



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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Executive Director

June 29, 2012

No. 2012/025

TO COUNTY ASSESSORS, COUNTY COUNSELS,
AND OTHER INTERESTED PARTIES:

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

**Proposed to Adopt Amendments to California Code of Regulations, Title 18,
Section 313, *Hearing Procedure*, and Section 321, *Burden of Proof***

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, sections (Property Tax Rules) 313, *Hearing Procedure*, and 321, *Burden of Proof*. Property Tax Rule 313 prescribes the procedures that county boards of equalization (county boards) must follow when conducting hearings on property tax applications. Property Tax Rule 321 prescribes the burden of proof in county boards' hearings regarding property tax applications. The proposed amendments clarify and make both Property Tax Rules 313 and 321 consistent with Assembly Bill No. (AB) 711 (Stats. 2011, ch. 220), which defined the term "owner-occupied single-family dwelling" for purposes of the rebuttable presumption regarding the burden of proof in hearings on specified property tax applications provided by Revenue and Taxation Code (RTC) section 167.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on August 21-23, 2012. 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 9:30 a.m. or as soon thereafter as the matter may be heard on August 21, 22, or 23, 2012. 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 Rules 313 and 321.

AUTHORITY

Government Code section 15606.

REFERENCE

RTC sections 167, 205.5, and 218.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Prior Law

RTC section 167, subdivision (a), establishes a rebuttable presumption regarding the burden of proof in county boards' hearings on property tax applications regarding owner-occupied single-family dwellings. RTC section 167, subdivision (a) provides that "Notwithstanding any other provision of law to the contrary, and except as provided in subdivision (b), there shall be a rebuttable presumption affecting the burden of proof in favor of the taxpayer or assessee who has supplied all information as required by law to the assessor in any administrative hearing involving the imposition of a tax on an owner-occupied single-family dwelling, the assessment of an owner-occupied single-family dwelling pursuant to this division, or the appeal of an escape assessment."

Property Tax Rule 313 prescribes the procedures county boards must follow when conducting hearings on property tax applications. Property Tax Rule 313, subdivision (c)(2), incorporates the rebuttable presumption in RTC section 167 and provides, in relevant part, that "The board shall not require the applicant to present evidence first when the hearing involves: . . . (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. In those instances, the chair shall require the assessor to present his or her case to the board first."

In addition, Property Tax Rule 321 prescribes the burden of proof in county boards' hearings regarding property tax applications. Property Tax Rule 321, subdivision (d), also incorporates the rebuttable presumption in RTC section 167 and provides that "in any hearing involving the assessment of an owner-occupied single-family dwelling . . . 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."

Amendments Made by AB 711

AB 711 added subdivision (c) to RTC section 167 to define the term “owner-occupied single-family dwelling” as used in the rebuttable presumption. New subdivision (c) provides that:

- For the purposes of this section, an owner-occupied single-family dwelling means a single-family dwelling that satisfies both of the following:
- (1) The dwelling is the owner's principal place of residence.
 - (2) The dwelling qualifies for a homeowners' property tax exemption.

Effect, Objectives, and Benefits of the Proposed Amendments

Board staff initiated a project the objective of which was to recommend language that could be added to Property Tax Rules 313 and 321 to incorporate the definition of owner-occupied single-family dwelling added to RTC section 167, subdivision (c), by AB 711, and thereby make the rules consistent with the new subdivision. As a result, Board staff issued Letter to Assessors No. (LTA) 2012/007 on January 30, 2012, which recommended amending Property Tax Rule 313, subdivision (c)(2), and Property Tax Rule 321, subdivision (d), to add the following sentence, and solicited comments regarding the recommendation from county assessors, county boards, and other interested parties:

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.

Board staff received one comment in response to LTA 2012/007. The comment explained that real property that is the owner's principal residence and qualifies for the \$100,000 disabled veterans' exemption provided by RTC section 205.5 also qualifies for the \$7,000 homeowners' property tax exemption provided by RTC section 218, even though taxpayers that are eligible for both exemptions choose to claim the larger disabled veterans' exemption, and that such property is therefore subject to the rebuttable presumption in RTC section 167, subdivision (a). The comment also recommended adding a sentence to the proposed amendments to both Property Tax Rules 313 and 321 to clarify that property that qualifies for a homeowners' property tax exemption includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by RTC section 205.5.

