



STATE OF CALIFORNIA

**STATE BOARD OF EQUALIZATION**

450 N STREET, SACRAMENTO, CALIFORNIA  
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-80  
916-445-2130 • FAX 916-324-3984  
www.boe.ca.gov

SEN. GEORGE RUNNER (RET.)  
First District, Lancaster

FIONA MA, CPA  
Second District, San Francisco

JEROME E. HORTON  
Third District, Los Angeles County

DIANE L. HARKEY  
Fourth District, Orange County

BETTY T. YEE  
State Controller

DEAN R. KINNEE  
Executive Director

No. 2018/008

**February 9, 2018**

**To Interested Parties:**

**Notice of Proposed Regulatory Action**

**The State Board of Equalization Proposes to Adopt Amendments to  
California Code of Regulations, Title 18,**

***Section 51, Agreements Qualifying Land for Assessment As Open-Space Lands***

NOTICE IS HEREBY GIVEN that 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, section (Property Tax Rule) 51, Agreements Qualifying Land for Assessment As Open-Space Lands. Property Tax Rule 51 prescribes the provisions that an agreement made pursuant to the Land Conservation Act of 1965 or Williamson Act (Gov. Code, § 51200 et seq.) prior to November 10, 1969, is required to contain for the agreement to provide the restrictions, terms, and conditions which are substantially similar to or more restrictive than those required by such act for a contract. The proposed amendments to Property Tax Rule 51 replace the rule's reference to repealed Property Tax Rule 251, Announcement of Assessment Ratio, with new text that refers to Revenue and Taxation Code (RTC) section 401, which has the same meaning and does not substantively change the calculation of the minimum cancellation fee required to be included in the cancellation provision of a pre-November 10, 1969, agreement, under Property Tax Rule 51, subdivision (d).

**PUBLIC HEARING**

The Board will conduct a meeting at 450 N Street, Sacramento, California, on March 27, 2018. 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](http://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 March 27, 2018. 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 Rule 51.

## **AUTHORITY**

Government Code section 15606

## **REFERENCE**

RTC section 401

Article 1.5 (commencing with section 421) of chapter 3 of part 2 of division 1 of the RTC

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

### Current Law

In 1965, the Legislature enacted the California Land Conservation Act of 1965 or Williamson Act (Gov. Code, § 51200 et seq.) in an effort to preserve the maximum amount of the state's limited supply of agricultural lands for the production of food and fiber, discourage the conversion of such lands to urban uses, and discourage noncontiguous urban development. (See Gov. Code, § 51220 (1965).) As relevant here, article 3 of the act (commencing with Gov. Code, § 51240) provided for and still provides for a city or county to enter into a "contract" to limit the use of specified land for the purposes of preserving such land. Article 3.5 of the act (commencing with Gov. Code, § 51255) provided for a city or county to enter into an "agreement" to limit the use of specified land, until Government Code section 51255 was repealed on a prospective basis, effective January 1, 1970. (Stats. 1969, ch. 1372, §§ 28, 44.) Also, article 5 (commencing with Gov. Code, § 51280) of the act generally required and still generally requires a landowner to pay a fee to a city or county upon the cancellation of a contract, and, in 1969, Government Code section 51283 was repealed and reenacted to require such a fee to be equal to 50 percent of the full cash value (or fair market value) of the land free from the contractual restrictions, as determined by the county assessor for the county in which the land is located, multiplied by the most recent assessment ratio announced pursuant to RTC section 401. (Stats. 1969, ch. 1372, §§ 34, 35.)

In the 1966 general election, the electorate approved a constitutional amendment that added article XXVIII, section 2 to the California Constitution to authorize the Legislature to enact laws providing for open-space lands subject to enforceable restrictions to be valued for assessment purposes on a basis that is "consistent with such restriction[s] and use." (In November 1974, article XXVIII, section 2 was repealed and article XIII, section 8 of the California Constitution was adopted, which contains similar provisions.) The following year, the Legislature added article 1.5 (commencing with section 421) to chapter 3 of part 2 of division 1 of the RTC to implement that authority. (Stats. 1967, ch. 1711, § 1.) And, as relevant here, article 1.5 defined an enforceable restriction to open-space land as a "contract" or "agreement" authorized by the California Land Conservation Act of 1965, but only when an agreement "taken as a whole, provides restrictions, terms, and conditions which are substantially similar or more restrictive than those required by statute for a contract." (Stats. 1967, ch. 1711, § 1 (RTC, § 422).) Also, in 1969, RTC sections 421 and 422 were repealed and reenacted, and reenacted RTC section 421

further provided that, for purposes of article 1.5, the term “agreement” means “an agreement executed pursuant to the California Land Conservation Act prior to the 61st day following the final adjournment of the 1969 Regular Session of the Legislature.” (Stats. 1969, ch. 862, §§ 1-4.) This language was previously determined to mean executed prior to November 10, 1969.

