a trial *de novo*, with the court being able to receive and consider new evidence. However, where the issue is a question of fact, the court is restricted to a review of the assessment appeals board findings and decisions (i.e., the administrative record). Essentially, the appeals board acts as the "trial court" and the superior court acts as the "appellate court" that reviews the appeals board action. With respect to factual issues, the superior court's level of review is limited to determining whether "substantial evidence" in the record exists to support the appeals board's decision.

In contrast, the law[28] provides state assesees with a right to a trial *de novo* in a suit for the refund of state-assessed property taxes. In these refund actions, the trial court is not restricted to "substantial evidence" review of the administrative record, but is required to consider all admissible evidence relating to the valuation of the subject property. This law requires the trial court to base its decision on the "preponderance of the evidence" before it.

Proposed Law: This bill would extend the current state assessee "trial *de novo*" provisions to a suit for the refund of locally assessed property taxes exclusively for commercial air carriers. Specifically, the trial court "may not be restricted to the administrative record, but shall consider all the evidence relating to the valuation of the property admissible under the rules of evidence. The court shall base its decision upon the preponderance of the evidence." The trial de novo provisions would sunset at a currently unspecified date. Presumably, the date would be consistent with the sunset of the bill's other provisions.

In General:

The BOE's Assessment Appeals Manual describes the judicial review of assessment appeals board decisions on page 108, it reads:

> On appeal from an appeals board's decision, if an applicant or the assessor claim only that the appeals board erroneously applied a valid method of determining full value, the decision of the board is equivalent to the determination of a trial court, and the reviewing court may review only the record presented to the board. Judicial review is limited to a determination of whether substantial evidence exists to support the board's findings. The court may overturn the board's decision only when no substantial evidence supports it, in which case the actions of the board are deemed so arbitrary as to constitute a deprivation of property without due process.[29]
>
> An appellant has no right to a trial *de novo* to resolve conflicting issues of fact as to the value of a property. Stated another way, with respect to findings of fact, a court will not substitute its own judgment for that of an appeals board. If the board has arrived at a determination based on the consideration of proper evidence, though it could have reached a contrary conclusion, it will be affirmed.[30]
>
> If an appeal challenges the validity of the method of valuation used by the board, then the decision is subject to review by a court to determine whether the challenged method is arbitrary, in excess of discretion, or in violation of the standards prescribed by law.[31] In addition, an appeal may be taken on the grounds that an applicant or assessor was denied due process.

[28] RTC Section 5170.
[29] *County of Orange v. Orange County Assessment Appeals Bd*. (1993) 13 Cal.App.4th 524.
[30] *Rancho Santa Margarita v. County of San Diego*, (1933) 135 Cal.App.134.
[31] *Bret Harte Inn, Inc. v. City and County of San Francisco*, (1976) 16 Cal.3d 14, *De Luz Homes, Inc. v. County of San Diego* (1955) 45 Cal.2d 546.

> Denial of due process may result from a conscious failure by the appeals board to exercise fair or impartial judgment, or an appeals board's decision made without substantial evidence to support it.[32]
>
> It is not, however, necessary that fraud or bad faith on the part of the appeals board be expressly shown. It may arise by implication out of the fact that the assessment when taken as a whole, and viewed with respect to the assessable values of the various kinds of taxable property, discloses such a degree of discrimination between properties of the same class or properties of different classes as to show willful and systematic disregard of the requirement of the Constitution and statutes.

Questions of Law vs. Fact:

Question of Law (Local and State Assessees) – Trial *de Novo*. In a refund action where the issue is a question of law, the taxpayer has a right to a trial *de novo*, and the court may receive and consider new evidence. Examples of legal issues include: whether a transfer of property meets the definition of a change in ownership; whether a property qualifies for various property tax exemptions; the constitutionality of a statute; the classification of an item as a real property fixture or personal property; broad questions involving the application of Proposition 13; or the *method* of valuation (the application of a valuation method is a question of fact).[33]

Question of Fact (State Assessees) – Trial *de Novo*. With respect to a question of fact, state-assessees are granted a trial *de novo*. The trial court is not restricted to a review of the administrative record, but is required to consider all admissible evidence relating to valuation of the subject property.

Question of Fact (Local Assessees) – Substantial Evidence Test. The court must uphold the county board's factual determinations if they are supported by substantial evidence. This means that the decision is supported by credible evidence in the administrative record. The trial court is confined to the record presented by the appeals board, with no new evidence introduced. Furthermore, the court has no authority to exercise its independent judgment to weigh the evidence in the record. Issues of fact generally relate to whether the assessment method used to value the property was applied correctly.

Legislative History: The Legislature has heard numerous bills to provide trial *de novo* to all local assessees including proposed constitutional amendments to address the constitutional issues associated with providing trial d*e novo* in statute for local assessees.

