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Appeals Procedures

State Board of Equalization

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APPEALS PROCEDURES

California State Board of Equalization

1020 N STREET, SACRAMENTO, CALIFORNIA 95814



BOARD MEMBERS

George R. Reilly, San Francisco First District
Ernest J. Dronenburg, Jr., San Diego Second District
William M. Bennett, Kentfield Third District
Richard Nevins, Pasadena Fourth District
Kenneth Cory, Sacramento State Controller
Douglas D. Bell, Executive Secretary

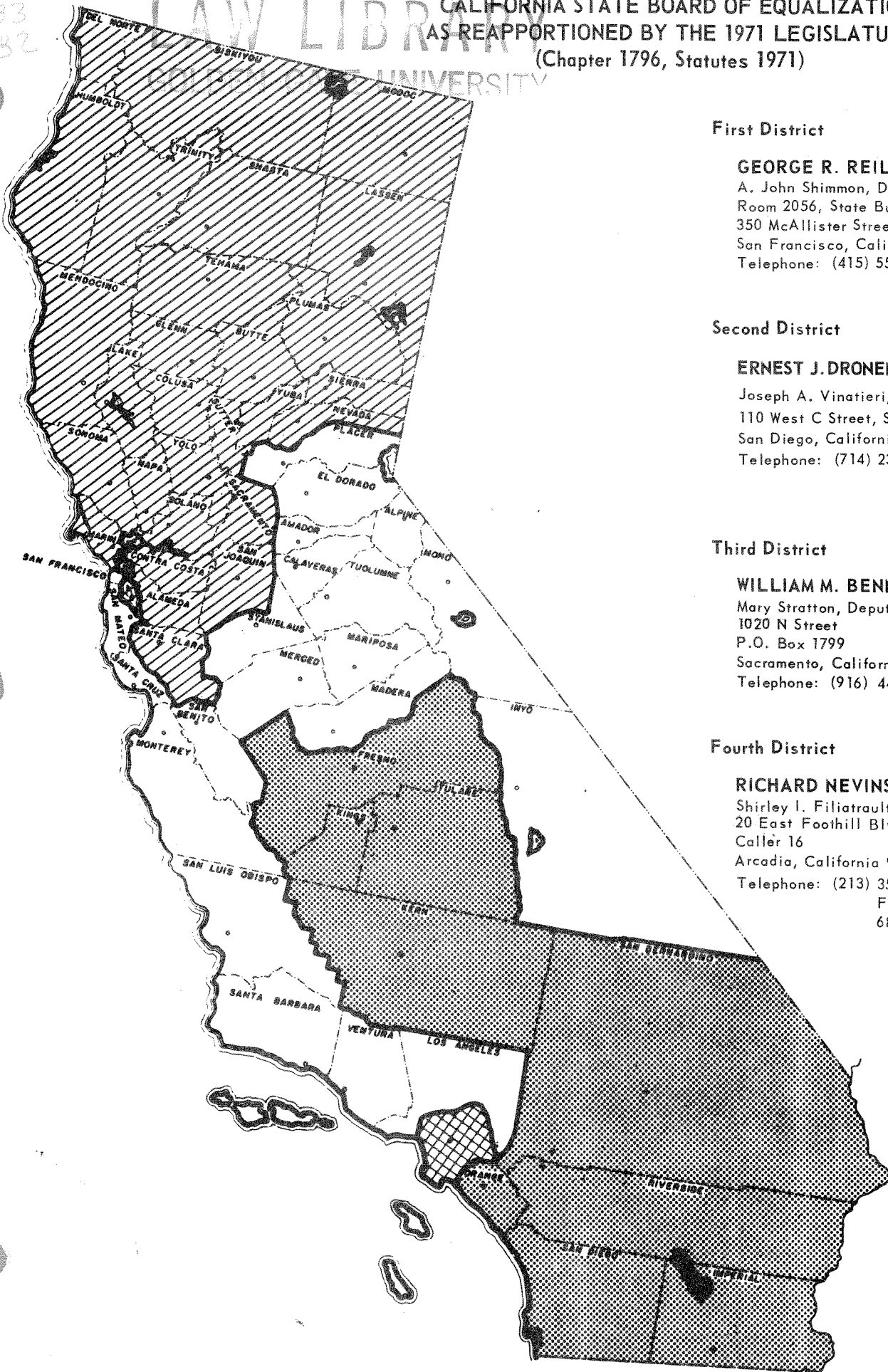
MARCH 1982

Pamphlet No. 17

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EQUALIZATION DISTRICTS
CALIFORNIA STATE BOARD OF EQUALIZATION
AS REAPPORTIONED BY THE 1971 LEGISLATURE
(Chapter 1796, Statutes 1971)



First District



GEORGE R. REILLY, Member

A. John Shimmon, Deputy
Room 2056, State Building
350 McAllister Street
San Francisco, California 94102
Telephone: (415) 557-1699

Second District



ERNEST J. DRONENBURG, JR., Member

Joseph A. Vinatieri, Deputy
110 West C Street, Suite 1709
San Diego, California 92101
Telephone: (714) 237-7844

Third District



WILLIAM M. BENNETT, Member

Mary Stratton, Deputy
1020 N Street
P.O. Box 1799
Sacramento, California 95808
Telephone: (916) 445-4081

Fourth District



RICHARD NEVINS, Member

Shirley I. Filiatrault, Deputy
20 East Foothill Blvd., Suite 205
Caliër 16
Arcadia, California 91006-0016
Telephone: (213) 350-6423
From LA
681-3551

EQUALIZATION DISTRICTS (LOS ANGELES COUNTY DETAIL)

CALIFORNIA STATE BOARD OF EQUALIZATION

AS REAPPORTIONED BY THE 1971 LEGISLATURE (Chapter 1796, Statutes 1971)

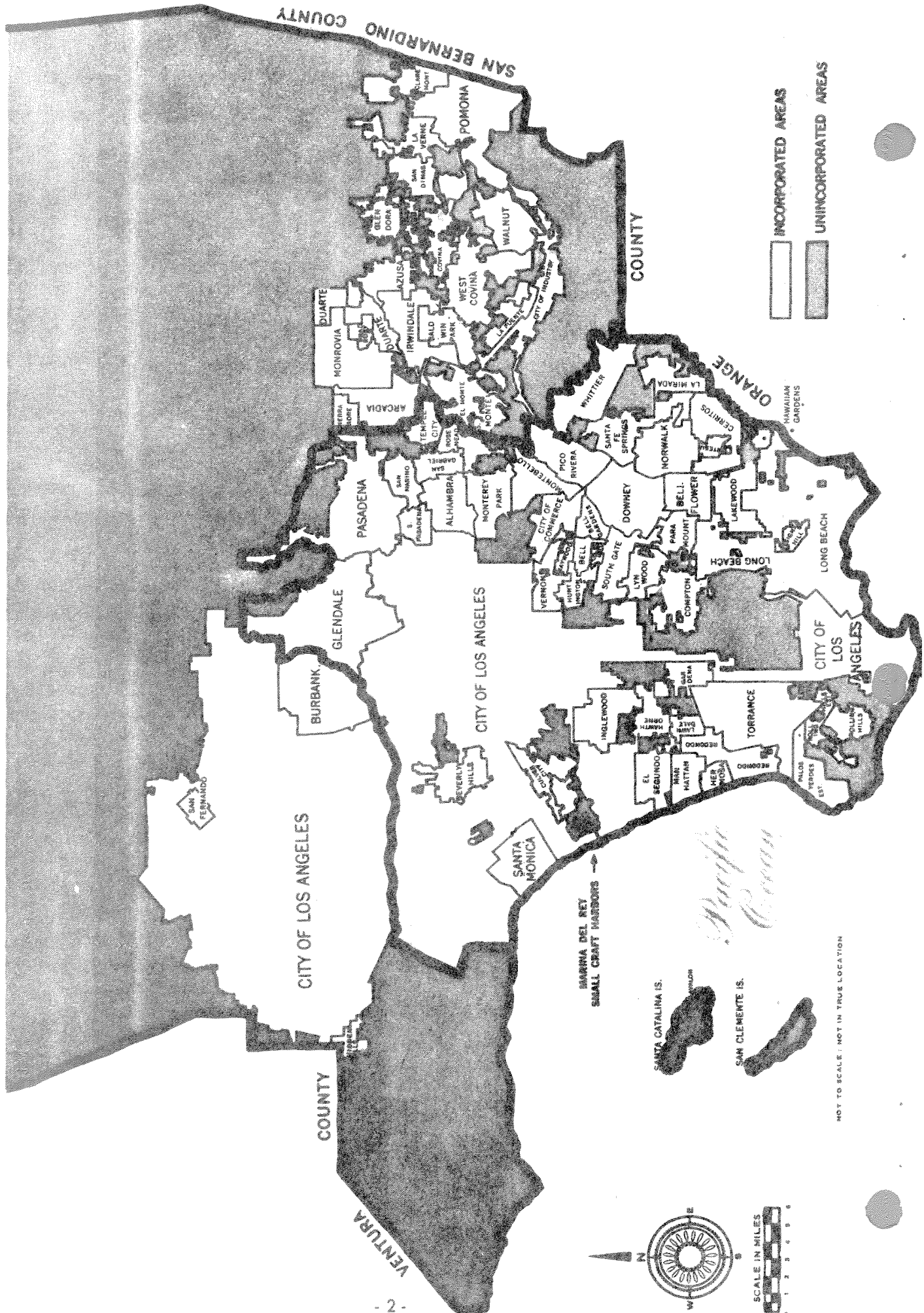


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FOREWORD

The purpose of this pamphlet is to collect in one convenient publication the information and reference material necessary for a taxpayer or his representative to understand the provisions available to him to obtain administrative review and adjustment of the business taxes administered by the State Board of Equalization, the taxes and tax assistance program administered by the Franchise Tax Board and the review of assessments made by county assessors used for the levy of property taxes by local government.

The State Board of Equalization is an elective body, created by the California Constitution. The Board consists of five Members, four of whom are elected from areas of the state known as Equalization Districts and the fifth being the State Controller, who is elected at large.

The State Board of Equalization is the major revenue agency of California. The Board administers the California Sales and Use Tax Law (including city and county taxing ordinances adopted under the Bradley-Burns Uniform Local Sales and Use Tax Law and the transactions and use taxes of rapid transit districts), the Motor Vehicle Fuel License Tax Law (gasoline), the Use Fuel Tax Law (diesel), the Alcoholic Beverage Tax Law, the Cigarette Tax Law, the Energy Resources Surcharge Law, and the Emergency Telephone Users Surcharge Law. The Board hears petitions for adjustments of assessments and claims for refund under the Insurance Tax Law.

The State Board of Equalization is an administrative appellate agency with respect to final actions of the Franchise Tax Board under the Bank and Corporation Tax Law, the Personal Income Tax Law, and the Senior Citizens Property Tax Assistance and Postponement Law.

The Board under statute prescribes rules and regulations to govern local boards of equalization, including assessment appeal boards, when equalizing assessments made by the assessors of the 58 counties of the state.

BUSINESS TAXES APPEAL AND REVIEW PROCESSES

The taxes covered in this section are:

SALES AND USE TAX LAW

(Sections 6001 to 7176, Revenue and Taxation Code)

BRADLEY-BURNS UNIFORM LOCAL SALES AND USE TAX LAW

(Sections 7200 to 7209, Revenue and Taxation Code)

TRANSACTIONS AND USE TAXES

(Sections 7251 to 7273, Revenue and Taxation Code)

*MOTOR VEHICLE FUEL LICENSE TAX LAW

(Sections 7301 to 8404, Revenue and Taxation Code)

USE FUEL TAX LAW

(Sections 8601 to 9355, Revenue and Taxation Code)

**TAX ON INSURERS

(Sections 12001 to 13153, Revenue and Taxation Code)

CIGARETTE TAX LAW

(Sections 30001 to 30479, Revenue and Taxation Code)

ALCOHOLIC BEVERAGE TAX LAW

(Sections 32001 to 32556, Revenue and Taxation Code)

ENERGY RESOURCES SURCHARGE LAW

*** (Sections 40001 to 40191, Revenue and Taxation Code)

EMERGENCY TELEPHONE USERS SURCHARGE LAW

*** (Sections 41001 to 41019, Revenue and Taxation Code)

Procedures for Review of Audit Results

The review processes are usually initiated by taxpayers as the result of an audit conducted by an auditor assigned to one of the Board's Business Taxes Field Offices. Claims for refund may also be filed by a taxpayer (see Step 5 following). Insurance tax adjustments begin with the Board at Step 4, following.**

At any time after a Business Taxes audit begins you may disagree with a particular conclusion reached by the Board or its representatives. Where this is the case, your position can be presented in one or more of the following steps:

Step 1. Consultation with the Auditor

a. During the Audit

A discussion with the auditor during the course of the examination may enable you to obtain and present additional information which will clarify the dispute and result in the auditor accepting your viewpoint.

b. After Completion of the Audit

After completion of the audit, discuss the audit thoroughly with the auditor. He can at this time, correct any disputed items which you successfully convince him are erroneous.

