



MERCED COUNTY
ASSESSMENT APPEALS BOARD
LOCAL RULES

(Adopted December 4, 2008)

MERCED COUNTY BOARD OF SUPERVISORS
Clerk of the Board of Supervisors
and the Assessment Appeals Board

*******Disclaimer*******

Please be advised that in addition to the Assessment Appeals Board (AAB) Rules, there are other governing laws and regulations which apply to assessment appeals. Those laws and regulations are found in the Revenue and Taxation Code and the California Code of Regulations. For current filing deadlines, please see the Instructions which accompany the Application for Changed Assessment.

STRIVING FOR EXCELLENCE

ASSESSMENT APPEALS BOARD LOCAL RULES

1. DEFINITIONS

The provisions set forth in this section shall govern the construction of the terms, as used hereinafter in these Rules.

- A. "County" is the County of Merced.
- B. "Assessor" is the assessor of the county.
- C. "Auditor" is the auditor of the county.
- D. "County legal advisor" is the county counsel.
- E. "Board" is the Assessment Appeals Board of the county.
- F. "Chair" is the chair of the board.
- G. "Clerk" is the clerk of the board.
- H. "Person affected" or "party affected" is any person or entity having a direct economic interest in the payment of property taxes on the property for the valuation date that is the subject of the proceedings under these rules, including the property owner, a lessee required by the property lease to pay the property taxes, and a property owner who acquires an ownership interest after the lien date if the new owner is also responsible for payment of property taxes for the lien date that is the subject of the application.
- I. "Applicant" is a person affected who files an application for a reduction in assessment pursuant to Rule 5.
- J. "Party" is the applicant and the assessor.
- K. "Restricted value" is a value standard other than full cash value prescribed by the Constitution or by statute authorized by the Constitution.
- L. "Full cash value" or "fair market value" is the value provided in sections 110 and 110.1 of the Revenue and Taxation Code.
- M. "Full value" is either the full cash value or the restricted value.

- N. "Authorized agent" is one who is directly authorized by the applicant to represent the applicant in an assessment appeals proceeding.
- O. "Equalization" is the determination by the Board of the correct full value for the property that is the subject of the hearing.
- P. "Lien date" is the time when taxes for any fiscal year become a lien on property. That time for all taxable property is 12:01 a.m. on January 1.
- Q. "Continuance" is the postponement of a hearing or other proceeding to a subsequent day or time.
- R. "Assessed Value" is the taxable value of a property against which the tax rate is applied.
- S. "Supplemental Assessment" is an assessment of the full cash value of property as of the date a change in ownership occurs or new construction is completed which establishes a new base year value for the property or the new construction.
- T. "Base year value" is, in accordance with Revenue and Taxation Code section 110.1, the fair market value as of either the 1975 lien date or the date the property was last purchased, newly constructed, or underwent a change in ownership after the 1975 lien date.

2. FUNCTION AND JURISDICTION

The functions of the Assessment Appeals Board are:

- A. To lower, sustain, or increase upon application, or to increase after giving notice when no application has been filed, individual assessments in order to equalize assessments on the local tax assessment roll;
- B. To determine the full value and, where appealed, the base year value of the property that is the subject of the hearing;
- C. To hear and decide penalty assessments, and to review, equalize and adjust escaped assessments on that roll except escaped assessments made pursuant to Revenue and Taxation Code section 531.1;

- D. To determine the classification of the property that is the subject of the hearing, including classifications within the general classifications of real property, improvements, and personal property. Such classifications may result in the property so classified being exempt from property taxation;
- E. To determine the allocation of value to property that is the subject of the hearing;
- F. To exercise the powers specified in sections 1605.5 of the Revenue and Taxation Code; and
- G. The Board cannot:
 - Grant or deny exemptions or consider whether exemptions were improperly denied;
 - Raise or lower the entire assessment roll;
 - Extend the time for filing applications for equalization;
 - Remove or waive penalties for delinquent payment of taxes;
 - Reduce an assessment due to damage, destruction or depreciation after the lien date of the year in question;
 - Change tax rates.