Board staff agreed with the above comment because RTC section 218, subdivision (b)(1), expressly provides that the homeowners' property tax exemption does not “apply to property on which the owner receives the veterans' exemption” specified by RTC section 205, but RTC section 218 does not contain similar language providing that property on which the owner receives the disabled veterans' exemption provided by RTC section 205.5 cannot qualify for the homeowners' property tax exemption. Subsequently, Board staff prepared Formal Issue Paper 12-004 and submitted it to the Board for consideration at its May 30, 2012, Property Tax Committee meeting. The issue paper recommended that the Board add references to RTC sections 205.5 and 218, which respectively prescribe the disabled veterans exemption and

homeowners' property tax exemption, to the reference notes to Property Tax Rules 313 and 321, and add the following two sentences to Property Tax Rule 313, subdivision (c)(2), and Property Tax Rule 321, subdivision (d), to incorporate and clarify the definition of owner-occupied single-family dwelling added to RTC section 167, subdivision (c), by AB 711:

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.

During its May 30, 2012, Property Tax Committee meeting, the Board determined that staff's recommended amendments are reasonably necessary to accomplish the objectives of making Property Tax Rules 313 and 321 consistent with the provisions of RTC section 167, subdivision (c), as added by AB 711, and further clarifying the meaning of the phrase "qualifies for a homeowners' property tax exemption," as used in RTC section 167, subdivision (c), as added by AB 711. Therefore, the Board unanimously voted to propose the adoption of the recommended amendments.

The proposed amendments are anticipated to provide the following specific benefits:

- Make Property Tax Rules 312 and 321 consistent with the provisions of RTC section 167, subdivision (c), as added by AB 711; and
- Clarify the meaning of the phrase "qualifies for a homeowners' property tax exemption," as used in RTC section 167, subdivision (c), as added by AB 711.

The Board has performed an evaluation of whether the proposed amendments to Property Tax Rules 313 and 321 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because Property Tax Rules 313 and 321 are the only existing state regulations prescribing the burden of proof in county boards' hearings on property tax applications regarding owner-occupied single-family dwellings. In addition, there is no federal property tax and there are no comparable federal regulations or statutes to Property Tax Rules 313 and 321.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Property Tax Rules 313 and 321 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Property Tax Rules 313 and 321 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The adoption of the proposed amendments to Property Tax Rules 313 and 321 will not change the burden of proof in county boards' hearings on property tax applications regarding owner-occupied single-family dwellings, as prescribed by RTC section 167. The adoption of the proposed amendments to Property Tax Rules 313 and 321 will only make the rules consistent with the provisions of RTC section 167, subdivision (c), as added by AB 711, and clarify the meaning of the phrase "qualifies for a homeowners' property tax exemption," as used in RTC section 167, subdivision (c), as added by AB 711. Therefore, the Board has made an initial determination that the adoption of the proposed amendments to Property Tax Rules 313 and 321 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.

The adoption of the proposed amendments to Property Tax Rules 313 and 321 may affect small business.

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 ANALYSIS REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has prepared the economic impact analysis required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Property Tax Rules 313 and 321 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Property Tax Rules 313 and 321 will not affect 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 to Property Tax Rules 313 and 321 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 should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

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 Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends at 9:30 a.m. on August 21, 2012, or as soon thereafter as the Board begins the public hearing regarding the proposed amendments to Property Tax Rules 313 and 321 during the August 21-23, 2012, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number 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 Rules 313 and 321. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an underscored and strikeout version of the text of Property Tax Rules 313 and 321 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

analysis 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 Rules 313 and 321 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 proposed amendments, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting amendments will be mailed to those interested parties who commented on the original proposed amendments orally or in writing or who asked to be informed of such changes. The text of the resulting amendments will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting amendments that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Property Tax Rules 313 and 321, 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/ Joann Richmond

Joann Richmond, Chief
Board Proceedings Division

JR:reb

Initial Statement of Reasons
Adoption of Proposed Amendments to
California Code of Regulations, Title 18, Section 1618,
United States Government Supply Contracts

SPECIFIC PURPOSE AND NECESSITY

Prior Law

Revenue and Taxation Code (RTC) section 167, subdivision (a), establishes a rebuttable presumption regarding the burden of proof in county board of equalization (county board) hearings on property tax applications regarding owner-occupied single-family dwellings. RTC section 167, subdivision (a) provides that “Notwithstanding any other provision of law to the contrary, and except as provided in subdivision (b), there shall be a rebuttable presumption affecting the burden of proof in favor of the taxpayer or assessee who has supplied all information as required by law to the assessor in any administrative hearing involving the imposition of a tax on an owner-occupied single-family dwelling, the assessment of an owner-occupied single-family dwelling pursuant to this division, or the appeal of an escape assessment.”