Prior to 1966, RTC section 401 provided that “all taxable property shall be assessed at its full cash value” (fair market value). (Stats. 1939, ch. 154, p. 1285.) However, a succession of amendments to RTC section 401 provided for each county assessor to assess taxable property “from the lien date for the 1967-1968 fiscal year through the 1970-1971 fiscal year at a publicly announced ratio of his own choosing which shall be between 20 percent and 25 percent of full cash value” and at “25 percent of full cash value” beginning with the lien date for the 1971-1972 fiscal year. So, the assessment ratios varied from county-to-county for the fiscal years 1967-1968 through 1970-1971. (See Stats. 1966, 1st Ex. Sess., ch. 147, § 34; Stats. 1967, ch. 43, § 1; and Stats. 1968, 1st Ex. Sess., ch. 1, § 10.) Also, Property Tax Rule 251 was adopted in 1966 to require each county assessor to annually announce the “uniform ratio” of full cash value, pursuant to RTC section 401, at which the assessor is assessing property and provide that such an announcement shall be accomplished by “publication in at least one newspaper of general circulation within the county, copies of which shall be sent immediately to the county board of supervisors and the State Board of Equalization,” and prominently posting a notice of that county’s assessment ratio in the assessor’s office. (Quoted text filed with the Secretary of State on November 25, 1966.) However, the reference to an assessment ratio was removed from RTC section 401 operative January 1, 1981 (Stats. 1978, ch. 1207, §§ 15 and 22), and Property Tax Rule 251 was repealed in 1982 because it was no longer necessary.

Property Tax Rule 51 was adopted in 1970 to implement, interpret, and make specific article 1.5 of chapter 3 of part 2 of division 1 of the RTC by prescribing the provisions that a pre-November 10, 1969, agreement is required to contain for the agreement to provide the restrictions, terms, and conditions which are substantially similar or more restrictive than those required by statute for a contract. As relevant here, Property Tax Rule 51, subdivisions (c) and (d), respectively require that an agreement include a cancellation provision and that the provision require the owner to pay a “cancellation fee” as deferred taxes “which is at least 50 percent of the full market value of the land when relieved of the restriction, as found by the assessor, multiplied by the latest assessment ratio that had been published pursuant to section 251 of this code [(Property Tax Rule 251)] when the agreement was initially entered into.”

#### Effect, Objective, and Benefits of the Proposed Amendments

Board staff determined that Property Tax Rule 51 is still necessary because the Department of Conservation verified that pre-November 10, 1969, agreements still exist, which are subject to the rule’s provisions. However, Board staff determined that there is an issue (or problem within the meaning of Gov. Code, § 11346.2, subd. (b)(1)) with subdivision (d) of Property Tax Rule 51 because it refers to Property Tax Rule 251, which has not been published in the California Code of Regulations since its repeal in 1982. Staff initiated a project to address the issue by amending Property Tax Rule 51 to delete the reference to repealed Property Tax Rule 251 and replace it

with new text that will have the same meaning and will not substantively change the calculation of the minimum cancellation fee required to be included in the cancellation provision of a pre-November 10, 1969, agreement, under Property Tax Rule 51, subdivision (d). Staff determined that this objective could be accomplished by replacing the reference to repealed Property Tax Rule 251 with a reference to RTC section 401 because the assessment ratio that county assessors were required to publish under repealed Property Tax Rule 251 was the assessment ratio that assessors were required to announce under RTC section 401. And, as a result, staff drafted proposed amendments to Property Tax Rule 51, subdivision (d), providing that the cancellation fee required to be included in the cancellation provision of a pre-November 10, 1969, agreement shall be at least 50 percent of the full market value of the land when relieved of the restriction, as found by the assessor, multiplied by the “assessment ratio in effect, pursuant to Revenue and Taxation Code section 401, on the date” when the agreement was initially entered into, and proposed amendments adding a reference to RTC section 401 to Property Tax Rule 51’s reference note.

