

Issue Paper Number 99-065



- Board Meeting
- Business Taxes Committee
- Customer Services Committee
- Legislative Committee
- Property Tax Committee
- Technology & Administration Committee
- Other

PROPERTY TAX RULE 305, APPLICATION

I. Issue

Shall the Board approve publication of amendments to Property Tax Rule 305 which grant a county board of equalization discretionary authority to permit amendments to an *Application for Changed Assessment* form (*Application*) to state additional facts claimed to require a reduction of the assessment that is the subject of the *Application*, and to make conforming amendments?

II. Staff Recommendation

The Board should adopt the amendments recommended by the staff to grant the discretionary authority (Attachment 1).

III. Other Alternative(s) Considered

Adopt the position of the county clerks of the board, county assessors, and county counsels that there should be no change in the existing rule as to amendments to the *Application* after the last day upon which the *Application* might have been timely filed with the county board (Attachment 2).

IV. Background

At their November 1999 meeting, the Board considered various versions of amendments to the rules for county boards of equalization (local boards), and directed staff to make revisions to subsection (e) of Rule 305.

The staff circulated suggested amendments to interested parties, received alternative language, and held an interested parties meeting. The parties discussed issues relating to:

- **Correction** of errors and omissions (e.g., incorrect parcel number).
- **Permissive amendments** under existing law (amendments not constituting relief additional to or different in nature from that originally requested).
- **Testimony** or other evidence to support a full value different from the value stated on the *Application*.
- **Recent case law** supporting present Rule 305(e) (no amendments requesting relief additional to or different from the original *Application*) and holding that where a taxpayer marked only the box for incorrect value of personal property and fixtures, they may not amend the *Application* to challenge the assessment of real property assessments at the location (*Helene Curtis v. Assessment Appeals Board of Los Angeles County* 76 Cal. App. 4th 124).
- **Revisions to the rule to permit amendments at the local board's discretion** and whether these revisions were within the rulemaking authority of the Board.

Interested parties suggested (1) discretionary amendments, and (2) no amendments after the last day upon which the *Application* might have been timely filed with the county board.

V. Staff Recommendation

A. Description of the Staff Recommendation

Staff recommends adoption of the attached draft of Property Tax Rule 305 (Attachment 1). Staff's draft would accomplish the following:

1. Grants discretion to the local board to accept amendments after the filing period has closed, either in writing before the scheduled hearing at which the *Application* will be considered or at the hearing.

Under this authority, the local board may accept amendments to consider any request for relief that could have been made part of the original *Application* for the property and the assessment year that is the subject of the *Application*. For example, this change would now permit the amendments that were not permitted in the *Helene Curtis* case, viz. requesting a change in assessment of the real property at the location where the original *Application* challenged only the personal property and fixtures. Since the *Curtis* court was upholding the Board's existing rule as a legitimate exercise of the Board's rulemaking power to fill in statutory gaps, the Board can also change the result of the rule under its "gap-filling" authority.

On the other hand, the local board could not accept amendments relating to other parcels that were not identified on the original *Application*. Likewise, the local board could not allow other years to be added to the *Application*. Section 1603 of the Revenue and Taxation Code is properly read to limit the claim for relief set forth in an *Application* to a specific assessment on the roll for the year for which the *Application* was filed.

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This revision does not address the issue of whether an escape of an underassessment must be enrolled as a prerequisite to contesting the overassessment of other property at the same location following an audit under section 469 of the Revenue and Taxation Code. That issue will be addressed in another rule to be drafted later in 2000.

2. Provides procedures for presenting the proposed amendments in writing or at the hearing on the matter.
3. Provides that the county assessor will have a minimum of 45 days to review the amendments following the hearing at which the amendment issue is considered by the local board, if the county assessor requests this period. The parties may stipulate to a different amount of time.
4. Provides as a condition of granting an amendment that the local board may require the applicant to agree to a waiver of the two-year period of section 1604 of the Revenue and Taxation Code.
5. Confirms that applicants have a right to correct invalid *Applications* (*Applications* with errors or omissions), and that the local board will resolve disputes concerning the invalidity of an *Application*.
6. Confirms that applicants have a right to amend an *Application* if the effect of the amendment is not to request relief additional to or different from that originally requested (i.e., continues existing law in this respect).
7. Confirms that applicants shall be permitted to present testimony and other evidence at the hearing to support a full value that may be different from the opinion of value stated on the *Application* (i.e., continues existing law in this respect).
8. Makes conforming amendments.

