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No. 2020/045

September 4, 2020

TO COUNTY ASSESSORS
AND OTHER INTERESTED PARTIES:

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

**Proposes to Adopt
Amendments to California Code of Regulations, Title 18,**

***Section 202, Allocation of Aircraft of Certificated Air Carriers and Scheduled
Air Taxi Operators***

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Government Code section 15606, proposes to adopt amendments to California Code of Regulations, title 18, section (Rule or Property Tax Rule) 202, *Allocation of Aircraft of Certificated Air Carriers and Scheduled Air Taxi Operators*. Property Tax Rule 202 implements, interprets, and makes specific the following: Revenue and Taxation Code sections 1150, 1151, 1154, 1155, 1156, as well as sections 441, 1152, 1153.5, and 1157, as amended and added, and section 1153 as repealed, by Senate Bill No. 791 (SB 791) (Stats. 2019, ch. 333).

PUBLIC HEARING

The Board will conduct a meeting on October 20-21, 2020, and is planning on conducting the meeting via teleconference, consistent with the Governor's Executive Order N-29-20 (issued March 17, 2020). The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 10:00 a.m. or as soon thereafter as the matter may be heard on October 20 or 21, 2020. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Property Tax Rule 202.

AUTHORITY

Government Code section 15606, subdivision (c)

REFERENCE

Revenue and Taxation Code sections 441, 1150, 1151, 1152, 1153.5, 1154, 1155, 1156, and 1157

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current Law

Under article XIII, section 1 of the California Constitution, all property is taxable and assessed at fair market value, unless otherwise provided by the California Constitution or the laws of the United States. Section 2 of article XIII of the California Constitution authorizes the Legislature to provide for property taxation of tangible personal property. Certificated aircraft used by air carriers are tangible personal property, subject to taxation when in revenue service in the state of California.

Until December 31, 2016, the law specified an aircraft valuation methodology required to be used by assessors, which was based on the lowest of trended acquisition cost less depreciation; the wholesale price listed in the Airliner Price Guide, a commercially published value guide, less ten percent; or the original price paid. In addition, assessors and commercial air carriers used a “lead county” system of assessment, which streamlined the administrative procedures involved. This allowed commercial air carriers operating in multiple California counties to file a single consolidated property statement with a designated lead county assessor’s office. The lead county’s assessor’s office calculated the total unallocated fleet value of the air carrier’s certificated aircraft for each make, model, and series and transmitted the calculated fleet value to the other counties. To assess the aircraft, each county assessor’s office determined its allocated portion of the calculated fleet value based on the flight data for its particular county. The allocation process limited each county’s assessment to reflect the aircraft’s physical presence in that county. However, this valuation methodology and the lead county system expired statutorily on December 31, 2016.

Due to the expiration of the mandatory valuation methodology and lead county system, county assessors were able to use any valid method (cost, income, comparable sales, published market value guides) to determine the fair market value of aircraft.

As related to the value allocation process, the law prior to approval of SB 791 required the Board to designate a representative period of time to measure aircraft presence in California after consulting with assessors annually. Since 1997, the Board has selected various weeks in the month of January to be the representative period. (See Rev. & Tax. Code, § 441, subd. (m).).

To best consolidate information and guidelines for county assessors regarding the valuation of certificated aircraft, the Board promulgated Property Tax Rule 202, which implements, interprets, and makes specific Revenue and Taxation Code sections 1150 to 1156.

Effect, Objective, and Benefits of the Proposed Amendments

The Legislature's adoption of SB 791 amended Revenue and Taxation Code section¹ 441, amended and added section 1152, added sections 1153.5 and 1157, and repealed section 1153.

Since SB 791 newly enacts section 1157, which directs the Board to, by emergency regulation, promulgate regulations and produce forms and instructions to implement the new allocation formula, Board staff initiated a project to review Property Tax Rule 202 and determine what portions, if any, needed to be amended after examining the changes made to sections 441 and 1152, the addition of section 1153.5, and the repeal of section 1153.

Section 441 provides guidelines for the submission of property statements for taxable personal property (other than manufactured homes) having an aggregate cost of \$100,000. Subdivision (m) of section 441 provides for property statements and the schedule of certificated aircraft filed with a lead county assessor's office. Subdivision (m) of section 441 previously expired on December 31, 2016. SB 791 removes this term of expiration as well as the requirement of a commercial air carrier to file a property statement electronically via the California Assessor's Standard Data Record network. Board staff reasonably believed that including a subdivision within the emergency rule to provide guidelines for the "lead county" system would best address the change made to section 441, subdivision (m), as the original Property Tax Rule 202 did not mention a lead county assessor's office. As a result, subdivision (f) within emergency Rule 202 provides guidelines in regard to the lead county assessor's office. Included within new subdivision (f) are provisions related to the electronic transmittal of the property statement.