Interested parties were provided with Board staff’s draft of the proposed amendments to the rule on September 8, 2016 (see Letter to Assessors 2016/031 available on the Board’s website), and invited to participate in the rulemaking effort. The only comment received regarding the draft of the proposed amendments was from the Los Angeles County Assessor’s Office in support of the amendments as written.

Board staff subsequently prepared Formal Issue Paper 16-11 and submitted it to the Board Members for consideration at the Board’s December 14, 2016, Property Tax Committee meeting. In the formal issue paper, Board staff recommended that the Board propose to adopt staff’s draft amendments to Property Tax Rule 51 to replace the reference to repealed Property Tax Rule 251 with a reference to RTC section 401 (discussed above). (In the formal issue paper, staff also recommended that the Board propose to adopt a solely grammatical amendment replacing “As” with “as” in the title of the rule.) Board staff also noted that the Department of Conservation verified that pre-November 10, 1969, agreements still currently exist, and staff recommended that the Board propose to adopt the amendments through the Administrative Procedure Act’s regular rulemaking process to provide the public, including county assessors and the owners of land subject to pre-November 10, 1969, agreements, additional notice and an opportunity to comment on the amendments if they believe that the amendments may result in an unintended substantive change to the rule.

At the conclusion of the December 14, 2016, Property Tax Committee meeting, the Board agreed with staff’s recommendations and the Board Members unanimously voted to propose the adoption of staff’s recommended amendments to Property Tax Rule 51. The Board determined that the proposed amendments are reasonably necessary to have the effect and accomplish the objective of addressing the issue (or problem) with Property Tax Rule 51 discussed above by deleting the rule’s reference to repealed Property Tax Rule 251 and replacing it with new text that refers to RTC section 401, which will have the same meaning and will not substantively change the calculation of the minimum cancellation fee required to be included in the cancellation provision of a pre-November 10, 1969, agreement.

The Board anticipates that the proposed amendments will increase openness and transparency in government and benefit the public, local boards of equalization and assessment appeals boards, county assessors, and the owners of land subject to pre-November 10, 1969, agreements by deleting Property Tax Rule 51's reference to Property Tax Rule 251, which has not been published in the California Code of Regulations since its repeal in 1982.

The Board has performed an evaluation of whether the proposed amendments to Property Tax Rule 51 are inconsistent or incompatible with existing state regulations. The Board has determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because there are no other Property Tax Rules that prescribe the provisions that a pre-November 10, 1969, agreement is required to contain for the agreement to provide the restrictions, terms, and conditions which are substantially similar or more restrictive than those required by statute for a contract. In addition, there are no comparable federal regulations or statutes to Property Tax Rule 51 or the proposed amendments to Property Tax Rule 51.

#### **NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS**

The Board has determined that the adoption of the proposed amendments to Property Tax Rule 51 will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

#### **ONE-TIME COST TO THE BOARD, BUT NO OTHER COST OR SAVINGS TO ANY STATE AGENCY, LOCAL AGENCY, OR SCHOOL DISTRICT**

The Board has determined that the adoption of the proposed amendments to Property Tax Rule 51 will result in an absorbable \$396 one-time cost for the Board to update its website after the amendments are completed. The Board has determined that the adoption of the proposed amendment to Property Tax Rule 51 will result in no other direct or indirect cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, no other non-discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

#### **NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS**

The Board has made an initial determination that the adoption of the proposed amendments to Property Tax Rule 51 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 Rule 51 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 ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)**

The Board assessed the economic impact of the proposed amendments to Property Tax Rule 51 on California businesses and individuals and determined that the proposed amendments to Property Tax Rule 51 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Board has prepared the economic impact assessment (EIA) required by Government Code section 11346.3, subdivision (b)(1), for the proposed amendments and included it in the initial statement of reasons. In the EIA, the Board has determined that the adoption of the proposed amendments to Property Tax Rule 51 will neither create nor eliminate jobs in the State of California nor create new businesses or eliminate existing businesses within the state nor expand businesses currently doing business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Property Tax Rule 51 will not affect the benefits of the rule to 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 Rule 51 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 Henry Nanjo, Chief Counsel, by telephone at (916) 323-1094, by e-mail at [Henry.Nanjo@boe.ca.gov](mailto:Henry.Nanjo@boe.ca.gov), or by mail at State Board of Equalization, Attn: Henry Nanjo, MIC:73, 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. Christopher Mayfield, Lead Analyst, by telephone at (916) 322-1923, by fax at (916) 324-3984, by e-mail at Christopher.Mayfield@boe.ca.gov, or by mail at State Board of Equalization, Attn: Christopher Mayfield, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080. Mr. Christopher Mayfield is the designated backup contact person to Mr. Nanjo.