The Board acts in a quasi-judicial capacity and renders its decision only on the basis of proper evidence presented at the hearing. Except as provided in subdivision D above, 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.

3. LOCATION OF LOCAL ROLL FOR INSPECTION

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.

4. APPLICATION

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

A. Eligible Persons.

- (1) An application is filed by a person affected or the person's agent, or a relative mentioned in Rule 22. If the application is made by an agent, other than an authorized attorney licensed to practice in this state who has been retained and authorized by the applicant to file the application, written authorization to so act must be filed with the application. For purposes of signing an application on behalf of an applicant, an agent shall be deemed to have been duly authorized if the applicant's written agent authorization is on the application or attached to each application at the time it is filed with the board. The attached authorization shall include the following:
 - (a) The date the authorization statement is executed;
 - (b) A statement to the effect that the agent is authorized to sign and file applications in the specific calendar year in which the application is filed;
 - (c) The specific parcel(s) or assessment(s) covered by the authorization, or a statement that the agent is authorized to represent the applicant on all parcels and assessments located in the specific county;
 - (d) The name, address, and telephone number of the specific agent who is authorized to represent the applicant;
 - (e) The applicant's signature and title; and
 - (f) A statement that the agent will provide the applicant with a copy of the application.
- (2) If a photocopy of the original authorization is attached to the application, the agent shall be prepared to submit an original signed authorization if requested by the Board. The application form shall show that the agent's authorization was attached to the application. An agent must have authorization to file an application at the time the application is filed; retroactive authorizations are not permitted.
- (3) If the applicant is a corporation, limited partnership, or a limited liability company, the agent authorization must be signed by an officer or authorized employee of the business entity.

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

B. Signature and Verification. The application shall be in writing and signed by the applicant or the applicant's agent with a declaration under penalty of perjury that the statements made in the application are true and that the person signing the application is one of the following:

(1) The person affected, a relative mentioned in Rule 22, an officer of a corporation, or an employee of a corporation who has been designated in writing by the Board of directors or corporate officer to represent the corporation on property tax matters;

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

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

C. Forms and Contents. The county shall provide, free of charge, forms on which applications are to be made.

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

(a) The name and address of the applicant.

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

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

(d) A description of the property that is the subject of the application sufficient to identify it on the assessment roll.

- (e) The applicant's opinion of the value of the property on the valuation date of the assessment year in issue.
- (f) The roll value on which the assessment of the property was based.
- (g) The facts relied upon to support the claim that the Board should order a change in the assessed value, base year value, or classification of the subject property. The amount of the tax or the amount of an assessed value increase shall not constitute facts sufficient to warrant a change in assessed values.

An application may include one or more reasons for filing the application.

- (2) The form shall also include:
 - (a) A notice that a list of property transfers within the county, that have occurred within the preceding two-year period, is open to inspection at the assessor's office to the applicant upon payment of a fee not to exceed ten dollars(\$10).
 - (b) A notice that written findings of fact will be prepared by the Board upon request if the applicable fee is paid. An appropriate place for the applicant to make the request shall be provided.
- (3) An application that does not include the information required by subsection(C)(1)(a-g) of this rule as set forth above is invalid and shall not be accepted by the Board. Prompt notice that an application is invalid shall be given by the clerk to the applicant and, where applicable, the applicant's agent. An applicant or the applicant's agent who has received notice shall be given a reasonable opportunity to correct any errors and/or omissions. Disputes concerning the validity of an application shall be resolved by the Board
- (4) An application that includes the correct information required by subdivision (1) is valid and no additional information shall be required of the applicant on the application form.
- (5) If the application appeals property subject to an escape assessment resulting from an audit conducted pursuant to section 469 of the Revenue and Taxation Code, then all property, both real and personal, of the assessee at the

same profession, trade, or business location shall be subject to review, equalization, and adjustment by the Appeals Board, except when the property has previously been equalized for the year in question.