Section 1152 provides the allocation formula that each assessor would use in assessing the certificated aircraft. SB 791 limited the use of this allocation formula to fiscal years prior to 2020-21 and provides a new allocation formula for use for fiscal years 2020-21 and after. To address this change, Board staff replaced previous subdivision (c) entitled "Allocation Formula" with the new allocation formula as detailed in section 1152, as applicable to the 2020-21 fiscal year and for each fiscal year thereafter. Staff rearranged the text of section 1152 to provide a clearer format that focuses more on the computation of time allocable to each airport from time in the air and time on the ground, rather than focus on the "proportionate amount of time" paragraph, which was moved to the caption of subdivision (c) and is better framed as a representative time period for the formula. The staff reasonably believed that duplicating section 1152 in this manner in Property Tax Rule 202 would provide clarity to the relevant county assessors that would have to calculate values for certificated aircraft. Since the new allocation formula no longer needs to distinguish between scheduled operations and nonscheduled operations, staff removed this distinction from subdivision (e). Also, staff reasonably believed that the term "type" of aircraft was too broad and clarified in subdivision (g) that the "subfleet type" was sought; staff also removed text and examples that were no longer applicable to Property Tax Rule 202.

Section 1153 provides for the aforementioned representative periods. This section has been repealed by SB 791, thus removing the Board's requirement to annually choose a representative period. For emergency Rule 202, Board staff removed mention of such representative periods and replaced it with the 12-month period in subdivision (a) and deleted the previous Property Tax Rule 202's subdivision (f) titled "Representative Period."

¹ Hereinafter, all references to "section" refer to the California Revenue and Taxation Code.

SB 791 newly enacts section 1153.5, which re-establishes a lead county assessor's office and provides for its designation, responsibilities, and audit. Board staff, in the emergency rule, replaced existing subdivision (f) with one entitled "Lead County Assessor's Office." Board staff rearranged the text of section 1153.5 for the purpose of clarity, such that subdivision (f)(1) would provide guidelines for the designation of lead county assessor's offices. Board staff amended some of the language regarding when the designation of the lead county assessor's office would take place in order to provide clarity. Subdivision (f)(2) was organized to include the responsibilities of the lead county assessor's office. Subdivision (f)(3) was drafted to emphasize the remaining responsibility of affected county assessor's offices regarding certificated aircraft valuation. Subdivision (f)(4) was drafted to emphasize the audit of commercial air carriers every four years.

Pursuant to section 1157, Board staff presented the emergency rule to the California Assessors' Association and representatives of commercial air carriers on October 11, 2019 and sought feedback. Staff only received comments from the Sacramento County Assessor's Office and incorporated the appropriate changes. On staff's recommendation, the Board adopted emergency rule 202 on November 19, 2019.

OAL approved emergency Rule 202 and the emergency rule was effective on January 1, 2020.

To make the amendments to emergency Rule 202 permanent, Board staff initiated a project to amend Rule 202 through the certificate of compliance rulemaking process. Staff incorporated ongoing feedback of the emergency rule and prepared a draft of the proposed amendments to Rule 202 accordingly.

These amendments include changes to Property Tax Rule 202, subdivision (c) to provide for better implementation of section 1152, by stating that absence of a flight from the "California Standard Flight Times" table does not preclude that flights inclusion in the allocation formula, as well as that commercial air carriers that discover missing flights are required to notify, in writing, the designated lead county assessor's office of its absence. Other amendments also clarify that references to section 441 are to the Revenue and Taxation Code, and references to subdivisions (c)(1) and (c)(2) are internal references to subdivisions of Property Tax Rule 202.

Upon further feedback, Board staff changed subdivision (f)(1) to better clarify when the Aircraft Advisory Subcommittee of the California Assessors' Association would designate the lead county assessor's office. In addition, further clarifications to subdivision (f) were made such that references to "paragraph (1)" were replaced with references to "subdivisions (f)(1) of this rule" to clarify the internal reference. Similarly, clarifications were added to show that references to sections 441 and 469 were references to sections of the Revenue and Taxation Code. Finally, a change to subdivision (f) was made to parallel the aforementioned changes made to subdivision (c), which added responsibility of the lead county assessor's office to notify the Board of any missing flights in the "California Standard Flight Times" table.

Board staff then provided interested parties with the latest draft of the proposed amendments to Property Tax Rule 202 on February 7, 2020 (see Letter to Assessors 2020/006 available at <https://boe.ca.gov/proptaxes/pdf/Ita20006.pdf> as of July 22, 2020), and invited interested parties to participate in the rulemaking effort. No comments were received.

