

Issue Paper Number 12-004



- Board Meeting
- Business Taxes Committee
- Customer Services and Administrative Efficiency Committee
- Legislative Committee
- Property Tax Committee
- Other

Amendments to Property Tax Rules 313 and 321

I. Issue

Should the State Board of Equalization (BOE) authorize publication of amendments to Property Tax Rule 313, *Hearing Procedure*, and Property Tax Rule 321, *Burden of Proof*?

II. Alternative 1 - Staff Recommendation

Staff recommends that the attached proposed amendments to Property Tax Rule 313, *Hearing Procedure*, and Property Tax Rule 321, *Burden of Proof*, be adopted and authorized for publication (see Attachment A).

III. Other Alternative(s) Considered

None

IV. Background

Under Government Code section 15606, subdivision (c), the BOE is given the power and duty to prescribe rules and regulations to govern local boards of equalization and assessment appeals boards when equalizing and county assessors when assessing. In compliance with this duty, the BOE has adopted Property Tax Rules 301 through 326, relative to the local equalization process.

Assembly Bill 711 (Stats. 2011, ch. 220), effective January 1, 2012, amends Revenue and Taxation Code section 167 to provide that an owner-occupied single-family dwelling means a single-family dwelling that is the owner's principal place of residence and that it qualifies for a homeowners' property tax exemption. This clarifies the rebuttable presumption affecting the burden of proof contained in section 167 pertaining to an assessment appeal hearing involving a single-family residence. The amendment to section 167 now places the burden of proof on the taxpayer for a rental single-family dwelling or a secondary vacation dwelling.

V. Discussion

Staff of the Property and Special Taxes Department, County-Assessed Properties Division, initiated a project to amend Property Tax Rules 313 and 321 to provide a definition of *owner-occupied single-family dwelling* consistent with the amendments to Revenue and Taxation Code section 167. Interested parties were provided with proposed draft language for the rules on January 30, 2012 (Letter To Assessors 2012/007) and invited to participate in the rulemaking effort. One comment was received, and it is accommodated in the proposed revisions to the rules.

VI. Alternative 1 - Staff Recommendation

Adopt and authorize for publication amendments to Property Tax Rule 313, *Hearing Procedure*, and Property Tax Rule 321, *Burden of Proof*. The primary focus of the proposed amendments is to reflect changes to Revenue and Taxation Code section 167.

A. Description of Alternative 1

Staff recommends that the attached proposed amendments to Property Tax Rule 313, *Hearing Procedure*, and Property Tax Rule 321, *Burden of Proof*, be adopted and authorized for publication (see Attachment A). The proposed amendments add to each rule a definition of "owner-occupied single-family dwelling" consistent with the Revenue and Taxation Code.

B. Pros of Alternative 1

Amendments to Property Tax Rules 313 and 321 will provide clarification for county assessors, members of local equalization and assessment appeals boards, and taxpayers regarding the rebuttable presumption affecting the burden of proof in an assessment appeal hearing.

The burden of proof in assessment appeal hearings involving an owner-occupied single-family residence will be on the county assessor. The county assessor must first validate the assessor's opinion of value; the taxpayer will then have the opportunity to refute that value. Conversely, the burden of proof in an assessment appeal hearing involving a single-family residence that is not owner-occupied as the principal residence of the taxpayer will be on the taxpayer. The taxpayer must first validate his/her opinion of value; the county assessor will then have the opportunity to refute that value.

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C. Cons of Alternative 1

None

D. Statutory or Regulatory Change for Alternative 1

Action by the BOE to adopt changes to Property Tax Rules 313 and 321 will amend Title 18 of the California Code of Regulations, chapter 1, subchapter 3, sections 313 and 321.

E. Operational Impact of Alternative 1

None

F. Administrative Impact of Alternative 1

1. Cost Impact

Development of Property Tax Rules is within the scope of the statutory duties of the County-Assessed Properties Division and will be absorbed by existing staff.

2. Revenue Impact

None

G. Taxpayer/Customer Impact of Alternative 1

The burden of proof in assessment appeal hearings involving single-family residences that are not the principal residence of the taxpayer (for example, vacation homes or rental properties) will be on the taxpayer.

H. Critical Time Frames of Alternative 1

None

VII. Other Alternatives

None

Preparer/Reviewer Information

Prepared by: Property and Special Taxes Department; County-Assessed Properties Division

Current as of: April 12, 2012

RULE 313. HEARING PROCEDURE.