B. Pros of the Staff Recommendation

Reinforces basic purpose of equalization process which is to find the correct value of the property in question.

Enhances due process by making certain that the applicant has not only a "day in court," but a full day in court at which all relevant issues are considered.

Favors complete consideration of all facts (substance) over technicalities (form) in the *Application* and equalization process.

Resolves a number of existing controversies in favor of the applicant's position.

C. Cons of the Staff Recommendation

Revises long-standing procedures and processes.

May increase workload of the local boards, the county assessors, the county counsels, and the county clerks of the board.

FORMAL ISSUE PAPER**D. Statutory or Regulatory Change**

Action by the Board on the attached Property Tax Rule will amend Title 18 of the California Code of Regulations, Subchapter 3, section 305.

E. Administrative Impact

None

F. Fiscal Impact**1. Cost Impact**

None

2. Revenue Impact

None

G. Taxpayer/Customer Impact

Amendments of Property Tax Rule 305 will affect administrative procedures for the assessment appeals process at the county level and the functions of the clerks of the appeals boards, appeals board members, county assessors, county counsels, and each taxpayer seeking a reduction in assessment of his or her property's value.

H. Critical Time Frames

The normal assessment appeals filing period is from July 2 through September 15 of each year. In order for the amendments of Property Tax Rule 305 to be adopted and effective for the filing period beginning July 2, 2000, the Board should authorize publication of amendments to the rule at its meeting on January 6, 2000.

VI. Alternative 1**A. Description of the Alternative**

Retain the current prohibition against amendments in subsection (e) of Property Tax Rule 305. Currently subsection (e) of Rule 305 does not permit an *Application* to be amended after the last day upon which the *Application* might have been filed if the effect of the amendment is to request relief additional to or different in nature from that originally requested.

B. Pros of the Alternative

County counsels, county assessors, and county clerks of the board believe that the statutes do not authorize amendments to an *Application* after the last day upon which the *Application* may have been timely filed with the county appeals board. Revenue and Taxation Code sections 1603, 1605, 170, and 80 prescribe specific content requirements and deadlines for filing *Applications* but are silent on the subject of whether amendments are permitted.

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C. Cons of the Alternative

Alternative 1 would continue to prohibit amendment of *Applications* even in instances where a taxpayer has made an obvious error or the error has been made by an applicant who is unfamiliar with property tax laws. This could result in denial of taxpayers' rights to have assessments of their properties reviewed by an appeals board and would preclude an appeals board from performing its duty of hearing and determining correct property values.

D. Statutory or Regulatory Change

Action by the Board on the attached Property Tax Rule will amend Title 18 of the California Code of Regulations, Subchapter 3, section 305.

E. Administrative Impact

None

F. Fiscal Impact

None

1. Cost Impact

None

2. Revenue Impact

None

G. Taxpayer/Customer Impact

No change from existing law.

H. Critical Time Frames

None - continues existing law.

Prepared by: Property Taxes Department; Policy, Planning, and Standards Division

Current as of: December 20, 1999

Rule 305. APPLICATION.

No change in an assessment sought by a person affected shall be made unless the following application procedure is followed:

(a) ~~WHO MAY FILE. ELIGIBLE PERSONS.~~ The (1) An application is made filed by a person affected or his the person's agent, or a relative mentioned in regulation 317 of this subchapter. If the application is made by an agent, other than an authorized attorney licensed to practice in this state who has been retained and authorized by the applicant to file the application, or a relative mentioned in section 320, written authorization to so act must be filed with the application. For purposes of signing an application on behalf of an applicant, an agent shall be deemed to have been duly authorized if the applicant's written agent authorization is on the application or attached to each application at the time it is filed with the board. The attached authorization shall include the following:

(A) The date the authorization statement is executed;

(B) A statement to the effect that the agent is authorized to sign and file applications in the specific calendar year in which the application is filed;

(C) The specific parcel(s) or assessment(s) covered by the authorization, or a statement that the agent is authorized to represent the applicant on all parcels and assessments located in the specific county;

(D) The name, address, and telephone number of the specific agent who is authorized to represent the applicant; and

(E) The applicant's signature and title.