In 1988, SB 2601 (Stats, 1988, Chap. 1372, Garamendi) added RTC Section 5170 to provide trial *de novo* to state assessees (public utilities and other specified properties operating as a unit and lying in two or more counties). Initially, SB 2601 would have provided trial *de novo* to local assessees but the provision was amended out when heard in the Assembly Judiciary Subcommittee on the Administration of Justice.

In 1989, SCA 6 (Garamendi) proposed a constitutional amendment extending trial *de novo* to local assessees. This measure failed on the Senate floor.

In 1991, SCA 26 (Morgan) proposed a constitutional amendment to authorize a statute similar to RTC Section 5170 that would apply to both appeals from BOE hearings of state assessees and to appeals from assessment appeals board hearings of local assessees, but this measure failed.

In 1995, SB 657 (Stats. 1995, Chap. 498, Maddy) proposed establishing trial *de novo* for local assessees, but that provision was deleted by May 23, 1995 amendments when the bill was heard in the Senate Judiciary Committee. The California Taxpayer's Association (CalTax) sponsored this bill.

In 1996, SB 1903 (Maddy) proposed giving local assessees trial *de novo*. Later, it was amended to provide a modified form of court review. Specifically, the superior court would be limited to a review of the

[32] *County of Orange v. Orange County Assessment Appeals Bd.*, supra.

[33] RTC Section 1605.5 provides that assessment appeals boards can hear appeals related to whether or not a change in ownership or new construction occurred. It also makes clear that although appeals boards may hear and rule on these cases, it is not to "be construed to alter, modify, or eliminate the right of an applicant under existing law to have a trial *de novo* in superior court with regard to the legal issue of whether or not that property has undergone a change in ownership or has been newly constructed so as to require reassessment."

administrative record of the local board of equalization proceedings, unless the court found that additional evidence should be admitted for certain reasons. CalTax sponsored this bill. It failed in the Senate.

In 1997, AB 1027 (Caldera) would have provided, with respect to any suit for the refund of property taxes (both locally assessed property and state assessed property), that the trial court is limited to the administrative record, and would require the trial court in a suit so described to uphold administrative findings of fact and value if there is substantial evidence in the administrative record to support those findings. AB 1027 would have authorized the trial court in a suit for refund of property taxes to remand the matter to the administrative body in certain cases in which the trial court finds that relevant evidence was improperly excluded at the prior administrative hearing. The California Assessors' Association (CAA) sponsored this bill, which failed in the Assembly.

In 1999, SB 1293 (Schiff) as introduced provided trial *de novo* for local assessees. On May 6, 1999, the bill was gutted and amended to provide instead that the trial court in reviewing the assessment appeals board's findings of fact, could exercise its *independent* judgment on the evidence in accordance with Code of Civil Procedure Section 1094.5(c). As modified under proposed new RTC Section 5171, the court could *reweigh the evidence* presented to the appeals board (but not accept new evidence) and substitute its judgment for that of the appeals board in making its decision. In its modified form, which supporters called "trial *de novo* lite," this California Chamber of Commerce sponsored bill failed in the Senate Revenue and Taxation Committee. After SB 1293 failed, Senator Schiff instead authored SB 1234 (Stats. 1999, Chap. 942) to require mandatory training for new assessment appeal board members and reduce from 1,000,0000 to 200,000, the population threshold where a person could be appointed to the appeals board merely upon the recommendation of a member of the board of supervisors.

In 2001, AB 934 (Hertzberg), as introduced, proposed trial de novo for local assessees. Subsequently, AB 934 was amended on August 23, 2001 to allow trial courts to exercise their independent judgment on the evidence in accordance with Code of Civil Procedure Section 1094.5(c), i.e., trial *de novo* lite. Permitted on a temporary basis, a report was required on the impact of trial *de novo* lite by the California Research Bureau in consultation with the Department of Finance. If a taxpayer lost a lawsuit, reimbursement to the county of up to $100,000 in litigation expenses, as specified, was required. Additionally, AB 934 would have required various agencies to undertake certain duties. It directed the BOE to compile a list of professionals with additional expertise in the valuation and assessment of complex properties able to serve as assessment appeals board members on a temporary basis for counties in need of their expertise. It directed the Judicial Council to develop programs to train judges in the valuation and assessment of property in accordance with property tax law. Additionally, the Council would have to make judges a with specialized property tax knowledge available to any court identifying a need for their expertise. The California Research Bureau was directed to study the bill's impact with an advisory group assisting. The advisory group consisted of representatives of taxpayer groups, labor, tax practitioners, businesses, counties, county assessors and the BOE. This bill failed in the Senate.