Board staff subsequently prepared a Chief Counsel Memorandum dated July 6, 2020 and submitted it to the Board Members for consideration at the Board's July 22, 2020 Board meeting. In the Chief Counsel Memorandum, Board staff recommended that the proposed amendments to Property Tax Rule 202 be authorized for publication.

At the July 22, 2020 meeting, the Board Members voted to adopt staff's recommended amendments to Property Tax Rule 202. The Board determined that the proposed amendments and language for the new rule are reasonably necessary for the specific purpose of providing for the implementation of the lead county assessor's office system, the new valuation formula, the audit, and the issue of "California Standard Flight Times".

The adoption of the proposed amendments to Property Tax Rule 202 is not mandated by federal law or regulations. There are no previously adopted or amended federal regulations that are identical to Property Tax Rule 202 or the proposed amendments to Property Tax Rule 202.

The Board has performed an evaluation of whether the proposed amendments to Property Tax Rule 202 are inconsistent or incompatible with existing state regulations. The Board has determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because there are no other Property Tax Rules applicable to the property taxation of certificated aircraft.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption the Proposed Amendments will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

ONE-TIME COST TO THE BOARD, BUT NO OTHER COST OR SAVINGS TO ANY STATE AGENCY, LOCAL AGENCY, OR SCHOOL DISTRICT

The Board has determined that the adoption of the proposed amendments to Property Tax Rule 202 will result in an absorbable \$420 one-time cost for the Board to update its website after the amendments are completed. The Board has determined that the adoption of the proposed amendment to Property Tax Rule 202 will result in no other direct or indirect cost or savings to any state agency, no cost to 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, no other non-discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that the adoption of the proposed amendments to Property Tax Rule 202 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

NO COST IMPACTS TO PRIVATE PERSONS 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.

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

The Board assessed the economic impact of the proposed amendments to Property Tax Rule 202 on California businesses and individuals and determined that the proposed amendments to Property Tax Rule 202 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Board has prepared the economic impact assessment (EIA) required by Government Code section 11346.3, subdivision (b)(1), for the proposed amendments and included it in the initial statement of reasons. In the EIA, the Board has determined that the adoption of the proposed amendments to Property Tax Rule 202 will neither create nor eliminate jobs in the State of California nor create new businesses or eliminate existing businesses within the state nor expand businesses currently doing business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Property Tax Rule 202 will not affect the benefits of the rule to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

Adoption of the proposed amendments will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments and new rule should be directed to Henry Nanjo, Chief Counsel, by telephone at (916) 323-1094, by e-mail at henry.nanjo@boe.ca.gov, or by mail at State Board of Equalization, Attn: Henry Nanjo, MIC:121, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0121.

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 Lawrence Lin, Regulations Coordinator, by telephone at (916) 322-1982, by e-mail at lawrence.lin@boe.ca.gov, or by mail at State Board of Equalization, Attn: Lawrence Lin, MIC: 121, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0121. Mr. Lin is the designated backup contact person to Mr. Nanjo.

WRITTEN COMMENT PERIOD

The written comment period ends at 10:00 a.m. on October 20, 2020, or as soon thereafter as the Board begins the public hearing regarding the proposed amendments to Property Tax Rule 202 during the October 20-21, 2020, Board meeting. Written comments received by Mr. Lawrence Lin at the postal address or email address provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Property Tax Rule 202.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an underline and strikeout version of the text of Property Tax Rule 202 illustrating the express terms of the proposed amendments and an initial statement of reasons for the adoption of the proposed amendments, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are 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 website at www.boe.ca.gov.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Property Tax Rule 202 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed 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 regulation, with the change clearly indicated, available to the public for at least 15 days prior to adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Lin. The Board will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Property Tax Rule 202, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's website at www.boe.ca.gov.

Sincerely,

/s/ Henry D. Nanjo

Henry D. Nanjo
Chief Counsel /
Acting Chief, Board Proceedings

HDN:ll
Attachment

**Initial Statement of Reasons for
Proposed Amendments to
California Code of Regulations, Title 18, Section 202,
*Allocation of Aircraft of Certificated Air Carriers and Scheduled Air Taxi
Operators***

SPECIFIC PURPOSE, PROBLEM INTENDED TO BE ADDRESSED, NECESSITY, AND ANTICIPATED BENEFITS

Current Law

Under article XIII, section 1 of the California Constitution, all property is taxable and assessed at fair market value, unless otherwise provided by the California Constitution or the laws of the United States. Section 2 of article XIII of the California Constitution authorizes the Legislature to provide for property taxation of tangible personal property. Certificated aircraft used by air carriers are tangible personal property, subject to taxation when in revenue service in the state of California.