(F) A statement that the agent will provide the applicant with a copy of the application.

(2) If a photocopy of the original authorization is attached to the application, the agent shall be prepared to submit an original signed authorization if requested by the board. The application form shall show that the agent's authorization was attached to the application. An agent must have authorization to file an application at the time the application is filed; retroactive authorizations are not permitted.

(3) If the applicant is a corporation, limited partnership, or a limited liability company, the agent authorization must be signed by an officer of the corporation or authorized employee of the business entity.

(4) No application shall be rejected as a duplicate application by the clerk unless it qualifies as a duplicate application within the meaning specified in section 1603.5 of the Revenue and Taxation Code.

(b) **SIGNATURE AND VERIFICATION.** The application shall be in writing and signed by the applicant or his the applicant's agent with a declaration under penalty of perjury that the statements made in the application are true and that the person signing the application is one of the following: If the application is executed outside the State of California, it shall be sworn to before a notary public or other person authorized to administer oaths.

(1) The person affected, a relative mentioned in regulation 317 of this subchapter, an officer of a corporation, or an employee of a corporation who has been designated in writing by the board of directors or corporate officer to represent the corporation on property tax matters;

(2) An agent authorized by the applicant as indicated in the agent's authorization portion of the application; or

(3) An attorney licensed to practice law in this state who has been retained by the applicant and who has been authorized by the applicant, prior to the time the application is filed, to file the application.

(c) FORMS AND CONTENTS. The county shall provide, free of charge, forms on which applications are to be made.

(1) The application form shall show be prescribed by the State Board of Equalization and shall require that the applicant provide the following information:

(1A) The name and address of the applicant;

(2B) The name and address of the applicant's agent, if any;. If the applicant is represented by an agent, both the applicant's actual mailing address and the agent's mailing address shall be provided on the application.

(C) The applicant's written authorization for an agent, if any, to act on the applicant's behalf.

(3D) A description of the property that which is the subject of the application sufficient to identify it on the assessment roll;

(4E) The applicant's opinion of the taxable value of the property on the valuation date of the assessment year in issue;

(5F) The taxable roll value on which the assessment of the property was based;

(6G) The facts relied upon to support the claim that the board should order a change in the assessed value, base year value, or classification of the subject property. The amount of the tax or the amount of an assessed value increase shall not constitute facts sufficient to warrant a change in assessed values.

(2) The form shall also include:

(7A) A notice that a list of property transfers within the county, which that have occurred within the preceding two-year period, is open to inspection at the assessor's office to the applicant upon payment of a fee of not to exceed ten dollars (\$10). This requirement shall not apply to counties with a population under 50,000 as determined by the 1970 decennial census.

(8B) A notice that written findings of fact will be available prepared by the board upon request if the applicable fee is paid, and an An appropriate place for the applicant to make the request shall be provided. (See sections 308 and 325 for other provisions regarding findings of fact.)

(3) An application may include one or more reasons for filing the application. Unless permitted by local rules, an application shall not include both property on the secured roll and property on the unsecured roll.

(4) An application which that does not show the foregoing items to be filled in by the applicant include the information required by subsection (c)(1) of this regulation is invalid and shall not be accepted by the board. Prompt notice that an application is invalid shall be given by the clerk to the applicant and, where applicable, the applicant's agent. An applicant or the applicant's agent who has received notice shall be given a reasonable opportunity to correct any errors and/or omissions. Disputes concerning the validity of an application shall be resolved by the board.

(5) An application which shows the foregoing items that includes the correct information required by subdivision (1) is valid and no additional information shall be required requested of the applicant on the application form. The application shall be in a form prescribed by the State Board of Equalization.

