



CALIFORNIA ASSESSORS' ASSOCIATION

EXECUTIVE COMMITTEE

President

JOAN C. THAYER
Marin County
3501 Civic Center Dr., Rm 208
San Rafael, CA 94903
415.499.7198
jthayer@co.marin.ca.us

Immediate Past President

***LAWRENCE E. STONE**
Santa Clara County
larry.stone@asr.co.scl.ca.us

President-Elect

CRIS ANDREWS
Shasta County
candrews@co.shasta.ca.us

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Mono County
assrbarnes@qnet.com

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Tulare County
ghardcas@co.tulare.ca.us

*GERALD COCHRAN

Del Norte
g.cochran@qte.net

*BRUCE DEAR

Placer County
bdear@placer.ca.gov

*DAVE PEETS

Alpine County
alpineassr@qbis.com

MICHAEL STRONG

Sutter County
mstrong@co.sutter.ca.us

DAVID BROWN

Yuba County
yubaassr@yahoo.com

DICK FISHER

Yolo County
Dick/fisher@ccm.yolocounty.org

WEBSTER GUILLORY

Orange County
sf@assessor.co.orange.ca.us

KENNETH BUNCH

Lassen County
kbunch@co.lassen.ca.us

Ex-Officio/Secretary

RICK AUERBACH
Los Angeles County
Rauerbac@co.la.ca.us

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Standards

MARSHA WHARFF
Mendocino County
wharffm@co.mendocino.ca.us

Legislative

KENNETH STIEGER
Sacramento County
stieger@saccounty.net

Conference

***GARY ORSO**
Riverside County
orso@co.riverside.ca.us

September 25, 2003

The Honorable Carol Migden
Chairwoman
State Board of Equalization
465 California St., Suite 830
San Francisco, CA 94104-1820

Subject: California Assessors' Association Petition for Revision of
State Board of Equalization Rule 305.3

Dear Chairwoman Migden:

The California Assessors' Association ("CAA") formally petitions the State Board of Equalization to amend State Board Rule 305.3 as authorized by Government Code section 11340.6. Attached to this cover letter are proposed rule revisions and a justification statement with attachments to more fully explain the legal and factual basis for the CAA proposals. The CAA is always available to meet with the Property Tax Committee Chairperson to further discuss the proposed rule amendments.

Please feel free to contact me or any of the other members of the CAA Executive Board if you have any questions regarding these petitions for rule revision.

Sincerely,

Joan Thayer
President, California Assessors' Association

cc: The Honorable Steve Westley, Controller
The Honorable Bill Leonard, State Board, District 2
The Honorable Claude Parrish, State Board, District 3
The Honorable John Chiang, State Board, District 4
Members, California Assessors Association
Mr. Tim Boyer, Interim Executive Director
Ms. Jean Ogrod, Interim Chief Counsel
Mr. David Gau, Deputy Director, Property Taxes Department

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CALIFORNIA ASSESSORS' ASSOCIATION

PROPOSED RULE CHANGE

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

(a) No Change

(b)(1) No Change

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

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

(b)(4) No Change

(b)(5) No Change

(b)(6) No Change

(b)(7) No Change

(c) No Change

(d) No Change

(e) No Change

(f) No Change

CALIFORNIA ASSESSOR'S ASSOCIATION
RULE 305.3 (Application for Equalization under
Revenue and Taxation Code Section 469)

Justification for Rule Revision

Property Tax Rule 305.3, adopted by the State Board of Equalization in 2001, contains various provisions that are ambiguous and could lead to misinterpretation and misapplication of the law. Two such provisions that require amendment are contained in 305.3(b)(2), which defines "Property subject to escape assessment," and 305.3(b)(3), which defines "Results of an audit."

Rule 305.3(b)(2)

The fourth sentence of 305.3(b)(2) currently states as follows:

"If no such finding is made by the Assessor, the taxpayer may file an application and present evidence to the board of the existence and disclosure of property subject to escape assessment."

This sentence could create the misimpression that the taxpayer can control the Assessor's audit findings by presenting evidence to the Assessment Appeals Board (AAB) that a minor item of minimal value had not been assessed or was under assessed, and, therefore, should have been the subject of an audit escape assessment. For example, a taxpayer owning personal property assessed at \$50 million could contend before the AAB that the Assessor failed to levy an audit escape assessment on an item of property worth only \$250, even though that amount of assessed value would not be significant relative to the entire assessment. Such an appeal under 305.3(b)(2) would waste the time of the AAB, and provide a means by which the taxpayer could file appeals on its property years after the regular filing deadline had passed.

The objectives in the Assessor's audit are to verify substantial compliance and to recognize any material discrepancies between the taxpayer's reporting and its books and records. The belated disclosure by the taxpayer of a minor item of minimal value relative to the overall assessment should not require the Assessor to reopen the audit and issue new audit findings. Consequently, any taxpayer availing itself of the procedure outlines in 305(b)(2) should be required to demonstrate that any property that is purportedly "subject to escape assessment" be of material value within the context of that audit. The issue of materiality would then be decided by the AAB based on the evidence presented.

For the reasons discussed, the following amendment to the fourth sentence of Rule 305.3, subsection (b)(2), is being proposed. Additions are underlined.

“If no such finding is made by the assessor, the taxpayer may file an application and present evidence to the board of the existence and disclosure of property of material value subject to escape assessment.”

Rule 305.3(b)(3)

Subsection (b)(3) of Rule 305.3 currently states as follows:

“Results of an audit” means the final conclusions reached by the assessor during the audit process as described in Rule 191 and shall include a description of any property subject to escape assessment as noted in the audit work papers or as identified in writing by the taxpayer.”

The last portion of that sentence, “...or as identified in writing by the taxpayer,” could be misinterpreted to mean that the taxpayer can control the final conclusions of the Assessor’s audit by merely stating in writing the taxpayer’s contentions as to what property has escaped assessment. This potential interpretation is contrary to the law as stated in two published California appellate opinion, Heavenly Valley v. El Dorado County Board of Equalization 84 Cal. App.4th 1323, and Apple Computer, Inc. v. County of Santa Clara Assessment Appeals Board 105 Cal. App 4th 1355. Those opinions make it clear that the assessor, and not the taxpayer, determine the results of an audit conducted pursuant to Revenue and Taxation Code Section 469. Consequently, the final 8 words of subsection (b)(3) should be deleted so that this portion of Rule 305.3 does not create an impression that is contrary to the law.

Subsection (b)(3) would then read as follows:

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