Senator Scott, chair of the Senate Revenue and Taxation Committee, requested a Legislative Counsel Opinion related to AB 934 as introduced. Legislative Counsel Opinion #14821, dated July 16, 2001, opined that if enacted AB 934 would impermissively delegate to trial courts the quasi-judicial fact-finding authority granted to county board of equalization by Section 16 of Article XIII of the California Constitution.

Commentary:

1. **What is trial *de novo*?** The term refers to a new trial or retrial in which the whole case is retried as if no trial had occurred in the first instance.

2. **The extent of trial de novo as it applies to commercial air carriers is unclear.** The proposed statute states it applies to property "valued" under Section 1153.5. The *valuation* provisions for aircraft are outlined in Section 401.17. The bill's Legislative Counsel digest states this bill applies to certificated aircraft. However, Section 1153.5 references other personal property owned by air carriers and audits of air carriers (which could include real property elements). Additionally, Section 1153.5 references a

number of other RTC sections. As currently written, would trial *de novo* be limited to certificated aircraft, all personal property including fixtures, or all property (both real and personal) owned or controlled by commercial air carriers? The current language could be interpreted to mean that trial *de novo* applies to any property owned or controlled by an air carrier, such as its real property, including taxable possessory interests in airports. If the bill's intent is to limit trial *de novo* to aircraft, then the author may wish to state that it applies to property valued under Section 401.17, or make other clarifying amendments consistent with the measure's intent.

3. **This bill sets a precedent of establishing trial *de novo* at the local level.** Although this measure applies to a select industry group, many other industries would also desire trial *de novo*.

4. **A number of studies and reports have urged trial *de novo* for property taxpayers.** These include: (1) a 1966 report by the Assembly Revenue and Taxation Committee, which recommended *de novo* review in the limited circumstance where the elected Board of Supervisors sits as the assessment appeals board, (2) a 1979 report by the Little Hoover Commission, and (3) a 1985 report by the Governor's Tax Reform Advisory Commission.

5. **Constitutionality issues.** One of the core issues associated with trial *de novo* is whether such a change requires a constitutional amendment. In a 2001 Legislative Counsel Opinion,[34] AB 934 (Hertzberg) was found to impermissively delegate to the trial courts the quasi-judicial fact-finding authority granted to county boards of equalization by Section 16 of Article XIII of the California Constitution.

   - Opponents of extending trial *de novo* to local assessees note that judicial deference is given to the decisions made by assessment appeals boards, in part, because they are constitutional agencies granted quasi-judicial powers delegated to them by the constitution, with special expertise in property valuation (Article XIII, Sec. 16 of the California Constitution). Opponents argue that the assessment appeals board is the fact-finding body designated in law to remedy excessive assessments.

   - Proponents of trial *de novo* agree that the constitution grants value-setting authority to appeals boards, but note that trial *de novo* measures merely change the *judicial standard of review*. They counter that the Legislature has the authority to change the standard by statute pursuant to Article XIII, Section 32 which provides that local taxpayers may bring an action to recover taxes paid "in such manner as may be provided by the Legislature." Also, Section 33 therein provides that the Legislature may pass all laws necessary to carry out this article.

   - **State Assessees.** Further, supporters observe that the Legislature previously exercised this authority by authorizing trial *de novo* for state assessees, and courts have not overturned it on constitutional grounds. Supporters note that the constitutionality of state assessee trial *de novo* was challenged and upheld in *AT&T Communications of California* and *American Telegraph Company Interstate Division* v. *State Board of Equalization*, Case No. 500802 and 500803 in the Sacramento Superior Court. A writ from the Court of Appeal to overturn this finding was denied.

6. **Independent judicial review.** Supporters of trial *de novo* contend that the lack of independent and impartial judicial review is especially unfair given that the qualifications for eligibility to sit on assessment appeals boards do not require expertise in property tax matters. Additionally, where a board of supervisors sits as the appeals board, supporters claim that budgetary pressures may bias their decisions. Opponents think that assessment appeals boards are better situated to handle value issues since they specialize in property valuation matters. However, many counties are concerned over the potential costs that would be incurred to defend themselves in litigation on valuation issues. They note that given their share of the property tax revenue, it would not always be in their financial interest to pursue these cases and may instead settle cases by negotiating with taxpayers for lower values.

[34] Property Taxation: Local Assessments: Judicial Review (A.B. 934) - #14821 dated July 16, 2001 to Senator Scott (Chair of Senate Revenue and Taxation Committee).

Administrative Costs: The BOE would incur some minor absorbable costs in informing and advising county assessors, the public, and staff of the change in law. Additionally, it is possible that BOE staff would be subpoenaed to testify in valuation issues in court.

Revenue Impact: Any loss or gain would be due to the courts making determinations different from those currently being made by assessment appeals boards. There is no measurable standard upon which to base an estimate of the outcome of court decisions.