D. Time of filing.

- (1) An application appealing a regular assessment shall be filed with the clerk during the regular filing period beginning July 2 but no later than November 30 of each year. A regular assessment is one placed on the assessment roll for the most recent lien date, prior to the closing of that assessment roll. Additionally, an application appealing a base year value for the most recent lien date, where that value is not the value currently on the assessment roll, shall be filed with the clerk during the regular filing period beginning July 2 but no later than November 30 of the lien date year. Because the Assessor does not provide all County assessees of County real property with notice of the assessed value of real property by August 1, the last day of the filing period for appealing a regular assessment of any property located in Merced County shall be extended to November 30 rather than the statutory September 15 date.
- (2) An application appealing an escape assessment or supplemental assessment must be filed with the clerk no later than 60 days after the date on which the assessee was notified of the assessment pursuant to section 1605 of the Revenue and Taxation Code.
- (3) An application appealing a proposed reassessment made for property damaged by misfortune or calamity pursuant to section 170 of the Revenue and Taxation Code must be filed with the clerk no later than six months after the date of mailing of the notice of proposed reassessment by the assessor. The decision of the Board regarding the damaged value of property shall be final; however, the decision regarding the reassessment made pursuant to section 170 shall create no presumption regarding the value of the property subsequent to the date of the damage.
- (4) An application will be deemed to have been timely filed:
 - (a) If it is sent by U.S. mail, properly addressed with postage prepaid and is postmarked on the last day of the filing period or earlier within such period; or

- (b) If proof satisfactory to the Board establishes that the mailing occurred on the last day of the filing period or earlier within such period. Any statement or affidavit made by an applicant asserting such a timely filing must be made within one year of the last day of the filing period.
- (5) An application filed by mail that bears both a private business postage meter postmark date and a U.S. Postal Service postmark date will be deemed to have been filed on the date that is the same as the U.S. Postal Service postmark date, even if the private business postage meter date is the earlier of the two postmark dates. If the last day of the filing period falls on Saturday, Sunday, or a legal holiday, an application that is mailed and postmarked on the next business day shall be deemed timely filed. If the county's offices are closed for business prior to 5 p.m. or for the entire day on which the deadline for filing falls, that shall be considered a legal holiday.
- (6) Applications transmitted by facsimile or other electronic means shall not be accepted for filing. The clerk shall reject all such filings and provide notice of such rejection to the applicant or the applicant's authorized representative within a reasonable period of time. Rejection by the clerk of an application submitted for filing by facsimile or other electronic means shall not constitute an excuse for failure to timely file an application. Applications must bear the original signatures whether delivered by mail or hand delivery.
- (7) Except as provided in sections 620.5, 1603, and 1605 of the Revenue and Taxation Code, the Board has no jurisdiction to hear an application unless filed within the time periods specified above.

E. Amendments and Corrections.

- (1) An applicant or an applicant's agent may amend an application until 5:00 p.m. on the last day upon which the application might have been timely filed.
- (2) After the filing period has expired:
 - (a) An invalid application may be corrected in accordance with subsection (C)(3) of this rule.

- (b) The applicant or the applicant's agent may amend an application provided that the effect of the amendment is not to request relief additional to or different in nature from that originally requested.
 - (i) Upon request of the applicant or the applicant's agent, the Board, in its discretion, may allow the applicant or the applicant's agent to make amendments to the application in addition to those specified above in subdivisions (a) and (b) to state additional facts claimed to require a reduction of the assessment that is the subject of the application.
 - (ii) The applicant or the applicant's agent shall state the reasons for the request, which shall be made in writing and filed with the clerk prior to any scheduled hearing, or may be made orally at the hearing. If made in writing, the clerk shall provide a copy to the assessor upon receipt of the request.
 - (iii) As a condition to granting to amend an application, the Board may require the applicant to sign a written agreement extending the two-year period provided in section 1604 of the Revenue and Taxation Code.
 - (iv) If a request to amend is granted, and upon the request of the assessor, the hearing on the matter shall be continued by the Board for no less than 45 days, unless the parties mutually agree to a different period of time.
- (3) An applicant or an applicant's agent shall be permitted to present testimony and other evidence at the hearing to support a full value that may be different from the opinion of value stated on the application. The presentation of such testimony or other evidence shall not be considered a request to amend or an amendment to the application.