Until December 31, 2016, the law specified an aircraft valuation methodology required to be used by assessors, which was based on the lowest of trended acquisition cost less depreciation; the wholesale price listed in the Airliner Price Guide, a commercially published value guide, less ten percent; or the original price paid. In addition, assessors and commercial air carriers used a “lead county” system of assessment, which streamlined the administrative procedures involved. This allowed commercial air carriers operating in multiple California counties to file a single consolidated property statement with a designated lead county assessor’s office. The lead county’s assessor’s office calculated the total unallocated fleet value of the air carrier’s certificated aircraft for each make, model, and series and transmitted the calculated fleet value to the other counties. To assess the aircraft, each county assessor’s office determined its allocated portion of the calculated fleet value based on the flight data for its particular county. The allocation process limited each county’s assessment to reflect the aircraft’s physical presence in that county. However, this valuation methodology and the lead county system expired statutorily on December 31, 2016.

Due to the expiration of the mandatory valuation methodology and lead county system, county assessors were able to use any valid method (cost, income, comparable sales, published market value guides) to determine the fair market value of aircraft. Subsequently, assessors entered into a memorandum of understanding (the Aircraft Assessment Memorandum of Understanding) in order to continue the lead county system amongst assessors that were responsible for assessing certificated aircraft.

As related to the value allocation process, the law prior to approval of SB 791, required the Board of Equalization (Board) to designate a representative period of time to measure aircraft

presence in California after consulting with assessors annually. Since 1997, the Board has selected various weeks in the month of January to be the representative period. (See Rev. & Tax. Code, § 441, subd. (m).)

As relevant here, Senate Bill (SB) 791 (Stats. 2019, ch. 333) amended Revenue and Taxation Code¹ section 441, amended and added section 1152, added sections 1153.5 and 1157, and repealed section 1153. Specifically, SB 791 requires the Board to:

- Establish a new formula for allocating the taxable value of certificated aircraft for use beginning with the 2020-2021 fiscal year, operative for the January 1, 2020 lien date. The new allocation formula used by each county assessor is the proportionate amount of time, both in the air and on the ground, that certificated aircraft have spent in California during the 12-month period from January 1 through December 31 of the previous year immediately preceding the lien date (January 1), as compared to the total time during that 12-month period.
- Re-establish the local centralized administrative procedures using a “lead county” system and provide for the duties of the lead county.
- Require an audit of a commercial air carrier once every four years on a centralized basis by an audit team of auditor appraisers from at least one, but not more than three counties, as selected by the Aircraft Advisory Subcommittee of the California Assessors’ Association (CAA), led by the lead county for the commercial air carrier.
- Continue to issue an annual Letter To Assessors (LTA) with the “California Standard Flight Times” to be used in calculating the allocation formula.

SB 791 also requires the Board, after consultation with the CAA and representatives of commercial air carriers, to promulgate an emergency regulation that implements the newly established allocation formula. SB 791 requires that the emergency regulation be effective by January 1, 2020.

Pursuant to SB 791, Board staff sent draft California Code of Regulations, title 18, section (Property Tax Rule) 202 on October 11, 2019 to CAA and representatives of commercial air carriers, inviting them to propose any changes. Board staff incorporated such changes from commenters and the Board adopted emergency Property Tax Rule 202 on November 19, 2019. BOE provided notice of proposed emergency action to interested parties on December 6, 2019 via LTA no. 2019/043. OAL approved emergency Rule 202 and the emergency rule was effective on January 1, 2020.

To make emergency Rule 202 permanent, Board staff initiated a project to amend Property Tax Rule 202 through the certificate of compliance rulemaking process. Staff incorporated ongoing feedback of the emergency rule, prepared a draft of proposed amendments to Property Tax Rule 202, and distributed it to interested parties for comments or suggestions on February 7, 2020. (See LTA No. 2020/006.) Board staff did not receive any comments or suggestions to this draft.

Chief Counsel Henry Nanjo subsequently prepared a memorandum date July 6, 2020 and submitted it to the Board Members for consideration at the Board's July 22, 2020 meeting. In the

¹ All further statutory references are to the California Revenue and Taxation Code, unless otherwise specified.

memorandum, the Chief Counsel and Board staff recommended that the Board propose to adopt staff's draft amendments to Property Tax Rule 202.

At the July 22, 2020 meeting, the Board Members voted to adopt staff's recommended amendments to Property Tax Rule 202. The Board determined that the proposed amendments and language for the new rule were reasonably necessary for the specific purpose of permanently implementing emergency Rule 202 and to further clarify and implement the amendments made to Revenue and Taxation Code sections 441, 1152, 1153.5, and 1157, as well as the repeal of section 1153.