* Includes Aircraft Jet Fuel Tax.

** The Board's administration of this tax is limited to assessment, adjustment of assessments, and claims for refund. Auditing is done by the Insurance Commissioner and collections are by the State Controller.

*** Audits are made by auditors assigned to the Headquarter's Excise Tax Unit.

Step 2. Consultation with Auditor's Field Supervisor

If you and the auditor are unable to agree on the auditor's recommendation, ask the auditor to arrange a meeting between you and his field supervisor. Explain your position to the field supervisor and what you think should be done to resolve any disagreement.

If any points of disagreement still exist after this conference, the audit will be specially marked to indicate that you do not concur with the results.

Step 3. Discussion at the Local Office – Notice of Determination

If the auditor submits your audit with the notation that you do not concur, you will ordinarily receive a letter from the local office giving you the opportunity to appear before a local Board representative for a discussion of your case before a billing is made.

This letter will give you ten (10) days within which to make an appointment for a discussion. The discussion will be informal and you may present any matter which you believe is pertinent. If, after the hearing the Board representative believes you have not paid the proper amount of tax, you will later be sent by mail from Sacramento Headquarters a Notice of Determination of the amount asserted to be underpaid.

You may not receive a notice for a discussion at the local office if a Statute of Limitation is involved or if the facts indicate a discussion would not be advisable. In such a case, a letter will be sent to you by the local office telling you that the audit has been forwarded to Sacramento Headquarters. Later you will be sent by mail a Notice of Determination from Sacramento without further communication from the local office.

Step 4. Petition for Redetermination

When you receive a Notice of Determination, you have thirty (30) days from date of mailing within which to file a Petition for Redetermination in all business tax cases except those pertaining to payment for Cigarette Tax stamps and meter register settings. In the later case, Petitions for Redetermination must be filed within ten (10) days from date of mailing the Notice of Determination, and the security may be adjusted by the Board as it may deem necessary. The petition must be in writing and filed with the Board. It should be sent to the State Board of Equalization, Petitions Unit, P.O. Box 1799, Sacramento, CA 95808.

Though your petition need not be in any particular form, it should identify the protested items and must contain a statement of the specific grounds or reasons why you believe the tax does not apply. You may, if you desire, request an oral hearing before the Board as part of your Petition for Redetermination.

a. Presentation of Additional Records or Documents

Most petitions are resolved without the need of a hearing. Upon receipt of your petition, you may be asked to provide evidence to support your contention or the district staff will be instructed to contact you to examine additional data. If you wish to pursue your petition further, you should reaffirm your request for a hearing.

b. Hearing Before a Headquarters' Hearing Officer

Upon receipt of a request for oral hearing, the Board will notify you of the time and place where you may appear for a preliminary hearing and present your case to a Board Hearing Officer. In some cases you will be requested to appear for a preliminary hearing before a Board Hearing Officer even though you have not specifically asked for an oral hearing. Preliminary hearings are not held for insurance tax cases. Insurance tax cases are heard directly by the Board of Equalization Members.

After this hearing, you will receive written notification of the Hearing Officer's recommendations. If you still disagree, you may request an oral hearing before the Board.

c. Board Hearing

This is a hearing before the Board of Equalization Members. If you have requested such a hearing, you will be given notice of the time and place of hearing. The Board Hearing Procedures Regulations are printed in this pamphlet beginning at page 18.

Sections 5001-5007 of the regulations are general provisions which apply to all hearings before the State Board of Equalization. Sections 5051-5059 cover petitions for redetermination of liability and claims for refund under the Sales and Use Tax, the Motor Vehicle Fuel License Tax, the Use Fuel Tax, the Alcoholic Beverage Tax, and the Cigarette Tax Laws. Petitions for reassessment and claims for refund of Insurance Tax and Energy Resources Surcharge are handled in a similar manner. Sections 5061-5067 of the regulations cover petitions for hearings in jeopardy determinations.

A Board hearing is available to any taxpayer, whether represented by counsel or not, who desires to show that a business tax determination or collection is in error. The Board receives evidence of facts in dispute and considers arguments based upon facts and law of each case before rendering an administrative decision. The rules and regulations are to facilitate the orderly, effective performance of this vital Board function while allowing every taxpayer wide latitude in presenting his case.

Although the Board's hearings are informal and are conducted without unnecessarily technical language, the taxpayer is urged to be prepared to give a clear, concise statement of his position. Facts in dispute should be proved by whatever oral and documentary evidence reasonably can be brought before the Board. Exhibits often may aid in simplifying the presentation of extensive accounts or involved relationships of people, places or things.

Members of the Board and the staff may question parties and witnesses in order to clarify the matters in question. The Board will terminate the hearing by announcing its decision, or, more often, by taking the matter under submission for a later decision. The Board has no authority to compromise a tax liability.

After the Board has heard your case and made the adjustments, if any, which it deems proper, a Notice of Redetermination will be issued. If the Board agrees that you owe no tax, the Redetermination will so indicate. If the Board decides that you owe tax, the Redetermination will show this. A Redetermination becomes final in thirty (30) days from the date thereof, and if not paid by that time, a 10% penalty attaches. No further steps can be taken on the matter until the amount of the Redetermination has been paid.

Step 5. Claim for Refund

This step is available only for amounts which have been paid. After payment, if you still feel that the tax has been incorrectly determined, you may file a written claim for refund with the Board within six (6) months from the date the determination became final, or within three (3) years (four (4) years for insurance tax) from the due date of the return for the period for which the overpayment was made (or within three (3) years from the due date of payment for Cigarette tax stamps or meter register settings) or within (6) months from the date of overpayment whichever date expires the later. This claim must set forth all the grounds or reasons which you believe render the items not subject to tax.

You may be given a hearing on a claim for refund if you have not had a hearing on a petition for redetermination involving the same issues. (See Step 4 above as to preliminary and Board hearings.)

The Board will in any event reconsider the case in light of your formal claim for refund. If you are not successful, you may then take your case to the courts. You must start such legal action by filing a complaint in a court of appropriate jurisdiction within ninety (90) days after the mailing of notice that your claim is denied. If the Board fails to mail a notice of action on your claim within six (6) months after you file the claim you may, prior to the mailing of notice by the Board of its action on the claim, consider the claim disallowed and commence a suit for refund. In case of denial by the Board, unless court action is commenced within ninety (90) days, the matter will be completely closed.

Step 6. Court Action

At this step, you have passed from the administrative process to a court proceeding which must be filed in the Superior Court. You should be represented by counsel. You are limited in your court action to the grounds for refund which were stated to the Board in your claim for refund.

You, as a taxpayer, will normally wish to avail yourself of all administrative remedies before resorting to court action. In special cases you or your attorney may deem it advisable to bypass certain of the steps in the administrative process in order to submit the matter to the courts as quickly as possible. This can be done by paying the determination at any stage, filing a claim for refund within six (6) months. If the claim is denied, you may start court action within ninety (90) days after denial. In the event the claim is not acted upon for six (6) months you may consider it denied and start court action.

Summary

In summary, the steps which may be taken to protest audit recommendations are:

1. Consultation with the auditor
 - a. During the audit
 - b. After completion of the audit
2. Consultation with the auditor's field supervisor
3. Discussion before a local Board representative
4. Petition for redetermination
 - a. Presentation of additional records or documents to district or headquarters' audit staff
 - b. Hearing before Board Hearing Officer
 - c. Hearing before the Board of Equalization members
5. Payment and claim for refund
6. Court action

Of course, if you prevail or change your mind at any of the above steps, it will not be necessary to go further.

Service of Legal Documents

Service of the summons and complaint in a court action against the Board of Equalization should be accomplished in accordance with Section 416.50 of the California Code of Civil Procedure. Mail service may be made in accordance with Section 415.30.

In an action or proceeding authorized by law against the Board of Equalization, service is made by delivering a copy of the summons and complaint to (1) the Chairman of the Board, or (2) the Executive Secretary, (or the acting Executive Secretary in his absence), or (3) by mailing a copy of the summons and complaint together with two copies of a notice of acknowledgment form and return envelope, postage prepaid to the persons mentioned.

The Chairman of the Board and the Executive Secretary maintain their offices at 1020 "N" Street, Sacramento, California 95814.

As the Executive Secretary or Acting Executive Secretary will always be available at the Board's Sacramento office during business hours, it is recommended that service of summons and complaints be directed to the Executive Secretary.

Service upon the Board through the Executive Secretary can be made by the marshal, sheriff, or a process server in Sacramento.

Arrangements for service can be made by letter addressed to the Sheriff of Sacramento County, 800 - 7th Street, Sacramento, California 95814, or through any private process server.

APPEALS FROM THE FRANCHISE TAX BOARD

The State Board of Equalization is by statute the administrative appellate agency to which appeals may be taken from final actions of the Franchise Tax Board under the Bank and Corporation Tax Law, the Personal Income Tax Law, and the Senior Citizens Property Tax Assistance and Postponement Law. Applicable sections of the Revenue and Taxation Code include Sections 25666, 25667, 25701, 25701a, 25731a, 25761a, 26075 to 26078, 18593 to 18596, 18621, 18645, 18646, 18648, 19057 to 19061.1, 19062.2 to 19062.5, and 20645.

The appeal must be in writing and should state the fact that an appeal is being made, the name of the appellant or appellants, the amounts and the years involved, the date when the notice of action was mailed by the Franchise Tax Board, the facts of the case, and the points and authorities relied on by the appellant. The appeal should be signed by the appellant or his authorized representative.

An appeal must be mailed to or received at the State Board of Equalization office within the time specified by the particular statute under which the appeal is taken. Appeals should be addressed to State Board of Equalization, P.O. Box 1799, Sacramento, CA 95808. The Board's street address is 1020 N Street, Sacramento. A copy of the appeal should be addressed and mailed at the same time to the Franchise Tax Board, Sacramento, CA 95867.

Sections 5021 to 5037 of the Hearing Procedure Regulations of the State Board of Equalization found in this pamphlet beginning at page 18 contain the detailed regulations applicable to appeals from actions of the Franchise Tax Board. Sections 5001 through 5007 of the Hearing Procedure Regulations are general provisions which apply to hearings before the State Board of Equalization. Certain appellants may also be concerned with Sections 5071 through 5080 of the Regulations when there has been a referral to a member of the State Board of Equalization to receive evidence and arguments.

After an appeal is heard, or oral hearing is waived, the appeal will be taken under submission by the State Board of Equalization and a written opinion and order determining the appeal will be rendered. A copy will be sent to each party immediately after it is issued. The determination is final 30 days from its date, unless a petition for rehearing is filed within that period. In that event the determination is final 30 days after the Board issues its opinion on the petition for rehearing.

If a taxpayer is dissatisfied with the action taken by the State Board of Equalization on his appeal, the next step is to file an action in the Superior Court. Except for cases dealing with residency, the tax must be paid and a claim for refund filed with the Franchise Tax Board before a court action is brought and the action will be a suit for refund.

PROPERTY TAX ASSESSMENT APPEAL AND REVIEW PROCESSES

The State Board of Equalization does not hear appeals from taxpayers as to the amounts of property taxes levied, the validity of property tax levies, or the correctness of assessments of the property of private taxpayers upon which local governments levy the property tax. Property tax assessment appeals are heard by the county Board of Supervisors sitting as a County Board of Equalization or, in certain counties, by an Assessment Appeals Board. The State Board of Equalization, pursuant to Section 15606 of the Government Code, prescribes rules and regulations to govern county boards of equalization (and assessment appeals boards) when equalizing. The hearing regulations for local equalization are printed in this pamphlet beginning at page 25 and are numbered Rules 301 through 326.

How Property Is Valued For Tax Purposes *

1. Previously the county assessor was required by law to assess your taxable property in relation to its fair market value as of March 1 each year. Proposition 13 and legislation has changed this scheme. Real property now will be valued as of a 1975 base year date or at its market value as of the date of new construction, purchase, or change in ownership. Personal property remains under an annual fair market value standard.
2. Fair market value means the highest amount that a willing and knowledgeable seller could obtain in cash for the property from a willing and knowledgeable buyer (including cash the buyer borrows from a third party).
3. The assessment ratio is 100% beginning in 1981 under SB 1656 (Stats. 1978, Ch. 1207) and Proposition 3 on the November 1979 ballot.