California Code of Regulations, title 18, section (Property Tax Rule) 313, *Hearing Procedure*, prescribes the procedures county boards must follow when conducting hearings on property tax applications. Property Tax Rule 313, subdivision (c)(2), incorporates the rebuttable presumption in RTC section 167 and provides, in relevant part, that “The board shall not require the applicant to present evidence first when the hearing involves: . . . (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. In those instances, the chair shall require the assessor to present his or her case to the board first.”

In addition, Property Tax Rule 321, *Burden of Proof*, prescribes the burden of proof in county boards’ hearings regarding property tax applications. Property Tax Rule 321, subdivision (d), also incorporates the rebuttable presumption in RTC section 167 and provides that “in any hearing involving the assessment of an owner-occupied single-family dwelling . . . 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.”

Amendments Made by AB 711

Assembly Bill No. (AB) 711 (Stats. 2011, ch. 220) added subdivision (c) to RTC section 167 to define the term “owner-occupied single-family dwelling” as used in the rebuttable presumption. New subdivision (c) provides that:

For the purposes of this section, an owner-occupied single-family dwelling means a single-family dwelling that satisfies both of the following:

- (1) The dwelling is the owner's principal place of residence.
- (2) The dwelling qualifies for a homeowners' property tax exemption.

Specific Purpose, Necessity, and Benefits of the Proposed Amendments

Board staff initiated a project to solve the problem of how to best amend Property Tax Rules 313 and 321 to incorporate the definition of owner-occupied single-family dwelling added to RTC section 167, subdivision (c), by AB 711, and thereby make the rules consistent with the new subdivision. As a result, Board staff issued Letter to Assessors No. (LTA) 2012/007 on January 30, 2012, which recommended amending Property Tax Rule 313, subdivision (c)(2), and Property Tax Rule 321, subdivision (d), to add the following sentence, and solicited comments regarding the recommendation from county assessors, county boards, and other interested parties:

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.

Board staff received one comment in response to LTA 2012/007. The comment explained that real property that is the owner's principal residence and qualifies for the \$100,000 disabled veterans' exemption provided by RTC section 205.5 also qualifies for the \$7,000 homeowners' property tax exemption provided by RTC section 218, even though taxpayers that are eligible for both exemptions choose to claim the larger disabled veterans' exemption, and that such property is therefore subject to the rebuttable presumption in RTC section 167, subdivision (a). The comment also recommended adding a sentence to the proposed amendments to both Property Tax Rules 313 and 321 to clarify that property that qualifies for a homeowners' property tax exemption includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by RTC section 205.5.

Board staff agreed with the above comment because RTC section 218, subdivision (b)(1), expressly provides that the homeowners' property tax exemption does not “apply to property on which the owner receives the veterans' exemption” specified by RTC section 205, but RTC section 218 does not contain similar language providing that property on which the owner receives the disabled veterans' exemption provided by RTC section 205.5 cannot qualify for the homeowners' property tax exemption. Subsequently, Board staff prepared Formal Issue Paper 12-004 and submitted it to the Board for consideration at its May 30, 2012, Property Tax Committee meeting. The issue paper recommended that the Board add references to RTC sections 205.5 and 218, which respectively prescribe the disabled veterans exemption and homeowners' property tax exemption, to the reference notes to Property Tax Rules 313 and 321, and add the following two

sentences to Property Tax Rule 313, subdivision (c)(2), and Property Tax Rule 321, subdivision (d), to incorporate and clarify the definition of owner-occupied single-family dwelling added to RTC section 167, subdivision (c), by AB 711:

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.

During its May 30, 2012, Property Tax Committee meeting, the Board determined that staff's recommended amendments are reasonably necessary to carry out the specific purpose and address the problem for which they are proposed, namely making Property Tax Rules 313 and 321 consistent with the provisions of RTC section 167, subdivision (c), as added by AB 711, and further clarifying the meaning of the phrase "qualifies for a homeowners' property tax exemption," as used in RTC section 167, subdivision (c), as added by AB 711. Therefore, the Board unanimously voted to propose the adoption of the recommended amendments.

