

Memorandum

To: Honorable Malia M. Cohen, Chair
Honorable Mike Schaefer, Vice Chair
Honorable Ted Gaines, First District
Honorable Antonio Vazquez, Third District
Honorable Betty T. Yee, State Controller

Date: June 15, 2022

From: Henry D. Nanjo
Chief Counsel

Subject: *Board Meeting, June 28-29, 2022*
Chief Counsel Matters - Item G – Rulemaking
Authorization to Adopt Proposed Amendments to Property Tax Rule 905 Under CCR, Title 1, Section 100

We request your adoption of the proposed amendments to Property Tax Rule¹ 905 under California Code of Regulations, title 1, section 100, *Publication of “Changes Without Regulatory Effect”* (Section 100). The proposed amendment to Rule 905 would update the rule’s references to include Revenue and Taxation Code section 721.5.

I. Background

Property Tax Rule 905, *Assessment of Electric Generation Facilities (Effective December 31, 2002)*, provides for the assessment of electric generation facilities, implementing Revenue and Taxation Code sections² 118, 721, 721.5, and 722.5. When this rule was last amended, the language of section 721.5 was proposed and in process, but had not yet been added to the Revenue and Taxation Code and thus, was not referenced. The proposed amendment to Rule 905 updates the statutory reference to include section 721.5.

Staff has determined that the changes to Rule 905 are appropriate for processing under Section 100. This is because the changes “[make] a regulatory provision consistent with a changed California statute,” and the “regulatory provision is inconsistent with and superseded by the changed statute” and the State Board of Equalization has “no discretion to adopt a change that differs in substance from the one chosen.” (Cal. Code Regs., tit. 1, § 100, subd. (a)(6).) Furthermore, the changes do “not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.” (Cal. Code Regs., tit. 1, § 100, subd. (a).)

¹ All references to Property Tax “Rule” or “Rules” are to sections of title 18 of the California Code of Regulations.

² All section references are to the Revenue and Taxation Code except for Section 100 or otherwise noted.

II. Staff's Recommendation

Based on the information stated above, staff requests the adoption of the proposed changes to Rule 905 under Section 100, without the normal notice and public hearing process. These changes are appropriate for processing under Section 100 because the changes are consistent with current law and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision.

The proposed amendments to the Rule are attached hereto, in strikeout and underline format. If you need more information or have any questions, please contact Honey Her, Regulations Coordinator, by telephone at (916) 274-3523 or by email at Honey.Her@boe.ca.gov.

Recommended by:

/s/ Henry Nanjo

Henry D. Nanjo, Chief Counsel

Approved:

/s/ Yvette Stowers

Yvette M. Stowers, Executive Director

Approved:

/s/ David Yeung

David Yeung, Deputy Director
Property Tax Department

BOARD APPROVED on: _____

Catherine Taylor, Chief
Board Proceedings Division

Attachment: Text of Proposed Amendments to Rule 905

- cc: Ms. Yvette M. Stowers
- Mr. Henry Nanjo
- Mr. David Yeung
- Ms. Lisa Thompson

Text of Proposed Amendments to California Code of Regulations

Title 18. Public Revenues

Division 1. State Board of Equalization – Property Tax

Chapter 9. State Assesseees, Article 1. General Provisions

Section 905. Assessment of Electric Generation Facilities. (Effective December 31, 2002)

(a) Commencing with the assessment for the lien date for the 2003 assessment year, an electric generation facility shall be state assessed property for purposes of article XIII, section 19 of the California Constitution if: (1) the facility has a generating capacity of 50 megawatts or more; and (2) is owned or used by a company which is an electrical corporation as defined in subdivisions (a) and (b) of section 218 of the Public Utilities Code; or, the facility is owned or used by a company which is a state assessee for reasons other than its ownership of the electric generation facility or its ownership of pipelines, flumes, canals, ditches, or aqueducts lying within two or more counties.

(b) "Electric generation facility" does not include a qualifying small power production facility or a qualifying cogeneration facility within the meaning of sections 201 and 210 of Title II of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. §§ 796(17), (18) and 824a-3) and the regulations adopted for those sections under that act by the Federal Energy Regulatory Commission (18 C.F.R. 292.101-292.602).

(c) For purposes of this section, "company" means:

(1) A person as defined in Revenue and Taxation Code section 19;

(2) A separate division or other functional unit of a business enterprise which is created and maintained to operate any electric generation facility, where the business enterprise is engaged in a primary business other than generating, transmitting, distributing or selling electricity to the public.

(d) If an electric generation facility is operated by a separate division or other functional unit of a business enterprise, as described in this rule, the business enterprise must maintain accounting and other records sufficient to distinguish the costs and revenues of the separate division or unit from other divisions and units of the business enterprise.

(e) As adopted on September 1, 1999 and effective November 27, 1999, this rule is applicable to define electric generation facilities subject to state assessment to and including December 30, 2002. As amended on November 28, 2001, and filed with the Secretary of State on May 14, 2002, this rule is applicable to define electric generation facilities subject to state assessment as of December 31, 2002 and thereafter.

Note: Authority cited: Section 15606(c), Government Code. Reference: Article XIII, Section 19, California Constitution; Sections 118, 721, 721.5, 722.5, Revenue and Taxation Code.