How to Find Out the Assessed Value of Property

1. The information is available to all property owners during May, June, or early in July.
2. The law requires notice by mail or publication of any increase in the assessor's market value figure for real estate over the figure he used last year. Some counties notify owners even if there is no increase. These notices usually go out around July 1 but in some instances earlier in the year. If you do not receive a valuation notice and are interested in your value, you may obtain the information from the assessor. You may phone, write, or call in person. Your inquiry can be answered most promptly if you supply the parcel number of your real estate; you will find it on your latest tax bill.
3. Inquiries should be made before or immediately after July 1, so that you may have time to properly prepare your protest if you do not agree with the assessor.

How to Appeal:

First go to the Assessor

1. Review his records and compare your property with others in the same area.
2. Obtain evidence of sales in your neighborhood.
3. Let him explain his market value estimate.

* Certain properties are excluded from the coverage of Proposition 13. Open-space properties will be valued at the lower of the Proposition 13 value or the restricted value. Properties valued under Section 11, of Article XIII, historical properties, timberland, and golf courses will continue to be assessed as they were before Proposition 13 was enacted.

What is Next:

An appeal to the board of supervisors sitting as a county board of equalization or to the assessment appeals board if the county has adopted the appeals board concept.

Normally, application for change in assessed value must be made in writing between July 2 and September 15 in all counties for the year in which the assessment is questioned. Forms may be obtained from the assessor, the clerk of the board of supervisors, or the clerk of the assessment appeals board.

Proposition 13 has changed some of the hearing requirements. Boards must hear only questions of fact, such as valuation questions, and have no jurisdiction to hear pure questions of law, such as whether a change of ownership has occurred. Additionally, for properties with a 1975 base year the assessor has until June 30, 1980, to reflect a proper base year value. This gives the taxpayer until September 15, 1980, an opportunity to contest the 1975 base year value if it is changed by the assessor. These provisions may be extended to 1981 in Los Angeles County if an ordinance is adopted by the county board of supervisors.

For property with a base year after 1975 an application may be filed during the regular equalization period for the year in which the assessment is placed on the assessment roll or in any of the three succeeding years.

In both cases, a 1975 base year and other than a 1975 base year, once an application is filed the base year value determined pursuant to that application shall be conclusively presumed to be the base year value for such assessment.

It is possible for a property owner who acquired his property after the first of March but before July 1 to file for an appeal after the normal appeals time but before November 15 of the same year. This provision is applicable only if the new owner did not receive notice of increase in value of the property over the preceding year's value.

The Hearing:

1. Notice of the time and place of the hearing will be given to the taxpayer. The hearing is informal. It is not essential to have legal counsel, but sometimes it is desirable.*
2. Generally the burden of proof is on the taxpayer to demonstrate that the assessor's fair market value estimate is too high. The exception is the case of an owner-occupied, single-family residence. In those cases, the assessor has the burden of establishing, by competent evidence, the value that he placed on the residence. In a few counties each year -- those in which the State Board of Equalization finds that the average assessment level is less than 21.8% of true market value -- an assessment reduction may be obtained even if the assessor's fair market value estimate for your property is not excessive. However, once the taxpayer is before the equalization board the entire assessment of his property is subject to review by the board.
3. A. Properties with a 1975 base year -- The only issues to be resolved by the Board are whether the assessor performed a periodic appraisal in 1975 on the property, and if not, whether the correct "indicia and factors" were used to set the base year value.

B. Properties with other than a 1975 base year -- Evidence of fair market value must support your appeal. Actual sale prices of comparable properties are the best evidence of fair market value and are the guidelines most relied upon by assessors. Rents and costs of replacing a property (less accrued depreciation) are two other acceptable evidences of fair market value.

* If a taxpayer goes to court after an adverse decision of the local equalization board the record made before the local board may be very important (See -- What if Appeal is Denied -- paragraph 3).

4. Do not argue taxes; the appeal applies only to the fair market value of your property. Don't argue that the fair market value estimate on which your assessment is based has gone up more than the actual market value increase; last year's assessment may have been too low.

What If Appeal is Denied:

1. You may go to court under certain circumstances.
2. If the appeal application was denoted as a claim for refund or if a separate claim was submitted to and denied by the Board of Supervisors, then a suit must be filed in the superior court within six (6) months of the effective date of the denial of the claim.
3. The court will not receive new evidence of value, but only review the record of the hearing in the local equalization proceeding.
4. The court will only hear the case for the following reasons:
 - a. Lack of due process
 - b. Actual or constructive fraud
 - c. Abuse of discretion
 - d. An erroneous appraisal method incapable of producing the correct value.

Important Property Tax Dates

March 1 – 12:01 a.m.	This is "Lien Date." Tax liens on all real property attach at this time.
March 15	Legal deadline for filing welfare, veteran's organization, cemetery, college, exhibition, and free museum exemption claims.
March 31	Legal deadline for filing church exemption claims.
April 1	Legal deadline for filing for the one (1) percent assessment of documented vessels.
April 10	Last day to pay the second (last) installment of secured property taxes without penalty for delinquency.
April 15	Legal deadline for filing veteran's and homeowner's exemption claims.
May 16 – August 31	Filing period for Senior Citizen's Property Tax or Rent Assistance programs.
July 1	Assessment roll to be delivered by the assessor to the auditor (unless the due date is extended for cause by the State Board of Equalization).
July 2 – September 15	File applications for change in assessed value with the Clerk of the County Board of Supervisors or Assessment Appeals Boards.
August 31	Last day to pay unsecured property taxes without penalty for delinquency.
December 1	Last day to file late affidavit and claims for homeowner's and totally disabled veteran's exemptions with assessor.
December 10	Last day to pay the first installment of secured property taxes without penalty for delinquency.

Property Tax Glossary

LIEN DATE	12:01 a.m. on March 1 preceding the fiscal year for which taxes are collected; the time when the taxes become a lien on property and the time as of which property is valued for tax purposes.
FAIR MARKET VALUE OR FULL CASH VALUE	The highest amount a willing and knowledgeable seller of a property could obtain in cash from a willing and knowledgeable buyer.
ASSESSED VALUE	A uniform percentage of market value unless a standard other than market value has been established by the Constitution in the case of real property or by the statutes in the case of personal property. The amount to which the tax rate is applied.
ASSESSMENT ROLL	A countywide list of all property which identifies the property, the owner (if known), and the values used in assessment and collection of property taxes.
SECURED ROLL	That part of the roll containing state-assessed property, locally assessed fee-owned land, and other locally assessed property the taxes on which are adequately secured by a lien on the real property.
UNSECURED ROLL	The remainder of the assessment roll.
SECURED TAX RATE	The rate at which property on the secured roll must be taxed in order to yield the budgeted receipts from taxes extended on this roll. Expressed as a percentage (1% plus bonded indebtedness) of the base year factored value.
UNSECURED TAX RATE	Last year's secured tax rate.
CODE AREA	A tax-rate area; the area within which a unique combination of tax rates applies (e.g., the tax rates of Alpha County, Garden City, and Delta School District).
COUNTY BOARD OF EQUALIZATION	The County Board of Supervisors, which decides appeals from property owners on the assessed values of their properties.
ASSESSMENT APPEALS BOARD	A board, nominated or appointed by the County Board of Supervisors, which decides appeals from property owners on the assessed values of their properties.

REFERENCE MATERIAL

Revenue laws administered by the State Board of Equalization may be found in the California Revenue and Taxation Code. They also are included in publications of the State Board of Equalization entitled "Property Taxes Law Guide and California Excise Tax Laws". Both of these volumes are sold by the State Board of Equalization, P. O. Box 1799, Sacramento, California 95808. Some public libraries have copies available for reference. Single copies of a pamphlet of a particular excise tax law may be available free on request to the Board. Rules and regulations adopted by the Board are incorporated in the California Administrative Code, Title 18, Chapters 1 and 2. The complete text of the rules and regulations of the Board contained in the Administrative Code may be obtained from the Department of General Services, Documents and Publications, 4675 Watt Ave., North Highlands, CA 95660.

Single copies of particular regulations concerning the application of tax laws administered by the Board are available from the Board of Equalization without charge.

Board regulations, bulletins, and tax rulings, together with the text of the various California revenue laws, are also published as a part of the tax services of the California Tax Service, 2131 University Avenue, Berkeley, California 94704; Commerce Clearing House, Quail Hill, San Rafael, California 94903; and Prentice-Hall, Inc., Englewood Cliffs, New Jersey 07631.

Copies of the Personal Income Tax Law, Senior Citizens Property Tax Assistance and Postponement Law, and Bank and Corporation Tax Law, administered by the Franchise Tax Board, may be purchased from the Department of General Services, Documents and Publications, 4675 Watt Ave., North Highlands, CA 95660. Some public libraries have copies available for reference.

For regulations governing the hearing procedures of county boards of equalization and assessment appeals boards and for hearing procedure regulations of the State Board of Equalization, see the pages which immediately follow.

Section 301-326 are local equalization rules under the property tax law.

Sections 5001-5007 are general provisions which apply to hearings before the State Board of Equalization.

Section 5021-5037 contain regulations applicable to appeals from the Franchise Tax Board under the Bank and Corporation Tax Law, Personal Income Tax Law and Senior Citizens Property Tax Assistance Law. Appellants may also be concerned with Sections 5071-5080 when there has been a reference to a Member of the State Board of Equalization to receive evidence and arguments.

Sections 5051-5059 cover petitions for redetermination of liability and claims for refund under the Sales and Use Tax, the Motor Vehicle Fuel License Tax, the Use Fuel Tax, the Motor Vehicle Transportation License Tax, the Alcoholic Beverage Tax, and the Cigarette Tax Laws. Petitions for reassessment and claims for refund of Insurance Tax are handled in a similar manner.

STATE BOARD OF EQUALIZATION

HEARING PROCEDURE REGULATIONS

(Effective April 26, 1960; Amended June 26, 1964;
Amended February 6, 1968; Amended October 8, 1968;
Amended December 15, 1976; Amended December 7, 1977;
Amended June 14, 1978; Amended June 29, 1978;
Amended May 5, 1981)

California Administrative Code
Title 18. Public Revenues
Chapter 2. Board of Equalization
Subchapter 10. Hearing Procedure

- Article 1. General. §§5001 - 5007.
2. Appeals from Franchise Tax Board. §§5021 - 5037.
 - 2.5. Timber Yield Tax Law. §§5040 - 5047.
 3. Business Taxes. §§5051 - 5059.
 4. Hearings on Jeopardy Determinations. §§5061 - 5067.
 5. Reference to a Board Member. §§5071 - 5080.

ARTICLE 1. GENERAL

5001. QUORUM. Any three members of the board shall constitute a quorum. A majority vote of the quorum is required for all decisions or actions of the board.

5002. PROPER PARTIES. A petition for redetermination, a claim for refund, or an appeal from the Franchise Tax Board shall be filed by and in the name of the person against whom the deficiency or other tax liability was determined, or by and in the full descriptive name of the fiduciary or other person directly interested who is legally entitled to institute the proceedings.

If there is a variance between the name set forth in the notice of determination or other notice of tax liability and the name of the petitioner, claimant or appellant, the petition for redetermination, claim for refund, or appeal shall contain a statement of the reasons for such variance.

5003. FEES; CERTIFIED COPIES. No fee will be charged by the board for the filing of any paper or the issuance of a subpoena. Charges for transcripts of testimony heard before the board will be made at the rates specified in Section 69950 of the Government Code. The records and files of the board will not be removed from its offices for use as evidence or other purposes. Certified copies of records which the board is permitted by law to divulge will, however, be furnished to litigants or other interested persons. Where certified photostatic copies of papers or records are requested, a charge of \$1.00 will be made for the first page, and a charge of 25¢ will be made for each page after the first page delivered pursuant to any one request.

5004. TRANSCRIPTS. Except as may be otherwise provided in these regulations, the record of a hearing before the board will be transcribed at the request of a taxpayer. The transcript shall be prepared at his expense (see Regulation 5003). A request that a hearing be transcribed should be made in writing to the Executive Secretary in advance of the hearing. However, such a request by a taxpayer made subsequent to the hearing to which it relates will be honored if it is made within six months from and after the date the board's decision in the matter has become final, except that if the hearing reporter and/or the notes of the hearing are unavailable, the request will be denied. (Amended May 5, 1981)

5005. SUBPENAS. Subpenas for the attendance of witnesses or the production of books, records, accounts and papers may be issued in accordance with Section 15613 of the Government Code. Except where the subpoena is issued at the instance of the board, a subpoena shall be served on behalf of and at the expense of the person requesting its issuance. An application for a subpoena for the production of books, records, accounts and papers shall be supported by an affidavit such as is prescribed by Section 1985 of the Code of Civil Procedure.