(6) If the county has appointed hearing officers as provided for in Revenue and Taxation Code section 1636, the application form shall advise the applicant of the circumstances under which he the applicant may request his that the application be heard by such an officer.

(7) If the application appeals property subject to an escape assessment resulting from an audit conducted pursuant to section 469 of the Revenue and Taxation Code, then all property, both real and personal, of the assessee at the same profession, trade, or business location shall be subject to review, equalization, and adjustment by the appeals board, except when the property has previously been equalized for the year in question.

(d) TIME OF FILING. (1)The An application appealing a regular assessment shall be filed with the clerk during the regular filing period beginning July 2 but no later than September 15. An application will be deemed to have been timely filed if it is sent by U.S. mail, property addressed with postage prepaid and is postmarked on September 15 or earlier within such period. A regular assessment is one placed on the assessment roll for the most recent lien date, prior to the closing of that assessment roll. Additionally, an application appealing a base year value for the most recent lien date, where that value is not the value currently on the assessment roll, shall be filed with the clerk during the regular filing period beginning July 2 but no later than September 15.

(2) An application for a change of assessment made outside the regular assessment period appealing an escape assessment or a supplemental assessment must be filed with the clerk no later than 60 days after the date on which the assessee was notified of the assessment, or no later than 60 days after the mailing of the tax bill in a county of the first class and in those counties where the board of supervisors has adopted a resolution to that effect, pursuant to section 1605 of the Revenue and Taxation Code. Except as provided in Revenue and Taxation Code sections 619.2, 620 and 620.5, the board has no jurisdiction to hear an application unless filed within the time specified. The regular assessment period is from January 1 to and including July 1 or to such later date for completion of the roll as may be authorized by the State Board of Equalization.

(3) An application appealing a proposed reassessment made for property damaged by misfortune or calamity pursuant to section 170 of the Revenue and Taxation Code must be filed with the clerk no later than 14 days after the date of mailing of the notice of proposed reassessment by the assessor. The decision of the board regarding the damaged value of property shall be final, however, the decision regarding the reassessment made pursuant to section 170 shall create no presumption regarding the value of the property subsequent to the date of the damage.

(4) An application will be deemed to have been timely filed:

(A) If it is sent by U.S. mail, properly addressed with postage prepaid and is postmarked on the last day of the filing period or earlier within such period; or

(B) If proof satisfactory to the board establishes that the mailing occurred on the last day of the filing period or within such period. Any statement or affidavit made by an applicant asserting such a timely filing must be made within one year of the last day of the filing period.

(5) An application filed by mail that bears both a private business postage meter postmark date and a U.S. Postal Service postmark date will be deemed to have been filed on the date that is the

same as the U.S. Postal Service postmark date, even if the private business postage meter date is the earlier of the two postmark dates. If the last day of the filing period falls on Saturday, Sunday, or a legal holiday, an application that is mailed and postmarked on the next business day shall be deemed timely filed. If the county's offices are closed for business prior to 5 p.m. or for the entire day on which the deadline for filing falls, that day shall be considered a legal holiday.

(6) Except as provided in sections 620.5, 1603, and 1605 of the Revenue and Taxation Code, the board has no jurisdiction to hear an application unless filed within the time periods specified above.

(e) **AMENDMENTS AND CORRECTIONS.** (1) ~~No~~ An applicant or an applicant's agent may amend an application ~~may be amended after~~ until 5:00 p.m. on the last day upon which the application might have been timely filed if the effect of the amendment is to request relief additional to or different in nature from that originally requested.

(2) After the filing period has expired:

(A) An invalid application may be corrected in accordance with subsection (c)(4) of this regulation.

(B) The applicant or the applicant's agent may amend an application provided that the effect of the amendment is not to request relief additional to or different in nature from that originally requested.

(C) (i) Upon request of the applicant or the applicant's agent, the board, in its discretion, may allow the applicant or the applicant's agent to make amendments to the application in addition to those specified in subdivisions (A) and (B) to state additional facts claimed to require a reduction of the assessment that is the subject of the application.