### **WRITTEN COMMENT PERIOD**

The written comment period ends at 9:30 a.m. on March 27, 2018, or as soon thereafter as the Board begins the public hearing regarding the proposed amendments to Property Tax Rule 51 during the March 27, 2018, Board meeting. Written comments received by Mr. Christopher Mayfield 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 Rule 51. 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 underline and strikeout version of the text of Property Tax Rule 51 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 assessment 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](http://www.boe.ca.gov).

### **SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8**

The Board may adopt the proposed amendments to Property Tax Rule 51 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 resulting regulation, with the change clearly indicated, available to the public for at least 15 days prior to adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

**AVAILABILITY OF FINAL STATEMENT OF REASONS**

If the Board adopts the proposed amendments to Property Tax Rule 51, 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](http://www.boe.ca.gov).

Sincerely,

/s/ Joann Richmond

Joann Richmond, Chief  
Board Proceedings Division

JR:cjm



**Initial Statement of Reasons for  
Proposed Amendments to  
California Code of Regulations, Title 18, Section 51,  
*Agreements Qualifying Land for Assessment As Open-Space Lands***

SPECIFIC PURPOSE, PROBLEM INTENDED TO BE ADDRESSED, NECESSITY,  
AND ANTICIPATED BENEFITS

Current Law

In 1965, the Legislature enacted the California Land Conservation Act of 1965 or Williamson Act (Gov. Code, § 51200 et seq.) in an effort to preserve the maximum amount of the state’s limited supply of agricultural lands for the production of food and fiber, discourage the conversion of such lands to urban uses, and discourage noncontiguous urban development. (See Gov. Code, § 51220 (1965).) As relevant here, article 3 of the act (commencing with Gov. Code, § 51240) provided for and still provides for a city or county to enter into a “contract” to limit the use of specified land for the purposes of preserving such land. Article 3.5 of the act (commencing with Gov. Code, § 51255) provided for a city or county to enter into an “agreement” to limit the use of specified land, until Government Code section 51255 was repealed on a prospective basis, effective January 1, 1970. (Stats. 1969, ch. 1372, §§ 28, 44.) Also, article 5 (commencing with Gov. Code, § 51280) of the act generally required and still generally requires a landowner to pay a fee to a city or county upon the cancellation of a contract, and, in 1969, Government Code section 51283 was repealed and reenacted to require such a fee to be equal to 50 percent of the full cash value (or fair market value) of the land free from the contractual restrictions, as determined by the county assessor for the county in which the land is located, multiplied by the most recent assessment ratio announced pursuant to Revenue and Taxation Code (RTC) section 401. (Stats. 1969, ch. 1372, §§ 34, 35.)

In the 1966 general election, the electorate approved a constitutional amendment that added article XXVIII, section 2 to the California Constitution to authorize the Legislature to enact laws providing for open-space lands subject to enforceable restrictions to be valued for assessment purposes on a basis that is “consistent with such restriction[s] and use.”<sup>1</sup> The following year, the Legislature added article 1.5 (commencing with section 421) to chapter 3 of part 2 of division 1 of the RTC to implement that authority. (Stats. 1967, ch. 1711, § 1.) And, as relevant here, article 1.5 defined an enforceable restriction to open-space land as a “contract” or “agreement” authorized by the California Land Conservation Act of 1965, but only when an agreement “taken as a whole, provides restrictions, terms, and conditions which are substantially similar or more restrictive than

---

<sup>1</sup> In November 1974, article XXVIII, section 2 was repealed and article XIII, section 8 of the California Constitution was adopted, which contains similar provisions.

those required by statute for a contract.” (Stats. 1967, ch. 1711, § 1 (RTC, § 422).) Also, in 1969, RTC sections 421 and 422 were repealed and reenacted, and reenacted RTC section 421 further provided that, for purposes of article 1.5, the term “agreement” means “an agreement executed pursuant to the California Land Conservation Act prior to the 61st day following the final adjournment of the 1969 Regular Session of the Legislature.” (Stats. 1969, ch. 862, §§ 1-4.) This language was previously determined to mean executed prior to November 10, 1969.