5006. OFFICIAL NOTICE. The board may take official notice of:

- (a) the records maintained by the board;
- (b) tax returns filed with the Franchise Tax Board for or on behalf of the petitioner, claimant, or appellant or an affiliated company, together with related records on file with the Franchise Tax Board;
- (c) any fact which may be judicially noticed by the courts of this State.

The parties may, at the hearing or through a petition for rehearing, request permission to refute any matter thus noticed.

5007. WITHDRAWAL OF EXHIBITS. At the conclusion of a hearing any exhibit may be withdrawn on written request of the party who produced the exhibit. In such case the party may be required to substitute an exact legible copy for the original thereof.

ARTICLE 2. APPEALS FROM FRANCHISE TAX BOARD

5021. "BOARD." As used in this article, the word "board" shall mean the State Board of Equalization.

5022. MANNER OF FILING. An appeal to the board from action by the Franchise Tax Board under the Personal Income Tax Law, the Senior Citizens Property Tax Assistance Law, or the Bank and Corporation Tax Law shall be addressed and mailed to the State Board of Equalization at Sacramento, California. A copy of the appeal shall be addressed and mailed at the same time to the Franchise Tax Board at Sacramento, California. An appeal may also be deposited personally at the office of the board in Sacramento and a copy thereof deposited personally with the Franchise Tax Board in Sacramento. (Amended October 8, 1968)

5023. TIMELINESS. An appeal will be timely if it is mailed to or received at the office of the board within the time specified by the particular statute under which the appeal is taken. In the absence of other evidence, the post-mark date will be considered as the mailing date. If the last day for making an appeal falls on a Saturday, Sunday or holiday, the time shall be extended to the next business day.

5024. FORM. The appeal must be in writing and should state the fact that appeal is being made, the name of the appellant, the amounts and the years involved, the date when the notice of action was mailed by the Franchise Tax Board, the facts involved and the points and authorities relied on by the appellant. The appeal should be signed by the appellant or by his authorized representative.

5025. SUPPLEMENTATION OF THE APPEAL. If the appeal is timely but incomplete, as through omission of a statement of the facts and a memorandum of the points and authorities, the appellant will be given additional time to supplement the appeal. A copy of all supplementary data shall be mailed to the Franchise Tax Board. The appeal is subject to dismissal if it is not supplemented as requested by the board within the time allowed by it. Reasonable extensions of time for filing supplementary data may be granted on written request.

5026. MEMORANDA TO BE FILED. After the filing of an appeal is complete, the Franchise Tax Board will be allowed not less than 30 days in which to file a memorandum in support of its position. The appellant will be allowed not less than 30 days thereafter in which to file a reply if he so desires. A copy of each memorandum shall be mailed to the opposing party. Reasonable extensions of time for the filing of memoranda may be granted upon written request. (Amended June 26, 1964)

5027. SUPPLEMENTAL MEMORANDA. The Franchise Tax Board will be allowed to file a supplemental memorandum to deny allegations of fact in the reply of the appellant if it so desires. The supplemental memorandum shall be filed by the Franchise Tax Board within 30 days of the filing of a reply unless, upon written request, an extension of time has been granted.

5028. STIPULATION OF FACTS. The appellant and the Franchise Tax Board may file at any time during the proceedings a stipulation of the facts upon which they agree, the facts which are in dispute and the reasons for the dispute. The board may require the parties to file such a stipulation.

5029. VOLUNTARY DISMISSAL: NEGOTIATIONS. An appeal may be dismissed at any time at the written request of the appellant or upon the basis of a written stipulation between the appellant and the Franchise Tax Board. Prior to the issuance of a decision the appellant and the Franchise Tax Board may enter into negotiations at any time for settlement of an appeal.

5030. DEFERRALS. The board may defer proceedings for an indefinite period upon the filing of a written stipulation between the appellant and the Franchise Tax Board or, depending on the circumstances, for a period not to exceed one year at the written request of either party.

5031. ORAL HEARING; WAIVER. After all memoranda are filed, the appeal will be set for oral hearing unless a hearing has been waived. Oral hearing may be waived and the appeal submitted for decision on the basis of the memoranda upon the written request of either party and agreement by the other.

5032. NOTICE OF HEARING; POSTPONEMENT. Written notice of the time and place of hearing will be sent to the parties approximately 30 days in advance. The hearing may be postponed for good cause at the written request of either party. (Amended October 8, 1968)

5033. PLACE OF HEARING; TIME ALLOWED. An appeal involving an appellant or his representative residing in the southern part of the State will ordinarily be heard in Pasadena. Other appeals will ordinarily be heard in Sacramento. A hearing is usually scheduled to last for not more than one hour. If additional time is needed, this may be arranged in advance through the Sacramento office of the board. (Amended June 26, 1964)

5034. HEARING PROCEDURE. The hearing will ordinarily proceed in the following manner. A member of the legal staff of the board will summarize the undisputed facts and the issues. The appellant will state his position and present his evidence. The Franchise Tax Board will thereafter state its position and present its evidence. The appellant will then be given an opportunity to reply.

The chairman or acting chairman of the board may call a party, or any other person who is present, to testify under oath or affirmation. Any member of the board or of its legal staff may question witnesses.

5035. EVIDENCE.

- (a) Oral evidence will be taken only on oath or affirmation.
- (b) Each party may call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination, impeach any witness regardless of which party first called him to testify, and rebut the evidence against him. A party or his employee or agent may be called by the opposing party and examined as if under cross-examination.
- (c) Any relevant evidence, including affidavits and other forms of hearsay evidence, will be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. The board will be liberal in admitting evidence, but objections to the admission of and comments on the weaknesses of evidence will be considered in assigning weight to the evidence. The board may deny admission of evidence which it considers irrelevant, untrustworthy or unduly repetitious. The rules of privilege which apply in civil court actions will be followed. (See Section 1881 of the Code of Civil Procedure.)

5036. BURDEN OF PROOF. The burden of proof will ordinarily be upon the appellant as to all issues of fact. In any proceeding involving the issue whether the appellant has been guilty of fraud with intent to evade tax, the burden of proof as to that issue will be upon the Franchise Tax Board.

5037. DECISION; REHEARINGS. After an appeal is heard, it will be taken under submission and a written opinion and order determining the appeal will be rendered. A copy of the determination will be sent to each party immediately after it is issued. The determination is final 30 days from its date unless a petition for rehearing is filed within that period. In that event the determination is final 30 days after the board issues its opinion on the petition.

ARTICLE 2.5. TIMBER YIELD TAX LAW (Adopted June 29, 1978)

5040. CONTENTS OF PETITION. Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded. It shall be signed by the taxpayer, his authorized representative or any person directly interested. Any portion of the determination which the taxpayer concedes is owing by him should be indicated in the petition. The petition may be amended to state additional grounds at any time prior to the date the board issues its order or decision on the petition.

5041. STAFF HEARING. A petition for redetermination will be initially scheduled for a hearing before a hearing officer of the staff. It is expected that at the staff hearing a taxpayer will present all the evidence in his behalf to the extent that it is possible for him to do at that time. It is the primary purpose of the staff hearing to establish the facts in the case and the application thereto of the law and regulations. Statements of witnesses at the staff hearing need not be under oath or affirmation.

5042. BOARD HEARINGS – FUNCTION OF STAFF. Hearings before the board under the applicable statutory provisions are not in the nature of trials or contests between adverse parties. They are meetings of the board at which the taxpayer presents orally to the board his arguments for a reduction or cancellation of a liability previously determined against him or for a refund of tax previously paid. It is the duty of the staff of the board at hearings to assist the board in ascertaining the facts and in determining the correct application of the law and the regulations to the facts.

5043. CONSOLIDATION FOR HEARING. Where taxpayers so desire, two or more determinations or claims for refund may be consolidated for hearing when the facts and issues are similar and no substantial right of any party will be prejudiced.

5044. PRESENTATION OF MATTERS FOR CONSIDERATION. A member of the staff shall introduce the matter for consideration by an oral statement of the facts, the law applicable, the issues, and the tentative views of the staff. The taxpayer may then present his position to the board. He may appear in his own behalf or he may be represented by any person of his choice, such as an attorney, accountant, bookkeeper or business associate.

As hereinafter used, the word "taxpayer" includes his representative at the hearing. Taxpayer may present his case as he sees fit, subject to rulings of the chairman of the board. Ordinarily adherence to technical rules of evidence will not be required. Taxpayer may offer witnesses to testify under oath if taxpayer so requests, or if the chairman of the board so directs. Any member of the board or staff member participating in the hearing may upon recognition of the Chairman question the taxpayer and may cross-examine anyone called as a witness by taxpayer.

Participating staff members may upon recognition of the Chairman comment upon the taxpayer's argument and explain to the board and the taxpayer the staff's views as to the validity of any argument made, the value of evidence submitted and any other matters pertinent to the proceedings.

5045. CLAIMS FOR REFUND. Every claim shall be in writing and shall state the specific grounds upon which the claim is founded. It shall be signed by the taxpayer, his authorized representative or any person directly interested. Although not required by statute to do so, the board in its discretion may grant hearings on refund claims. The procedure on such hearings is the same as in the case of hearings on petitions for redetermination pursuant to statutory provisions.

5046. REHEARINGS. The board in its discretion may continue a hearing to a later date or grant a rehearing on a petition for redetermination. Action granting a rehearing must be taken prior to the time a determination becomes final.

5047. DECISIONS. When the hearing is concluded, the board may make its order or decision, or take the matter under consideration for decision later at the same meeting or at a subsequent meeting. The board's decision will be transmitted to the taxpayer in the form of a notice of redetermination of the tax, a notice of denial of the petition, or a notice of denial or granting of a claim for refund. Written opinions will not ordinarily be rendered.

ARTICLE 3. BUSINESS TAXES

5051. BUSINESS TAXES AFFECTED BY THIS ARTICLE AND ARTICLE 4. The Business Taxes to which this article and Article 4 are applicable are:

Sales and Use Tax (including State-administered
local sales and use taxes)
Motor Vehicle Fuel License Tax
Use Fuel Tax
Motor Vehicle Transportation License Tax
Alcoholic Beverage Tax

Cigarette Tax
Litter Control, Recycling, and Resource
Recovery Assessment
Energy Resources Surcharge Law*
Emergency Telephone Users Surcharge Law*

* Article 4 does not apply to these laws.

(Amended December 7, 1977)

5052. CONTENTS OF PETITION. Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded. It shall be signed by the taxpayer, his authorized representative or any person directly interested. Any portion of the determination which the taxpayer concedes is owing by him should be indicated in the petition. The petition may be amended to state additional grounds at any time prior to the date the board issues its order or decision on the petition. (Amended February 6, 1968)

5053. STAFF HEARING. A petition for redetermination will be initially scheduled for a hearing before a hearing officer of the staff. It is expected that at the staff hearing a taxpayer will present all the evidence in his behalf to the extent that it is possible for him to do at that time. It is the primary purpose of the staff hearing to establish the facts in the case and the application thereto of the law and regulations. Statements of witnesses at the staff hearing need not be under oath or affirmation.

5054. BOARD HEARINGS - FUNCTION OF STAFF. Hearings before the board under the applicable statutory provisions are not in the nature of trials or contests between adverse parties. They are meetings of the board at which the taxpayer presents orally to the board his arguments for a reduction or cancellation of a liability previously determined against him or for a refund of tax previously paid. It is the duty of the staff of the board at hearings to assist the board in ascertaining the facts and in determining the correct application of the law and the regulations to the facts.

5055. CONSOLIDATION FOR HEARING. Where taxpayers so desire, two or more determinations or claims for refund may be consolidated for hearing when the facts and issues are similar and no substantial right of any party will be prejudiced.

5056. PRESENTATION OF MATTERS FOR CONSIDERATION. A member of the staff shall introduce the matter for consideration by an oral statement of the facts, the law applicable, the issues, and the tentative views of the staff. The taxpayer may then present his position to the board. He may appear in his own behalf or he may be represented by any person of his choice, such as an attorney, accountant, bookkeeper or business associate.

As hereinafter used, the word "taxpayer" includes his representative at the hearing. Taxpayer may present his case as he sees fit, subject to rulings of the chairman of the board. Ordinarily adherence to technical rules of evidence will not be required. Taxpayer may offer witnesses to testify under oath if taxpayer so requests, or if the chairman of the board so directs. Any member of the board or staff member participating in the hearing may upon recognition of the Chairman question the taxpayer and may cross-examine anyone called as a witness by taxpayer.