Proposed Amendments to Property Tax Rule 202

The proposed amendments include:

1. Replacement of the representative period with a 12-month period from January 1 through December 31 of the previous year immediately preceding the lien date in order to reflect the change brought forth by SB 791 in repealing sections 1153 and adding new section 1152.
2. Extension of Revenue and Taxation Code sections applicable to aircraft from sections 1150 to 1156 to sections 1150 to 1157, since SB 791 added section 1157, which is applicable to Property Tax Rule 202.
3. Replacement of the Allocation Formula to the one introduced by SB 791 and new section 1152, which incorporates the aforementioned 12-month period, a time in the air definition including flight time and taxi time within California's borders and based on the "California Standard Flight Times" table as prepared by the State Board of Equalization, a time on the ground definition as all time in the state that is not flight or taxi time but mandating a report of time on ground and excluding time on the ground allocated to heavy maintenance, a time allocable to each airport definition as the amount of time aircraft is on the ground at the airport computed by the formula, and the exclusion from time-in-state factor of all time, both in the air and on the ground that aircraft have spent within the state prior to the aircraft's first entry into the revenue service of the air carrier. The proposed amendments to Property Tax Rule 202 also clarify that a flight missing from the "California Standard Flight Times" table does not preclude inclusion of the flight within the allocation formula and that commercial air carriers must provide written notification to the lead county for that air carrier of its absence; the lead county shall then provide written notification to the Board of the missing flight.
4. Removal of the distinction between scheduled and nonscheduled operations from the sources of allocation data as such distinctions are encompassed within the allocation formula.
5. Addition of a subdivision that details the designation, responsibilities, and audit of a lead county assessor's office for each commercial air carrier as provided in SB 791 and section 1153.5.
6. Clarification of "type" as "subfleet type" in Application of Allocation Formula, as well as removing language deemed extraneous and unnecessary with the changes brought upon by SB 791, as well as removing examples of subfleet types, as such examples were outdated.

The adoption of the proposed amendments to Property Tax Rule 202 is not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Property Tax Rule 202 or the proposed amendments to Property Tax Rule 202.

DOCUMENTS RELIED UPON

The Board relied on its Legislative Enrolled Bill Analysis regarding SB 791, the text of SB 791, the Memorandum by the Chief Counsel dated July 6, 2020, and the Aircraft Assessment Memorandum of Understanding.

ALTERNATIVES CONSIDERED

The Board considered whether to begin the formal rulemaking process to adopt the proposed amendments to Property Tax Rule 202 at this time or, alternatively, whether to take no action at this time. The Board decided to begin the formal rulemaking process to adopt the proposed amendments at this time because the Board determined that the proposed amendments are reasonably necessary for the reasons set forth above.

The Board did not reject any reasonable alternative to the proposed amendments to Property Tax Rule 202 that would lessen any adverse impact the proposed action may have on small business or that would be less burdensome and equally effective in achieving the purpose of the proposed action. No reasonable alternative has been identified and brought to the Board's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

INFORMATION REQUIRED BY GOVERNMENT CODE SECTION 11346.2, SUBDIVISION (b)(5), ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b), AND DETERMINATIONS AND ESTIMATE REQUIRED BY GOVERNMENT CODE SECTION 11346.5, SUBDIVISION (a)(5), (6), AND (8)

The proposed amendments to Property Tax Rule 202 reflect the amendment of section 441, amendment and addition of section 1152, addition of sections 1153.5 and 1157, and repeal of section 1153. Property Tax Rule 202 consolidates the law pertaining to the valuation of certificated aircraft in one regulation, implements such law, and provides clarification of the referenced statutes, but does not impose any other duties or responsibilities that are not already imposed by the Revenue and Taxation Code.

Thus, the proposed amendments will not mandate that individuals or businesses or state or local government do anything that is not already required by the Revenue and Taxation Code, and there is nothing in the proposed amendments that would significantly change how individuals and businesses would generally behave in the absence of the proposed regulatory action, or that

would have a significant effect on the state's economy or that would impact the state's revenue. Therefore, Board staff determined that the proposed amendments will not impact property tax revenue. The proposed amendments and new rule will not impose new compliance costs on businesses and individuals and will not provide a monetary benefit to businesses and individuals. And, Board staff estimated that the proposed amendments and new rule will result in an absorbable \$420 one-time cost for the Board to update its website after the amendments and new rule are completed assuming that average hourly compensation costs are \$52.45 per hour² and that it will take approximately eight hours ($\$52.45 \times 8 = \419.60 , rounded to \$420), but will not have any other fiscal impact on local or state government.