Prior to 1966, RTC section 401 provided that “all taxable property shall be assessed at its full cash value” (fair market value). (Stats. 1939, ch. 154, p. 1285.) However, a succession of amendments to RTC section 401 provided for each county assessor to assess taxable property “from the lien date for the 1967-1968 fiscal year through the 1970-1971 fiscal year at a publicly announced ratio of his own choosing which shall be between 20 percent and 25 percent of full cash value” and at “25 percent of full cash value” beginning with the lien date for the 1971-1972 fiscal year. So, the assessment ratios varied from county-to-county for the fiscal years 1967-1968 through 1970-1971. (See Stats. 1966, 1st Ex. Sess., ch. 147, § 34; Stats. 1967, ch. 43, § 1; and Stats. 1968, 1st Ex. Sess., ch. 1, § 10.) Also, California Code of Regulations, title 18, section (Property Tax Rule) 251, *Announcement of Assessment Ratio*, was adopted in 1966 to require each county assessor to annually announce the “uniform ratio” of full cash value, pursuant to RTC section 401, at which the assessor is assessing property and provide that such an announcement shall be accomplished by “publication in at least one newspaper of general circulation within the county, copies of which shall be sent immediately to the county board of supervisors and the State Board of Equalization,” and prominently posting a notice of that county’s assessment ratio in the assessor’s office.<sup>2</sup> However, the reference to an assessment ratio was removed from RTC section 401 operative January 1, 1981 (Stats. 1978, ch. 1207, §§ 15 and 22), and Property Tax Rule 251 was repealed in 1982 because it was no longer necessary.

Property Tax Rule 51, *Agreements Qualifying Land for Assessment As Open-Space Lands*, was adopted in 1970 to implement, interpret, and make specific article 1.5 of chapter 3 of part 2 of division 1 of the RTC by prescribing the provisions that a pre-November 10, 1969, agreement is required to contain for the agreement to provide the restrictions, terms, and conditions which are substantially similar or more restrictive than those required by statute for a contract. As relevant here, Property Tax Rule 51, subdivisions (c) and (d), respectively require that an agreement include a cancellation provision and that the provision require the owner to pay a “cancellation fee” as deferred taxes “which is at least 50 percent of the full market value of the land when relieved of the restriction, as found by the assessor, multiplied by the latest assessment ratio that had been published pursuant to section 251 of this code [(Property Tax Rule 251)] when the agreement was initially entered into.”

### Proposed Amendments

---

<sup>2</sup> Quoted text filed with the Secretary of State on November 25, 1966.

State Board of Equalization (Board) staff determined that Property Tax Rule 51 is still necessary because the Department of Conservation verified that pre-November 10, 1969, agreements still exist, which are subject to the rule's provisions. However, Board staff determined that there is an issue (or problem within the meaning of Gov. Code, § 11346.2, subd. (b)(1)) with subdivision (d) of Property Tax Rule 51 because it refers to Property Tax Rule 251, which has not been published in the California Code of Regulations since its repeal in 1982. Staff initiated a project to address the issue by amending Property Tax Rule 51 to delete the reference to repealed Property Tax Rule 251 and replace it with new text that will have the same meaning and will not substantively change the calculation of the minimum cancellation fee required to be included in the cancellation provision of a pre-November 10, 1969, agreement, under Property Tax Rule 51, subdivision (d). Staff determined that this specific purpose could be accomplished by replacing the reference to repealed Property Tax Rule 251 with a reference to RTC section 401 because the assessment ratio that county assessors were required to publish under repealed Property Tax Rule 251 was the assessment ratio that assessors were required to announce under RTC section 401. And, as a result, staff drafted proposed amendments to Property Tax Rule 51, subdivision (d), providing that the cancellation fee required to be included in the cancellation provision of a pre-November 10, 1969, agreement shall be at least 50 percent of the full market value of the land when relieved of the restriction, as found by the assessor, multiplied by the "assessment ratio in effect, pursuant to Revenue and Taxation Code section 401, on the date" when the agreement was initially entered into, and proposed amendments adding a reference to RTC section 401 to Property Tax Rule 51's reference note.

Interested parties were provided with Board staff's draft of the proposed amendments to the rule on September 8, 2016 (see Letter to Assessors 2016/031 available on the Board's website), and invited to participate in the rulemaking effort. The only comment received regarding the draft of the proposed amendments was from the Los Angeles County Assessor's Office in support of the amendments as written.