Participating staff members may upon recognition of the Chairman comment upon the taxpayer's argument and explain to the board and the taxpayer the staff's views as to the validity of any argument made, the value of evidence submitted and any other matters pertinent to the proceedings.

5057. CLAIMS FOR REFUND. Every claim shall be in writing and shall state the specific grounds upon which the claim is founded. It shall be signed by the taxpayer, his authorized representative or any person directly interested. Although not required by statute to do so, the board in its discretion may grant hearings on refund claims. The procedure on such hearings is the same as in the case of hearings on petitions for redetermination pursuant to statutory provisions. (Amended February 6, 1968)

5057.5. CLASS CLAIMS FOR REFUND.

(a) Foreword.

The California courts have recognized that class claims for refund of sales and use taxes can be valid. However, the courts have not given instructions as to how the board should handle such claims. This regulation is intended to provide an orderly procedure for handling such claims and to relieve the courts of unnecessary litigation.

(b) Procedures Required of Class Representative.

The representative claiming a refund on behalf of himself and other members of a class must establish:

- (1) That it is more beneficial to the class and to the state to proceed as a class rather than individually.
- (2) The existence and the composition of the class, including
 - (A) A description of the members sufficient to identify the persons making up the class.
 - (B) The approximate number of persons in the class.
 - (C) The manner in which and the time when the class members will be identified and notified of the pendency of the class claim.
- (3) The issues of law and the issues of fact which are common to all class members and those which are not, and the approximate number of class members affected by each issue that is not common to all.
- (4) The representative's written authority to act as representative for each class member, which authority shall authorize the board to release to the representative any confidential information in the board's files which may be required in connection with the claim. This statement may include a separate claim for refund by the class member or may state that the class member joins in the class claim.
- (5) That the representative is a member of the class and when and how the representative became a member. In addition, any unique legal or factual issues pertaining to the representative's claim and any differences between the representative's status as a class member and that of any other class member must be described.
- (6) That the representative can fairly and adequately protect the interests of each member of the class and that the representative's interests are not antagonistic to members of the class.
- (7) When requested by the board, that each member of the class has been notified of the pendency of the claim and each member has had a reasonable opportunity to join in or be excluded from the class claim.

(c) Action to be Taken by Board.

- (1) If the board finds that the claim is a proper class claim it shall act upon the claim in the same manner, to the extent possible, that it would act on any other claim. If the board finds that the claim is not a proper class claim, it shall act only on claims by individual members and notify the representative that the claim is not valid as to others. In determining the amount of any refund due to any member of the class, the refund shall be limited to the amount of tax overpayment by that member under the tax law pursuant to which the claim was filed.
- (2) Before a refund will be made to any member of the class, the amount of the tax overpayment by the member must be established and the representative or member must furnish to or make available to the board all contracts, documents, or records (or true copies thereof) necessary to verify the overpayment and the amount thereof. If such contracts, documents, or records are not presented to or made available to the board, the representative or member, as the case may be, shall be deemed to have failed to exhaust the administrative remedies.

(d) Effect of Action on Class Claims.

- (1) Failure to commence a court action within 90 days after the mailing of the notice of the board's action on a refund claim as provided in the tax law pursuant to which the claim was filed constitutes a waiver of any demand against the state on account of alleged overpayments. This waiver, however, does not apply with respect to persons who have not previously been notified of the claim, or who have notified the board that they desire to be excluded from the claim. Nor does the waiver apply with respect to persons involved in a claim to the extent it has been declared invalid as distinguished from persons as to whom a claim has been denied.
- (2) A judgment in any court action filed with respect to the denial of any claim is res judicata as to the claimant's tax liability or overpayments for the period involved. (Amended June 14, 1978)

5058. REHEARINGS. The board in its discretion may continue a hearing to a later date or grant a rehearing on a petition for redetermination. Action granting a rehearing must be taken prior to the time a determination becomes final.

5059. DECISIONS. When the hearing is concluded, the board may make its order or decision, or take the matter under consideration for decision later at the same meeting or at a subsequent meeting. The board's decision will be transmitted to the taxpayer in the form of a notice of redetermination of the tax, a notice of denial of the petition, or a notice of denial or granting of a claim for refund. Written opinions will not ordinarily be rendered.

ARTICLE 4. HEARINGS ON JEOPARDY DETERMINATIONS.

5061. PETITION FOR REDETERMINATION AND STAY OF COLLECTION ACTIVITIES. The person against whom a jeopardy determination is made may petition for redetermination thereof if the person, within 10 days after service of the notice of the jeopardy determination, files a petition for redetermination and within that period deposits with the Board such security as the Board deems necessary to secure compliance with the tax law or laws pursuant to which the determination is made. The petition shall be in writing and shall state the specific grounds upon which it is based. The filing of the petition and depositing of the required security will stay further collection activities until such time as the determination becomes final. Hearings on such petition shall be governed by the procedures set forth in Article 3 of these regulations. (Amended December 7, 1977)

5062. APPLICATION FOR ADMINISTRATIVE HEARING. Within 30 days after service of the notice of jeopardy determination, the person against whom a jeopardy determination has been made may, with or without complying with the requirements of Regulation 5061, apply for an administrative hearing for one or more of the following purposes:

- (a) to establish that the determination is excessive or
- (b) to establish that the sale of property that may have been seized after issuance of the jeopardy determination or any part thereof, should be delayed pending the administrative hearing because the sale would result in irreparable injury to him or
- (c) to request the release of all or a part of the property to him or
- (d) to request a stay of collection activities.

The application must be in writing and must state the specific factual and legal grounds upon which it is founded. No security need be posted to obtain this hearing. Unless the person complies with the provisions of Regulation 5061 relating to the deposit of security, the filing of the petition shall not operate as a stay of collection activities except sale of the property seized. Upon a showing of good cause for failure to file a timely petition for administrative hearing, the Board may allow a late filing of the petition and grant petitioner an administrative hearing. (Amended December 7, 1977)

5063. EFFECT OF FILING APPLICATION. The seized property shall not be sold without the consent of the owner during the first 30 days after service of the notice of jeopardy determination nor while a timely application for an administrative hearing is pending. The storing of the property during the period the application is pending shall be at the applicant's expense. (Amended December 15, 1976)

5064. ADMINISTRATIVE HEARING. An administrative hearing shall be scheduled promptly after the filing of the application. The decision of the administrative officer holding the hearing shall become final 30 days after the notice of the decision is mailed to the applicant unless within that time the applicant makes a written request for an oral hearing before the Board. When an oral hearing before the Board is requested, the hearing shall be scheduled as soon as practicable. The Board shall give the applicant at least 10 days' notice of the time and place of the hearing. The Board may continue the hearing from time to time as may be necessary. (Amended December 15, 1976)

5065. ORDER OF HEARING OFFICER. The administrative officer or the Board may find that the applicant is not entitled to the relief requested or may order that one or more of the following types of relief be granted: that the sale of the property will irreparably damage the applicant and that the property shall not be sold; that the property, or a portion thereof, be released to the applicant or to the person from whom it was seized; that the tax as determined is excessive and that the amount of the determination be reduced. The order of the Board shall become final 30 days after mailing notice thereof to the applicant. (Amended December 15, 1976)

5066. CERTIFICATION TO STATE BOARD OF CONTROL. If, under the terms of the tax law involved, the jeopardy determination has become final, any reduction of the determination in an amount in excess of one thousand dollars (\$1,000) may be made only if the Board sets forth in its records that the amount has been illegally determined and certifies to the State Board of Control the amount determined in excess of the amount legally due and the person against whom the determination was made. If the State Board of Control approves and so authorizes, the amount of the determination shall be reduced. (Amended December 15, 1976)

5067. NOTICES. Any notice given pursuant to this article shall be served personally or by mail in the manner prescribed for service of notice of a deficiency determination. (Amended December 15, 1976)

ARTICLE 5. REFERENCE TO A BOARD MEMBER

5071. REFERENCE. In any appeal pending before the board from action taken by the Franchise Tax Board a referral may be made by the board to one or more of its members for oral hearing. The purpose of the referral shall be to receive for the board the oral presentation of testimony and arguments, to receive documentary and other evidence, to make a record of hearing and to prepare a summary of the facts and arguments presented.

5072. POLICY ON ASSIGNMENT. In so far as practicable, referrals shall be made to the members of the board in rotation, and to other than a board member of the equalization district in which the interested taxpayer resides or maintains his principal place of business.

5073. PRESIDING BOARD MEMBER. When a matter is referred to a board member, he shall preside at and shall control the conduct of the hearing. When a matter is referred to two or more members, the board shall designate one of the members as the presiding board member. The presiding board member shall set the time and place of hearing and shall cause to be given the same notice thereof as is required for a notice of a board hearing. On his own motion, or for good cause shown by a party, he may postpone a hearing to another time or place. Written notice of the time and place for the postponed hearing shall be given to each party, except that where a continuance is ordered during the course of a hearing, notice may be given orally to each party present. The fact of giving oral notices shall be noted in the record. A copy of the order or notice of continuance shall be posted conspicuously on or near the door of the place where the hearing was held within 24 hours after the time of continuance. If the hearing is continued to a time less than the 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance shall be posted immediately following the meeting at which the declaration or order of continuance was adopted or made. At any time prior to filing the summary with the Secretary the presiding board member on his own motion or for good cause shown, may reopen the matter for further hearing. He shall cause to be given the same notice of the time and place of further hearing as is required for a notice of a board hearing. (Amended October 8, 1968)

5074. STAFF ATTORNEY. Upon the referral of any matter for oral hearing under this article the Chief Counsel shall assign a staff attorney to attend any proceedings therein. At the direction of the presiding board member the attorney shall render such technical assistance to the board members as may be required.

5075. RECORD OF HEARING. The presiding board member shall cause to be made a written record of all proceedings had with respect to the matter referred and shall require oral hearings to be recorded by phonographic reporter or recording machine. Upon agreement of the parties any portion of oral argument need not be recorded.

5076. CONDUCT OF HEARING. The presiding board member may determine the order of proof and argument. The manner of questioning witnesses and the rules of evidence shall be the same as are applicable to hearings before the board itself. The board members and the staff attorney may question any party or witness. The presiding board member may order into the record any material and relevant evidence. He may rule on the admission of evidence and allow reasonable time for oral arguments. He may also direct the filing of written memoranda or briefs and allow reasonable time limits therefor.

5077. TRANSCRIPT. Any party to a hearing under this article may obtain a copy of the transcript of all or a part thereof, by a request in writing delivered to the presiding board member, and upon making suitable arrangements for payment of the cost of the transcript.

5078. SUMMARY. After the completion of the proceedings upon referral, the presiding board member shall cause to be prepared a written summary of the facts and arguments presented. The record of the proceedings, including the summary, all exhibits, memoranda, and briefs shall be filed with the Secretary.

5079. BOARD ACTION. Upon receipt of the record by the Secretary, the appeal shall stand submitted for decision by the board. After the appeal is submitted, the board at its discretion, may receive additional evidence or arguments, or it may again make a referral for this purpose.

5080. RECALL OF REFERRED CASE. The board may at any time recall any matter referred under the provisions of this article for further proceedings by the board itself. In such case the presiding board member shall file with the Secretary a copy of the record of the proceedings had prior to the recall.

BOARD OF EQUALIZATION
PROPERTY TAX DEPARTMENT
PROPERTY TAX RULES

Chapter 1. State Board of Equalization—Property Tax
Subchapter 3. Local Equalization
Article 1. Hearing by County Board

Rule 301. DEFINITIONS AND GENERAL PROVISIONS

Reference: Articles 1 and 1.5, Chapter 1, Part 3, Division 1, Revenue and Taxation Code.

The provisions set forth in this section govern the construction of this subchapter.

- (a) "County" is the county wherein the property is located which is the subject of the proceedings under this subchapter.
- (b) "Assessor" is the assessor of the county.
- (c) "Auditor" is the auditor of the county.
- (d) "Board" is the board of equalization or assessment appeals board of the county.
- (e) "Chairman" is the chairman of the board.
- (f) "Clerk" is the clerk of the board.
- (g) "Person affected" is one who owns an interest in property which is the subject of the proceedings under this subchapter.
- (h) "Full cash value" is synonymous with market value.
- (i) "County legal advisor" is the county counsel or the district attorney of the county if there is no county counsel, and the City Attorney of the City and County of San Francisco.

History: Adopted May 11, 1967, effective June 11, 1967.

Rule 302. THE BOARD'S FUNCTION AND JURISDICTION

Reference: Articles 1 and 1.5, Chapter 1, Part 3, Division 1, Revenue and Taxation Code.