(ii) The applicant or the applicant's agent shall state the reasons for the request, which shall be made in writing and filed with the clerk of the board prior to any scheduled hearing, or may be made orally at the hearing. If made in writing, the clerk shall provide a copy to the assessor upon receipt of the request.

(iii) As a condition to granting a request to amend an application, the board may require the applicant to sign a written agreement extending the two-year period provided in section 1604 of the Revenue and Taxation Code.

(iv) If a request to amend is granted, and upon the request of the assessor, the hearing on the matter shall be continued by the board for no less than 45 days, unless the parties mutually agree to a different period of time.

(3) An applicant or an applicant's agent shall be permitted to present testimony and other evidence at the hearing to support a full value that may be different from the opinion of value stated on the application. The presentation of such testimony or other evidence shall not be considered a request to amend or an amendment to the application.

(f) **CLAIM FOR REFUND.** If a valid application is designated as a claim for refund pursuant to section 5097 of the Revenue and Taxation Code, the applicant shall be deemed to have challenged each finding of the board and to have satisfied the requirements of section 5097.02 of the Revenue and Taxation Code.

(g) **RETENTION OF RECORDS.** The clerk may destroy records consisting of assessment appeal applications when five years have elapsed since the final action on the application. The records may be destroyed three years after the final action on the application if the records have

been microfilmed, microfiched, imaged, or otherwise preserved on a medium that provides access to the documents. As used in this subsection, "final action" means the date of the final decision by the board.

(h) **CONSOLIDATION OF APPLICATIONS.** The board, on its own motion or on a timely request of the applicant or applicants or the assessor, may consolidate applications when the applications present the same or substantially related issues of valuation, law, or fact. If applications are consolidated, the board shall notify all parties of the consolidation.

NOTE - Authority: Government Code section 15606(c)

Reference: Sections 51, 166, 408.1, 1603, 1605, Revenue and Taxation Code.
Section 25105.5, Government Code.

**ISSUE: AMENDING AN APPLICATION
PROPERTY TAX RULE 305, SUBSECTION (e)**

<p>LANGUAGE SUPPORTED BY: BOARD STAFF CAL-TAX</p>	<p>ALTERNATE LANGUAGE SUPPORTED BY: CALIFORNIA ASSOCIATION OF CLERKS AND ELECTION OFFICIALS CLERKS OF THE BOARD OF SUPERVISORS SECTION CALIFORNIA ASSESSORS' ASSOCIATION COUNTY COUNSELS' ASSOCIATION OF CALIFORNIA</p>
<p>(B) The applicant or the applicant's agent may amend an application provided that the effect of the amendment is not to request relief additional to or different in nature from that originally requested.</p> <p>(C) (i) Upon request of the applicant or the applicant's agent, the board, in its discretion, may allow the applicant or the applicant's agent to make amendments to the application in addition to those specified in subdivisions (A) and (B) to state additional facts claimed to require a reduction of the assessment that is the subject of the application.</p> <p>(iii) As a condition to granting a request to amend an application, the board may require the applicant to sign a written agreement extending the two-year period provided in section 1604 of the Revenue and Taxation Code.</p> <p>(iv) If a request to amend is granted, upon the request of the assessor the hearing on the matter shall be continued by the board for no less than 45 days, unless the parties mutually agree to a different period of time.</p>	<p>(B) The applicant or the applicant's agent may <u>correct</u> an application provided that the effect of the <u>correction</u> is not to request relief additional to or different in nature from that originally requested.</p> <p>(C)(i) In addition to (A) and (B) of this subsection, an application may be corrected if the board may determine from the face of the application, or otherwise has a reasonable means of ascertaining, the original intent of the applicant. This subsection shall apply only if the application was filed within the filing period applicable to the corrected relief.</p> <p>(iii) As a condition to granting a request to <u>correct</u> an application, the board may require the applicant to sign a written agreement extending the two-year period provided in section 1604 of the Revenue and Taxation Code.</p> <p>(iv) If a request to <u>correct</u> is granted, upon the request of the assessor the hearing on the matter shall be continued by the board for no less than 45 days, unless the parties mutually agree to a different period of time.</p>