Board staff subsequently prepared Formal Issue Paper 16-11 and submitted it to the Board Members for consideration at the Board's December 14, 2016, Property Tax Committee meeting. In the formal issue paper, Board staff recommended that the Board propose to adopt staff's draft amendments to Property Tax Rule 51 to replace the reference to repealed Property Tax Rule 251 with a reference to RTC section 401 (discussed above).<sup>3</sup> Board staff also noted that the Department of Conservation verified that pre-November 10, 1969, agreements still currently exist, and staff recommended that the Board propose to adopt the amendments through the Administrative Procedure Act's regular rulemaking process to provide the public, including county assessors and the owners of land subject to pre-November 10, 1969, agreements, additional notice and an opportunity to comment on the amendments if they believe that the amendments may result in an unintended substantive change to the rule.

---

<sup>3</sup> In the formal issue paper, staff also recommended that the Board propose to adopt a solely grammatical amendment replacing "As" with "as" in the title of the rule.

At the conclusion of the December 14, 2016, Property Tax Committee meeting, the Board agreed with staff's recommendations and the Board Members unanimously voted to propose the adoption of staff's recommended amendments to Property Tax Rule 51. The Board determined that the proposed amendments are reasonably necessary for the specific purpose of addressing the issue (or problem) with Property Tax Rule 51 discussed above by deleting the rule's reference to repealed Property Tax Rule 251 and replacing it with new text that refers to RTC section 401, which will have the same meaning and will not substantively change the calculation of the minimum cancellation fee required to be included in the cancellation provision of a pre-November 10, 1969, agreement.

The Board anticipates that the proposed amendments will increase openness and transparency in government and benefit the public, local boards of equalization and assessment appeals boards, county assessors, and the owners of land subject to pre-November 10, 1969, agreements by deleting Property Tax Rule 51's reference to Property Tax Rule 251, which has not been published in the California Code of Regulations since its repeal in 1982.

The adoption of the proposed amendments to Property Tax Rule 51 is not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Property Tax Rule 51 or the proposed amendments to Property Tax Rule 51.

#### DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 16-11, the attachment to the issue paper, and the comments made during the Board's discussion of the issue paper during its December 14, 2016, Property Tax Committee meeting in deciding to propose the amendments to Property Tax Rule 51 described above.

#### ALTERNATIVES CONSIDERED

The Board considered whether to begin the formal rulemaking process to adopt the proposed amendments to Property Tax Rule 51 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 proposed 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 Rule 51 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 purpose 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 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.

INFORMATION REQUIRED BY GOVERNMENT CODE SECTION 11346.2, SUBDIVISION (b)(5), ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b), AND DETERMINATIONS AND ESTIMATE REQUIRED BY GOVERNMENT CODE SECTION 11346.5, SUBDIVISION (a)(5), (6), AND (8)

As explained in more detail above, Property Tax Rule 51 implements, interprets, and makes specific article 1.5 of chapter 3 of part 2 of division 1 of the RTC by prescribing the provisions that a pre-November 10, 1969, agreement under the California Land Conservation Act of 1965 is required to contain for the agreement to provide the restrictions, terms, and conditions which are substantially similar or more restrictive than those required by statute for a contract under the California Land Conservation Act of 1965, and qualify land subject to such an agreement for assessment under article 1.5. The proposed amendments to Property Tax Rule 51 delete subdivision (d)'s reference to repealed Property Tax Rule 251 and replace it with new text that refers to RTC section 401, which has the same meaning and does not substantively change the calculation of the minimum cancellation fee required to be included in the cancellation provision of a pre-November 10, 1969, agreement, under Property Tax Rule 51, subdivision (d).

As a result, the proposed amendments do not change the provisions that a pre-November 10, 1969, agreement is required to contain for land subject to the agreement to qualify for assessment under article 1.5 of chapter 3 of part 2 of division 1 of the RTC. The proposed amendments will not mandate that individuals or businesses or state or local government do anything that is not already required by Property Tax Rule 51 or the RTC, and there is nothing in the proposed amendments that would significantly change how individuals and businesses would generally behave in the absence of the proposed regulatory action, or that would have a significant effect on the state's economy or that would impact the state's revenue. Therefore, Board staff determined that the proposed amendments will not impact property tax revenue. The proposed amendments will not impose new compliance costs on businesses and individuals and will not provide a monetary benefit to businesses and individuals. And, Board staff estimated that the proposed amendments will result in an absorbable \$396 one-time cost for the Board to update its website after the amendments are completed assuming that average hourly compensation costs are \$49.48 per hour<sup>4</sup> and that it will take approximately eight hours ( $49.48 \times 8 = \$395.84$ , rounded to \$396), but will not have any other fiscal impact on local or state government.