The functions of the board are:

- (a) To increase after giving notice or to lower upon application, individual assessments in order to equalize assessments on the local tax assessment roll,
- (b) To review, equalize and adjust penal and escaped assessments on that roll except escaped assessments made pursuant to Revenue and Taxation Code section 531.1, and
- (c) To exercise the powers specified in section 1613 of the Revenue and Taxation Code.

The board acts in a judicial capacity and may act only on the basis of evidence. The board has no jurisdiction to grant or deny exemptions or to consider allegations that claims for exemption from property taxes have been improperly denied.* The board has no legislative power.

*The failure of an assessee to request an allocation of claimed exempt and taxable values may result in a denial of judicial relief on the grounds of failure to exhaust administrative remedies.

History: Adopted May 11, 1967, effective June 11, 1967.
Amended May 21, 1968, effective June 26, 1968.
Amended June 4, 1969, effective June 6, 1969.
Amended May 5, 1971, effective June 10, 1971.
Amended December 17, 1975, effective January 25, 1976.

Rule 304. LOCATION OF LOCAL ROLL FOR INSPECTION

Reference: Articles 1 and 1.5, Chapter 1, Part 3, Division 1, Revenue and Taxation Code.

The local roll or a copy thereof shall be made available for inspection by all interested parties during regular office hours of the officer having custody thereof. Copies may be made available for inspection at other places for the convenience of the public.

History: Adopted May 11, 1967, effective June 11, 1967.

Rule 305. APPLICATION

References: Section 1603, Revenue and Taxation Code.

Articles 1 and 1.5, Chapter 1, Part 3, Division 1, Revenue and Taxation Code.

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

(a) **WHO MAY FILE.** The application is made by a person affected or his agent. If the application is made by an agent other than an authorized attorney licensed to practice in this state, or a relative mentioned in section 320, written authorization to so act must be filed with the application. If the applicant is a corporation, the authorization must be signed by an officer of the corporation.

(b) **SIGNATURE AND VERIFICATION.** The application shall be in writing and signed by applicant or his agent with declaration under penalty of perjury that the statements made in the application are true. 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.

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

- (1) The name and address of the applicant;
- (2) The name and address of the applicant's agent, if any;
- (3) A description of the property which is the subject of the application sufficient to identify it on the assessment roll;
- (4) The applicant's opinion of the full value (market value) of the property on the valuation date of the assessment year in issue;
- (5) The full value on which the assessment of the property was based (that is, four times the assessed value);
- (6) The facts relied upon to support the claim that the board should order a change in the assessed 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.
- (7) A notice that a list of property transfers within the county, which 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 ten dollars (\$10).
- (8) A notice that written findings of fact will be available upon request and an appropriate place for the applicant to make the request. (See sections 308 and 325 for other provisions regarding findings of fact.)

An application which does not show the foregoing items to be filled in by the applicant is invalid and shall not be accepted by the board. Prompt notice that an application is invalid shall be given. An application which shows the foregoing items is valid and no additional information shall be requested of the applicant on the application form. The application shall be in a form prescribed by the State Board of Equalization. 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 may request his application be heard by such an officer.

(d) **TIME OF FILING.** The application shall be filed with the clerk 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, properly addressed with postage prepaid and is postmarked on September 15 or earlier within such period.

Rule 305. APPLICATION (Cont.)

An application for a change of assessment made outside the regular assessment period must be filed with the clerk no later than 60 days after the date on which the assessee was notified of the assessment 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 March 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.

(e) **AMENDMENTS.** No application may be amended after 5:00 p.m. on the last day upon which it might have been filed if the effect of the amendment is to request relief additional to or different in nature from that originally requested.

History: Adopted May 11, 1967, effective June 11, 1967.
Amended December 11, 1967, effective January 13, 1968.
Amended May 21, 1968, effective June 26, 1968.
Amended November 20, 1968, effective November 22, 1968.
Amended June 4, 1969, effective June 6, 1969.
Amended May 6, 1970, effective June 6, 1970.
Amended April 14, 1972, effective May 14, 1972.
Amended June 13, 1974, effective June 14, 1974.
Amended April 7, 1977, effective May 22, 1977, applicable to 1977 assessment appeals.
Amended July 31, 1980, effective November 19, 1980.

Rule 305.1. EXCHANGE OF INFORMATION

Reference: Articles 1 and 1.5, Chapter 1, Part 3, Division 1, Revenue and Taxation Code.

(a) **REQUEST FOR INFORMATION.** When the assessed value of the property involved, before deduction of any exemption accorded the property, is \$25,000 or less, the applicant may file a written request for an exchange of information with the assessor; and when the assessed value before deduction of any exemption exceeds \$25,000, either the applicant or the assessor may request such an exchange. The request may be filed with the clerk at the time an application for hearing is filed or may be submitted to the other party at any time prior to 20 days before the commencement of the hearing. The clerk shall immediately forward any request filed with his office or a copy thereof to the other party. The request shall contain the basis of the requesting party's opinion of value and the following data:

(1) **COMPARABLE SALES DATA.** If the opinion of value is to be supported with evidence of comparable sales, the properties sold shall be described by the assessor's parcel number, street address or legal description sufficient to identify them. With regard to each property sold there shall be presented the approximate date of sale, the price paid, the terms of sale (if known) and the zoning of the property.

(2) **INCOME DATA.** If the opinion of value is to be supported with evidence based on an income study, there shall be presented: the gross income, the expenses, and the capitalization method and rate or rates employed.

(3) **COST DATA.** If the opinion of value is to be supported with evidence of replacement cost, there shall be presented:

(A) With regard to improvements to real property: the date of construction, type of construction, and replacement cost of construction.

(B) With regard to machinery and equipment: the date of installation, replacement cost, and any history of extraordinary use.

(C) With regard to both improvements and machinery and equipment: facts relating to depreciation, including any functional or economic obsolescence, and remaining economic life.

(b) **TRANSMITTAL OF DATA TO OTHER PARTY.** If the party requesting an exchange of data under the preceding subsection has submitted the data required therein within the specified time, the other party shall mail a response at least 10 days prior to the hearing. The response shall be supported with the same type of data required of the requesting party. When the assessor is the respondent, he shall mail his response to the address shown on the application for hearing.

Rule 305.1. EXCHANGE OF INFORMATION (Cont.)

(c) **PROHIBITED EVIDENCE; NEW MATERIAL; CONTINUANCE.** Whenever information has been exchanged pursuant to this section, the parties may introduce evidence only on matters so exchanged unless the other party consents to introduction of other evidence. However, at the hearing, each party may introduce new material relating to the information received from the other party. If a party introduces new material at the hearing, the other party, upon request, shall be granted a continuance for a reasonable period of time.

History: Adopted May 6, 1970, effective June 6, 1970.
Amended May 5, 1971, effective June 10, 1971.
Amended June 13, 1974, effective June 14, 1974.

Rule 305.5. BASE YEAR VALUE PRESUMPTION

References: Sections 80, 81, Revenue and Taxation Code.
Articles 1 and 1.5, Chapter 1, Part 3, Division 1, Revenue and Taxation Code.

The appeals board decision that the fair market value is lower than the taxable value (as defined in Section 460(b) (6)) will not establish a new base year value, unless the base year value is the subject of the appeal.

Any base year value determined by a local board of equalization or by a court for any 1975 assessment shall be conclusively presumed to be the base year value for the property assessed.

The full value determined for the 1975 base year shall be conclusively presumed to be the base year value unless an equalization application is filed no later than September 15, 1980.

The full value determined for property which is purchased, is newly constructed, or changes ownership after the 1975 lien date, shall be conclusively presumed to be the base year value, unless an application for equalization is filed during the equalization period for the year in which the assessment is placed on the assessment roll, or is filed during the equalization period in any of the three succeeding years. Any determination of full cash value by a local board of equalization or by a court of law resulting from such filing shall be conclusively presumed to be the base year value beginning with the lien date of the assessment year in which the appeal is filed. An application for equalization made pursuant to sections 620 or 1605 of the Revenue and Taxation Code, when determined, shall be conclusively presumed to be the base year value.

History: Adopted November 20, 1968, effective November 22, 1968.
Amended June 4, 1969, effective June 6, 1969.
Amended May 6, 1970, effective June 6, 1970.
Amended May 5, 1971, effective June 10, 1971.
Amended April 14, 1972, effective May 14, 1972.
Amended December 17, 1975, effective January 25, 1976.
Amended July 31, 1980, effective November 19, 1980.

Rule 306. COPY OF APPLICATION TO ASSESSOR

Reference: Articles 1 and 1.5, Chapter 1, Part 3, Division 1, Revenue and Taxation Code.

The clerk shall transmit to the assessor a copy of each application for a change in assessment received, and a reasonable time shall be allowed before hearing for the assessor to obtain information relative to the property and the assessment thereof.

History: Adopted May 11, 1967, effective June 11, 1967.

Rule 307. NOTICE OF HEARING

Reference: Articles 1 and 1.5, Chapter 1, Part 3, Division 1, Revenue and Taxation Code.

(a) After the filing of an application for reduction of an assessment, the clerk shall set the matter for hearing and notify the applicant or his agent in writing by personal delivery or by depositing the notice in the United States mail directed to the address given in the application. The notice shall designate the time and place of the hearing. After receipt of a copy of a notice pursuant to section 305.5, the clerk shall set the matter for hearing and give notice to the assessee at his latest address on file in the assessor's records. It shall also include a statement that the board is required to find the full cash value of the property from the evidence presented at the hearing and that this finding may exceed the full cash value on which the assessment

Rule 307. NOTICE OF HEARING (Cont.)

was based, with the result that the assessment will be raised rather than lowered. The notice may include a statement that an application for a reduction in the assessment of a portion of an improved real property (e.g., land only or improvements only) or a portion of installations which are partly real property and partly personal property (e.g., only the improvement portion or only the personal property portion of machinery and equipment) may result in an increase in the unprotested assessment of the other portion or portions of the property, which increase will offset, in whole or in part, any reduction in the protested assessment. If the general notice does not include the latter statement, such a statement shall be included in notices in those cases to which the clerk deems it relevant.

(b) The notice shall be given no less than thirty days prior to the hearing unless:

(1) the clerk has received a request for information pursuant to section 305.1, in which event the notice shall be given no less than twenty days prior to the hearing, or,

(2) the clerk has received a writing from the applicant which states that the applicant will not make a request for information, in which event the notice shall be given no less than five days prior to the hearing, or,

(3) a shorter notice has been stipulated to by the assessor and the applicant or his agent.

(c) The clerk shall notify the assessor and the county legal advisor of the time and place of the hearing.

(d) When proposing to raise an assessment on its own motion without an application for reduction pending before it, the board shall give notice of the hearing in the manner provided hereinbelow not less than 20 days prior to the hearing unless notice is waived by the assessee or his agent in writing in advance of the hearing or orally at the time of the hearing or a shorter notice is stipulated to by the assessor and assessee or his agent. The notice shall be given to the assessee as revealed by the latest assessment roll by depositing the notice in the United States mail directed to the assessee at the latest address of the assessee available to the assessor on file in the records in the assessor's office. It shall contain:

(1) A statement that a hearing will be held before the local board to determine whether or not the assessment shall be raised;

(2) The time and place of the hearing;

(3) The Assessor's parcel number or numbers of the property as shown on the local roll;

(4) A statement that the board is required to find the full cash value of the property from the evidence presented at the hearing;

(5) The amount by which it is proposed to raise the assessment.

History: Adopted May 11, 1967, effective June 11, 1967.
Amended October 4, 1967, effective October 5, 1967.
Amended May 21, 1968, effective June 26, 1968.
Amended November 20, 1968, effective November 22, 1968.
Amended June 4, 1969, effective June 6, 1969.
Amended May 6, 1970, effective June 6, 1970.
Amended April 14, 1972, effective May 14, 1972.

Rule 308. REQUEST FOR FINDINGS

Reference: Section 1611.5, Revenue and Taxation Code.

If an applicant or the assessor desires written findings of fact, his request must be in writing and submitted to the clerk before commencement of the hearing. The requesting party may abandon the request and waive findings at the conclusion of the hearing. If the requesting party abandons his request at this time, the other party may orally or in writing renew the request. The county may impose a reasonable fee not to exceed ten dollars (\$10) per parcel or a total of fifty dollars (\$50) for findings covering applications on contiguous parcels or assessments on the roll involving the same issues and same owners. The county must provide findings within 45 days after the final determination of the board, and shall accompany them with a notice that a request for a transcript of the hearing must be made within 60 days after the determination. (See section 312 for other matters with regard to a transcript.)

Rule 308. REQUEST FOR FINDINGS (Cont.)