The proposed amendments are anticipated to provide the following specific benefits:

- Make Property Tax Rules 312 and 321 consistent with the provisions of RTC section 167, subdivision (c), as added by AB 711; and
- Clarify the meaning of the phrase "qualifies for a homeowners' property tax exemption," as used in RTC section 167, subdivision (c), as added by AB 711.

The proposed amendments to Property Tax Rules 313 and 321 were not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Property Tax Rules 313 and 321.

DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 12-004, the attachments to the formal issue paper, and the comments made during the Board's discussion of the formal issue paper during its May 30, 2012, Property Tax Committee meeting in deciding to propose the amendments to Property Tax Rules 313 and 321 described above.

ALTERNATIVES CONSIDERED

The Board considered whether to begin the formal rulemaking process to adopt the proposed amendments to Property Tax Rules 313 and 321 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 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 Rules 313 and 321 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 purposes 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 purposes 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)(6) AND ECONOMIC IMPACT ANALYSIS REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

RTC section 167 establishes a rebuttable presumption regarding the burden of proof in county board hearings on property tax applications regarding owner-occupied single-family dwellings. AB 711 defined the term "owner-occupied single-family dwelling," as used in the rebuttable presumption, to mean a single-family dwelling that is the owner's principal place of residence and qualifies for the homeowners' property tax exemption provided by RTC section 218. In addition, the Board determined that property that qualifies for the homeowners' property tax exemption includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by RTC section 205.5.

The proposed amendments to Property Tax Rules 313 and 321 add two sentences to Property Tax Rule 313, subdivision (c)(2), and Property Tax Rule 321, subdivision (d), to:

- Incorporate the express definition of owner-occupied single-family dwelling added to RTC section 167, subdivision (c), by AB 711; and
- Clarify that property that qualifies for the homeowners' property tax exemption provided by RTC section 218 includes property that is the principal place of residence of its owner and qualifies for the disabled veterans' exemption provided by RTC section 205.5.

The proposed amendments also add references to RTC sections 205.5 and 218, which respectively prescribe the disabled veterans exemption and homeowners' property tax exemption, to both rules' reference notes.

The proposed amendments make Property Tax Rules 313 and 321 consistent with the amendments made to RTC section 167 by AB 711. The proposed amendments to Property Tax Rules 313 and 321 also clarify the amendments made to RTC section 167 by AB 711 by explaining that property that qualifies for the homeowners' property tax exemption provided by RTC section 218 includes property that is the principal place of

residence of its owner and qualifies for the disabled veterans' exemption provided by RTC section 205.5, as suggested in the one comment Board staff received in response to LTA 2012/007. The proposed amendments do not make any other changes to either rule. Therefore, the Board has determined that the adoption of the proposed amendments to Property Tax Rules 313 and 321 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

Furthermore, Property Tax Rules 313 and 321 do 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 Property Tax Rules 313 and 321 will not affect the health and welfare of California residents, worker safety, or the state's environment.

The forgoing information also provides the factual basis for the Board's initial determination that the adoption of the proposed amendments to Property Tax Rules 313 and 321 will not have a significant adverse economic impact on business.

The proposed amendments may affect small business.

**Text of Proposed Amendments to
California Code of Regulations, Title 18, Sections 313 and 321**

Section 313. Hearing Procedure.

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.

Note: Authority cited: 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; and Section 664, Evidence Code.

Section 321. Burden of Proof.

(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.

Note: Authority cited: Section 15606(c), Government Code. Reference: Sections 110, 167, 205.5, 218 and 1601 et seq., Revenue and Taxation Code; and Section 664, Evidence Code.

Regulation History

Type of Regulation: Property Tax

Rule: 313, and 321

Title: 321, *Burden of Proof*
313, *Hearing Procedure*

Preparation: Glenna Schultz

Legal Contact: Bradley Heller

The proposed amendments incorporate and clarify the definition of “owner-occupied single-family dwelling” added to Revenue and Taxation Code section 167 by Assembly Bill No. 711 (Stats. 2011, ch. 220).

History of Proposed Regulation:

August 21-23, 2012 Public hearing

June 29, 2012 OAL publication date; 45-day public comment period begins; IP mailing

June 19, 2012 Notice to OAL

May 30, 2012 PTC, Board Authorized Publication (Vote 5-0)

Sponsor: NA

Support: NA

Oppose: NA