Authority: Section 15606(c), Government Code.

Reference: Article XIII A, California Constitution.

Sections 110, 167, 205.5, 218, 1605.4, 1607, 1609, 1609.4, and 1637, Revenue and Taxation Code.
Section 664, Evidence Code.

Hearings on applications shall proceed as follows:

(a) The chair or the clerk shall announce the number of the application and the name of the applicant. The chair shall then determine if the applicant or the applicant's agent is present. If neither is present, the chair shall ascertain whether the clerk has notified the applicant of the time and place of the hearing. If the notice has been given and neither the applicant nor the applicant's agent is present, the application shall be denied for lack of appearance, or, for good cause of which the board is timely informed prior to the hearing date, the board may postpone the hearing. If the notice has not been given, the hearing shall be postponed to a later date and the clerk directed to give proper notice thereof to the applicant.

The denial of an application for lack of appearance by the applicant, or the applicant's agent, is not a decision on the merits of the application and is not subject to the provisions of regulation 326 of this subchapter. The board of supervisors may adopt a procedure which authorizes reconsideration of the denial where the applicant furnishes evidence of good cause for the failure to appear or to make a timely request for postponement and files a written request for reconsideration within a period set by the board, not to exceed 60 days from the date of mailing of the notification of denial due to lack of appearance. Applicants who fail to request reconsideration within the period set, or whose requests for reconsideration are denied, may refile an appeal of the base year value during the next regular filing period in accordance with Revenue and Taxation Code section 80.

(b) If the applicant or the applicant's agent is present, the chair or the clerk shall announce the nature of the application, the assessed value as it appears on the local roll and the applicant's opinion of the value of the property. The chair may request that either or both parties briefly describe the subject property, the issues the board will be requested to determine, and any agreements or stipulations agreed to by the parties.

(c) In applications where the applicant has the burden of proof, the board shall require the applicant or the applicant's agent to present his or her evidence first, and then the board shall determine whether the applicant has presented proper evidence supporting his or her position. This is sometimes referred to as the burden of production. In the event the applicant has met the burden of production, the board shall then require the assessor to present his or her evidence. The board shall not require the applicant to present evidence first, when the hearing involves:

(1) A penalty portion of an assessment.

(2) The assessment of an owner-occupied single-family dwelling or the appeal of an escape assessment, and the applicant has filed an application that provides all of the information required in regulation 305(c) of this subchapter and has supplied all information as required by law to the assessor. An owner-occupied single-family dwelling means a single-family dwelling that is the owner's principal place of residence and qualifies for a homeowners' property tax exemption pursuant to Revenue and Taxation Code section 218. "Property that qualifies for a homeowners' property tax exemption" also includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by Revenue and Taxation Code section 205.5. In those instances, the chair shall require the assessor to

present his or her case to the board first. With respect to escape assessments, the presumption in favor of the applicant provided in regulation 321(d) of this subchapter does not apply to appeals resulting from situations where an applicant failed to file a change in ownership statement, a business property statement, or to obtain a permit for new construction.

(3) A change in ownership and the assessor has not enrolled the purchase price, and the applicant has provided the change of ownership statement required by law. The assessor bears the burden of proving by a preponderance of the evidence that the purchase price, whether paid in money or otherwise, is not the full cash value of the property.

(d) All testimony shall be taken under oath or affirmation.

(e) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Failure to enter timely objection to evidence constitutes a waiver of the objection. The board may act only upon the basis of proper evidence admitted into the record. Board members or hearing officers may not act or decide an application based upon consideration of prior knowledge of the subject property, information presented outside of the hearing, or personal research. A full and fair hearing shall be accorded the application. There shall be reasonable opportunity for the presentation of evidence, for cross-examination of all witnesses and materials proffered as evidence, for argument and for rebuttal. The party having the burden of proof shall have the right to open and close the argument.

(f) When the assessor requests the board find a higher assessed value than he or she placed on the roll and offers evidence to support the higher value, the chair shall determine whether or not the assessor gave notice in writing to the applicant or the applicant's agent by personal delivery or by deposit in the United States mail directed to the address given on the application. If notice and a copy of the evidence offered has been supplied at least 10 days prior to the hearing, the assessor may introduce such evidence at the hearing. When the assessor proposes to introduce evidence to support a higher assessed value than the value on the roll, the assessor no longer has the presumption accorded in regulation 321(a) of this subchapter and the assessor shall present evidence first at the hearing, unless the applicant has failed to supply all the information required by law to the assessor. The foregoing notice requirement shall not prohibit the board from a finding of a higher assessed value when it has not been requested by the assessor.