History: Adopted May 11, 1967, effective June 11, 1967.
Amended November 20, 1968, effective November 22, 1968.
Amended April 14, 1972, effective May 14, 1972.
Amended June 23, 1981, effective September 19, 1981.

Rule 308.5. DISQUALIFICATION OF A BOARD MEMBER

Reference: Articles 1 and 1.5, Chapter 1, Part 3, Division 1, Revenue and Taxation Code.

(a) In those counties having assessment appeals boards, the party affected or his agent, or the assessor, may file with the clerk a written statement objecting to the hearing of a matter before a member of the board. The statement shall set forth the facts constituting the ground of the disqualification of the member and shall be signed by the party affected or his agent, or by the assessor and shall be filed with the clerk at the earliest practicable opportunity after discovery of the facts constituting the ground of the member's disqualification, and in any event before the commencement of the hearing of any issue of fact in the proceeding before such member. Copies of the statement shall be served by the presenting party on each party to the proceeding and on the board member alleged to be disqualified. Within 10 days after filing of the statement or 10 days after service of it on him, whichever is later, the board member may file with the clerk a written answer:

(1) Consenting to the proceeding being heard by another member, in which event the clerk shall appoint a replacement member, or

(2) Denying his disqualification, which answer may admit or deny any or all of the facts alleged in the statement and set forth any additional facts relevant to his disqualifications.

The clerk shall forthwith transmit a copy of such answer to each party.

Every statement and answer shall be verified by oath in the manner prescribed by section 446 of the Code of Civil Procedure.

(b) No member shall hear or pass on the question of his own disqualification. Another member of the board shall hear and pass on the question and shall be selected as follows:

(1) All the parties who have appeared may agree on the member who shall hear and pass on the question provided agreement is reached within five days after expiration of the time allowed in subsection (a) for the challenged member to answer, or,

(2) In the event an agreement is not reached within the time provided in subsection (b) (1), the clerk shall immediately notify the board of supervisors of that fact, and on receipt of notice the board of supervisors shall forthwith assign the member who shall hear and pass on the question.

Once the member has been selected pursuant to subsection (b) (1) or (2) that member shall determine the qualification of the challenged member.

History: Adopted May 6, 1970, effective June 6, 1970.
Amended June 13, 1974, effective June 14, 1974.

Rule 308.6. APPLICATION FOR EQUALIZATION BY MEMBER OR ALTERNATE

Reference: Articles 1 and 1.5, Chapter 1, Part 3, Division 1, Revenue and Taxation Code.

An application for equalization filed pursuant to section 1603 by a member or alternate member of an assessment appeals board shall be heard before an assessment appeals board panel consisting of three special alternate assessment appeals board members appointed by order of the presiding judge of the superior court in the county in which the application is filed.

A special alternate assessment appeals board member may hear only the application or applications for equalization set forth in the superior court order appointing such member.

Any person shall be eligible for appointment as a special alternate assessment appeals board member who is a resident of the county in which the application is filed and who is a person the presiding judge of the superior court has reason to believe is possessed of competent knowledge of property appraisal and taxation.

Rule 308.6. APPLICATION FOR EQUALIZATION BY MEMBER OR ALTERNATE (Cont.)

Sections 1624.1 and 1624.2 of the Revenue and Taxation Code shall be applicable to the appointment of a special assessment appeals board member.

History: Adopted June 13, 1974, effective June 14, 1974.
Amended December 17, 1975, effective January 25, 1976.

Rule 309. HEARING

Reference: Articles 1 and 1.5, Chapter 1, Part 3, Division 1, Revenue and Taxation Code.

In counties having a population in excess of 4,000,000, on the fourth Monday in September of each year, the board shall meet to equalize the assessment of property on the local roll and shall continue to meet for that purpose from time to time until the business of equalization is disposed of. In all other counties the board shall meet on the third Monday in July and shall continue to meet until the business of equalization is disposed of. All hearings before the board shall be conducted in the manner provided in this article. Nothing herein requires the board to conduct hearings prior to the final day for filing applications.

History: Adopted May 11, 1967, effective June 11, 1967.
Amended June 13, 1974, effective June 14, 1974.

Rule 310. SELECTION OF BOARD CHAIRMAN

Reference: Articles 1 and 1.5, Chapter 1, Part 3, Division 1, Revenue and Taxation Code.

The board shall select one of its members to act as chairman and preside over all hearings. This function may be rotated among board members. The chairman shall exercise such control over the hearings as is reasonable and necessary. He shall make all rulings regarding procedural matters and regarding the admission or exclusion of evidence.

History: Adopted May 11, 1967, effective June 11, 1967.

Rule 311. QUORUM AND VOTE REQUIRED

Reference: Articles 1 and 1.5, Chapter 1, Part 3, Division 1, Revenue and Taxation Code.

No hearing before the board shall be held unless a quorum consisting of a majority of the board is present. Except as otherwise provided in section 310, no determination or order shall be made by the board by less than a majority vote of all the members of the board. Only those members who have been in attendance throughout the hearing may vote on the decision. If a hearing takes place before a board consisting of an even number of members and they are unable to reach a majority decision, the application shall be reheard before the full board. In any case wherein the hearing takes place before less than the full board, the parties may stipulate that the absent member or members may read or otherwise familiarize himself or themselves with the record and participate in the vote on the decision. (Amended May 21, 1968, effective June 26, 1968.)

History: Adopted May 11, 1967, effective June 11, 1967.
Amended May 21, 1968, effective June 26, 1968.

Rule 312. HEARINGS RECORDED

Reference: Articles 1 and 1.5, Chapter 1, Part 3, Division 1, Revenue and Taxation Code.

All hearings of the board shall be recorded or reported. Any person may purchase a transcript of that portion of the hearings that is open to the public upon payment of a reasonable fee, provided the request to purchase has been made within 60 days after the final determination of the board. In a county which does not regularly employ a stenographic reporter, the applicant, at his own expense, may have the hearing reported by a stenographer. If the applicant desires the clerk to

Rule 312. HEARINGS RECORDED (Cont.)

arrange for a stenographic reporter, he must ask the clerk to do so in writing at least two days before the hearing.

History: Adopted May 11, 1967, effective June 11, 1967.
Amended April 14, 1972, effective May 14, 1972.
Amended June 13, 1974, effective June 14, 1974.

Rule 313. HEARING PROCEDURE

References: Sections 167, 1609.4, Revenue and Taxation Code.
Articles 1 and 1.5, Chapter 1, Part 3, Division 1, Revenue and Taxation Code

Hearings on applications shall proceed as follows:

- (a) The clerk shall announce the number of the application and the name of the applicant. The chairman shall then determine if the applicant or his agent is present. If neither is present, the chairman 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 his agent is present, the application shall be denied for lack of appearance, or, for good cause of which the board is timely informed, 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.
- (b) If the applicant or his agent is present 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 full value of the property.
- (c) The chairman shall then require the applicant or his agent to present his case to the board, except when the hearing involves a penalty portion of an assessment or an assessment for which the assessor has given notice pursuant to section 305.5. If the applicant fails to present evidence of value of the property, the presumption set forth in section 321 (a) applies and the board shall not require the assessor to present his case.
- (d) When a hearing involves the assessment of an owner-occupied single-family dwelling, and the applicant has complied with section 305 (c) and, if applicable, section 305.1, then the presumption in section 321 (b) applies. In such instances the chairman shall require the assessor to present appraisal data that supports the full value he has determined for the property subject of the hearing.
- (e) When a hearing involves a penalty portion of an assessment or an assessment for which the assessor has given notice pursuant to section 305.5, the assessor shall present his evidence notwithstanding the failure of the assessee or his agent to present evidence, to appear, or to request postponement of the hearing.
- (f) All testimony shall be taken under oath or affirmation.
- (g) 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 evidence properly admitted into the record. A full and fair hearing shall be accorded the application. There shall be reasonable opportunity for the presentation of evidence, for the cross-examination of all witnesses, for argument, and for rebuttal. The board may not consider the findings and recommendation of the Chief of the Office of Appraisal Appeals or the order of the State Board of Equalization made with respect to property pursuant to section 1816.2 of the Revenue and Taxation Code.
- (h) When the assessor requests the board find a higher assessed value than he placed on the roll and offers evidence to support the higher value, the chairman shall determine whether or not the assessor gave notice in writing to the applicant or his 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. 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.

Rule 313. HEARING PROCEDURE (Cont.)

(i) Hearings shall be open except that

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

(2) The board may grant a request by the applicant to close to the public a portion of the hearing relating to trade secrets. 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 applicant which 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 applicant.

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

Rule 314. LEGAL COUNSEL FOR APPLICANT AND ASSESSOR

Reference: Articles 1 and 1.5, Chapter 1, Part 3, Division 1, Revenue and Taxation Code.

The applicant and the assessor may be represented by legal counsel, except that when an assessment protest is heard by a hearing officer appointed pursuant to section 1636 of the Revenue and Taxation Code, the assessor may have legal counsel only if the applicant is represented by an attorney.

History: Adopted May 11, 1967, effective June 11, 1967.
Amended June 13, 1974, effective June 14, 1974.

Rule 316. EXAMINATION OF APPLICANT BY BOARD

Reference: Articles 1 and 1.5, Chapter 1, Part 3, Division 1, Revenue and Taxation Code.

Except as hereinafter provided no reduction of an assessment shall be made unless the board examines, on oath, the applicant or his agent touching the value of the property, and the applicant or agent attends and answers all questions pertinent to the inquiry.

(a) In the event there is filed with the board a written stipulation, signed by the assessor and county legal advisor on behalf of the county and the person affected or the agent making the application, as to the full cash value (fair market value) and assessed value of the property, which stipulation sets forth the facts upon which the reduction in value is premised, the board may, at a public hearing,

(1) accept the stipulation, waive the appearance of the person affected or the agent and change the assessed value in accordance with Section 1610.8 of the Revenue and Taxation Code, or,

(2) reject the stipulation or set or reset the application for reduction for hearing.

(b) The board may in its discretion, waive the examination of the applicant or his agent if the board and the assessor are satisfied that the issues raised by the application and the facts pertaining thereto have been fully considered by the board in previous years or fully presented in the application, and if the applicant or his agent requests such waiver in his application. The board shall consult with the assessor and shall act promptly on any request for waiver and give written notice of its decision within ten days of the filing of the application. If the board waives the examination of the applicant or his agent, it shall decide the case on the merits of the application.

Rule 316. EXAMINATION OF APPLICANT BY BOARD (Cont.)

History: Adopted May 11, 1967, effective June 11, 1967.
Amended October 4, 1967, effective October 5, 1967.
Amended May 21, 1968, effective June 26, 1968.
Amended December 17, 1975, effective January 25, 1976.

Rule 317. PERSONAL APPEARANCE BY APPLICANT; APPEARANCE BY AGENT

Reference: Articles 1 and 1.5, Chapter 1, Part 3, Division 1, Revenue and Taxation Code.

The applicant must appear personally at the hearing and not through an agent except as otherwise provided in this article. The applicant's presence at the hearing may be excused by the board and he may be represented by an agent upon a showing by affidavit or declaration under penalty of perjury at the time of hearing that the applicant is either absent from the county or unable to appear by reason of health.

Any person, other than an attorney at law, purporting to act as agent for the applicant shall prior to the hearing file with the clerk written authority to represent the applicant at the hearing. An appearance by an officer or employee of a corporate applicant or by a relative mentioned in Section 320 requires no written authorization.

History: Adopted May 11, 1967, effective June 11, 1967.

Rule 318. PROPERTY IN COMMON OWNERSHIP

Reference: Articles 1 and 1.5, Chapter 1, Part 3, Division 1, Revenue and Taxation Code.

If the property is held in joint or common ownership or in co-ownership, the presence of the applicant or any one of the owners shall constitute a sufficient appearance.

History: Adopted May 11, 1967, effective June 11, 1967.

Rule 319. APPEARANCE BY CORPORATION

Reference: Articles 1 and 1.5, Chapter 1, Part 3, Division 1, Revenue and Taxation Code.

Where the applicant is a corporation, the corporation shall make an appearance by the presence of any duly authorized officer or employee.

History: Adopted May 11, 1967, effective June 11, 1967.

Rule 320. APPEARANCE BY MEMBERS OF FAMILY

Reference: Articles 1 and 1.5, Chapter 1, Part 3, Division 1, Revenue and Taxation Code.

A husband may appear for his wife, or a wife for her husband, and sons or daughters for parents or vice versa.

History: Adopted May 11, 1967, effective June 11, 1967.

Rule 321. BURDEN OF PROOF

References: Section 167, Revenue and Taxation Code.
Articles 1 and 1.5, Chapter 1, Part 3, Division 1, Revenue and Taxation Code.