Therefore, the Board has determined that the adoption of the proposed amendments to Property Tax Rule 51 will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement under part 7 (commencing with

---

<sup>4</sup> Source: Hourly compensation costs are from the U.S. Bureau of Labor Statistics. Hourly compensation costs are for State and Local Workers, adjusted for the Pacific Region. *Employer Costs for Employee Compensation – March 2016*, June 9, 2016 press release; also: Series Title: *State and Local Government Total Compensation for All Occupations; Cost per Hour Worked*, <http://www.bls.gov/>

section 17500) of division 4 of title 2 of the Government Code, and the Board estimates that the adoption of the proposed amendment to Property Tax Rule 51 will result in an absorbable \$396 one-time cost to the Board, but no other direct or indirect cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, no other non-discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

In addition, the Board has made an initial determination that the proposed amendments to Property Tax Rule 51 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, and the Board has determined that the proposed amendments to Property Tax Rule 51 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, because the Board has estimated that the proposed amendments will not have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars (\$50,000,000) during any 12-month period.

Further, based upon these facts and all of the information in the rulemaking file, the Board also determined that the adoption of the proposed amendments to Property Tax Rule 51 will neither create nor eliminate jobs in the State of California nor create new businesses or eliminate existing businesses within the state nor expand businesses currently doing business within the State of California.

Furthermore, Property Tax Rule 51 does 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 Rule 51 will not affect the benefits of Property Tax Rule 51 to 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 Rule 51 will not have a significant adverse economic impact on business.

The proposed amendments to Property Tax Rule 51 may affect small business within the meaning of California Code of Regulations, title 1, section 4 because a small business may own land that is subject to a pre-November 10, 1969, agreement that must comply with Property Tax Rule 51's requirements for the land to qualify for assessment under article 1.5 of chapter 3 of part 2 of division 1 of the RTC.

**Text of Proposed Amendments to  
California Code of Regulations, Title 18, Section  
51, *Agreements Qualifying Land for Assessment as Open-Space Lands***

**51. Agreements Qualifying Land for Assessment As Open-Space Lands.**

An agreement made pursuant to the Land Conservation Act of 1965 prior to November 10, 1969, qualifies for restricted-use assessment pursuant to sections 423 and 426 of the Revenue and Taxation Code if, taken as a whole, it provides restrictions, terms, and conditions which are substantially similar to or more restrictive than those which were required by such act for a contract at the time the agreement became effective or which have subsequently been made less restrictive by the Legislature.

(a) **Mandatory Provisions.** The agreement must contain provisions at least as restrictive as the following:

- (1) An initial term of years sufficient to make the agreement effective for ten successive lien dates and an annual renewal date at which time another year is automatically added to the term unless a notice of nonrenewal is given prior to such date.
- (2) An exclusion of uses for the duration of the agreement other than agricultural uses and compatible uses as defined by the Land Conservation Act, the agreement, or the resolution establishing the agricultural preserve in which the property is located.
- (3) A provision making the agreement binding upon and inuring to the benefit of all successors in interest of the owner.

(b) **Disqualifying Provisions.** An agreement in order to qualify for restricted use assessment must not contain any of the following:

- (1) A provision purporting to bind the assessor to a particular assessment formula.
- (2) A provision nullifying the agreement by reason of the owner's death or factors arising because of his death.

(c) **Cancellation.** The agreement may contain a cancellation provision as to all or part of the land if the following procedures are required under the terms of the agreement:

- (1) Cancellation by mutual agreement, which may consist of a request by the owner and the approval by the board of supervisors or city council of the cancellation.
- (2) A public hearing before the board or council.
- (3) Notice of hearing by mail to each owner in the agricultural preserve of land under contract or agreement and publication of notice pursuant to section 6061 of the Government Code, provided, however, that a county or city may provide for such notice by ordinance instead of incorporating this requirement in the agreement.

(4) Findings by the board or council that cancellation is not inconsistent with the purposes of the Land Conservation Act of 1965 and is in the public interest.

The existence of an opportunity for another use of the land shall not be sufficient reason for cancellation. A potential alternative use of the land may be considered only if there is no proximate land not subject to a Land Conservation Act contract or agreement suitable for the use to which it is proposed the subject land be put. The uneconomic character of an existing agricultural use shall not be sufficient reason for cancellation. The uneconomic character of the existing use may be considered only if there is no other reasonable or comparable agricultural use to which the land may be put.

