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May 21, 2004

TO INTERESTED PARTIES:

PROPERTY TAX RULE 305.3,
APPLICATION FOR EQUALIZATION UNDER REVENUE AND
TAXATION CODE SECTION 469

In Letter To Assessors 2004/016, interested parties were advised that the Board had received a petition from the California Assessors' Association (CAA) proposing that the Board commence the rulemaking process to amend Property Tax Rule 305.3, *Application for Equalization Under Revenue and Taxation Code Section 469*. Interested parties were invited to provide comments on the CAA petition. Enclosed is a matrix summarizing the comments received.

An interested parties meeting will be held on June 25, 2004 to discuss the proposed amendments to Rule 305.3. The meeting will begin at 9:30 a.m. at the Board's headquarters in Sacramento, 450 N Street, Room 122. The petition to amend Rule 305.3 is scheduled for the August 24, 2004 Property Tax Committee meeting.

Since the same interested parties submitted comments on a second CAA petition to amend Property Tax Rule 461, *Real Property Value Changes*, both rules will be discussed at the June 25 interested parties meeting.

All documents regarding this project will be posted to the Board's Web site at <http://www.boe.ca.gov/proptaxes/ptr3053.htm>. If you plan to attend the interested parties meeting on June 25, please advise Ms. Sherrie Kinkle at sherrie.kinkle@boe.ca.gov or (916) 322-2921.

Sincerely,

/s/ Dean R. Kinnee

Dean R. Kinnee, Chief
Assessment Policy and Standards Division

DRK:sk
Enclosure

**PROPERTY TAX RULE 305.3
APPLICATION FOR EQUALIZATION UNDER REVENUE AND
TAXATION CODE SECTION 469**

On September 25, 2003, the California Assessors' Association (CAA) petitioned the Board to consider the following amendments to Property Tax Rule 305.3:

(b)(2) "Property subject to an escape assessment" means any individual item of the assessee's property that was underassessed or not assessed at all when the assessor made the original assessment of the assessee's property, and which has not been previously equalized by an appeals board, regardless of whether the assessor actually makes or enrolls an escape assessment. Property is subject to an escape assessment even if the audit discloses an overassessment of another portion of an item of the property, and the amount of the underassessment could be offset completely by the amount of overassessment. If the audit discloses that any property was subject to an escape assessment, the assessor shall include that fact as a finding presented to the taxpayer as required by Rule 191. If no such finding is made by the assessor, the taxpayer may file an application and present evidence to the board of the existence and disclosure of property of material value subject to escape assessment. If the board determines that property subject to escape assessment was disclosed as a result of an audit, the board shall permit the taxpayer's section 469 appeal.

(b)(3) "Result of an audit" means the final conclusions reached by the assessor during the audit process as described in Rule 191 and shall include a description of any property subject to escape assessment as noted in the audit work papers, ~~or as identified in writing by the taxpayer.~~

Following are comments received in response to the CAA petition.

No.	SOURCE	COMMENTS
1	Cris Andrews, Shasta County Assessor; President, California Assessors' Association	As you know, the Elected Board of Equalization approved the California Assessors' Association (CAA) petitions to commence the rulemaking process for amendments to Property Tax Rules 138, 305.3 and 461 on December 4, 2003. I am writing to you to express the CAA's appreciation to you and the Board for your support in our efforts to improve the fairness and efficiency of California's property tax system.
2	Bob Poole, Western States Petroleum Association	<p>WSPA opposes the CAA proposed change to Rule 305.3. It is our view that Rule 305.3 has a long history of fulfilling the original legislative intent of the California Legislature and does not conflict with the California Revenue and Taxation Code.</p> <p>Rule 305.3 currently affords the taxpayer a right to file an application to the board and present evidence of existence and disclosure of property subject to escape assessment. Modifying this rule removes existing rights currently afforded the taxpayer.</p> <p>The proposed change is both vague and restricts the rights of all taxpayers for the sake of a few taxpayers who may have abused this provision. It is our view that other means should be sought by the CAA to address those found to be abusing the intent of this provision.</p>