(a) The law presumes that the assessor has properly performed his duty and has assessed all properties fairly and upon an equal basis. The effect of this presumption is to impose upon the applicant the burden of proving that the property in question has not been correctly assessed. The law requires that the applicant proceed to present independent evidence relevant to the full value of the property. The assessor has the burden of establishing the basis for imposition of a penalty assessment. No greater relief may be granted than is justified by the evidence produced.

(b) An exception to (a) applies in any hearing involving the assessment of an owner-occupied single-family dwelling. In such instances the presumption in section 167 of the Revenue and

Rule 321. BURDEN OF PROOF (Cont.)

Taxation Code affecting the burden of proof in favor of the taxpayer or assessee 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.

(c) In the case of a hearing arising under section 305.5, the burden of rebutting the presumption set forth in that section rests on the assessor.

History: Adopted May 11, 1967, effective June 11, 1967.
Amended October 4, 1967, effective October 5, 1967.
Amended November 20, 1968, effective November 22, 1968.
Amended April 14, 1972, effective May 14, 1972.
Amended November 4, 1976, effective January 1, 1977.

Rule 322. SUBPENAS

Reference: Articles 1 and 1.5, Chapter 1, Part 3, Division 1, Revenue and Taxation Code.

At the request of the applicant or the assessor in advance of the hearing or at the time of the hearing the board or the clerk on authorization from the board shall issue subpoenas for the attendance of witnesses at the hearing. The board may issue a subpoena on its own motion. If a subpoena is issued at the request of the applicant, he is responsible for serving it and for the payment of witness fees and mileage. An application for a subpoena for the production of books, records, maps, and documents shall be supported by an affidavit such as is prescribed by section 1985 of the Code of Civil Procedure. No subpoena to take a deposition shall be issued nor shall depositions be considered for any purpose by the board.

History: Adopted May 11, 1967, effective June 11, 1967.
Amended October 4, 1967, effective October 5, 1967.
Amended May 21, 1968, effective June 26, 1968.

Rule 323. CONTINUANCES

Reference: Articles 1 and 1.5, Chapter 1, Part 3, Division 1, Revenue and Taxation Code.

The board may continue a hearing to a later date. If the hearing is continued, the chairman or the clerk shall inform the applicant or his agent and the assessor of the time and place of such further hearing and no further notice thereof need be given.

History: Adopted May 11, 1967, effective June 11, 1967.
Amended May 21, 1968, effective June 26, 1968.
Amended November 20, 1968, effective November 22, 1968.

Rule 324. DECISION

Reference: Articles 1 and 1.5, Chapter 1, Part 3, Division 1, Revenue and Taxation Code.

(a) Acting upon the evidence properly before it the board shall determine the full cash value^a of the property which is the subject of the hearing, and shall designate the ratio to be applied thereto, which shall be the lowest of the ratios provided in section 1605 of the Revenue and Taxation Code. The determination of the full cash value^a shall be supported by the weight of the evidence at the hearing.

(b) When an applicant requests a reduction in the assessed value of a portion of an improved real property (e.g., land only or improvements only) or a portion of installations which are partly real property and partly personal property (e.g., only the improvement portion or only the personal property portion of machinery and equipment), whether the reduction is requested on grounds of valuation, on grounds of misclassification, or for any other cause, the board shall make a determination of the full cash value of the whole property and shall order a change in the assessed value of the part only if the assessed value of the whole requires equalization, or shall adjust the value of the parts so that each is equalized and the value of the whole property is accounted for.

Rule 324. DECISION (Cont.)

- (c) The board shall be bound by the same principles of evaluation that are legally applicable to the assessor.
- (d) The board shall neither raise nor lower the entire local roll.
- (e) When written findings of fact are made, they shall fairly disclose the board's findings on all material points raised in the application and at the hearing. The findings shall also include a statement of the method or methods of valuation used in determining the full cash value of the property, and shall be made timely after the hearing.
- (f) A decision that changes the value to which a presumption had previously attached pursuant to section 305.5 to a value different from the assessor's latest finding of value as reflected by the assessment on the roll, or from that recommended, proposed, or stipulated to by the assessor for the year the decision is made, shall raise a new two-year presumption attaching to the value established by the decision.
- (g) It is conclusively presumed that the ratio of the assessed value to the full cash value in the county is not more than 115 percent of the latest preliminary or final ratio determined by the State Board of Equalization pursuant to section 1815 of the Revenue and Taxation Code.
- (h) When valuing a property by comparison with sales of other properties, the board shall consider only those sales which in its judgment are sufficiently near in time to the lien date, are located sufficiently near, and are sufficiently alike in respect to character, size, situation, usability, zoning or other legal restriction as to use to the property being valued, to make it clear that the properties sold and the property being valued are comparable in value and that the cash equivalent price realized for the properties sold may fairly be considered as shedding light on the value of the property being valued. Pursuant to section 402.1 of the Revenue and Taxation Code, the board shall presume that zoning or other legal restrictions on the use of either the properties sold or the property being valued will not be removed or substantially modified in the predictable future unless sufficient grounds as set forth in that section are presented to the board to overcome that presumption.

**The term "full cash value" shall mean restricted value when the property being valued is subject to assessment pursuant to article XIII, section 8 of the California Constitution.*

History: Adopted May 11, 1967, effective June 11, 1967.
Amended October 4, 1967, effective October 5, 1967.
Amended May 21, 1968, effective June 26, 1968.
Amended November 20, 1968, effective November 22, 1968.
Amended May 6, 1970, effective June 6, 1970.
Amended May 5, 1971, effective June 10, 1971.
Amended April 14, 1972, effective May 14, 1972.
Amended December 17, 1975, effective January 25, 1976.

Rule 325. NOTICE OF DECISION

Reference: Articles 1 and 1.5, Chapter 1, Part 3, Division 1, Revenue and Taxation Code.

A board may announce its decision to the applicant and the assessor at the conclusion of the hearing, or it may take the matter under submission. If the matter is taken under submission, the clerk shall notify the applicant in writing of the decision of the board by United States mail addressed to the applicant or to his agent at the address given in the application.

History: Adopted May 11, 1967, effective June 11, 1967.

Rule 326. RECONSIDERATION AND REHEARING

Reference: Articles 1 and 1.5, Chapter 1, Part 3, Division 1, Revenue and Taxation Code.

The decision of the board upon an application is final. The board shall not reconsider or rehear an application.

History: Adopted May 11, 1967, effective June 11, 1967.

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CALIFORNIA STATE BOARD OF EQUALIZATION OFFICES

BOARD MEMBERS

DISTRICT	MEMBER	OFFICE ADDRESS	AREA CODE	TELEPHONE NUMBER
First	George R. Reilly	350 McAllister Street, Room 2056, San Francisco 94102	415	557-1699
Second	Ernest J. Dronenburg, Jr.	110 West C Street, Suite 1709, San Diego 92101	714	237-7844
Third	William M. Bennett	1020 N Street, Sacramento 95814	916	445-4081
Fourth	Richard Nevins	20 East Foothill Boulevard, Suite 205, Caller 16, Arcadia, CA 91006 - 0016	213 From L.A.	350-6423 681-3551

SACRAMENTO HEADQUARTERS

1020 N Street, Sacramento 95814

916

445-6464

BUSINESS TAXES FIELD OFFICES

CALIFORNIA CITIES	OFFICE HOURS 8-5 UNLESS OTHERWISE LISTED BELOW	OFFICE ADDRESS	AREA CODE	TELEPHONE NUMBER
Arcadia		20 East Foothill Boulevard, 91006	213 From L.A.	350-6401 681-6675
Auburn	8-12 & 1-5 M thru F	550 High Street, Suite 3, 95603	916	885-8408
Bakersfield		525 18th Street, 93301	805	395-2880
Bishop	8-12 & 1-5 M thru F	407 West Line Street, 93514	714	872-3701
Chico	8-12 & 1-5 M thru F	8 Williamsburg Lane, 95926	916	893-0266
Covina		233 North Second Avenue, 91723	213	331-6401
Crescent City	8-12 & 1-5 M thru F	422 Second Street, 95531	707	464-2321
Downey		11229 Woodruff Avenue, 90241	213	773-3480
El Centro	8-12 & 1-5 M thru F	380 North Eighth Street, Suite 4, 92243	714	352-3431
El Cerrito	8-12 & 1-5 M thru F	11161 San Pablo Ave, 94530	415	540-2909
Eureka	8-12 & 1-5 M thru F	1656 Union Street, 95501	707	442-4503
Fresno		2550 Mariposa Street, State Building, Rm. 2080, 93721	209	445-5285
Hanford	8-12 & 1-5 M thru F	422 North Douty Street, Suite D, 93230	209	584-6631
Hayward	8-12 & 1-5 M thru F	795 Fletcher Lane, 94544	415	881-3544
Hollywood		5110 Sunset Boulevard, 90027	213	663-8181
Inglewood		630 North LaBrea Avenue, 90302	213	678-8964
Long Beach		4140 Long Beach Boulevard, 90807	213	636-2466
Madera	8-12 & 1-5 M thru F	501 North E Street, 93637	209	674-2007
Marysville		922 G Street, 95901	916	674-4301
Merced	8-12 & 1-5 M thru F	3191 M Street, Suite A, 95340	209	383-2831
Modesto		1020 - 15th Street, Suite E, 95354	209	576-6360
Mt. Shasta	9-12:30 & 1-3:30 M thru F	326 North Mt. Shasta Boulevard, Suite 8, 96067	916	926-4624
Napa	8-12 & 1-5 M thru F	3273 Claremont Way, Suite 104, 94558	707	252-2131
Nevada City	8-12 & 1-5 M thru F	301 Broad Street, 95959	916	265-4628
Oakland		1111 Jackson Street, 94607	415	464-0347
Ontario	8-12 & 1-5 M thru F	320 West G Street, Suite 105, 91762	714	983-5969
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Palm Desert	8-12 & 1-5 M thru F	73-900 El Paseo, Suite 3, 92260	714	346-8096
Placerville	8-12 & 1-5 M thru F	100 Forni Road, Suite 1B, 95667	916	622-1101
Pleasant Hill	8-12 & 1-5 M thru F	395 Civic Drive, Suite D, 94523	415	687-6962
Quincy	9-1 M thru F	546 Lawrence Street, 95971	916	283-1070
Redding		2135 Akard Street, 96001	916	246-6261
Sacramento		1891 Alhambra Boulevard, 95816	916	739-4911
Salinas		77 West Laurel Drive, Suite 77, 93906	408	443-3008
San Bernardino		303 West Third Street, Suite 500, 92401	714	383-4701
San Diego		1350 Front Street, 92101	714	237-7289
San Francisco		350 McAllister Street, Room 2262, 94102	415	557-1877
San Jose		1550 The Alameda, Suite 220, 95126	408	277-1231
San Luis Obispo		940 Chorro Street, 93401	805	549-3131
San Marcos		365 So. Rancho Santa Fe Rd., 92069	714	744-1330
San Mateo		520 South El Camino Real, Suite 740, 94402	415	573-3578
San Rafael	8-12 & 1-5 M thru F	7 Mt. Lassen Drive, Suite B136, 94903	415	472-1513
Santa Ana		28 Civic Center Plaza, 92701	714	558-4051
Santa Barbara		411 East Canon Perdido Street, Room 11, 93101	805	965-4535
Santa Cruz	8-12 & 1-5 M thru F	303 Water Street, Suite 6, 95062	408	423-6683
Santa Maria		1529 Stowell Center Plaza, Suite B, 93454	805	925-7417
Santa Rosa		1726 Corby Avenue, 95401	707	576-2100
Sonoma	8-12 & 1-5 M thru F	101 South Stewart Street, 95370	209	532-6979
South Lake Tahoe	8-12 & 1-5 M thru F	3368 Lake Tahoe Boulevard, Suite 302, 95705	916	544-4816
Stockton		31 East Channel Street, Room 264, 95202	209	948-7720
Susanville	9-1 M thru F	80 North Roop Street, 96130	916	257-3429
Ukiah	8-12 & 1-5 M thru F	262 East Smith Street, 95482	707	462-1988
Vallejo	8-12 & 1-5 M thru F	440 Santa Clara Street, Suite 2, 94950	707	642-7546
Van Nuys		16933 Parthenia St., Sepulveda, 91343	213	891-6602
Ventura		4258 Telegraph Road, 93003	805	654-4523
Visalia		213 North West Street, 93277	209	732-5641
West Los Angeles		11870 Santa Monica Boulevard, 90025	213	879-0600
Woodland	8-12 & 1-5 M thru F	96 West Main Street, Suite 2, 95695	916	662-7331

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