(d) Cancellation Fee-Waiver or Deferral. A provision for cancellation of the agreement must carry with it a cancellation fee payable by the owner to the county treasurer as deferred taxes which is at least 50 percent of the full market value of the land when relieved of the restriction, as found by the assessor, multiplied by the ~~latest~~ assessment ratio in effect, pursuant to Revenue and Taxation Code section 401, on the date that had been published pursuant to section 251 of this code when the agreement was initially entered into. The determination of unrestricted value may be made the subject of an equalization hearing.

The agreement may provide for waiver or deferral by the board of supervisors or city council and may authorize the board or council to make the waiver or deferral contingent upon future action of the landowner if the agreement provides for a lien on the subject land securing the performance of the act upon which the waiver or deferral is made contingent. Waiver or deferral of the cancellation fee or a portion thereof may be allowed by the agreement if the waiver is subject to these findings by the board or council:

(1) It is in the public interest and the best interests of the program to conserve agricultural land that such payment be waived or deferred.

(2) The reason for the cancellation is an involuntary transfer or involuntary change in the use of the land and the land is not suitable and will not be immediately used for a purpose which produces a greater economic return to the owner.

(e) Other Provisions. If an agreement contains a clause relating to any of the following subjects, it may do so only under the conditions stated:

(1) A provision nullifying the agreement at or immediately before the time an action in eminent domain is filed or land is acquired in lieu of eminent domain (a) if the fee title, or other interest less than fee which would prevent the land from being used for agricultural or compatible uses, is being condemned and (b) if the agreement is nullified only as to land actually condemned or acquired or as to such land and a remaining portion that is rendered unsuitable for agricultural or compatible uses.

(2) A provision requiring the payment of liquidated damages by the landowner in case of breach of the agreement if this remedy does not impair enforcement of the agreement by injunction or specific performance.



(3) A provision cancelling or terminating an agreement upon annexation of the subject land by a city if the land was within one mile of the city at the time the agreement was initially executed, the city protested the execution of the agreement pursuant to section 51243.5 of the Government Code, and the city states its intent not to succeed in its resolution of intention to annex.

(f) Substantial Similarity. An agreement having a provision which is more restrictive than required by the Land Conservation Act of 1965 for a contract may qualify even though it is deficient in some other respect. The mandatory provisions of subparagraph (a), however, are minimum requirements which if deficient cannot be compensated for from some other source. Similarly, the disqualifying provisions of subparagraph (b) are such a substantial departure from the statutory provisions for a contract that their existence cannot be offset by other more restrictive provisions. A deficiency in the procedures set forth in subparagraphs (c) and (d) or in the conditions in subparagraph (e) may be compensated for by other more restrictive provisions except that, with respect to subparagraphs (c) and (d), an agreement that contains a cancellation provision cannot dispense with basic requirements of (1) a public hearing on a cancellation request of which the public is given notice and (2) findings by the board or council based on the evidence.

An agreement that does not allow a county or city to waive the cancellation fee under any circumstances is more restrictive than the requirements of the Land Conservation Act for a contract. Such an agreement is substantially similar to a contract even though it also allows a reduction of the cancellation fee after notice of nonrenewal has been given by the proportion that the number of whole years remaining until expiration of the agreement bears to ten.

(g) Effective Date. This rule shall be effective from and after March 1, 1971.

Note: Authority cited: Section 15606, Government Code. Reference: Section 401 and Article 1.5, Chap. 3, Part 2, Div. 1, Revenue and Taxation Code.

## Regulation History

**Type of Regulation:** Property Tax

Rule: 51

Title: Agreements Qualifying Land for Assessment as Open-Space Lands

**Preparation:** Glenna Schultz

**Legal Contact:** Glenna Schultz

The State Board of Equalization proposes to replace a reference to repealed Rule 251 with text that refers to Revenue and Taxation Code section 401, which has the same meaning and does not change the way Rule 51 applies to pre-November 10, 1969, agreements under the Land Conservation Act of 1965 or Williamson Act.

### History of Proposed Regulation:

March 27, 2018	Public Hearing
February 9, 2018	OAL publication date; 45-day public comment period begins; Interested Parties mailing
January 26, 2018	Notice to OAL
December 14, 2016	Business Tax Committee, Board Authorized Publication (Vote 5-0)

Sponsor: NA

Support: NA

Oppose: NA