(g) Hearings by boards and hearing officers shall be open, accessible, and audible to the public except that:

(1) Upon conclusion of the evidentiary portion of the hearing, the board or hearing officer may take the matter under submission and deliberate in private in reaching a decision, and

(2) The board or hearing officer may grant a request by the applicant or the assessor to close to the public a portion of the hearing relating to trade secrets. For purposes of this regulation, a "trade secret" is that information defined by section 3426.1 of the Civil Code. Such a request may be made by filing with the clerk a declaration under penalty of perjury that evidence is to be presented by the assessor or the applicant that relates to trade secrets whose disclosure to the public will be detrimental to the business interests of the owner of the trade secrets. The declaration shall state the estimated time it will take to present the evidence. Only evidence relating to the trade secrets may be presented during the time the

hearing is closed, and such evidence shall be confidential unless otherwise agreed by the party to whom it relates.

History: Adopted May 11, 1967, effective June 11, 1967.
 Amended October 4, 1967, effective October 5, 1967.
 Amended May 21, 1968, effective June 26, 1968.
 Amended November 20, 1968, effective November 22, 1968.
 Amended June 4, 1969, effective June 6, 1969.
 Amended May 6, 1970, effective June 6, 1970.
 Amended April 14, 1972, effective May 14, 1972.
 Amended June 7, 1973, effective July 15, 1973.
 Amended June 13, 1974, effective June 14, 1974.
 Amended November 4, 1976, effective January 1, 1977.
 Amended April 7, 1977, effective May 22, 1977, applicable to 1977 assessment appeals.
 Amended December 7, 1982, effective March 16, 1983.
 Amended November 14, 1984, effective March 1, 1985.
 Amended January 5, 2000, effective April 22, 2000.
 Amended and effective November 20, 2000.

RULE 321. BURDEN OF PROOF.

Reference: Sections 110, 167, 205.5, 218, 1601 et seq., Revenue and Taxation Code.
Section 664, Evidence Code.

(a) Subject to exceptions set by law, it is presumed that the assessor has properly performed his or her duties. The effect of this presumption is to impose upon the applicant the burden of proving that the value on the assessment roll is not correct, or, where applicable, the property in question has not been otherwise correctly assessed. The law requires that the applicant present independent evidence relevant to the full value of the property or other issue presented by the application.

(b) If the applicant has presented evidence, and the assessor has also presented evidence, then the board must weigh all of the evidence to determine whether it has been established by a preponderance of the evidence that the assessor's determination is incorrect. The presumption that the assessor has properly performed his or her duties is not evidence and shall not be considered by the board in its deliberations.

(c) The assessor has the burden of establishing the basis for imposition of a penalty assessment.

(d) Exceptions to subsection (a) apply in any hearing involving the assessment of an owner-occupied single-family dwelling or an escape assessment. An owner-occupied single-family dwelling means a single-family dwelling that is the owner's principal place of residence and qualifies for a homeowners' property tax exemption pursuant to Revenue and Taxation Code section 218. "Property that qualifies for a homeowners' property tax exemption" also includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by Revenue and Taxation Code section 205.5. In such instances, the presumption in section 167 of the Revenue and Taxation Code affecting the burden of proof in favor of the applicant who has supplied all information to the assessor as required by law imposes upon the assessor the duty of rebutting the presumption by the submission of evidence supporting the assessment.

(e) In hearings involving change in ownership, except as provided in section 110 of the Revenue and Taxation Code, the purchase price is rebuttably presumed to be the full cash value. The party seeking to rebut the presumption bears the burden of proof by a preponderance of the evidence.

(f) In weighing evidence, the board shall apply the same evidentiary standard to the testimony and documentary evidence presented by the applicant and the assessor. No greater relief may be granted than is justified by the evidence produced during the hearing.

History: Adopted May 11, 1967, effective June 11, 1967.
Amended October 4, 1967, effective October 5, 1967.
Amended November 20, 1968, effective November 22, 1968.
Amended April 14, 1972, effective May 14, 1972.
Amended November 4, 1976, effective January 1, 1977.
Amended July 27, 1982, effective February 10, 1983.
Amended January 5, 2000, effective April 22, 2000.