Therefore, the Board has determined that the adoption of the proposed amendments to Property Tax Rule 202 will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, and the Board estimates that the adoption of the proposed amendment to Property Tax Rule 202 will result in an absorbable \$420 one-time cost to the Board, but no other direct or indirect cost or savings to any state agency, no cost to 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, no other non-discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

In addition, the Board has made an initial determination that the proposed amendments to Property Tax Rule 202 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, and the Board has determined that the proposed amendments to Property Tax Rule 202 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, because the Board has estimated that the proposed amendments will not have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars (\$50,000,000) during any 12-month period.

Further, based upon these facts and all of the information in the rulemaking file, the Board also determined that the adoption of the proposed amendments to Property Tax Rule 202 will neither create nor eliminate jobs in the State of California nor create new businesses or eliminate existing businesses within the state nor expand businesses currently doing business within the State of California.

Furthermore, Property Tax Rule 202 does not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has also determined that the adoption of the proposed amendments to Rule 202 will not affect the benefits of Rule 202 to the health and welfare of California residents, worker safety, or the state's environment.

² Source: Hourly compensation costs are from the U.S. Bureau of Labor Statistics. Hourly compensation costs are for State and Local Workers. *Employer Costs for Employee Compensation – March 2020*, June 18, 2020 press release, <https://www.bls.gov/news.release/pdf/ecec.pdf>.

The forgoing information also provides the factual basis for the Board's initial determination that the adoption of the proposed amendments to Property Tax Rule 202 will not have a significant adverse economic impact on business.

BOARD OF EQUALIZATION
PROPERTY TAX RULES

Division 1. State Board of Equalization-Property Tax
Chapter 2. Assessment
Article 5. Situs

Rule 202. Allocation of Aircraft of Certificated Air Carriers and Scheduled Air Taxi Operators.

Authority: Section 15606, Government Code.

Reference: Sections 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, Revenue and Taxation Code.

(a) AIR TAXIS. An aircraft whose owner on the lien date used it in scheduled air taxi service at any time during the ~~representative 12-month period from January 1 through December 31 of the previous year immediately preceding the lien date~~ selected pursuant to subsection (f), or which has been purchased for scheduled air taxi service but not yet put into such service and not yet used in any other service, is assessable under sections 1150 to ~~1456~~ 1157 of the Revenue and Taxation Code and not under Part 10, Division 1, or under other situs provisions of Part 2, Division 1, of the Revenue and Taxation Code.

(b) SITUS. Aircraft of United States registry operated by certificated air carriers (within the meaning of section 1150 of the Revenue and Taxation Code) or scheduled air taxis (within the meaning of subdivisions (a) and (b) of section 1154 of the Revenue and Taxation Code) and flown in intrastate, interstate, or foreign commerce shall be deemed to be situated only in those taxing agencies (within the meaning of section 404 of the Revenue and Taxation Code) in which the aircraft normally make physical contact. The physical contact must be intentional rather than by accident or as the result of an emergency, and it must involve embarking or disembarking of crew, passengers, or freight.

(1) Aircraft flying over the state without landing do not acquire situs for property tax purposes. Conversely, the situs of aircraft that depart from a taxing agency within the state, fly out of the state, and return to the same or another taxing agency within the state without landing outside the state is within the state's taxing jurisdiction throughout the flight.

(2) Situs for property tax purposes is not affected by the legal or commercial domicile of the operator of the aircraft, except that foreign-owned and-based aircraft operated solely in foreign commerce do not acquire a situs within the state for property tax purposes.

~~**(c) ALLOCATION FORMULA.** The allocation formula to be used by each assessor is composed of two factors: (1) ground and flight time and (2) aircraft arrivals and departures.~~

~~—(1) The ground and flight time factor is the ratio of time allocable to an airport during a representative period to the total time during the representative period.~~

~~—(A) Time allocable to an airport is the amount of time a certificated aircraft (or scheduled air taxi) is on the ground at the airport, plus the portion of incoming and outgoing flight time computed pursuant to subsection (d). In computing the time allocable to the airport, the following shall be excluded: (1) all ground and flight time prior to the aircraft's first entry into the revenue service of the air carrier in control of the aircraft on the current lien date; and (2) all ground time in excess of 168 hours during each period the aircraft spent 720 or more consecutive hours on the ground.~~

~~—(B) Total time is the sum of the time allocable to the airport and the time allocable elsewhere during the representative period. In computing the total time, the following shall be excluded: (1) all ground and flight time prior to the aircraft's first entry into the revenue service of the air carrier in control of the aircraft on the current~~