No.	SOURCE	COMMENTS
3	John Martini and Rock Zierman, California Independent Petroleum Association	<p>CIPA opposes the CAA proposed change to Rule 305.3. It is our view that Rule 305.3 has a long history of fulfilling the original legislative intent of the California Legislature and does not conflict with the California Revenue and Taxation Code.</p> <p>Rule 305.3 currently affords the taxpayer a right to file an application to the board and present evidence of existence and disclosure of property subject to escape assessment. Modifying this rule removes existing rights currently afforded the taxpayer.</p> <p>The proposed change is both vague and restricts the rights of all taxpayers for the sake of a few taxpayers who may have abused this provision. It is our view that other means should be sought by the CAA to address those found to be abusing the intent of this provision.</p>
4	David S. Hall, Berry Petroleum Company	<p>Berry Petroleum Company opposes the CAA proposed change to Rule 305.3. It is our view that Rule 305.3 has a long history of fulfilling the original legislative intent of the California Legislature and does not conflict with the California Revenue and Taxation Code.</p> <p>Rule 305.3 currently affords the taxpayer a right to file an application to the board and present evidence of existence and disclosure of property subject to escape assessment. Modifying this rule removes existing rights currently afforded the taxpayer.</p> <p>The proposed change is both vague and restricts the rights of all taxpayers for the sake of a few taxpayers who may have abused this provision. It is our view that other means should be sought by the CAA to address those found to be abusing the intent of this provision.</p>
5	Wade E. Norwood, Industry Representative	<p>The proposed language is ambiguous because "material value" is undefined and would require Assessment Appeals Boards (AABs) to guess as to what amount of property was "material." AABs currently make no similar determinations that would provide them with some guidance as to how to make a "materiality" determination. No uniform standard of "material value" is proposed. As a result, there will be inconsistent "materiality" determinations from county to county and from AAB to AAB within counties.</p> <p>Under the proposal, the assessor will be able to avoid having their work reviewed by arguing that the property the assessor failed to enroll was not of "material value." This will lead to additional costs for taxpayers, will waste administrative resources, will deny many taxpayers of a full and fair hearing, and will lead to substantial litigation. AABs will have to hold additional "materiality" hearings merely for the purpose of determining if the taxpayer can have his assessments reviewed.</p> <p>Under subsection (b)(2), taxpayers have the right to "present evidence to the board of the existence and disclosure of property (of material value) subject to escape assessment. Proposed subsection (b)(3), however, defines "result of an audit" in such a way that the AAB would be limited to determining if the audit work papers <i>alone</i> revealed property subject to escape assessment. The deletion proposed by the Assessors' Association in subsection (b)(3) is inconsistent with subsection (b)(2).</p>

No.	SOURCE	COMMENTS
6	Wm. Gregory Turner, California Taxpayers' Association	<p>Cal Tax respectfully urges you to reject the petition of the CAA to amend Rule 305.3 relating to appeals after an audit. The current rule presents no ambiguities in respect to the issues raised that could lead to misinterpretation or misapplication. To the contrary, it provides clear guidelines which protect taxpayers from the actual abuse by some county assessor offices of the audit process to artificially inflate taxpayer liabilities. Making the changes suggested by the assessors would make Rule 305.3 inconsistent with the authorizing statute (Rev & Tax Code Section 469) and expose taxpayers to possible manipulation of the audit process to deny them their statutory right to appeal assessments under Section 469.</p> <p>We believe the changes proposed by the assessors are inconsistent with the express language of Section 469 and certainly inconsistent with the purpose and intent of the statute because they seek to further impede the taxpayer's right to appeal assessments. While proposed to clarify ambiguity, we believe the changes create ambiguity that does not currently exist and will likely produce litigation.</p>
7	Lawrence E. Stone, Santa Clara County Assessor	<p>I am writing to request your support for the amendments to Rule 305.3 that are being proposed by the CAA. While the proposed changes may appear minor, they are of substantial significance in enabling assessors to efficiently and effectively perform their official duties. The changes being suggested by the CAA are intended to address provisions of the current rule that several assessors had identified as being problematic at the time Rule 305.3 was initially adopted. However, corporate special interest were able to persuade the SBE to adopt the rule in its present form despite the efforts of the assessors to identify its flaws and the problems those flaws created.</p> <p>The fundamental problem with Rule 305.3 in its current iteration is that it lends itself to manipulation and abuse by those corporate taxpayers who want to reopen assessment appeals filing periods years after the regular filing period has closed. Amending Rule 305.3 to expressly require that evidence presented to the local appeals board must establish that property subject to escape assessment be "of material value" would reduce the potential for manipulation and abuse. The concept of materiality is a principle fundamental to taxation and financial accounting. Despite the objections of its opponents, the assessors' proposal to include a materiality standard in Rule 305.3 will not impair any legitimate appeal right of any taxpayer.</p> <p>In conjunction with the materiality standard, the assessors are requesting that Rule 305.3 be amended by deleting the words "or as identified in writing by the taxpayer." The <i>Apple Computer</i> case illustrates very clearly why the objectionable language should be deleted. In that litigation, Apple argued that the court should accept what Apple had determined should have been the result of the assessor's audit. Both the trial court and the appellate court very wisely rejected Apple's argument, recognizing that the assessor, not the taxpayer, conducts the audit. It was evidently apparent to the court that a system in which the taxpayer audits itself and determines its own audit findings is not a functional property tax system.</p>

No.	SOURCE	COMMENTS
8	David Gangloff, Jr., Industry Representative	<p>I believe that the court in <i>Heavenly Valley v. El Dorado County Board of Equalization</i> (2000 84 Cal.App.4th 1323, 1342) has already rejected the position that property that escapes assessment must be of "material value." At issue in that case was property that was both under and over assessed. The county netted the assessments together, declared that the value would be de minimus, and refused to issue tax bills. Heavenly argued that even if the assessment would be de minimus it was irrelevant to the taxpayer's right of appeal. The court concluded, "the Legislature intends to grant a taxpayer the right to administrative review ... where the assessor's audit discloses property that was underassessed or unassessed, regardless of whether or not an escape assessment is actually enrolled." The fact that the property has no material value is irrelevant to the taxpayer's right of appeal.</p> <p>An assessor is not allowed to refuse to assess taxable property. All property that is not exempt must be assessed by the assessor. That is his Constitutionally mandated duty. If the taxpayer discovers that he did not report all of his property to the assessor, and so notifies the assessor during the audit, the assessor is not free to ignore this information to prevent the taxpayer from filing an appeal. See <i>Sunrise Retirement Villa v. Dear</i> (1997) 58 Cal.App.4th 948, 963, fn 5.)</p>