~~lien date. The ground and flight time factor shall be multiplied by 75 percent to obtain a weighted ground and flight time factor.~~

~~(2) The aircraft arrivals and departures factor is the ratio of the number of arrivals at and departures from an airport during a representative period to the total number of arrivals at and departures from all airports during the representative period. This factor shall be multiplied by 25 percent to obtain a weighted arrivals and departures factor.~~

~~(3) The weighted ground and flight time factor shall be added to the weighted arrivals and departures factor. The sum of the two weighted factors yields the allocation ratio to be applied to the full cash value of the aircraft to determine the full cash value allocable to the airport.~~

(c) ALLOCATION FORMULA. The allocation formula to be used by each assessor is the proportionate amount of time, both in the air and on the ground, that certificated aircraft have spent within the state during the 12-month period from January 1 through December 31 of the previous year immediately preceding the lien date as compared to the total time during that 12-month period.

(1) Time in the air consists of flight time and taxi time within California's borders.

(A) Time in the air shall be based on the State Board of Equalization's "California Standard Flight Times" table in the most recently published Letter To Assessors that address intrastate and interstate standard flight times.

(B) These standard times shall be multiplied by the number of departures to and from the airports listed in the Letter To Assessors.

(C) Absence of a flight on the State Board of Equalization's "California Standard Flight Times" table in the most recently published Letter To Assessors that addresses intrastate and interstate standard flight times does not preclude the inclusion of that flight in the allocation formula.

(D) Commercial air carriers shall notify, in writing, the lead county for that air carrier of any missing flights not listed in the "California Standard Flight Times" table in the most recently published Letter To Assessors that address intrastate and interstate standard flight times.

(2) Time on the ground is all time in the state that is not flight or taxi time.

(A) Time on the ground at each airport shall be reported on a summary basis by fleet type pursuant to subdivision (m) of section 441 of the Revenue and Taxation Code.

(B) Time on ground allocated to heavy maintenance that requires a certificated aircraft or scheduled air taxi to be removed from revenue service shall be excluded.

i. An air carrier claiming such exclusion shall identify such maintenance and supply sufficient documentation that will enable the assessor to confirm the amount of time the aircraft was not in revenue service.

ii. Routine line maintenance that does not require removal from revenue service shall not be excluded from time allocable to the airport.

(3) Time allocable to each airport is the amount of time a certificated aircraft or scheduled air taxi is on the ground at the airport computed pursuant to subdivision (c)(2) of this rule, plus the portion of incoming and outgoing flight time computed pursuant to subdivision (c)(1) of this rule.

(4) All time, both in the air and on the ground, that certificated aircraft have spent within the state prior to the aircraft's first entry into the revenue service of the air carrier in control of the aircraft on the current lien date shall be excluded from the time-in-state factor.

(d) ALLOCATION OF FLIGHT TIME. For aircraft flying from one California airport to another California airport, the flight time attributable to each airport is one-half the flight time between the airports. For aircraft arriving from an airport outside the state or leaving for an airport outside the state, the flight time from or to the state boundary shall be allocated to the California airport in which the aircraft first lands or last takes off, as the case may be. The flight time to the state boundary shall be computed as follows: (1) determine the mileage from the airport to the state boundary crossing point on a great circle flight to the first landing point outside the state; (2) divide this mileage by the total great circle mileage from the airport to the first landing point outside the state; (3) multiply this percentage by the total flight time from the airport to the first landing point outside the state. The same procedure shall be used for inbound flights from outside the state. To allow for differences in take-off, landing, and cruising speeds and for varying take-off and landing patterns, the time allocated to an airport shall not be less than five minutes for an incoming or an outgoing flight. In lieu of the actual flight time for a single flight, the average flight time between two ports, or between a port and the state line, for two or more flights of a single carrier or of more than one carrier shall be used when such an average is promulgated by the board unless the assessor has documented evidence which justifies departure from such average time.

(e) SOURCES OF ALLOCATION DATA. ~~For scheduled operations, arrivals and departures and ground and flight time shall be derived from the carrier's operating schedules.~~ For all nonscheduled operations, including, but not limited to, overhaul, pilot training, charter, military contract flights, and standby services, ground time and departures shall be derived from the carrier's recorded operations.

(f) REPRESENTATIVE PERIOD. ~~Annually, on or before December 20, the board shall consult with the assessors of the counties in which air carriers' aircraft normally make physical contact. On or before January 15, the board shall designate a representative period to be used by all assessors in assessing the aircraft of each carrier for the forthcoming fiscal year.~~

(f) LEAD COUNTY ASSESSOR'S OFFICE.

- (1) After consulting with commercial air carriers in the state, the Aircraft Advisory Subcommittee of the California Assessors' Association shall do both of the following:
 - (A) On or before March 1, 2020 and on or before each March 1 thereafter, designate a lead county assessor's office for each commercial air carrier operating certificated aircraft in California.
 - (B) Every third year thereafter, redesignate a lead county assessor's office for each of these air carriers, unless an air carrier and its existing lead county assessor's office concur to waive this redesignation.
- (2) The lead county assessor's office shall do all of the following:
 - (A) Calculate an unallocated value of the certificated aircraft of each commercial air carrier to which that assessor is designated.
 - (B) Electronically transmit to the assessor of each county in which the property described in subdivision (f)(1) of this rule has situs for the assessment year the values determined by the lead county assessor's office under subdivision (f)(1) of this rule.
 - (C) Receive the property statement, as described in subdivision (m) of section 441 of the Revenue and Taxation Code, of each commercial air carrier to which the assessor is designated.
 - (D) Receive and electronically transmit to the assessor of each affected county flight data received pursuant to paragraph (3) of subdivision (m) of section 441 of the Revenue and Taxation Code.
 - (E) Lead the audit team described in subdivision (f)(4) of this rule when that team is conducting an audit of a commercial air carrier to which the assessor is designated.

- (F) Notify, in writing, each commercial air carrier for which the assessor has been designated of this designation on or before the first March 15 that follows that designation.
- (G) Notify, in writing, the State Board of Equalization, of any missing flights not listed in the "California Standard Flight Times" table in the most recently published Letter To Assessors that addresses intrastate and interstate standard flight times.
- (3) The county assessor of each county in which the personal property of a commercial air carrier has situs for an assessment year is solely responsible for assessing that property, applying the allocation formula set forth above and enrolling the value of the property in that county, but, in determining the allocated fleet value for each make, model, and series of certificated aircraft of a commercial air carrier, the assessor may consult with the lead county assessor's office designated for that commercial carrier.
- (4) An audit of a commercial air carrier shall be conducted once every four years on a centralized basis by an audit team of auditor-appraisers from one to three counties, as determined by the Aircraft Advisory Subcommittee of the California Assessors' Association. Such audit shall encompass all of the California personal property and fixtures of the air carrier and is deemed to be made on behalf of each county for which an audit would otherwise be required under section 469 of the Revenue and Taxation Code.
 - (A) The audit team shall be the point of contact for all aircraft-related questions to or from each county and the commercial air carrier.
 - (B) The audit team shall also ensure that all aircraft-related concerns regarding the taxable value of the aircraft and aircraft parts are resolved with each county before finalizing the audit.

(g) APPLICATION OF ALLOCATION FORMULA. The aircraft of certificated air carriers and scheduled air taxi operators shall be segregated by subfleet type, and a separate allocation ratio shall be computed for each subfleet type which ~~that~~ has established a taxable situs within the state, excluding those makes within a type which ~~that~~ have not established a taxable situs within the state. Each allocation ratio shall then be applied to the total value of the carrier's aircraft of each subfleet type to which the allocation ratio applies, ~~excluding those makes within a type which have not established a tax situs within the state.~~ Annually, the types shall be designated by the board in the same manner and at the same time the representative period is designated. Examples of the types are as follows:

- (1) Piston powered
- (2) Turboprop powered
- (3) Helicopter
- (4) Turbojet and Turbofan powered
 - (A) Two engine
 - (B) Three engine
 - (C) Four engine
 - (D) DC-8-60 series
 - (E) Two engine widebody
 - (F) Three engine widebody
 - (G) Four engine widebody

Regulation History

Type of Regulation: Property Tax

Rule: 202

Title: Allocation of Aircraft of Certificated Air Carriers and Scheduled Air Taxi Operators under Certificate of Compliance Rulemaking Process

Prepared by: Henry Nanjo

Legal Contact: Henry Nanjo

Summary: The State Board of Equalization proposes to adopt amendments to Property Tax Rule 202 to make the rule consistent with current law under Revenue and Taxation Code sections 441 and 1150 to 1157, which provides for a new formula for allocating the taxable value, re-establishes the local centralized administrative procedures using a “lead county” system and provides for the duties of the lead county, requires an audit of a commercial air carrier once every four years, and requires the State Board of Equalization to continue to issue an annual Letter To Assessors with the “California Standard Flight Times” to be used in calculating the allocation formula.

History of Proposed Regulation:

October 20, 2020	Public hearing
September 4, 2020	OAL publication date; 45-day public comment period begins; IP mailing
August 25, 2020	Notice to OAL
July 22, 2020	Chief Counsel Matters, Board Authorized Publication (Vote 5-0)

Petitioner: N/A

Support: N/A

Oppose: N/A