F. Claim for Refund. If a valid application is designated as a claim for refund pursuant to section 5097 of the Revenue and Taxation Code, the applicant shall be deemed to have challenged each finding of the Board and to have satisfied the requirements of section 5097.02 of the Revenue and Taxation Code.

- G. Retention of Records. The clerk may destroy records consisting of assessment appeal applications when five years have elapsed since the final action on the application. The records may be destroyed three years after the final action on the application if the records have been microfilmed, microfiched, imaged, or otherwise preserved on a medium that provides access to the documents. As used in this subsection, "final action" means the date of the final decision by the Board.
- H. Consolidation of Applications. The Board, on its own motion or on a timely request of the applicant or applicant's agent or the assessor, may consolidate applications when the applications present the same or substantially related issues of valuation, law, or fact. If applications are consolidated, the Board shall notify all parties of the consolidation as per 1604 (c) (2).

5. BASE YEAR VALUE PRESUMPTION

The Board decision that the full cash value, as defined in section 110 of the Revenue and Taxation Code, is lower than the adjusted base year value (the base year value adjusted to reflect inflation as prescribed by section 110.1 subdivision (f) of the Revenue and Taxation Code) 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 the Board or by a court for any 1975 assessment shall be conclusively presumed to be the base year for the property assessed.

The full cash value determined for property that 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: (1) within the time period specified in section 1605 of the Revenue and Taxation Code following a determination of new construction or change in ownership; (2) during the regular equalization period provided for in section 1603 of the Revenue and Taxation Code for the year in which the assessment is placed on the assessment roll, or is filed during the regular equalization period in any of the three (3) succeeding years. Any determination of full cash value by the Board 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; or (3) at any time after the time specified in (1) or (2) if the applicant claims that an erroneous change in ownership determination occurred.

Any base year value determined pursuant to section 51.5 of the Revenue and Taxation Code shall be conclusively presumed to be the base year value unless an application is filed during the regular equalization period in the year in which the error was corrected or during the regular equalization period in any of the three succeeding years. 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 that assessment event.

An application for equalization made pursuant to sections 1603 or 1605 of the Revenue and Taxation Code, when determined, shall be conclusively presumed to be the base year value for that assessment event.

6. COPY OF APPLICATION, AMENDMENT, AND CORRECTION TO ASSESSOR. IDENTIFICATION BY AAB AND NOTIFICATION OF PARTIES OF APPEALS DESIGNATED AS SUBJECT TO SPECIAL RULES FOR HIGH VALUE CONTESTED APPEALS

The clerk shall transmit to the assessor a copy of each application for a change in assessment and each written request for amendment or correction that is received. A reasonable time shall be allowed before the hearing for the assessor to obtain information relative to the property and the assessment thereof.

7. NOTICE OF HEARING

A. After the filing of an application for a change in assessment, the clerk shall set the matter for hearing, and for pre-hearing as appropriate, and notify the applicant or the applicant's agent in writing by personal delivery or by depositing the notice in the United States mail directed to the address given in the application. If requested by the assessor or the applicant, the Clerk of the Board may electronically transmit the notice to the requesting party. The notice shall designate the time and place of the hearing. It shall also include a statement that the Board is required to find the full value of the property from the evidence presented at the hearing, and that the Board can raise, under certain circumstances, as well as lower or confirm the assessment being appealed. The notice shall 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 a reappraisal of all property of the applicant at the site which 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 forty-five (45) days prior to the hearing unless:
 - (1) A shorter notice has been stipulated to by the assessor and the applicant or the applicant's agent pursuant to section 1605.6 of the Revenue and Taxation Code; or
 - (2) The matter has been continued from the original noticed hearing date.

- C. The clerk shall notify the applicant (or the applicant's agent) and the assessor of the time and place of the hearing. In addition to the written notice of the scheduling of a hearing, the clerk shall also provide the applicant (or the applicant's agent) with an "Assessment Appeal Hearing Date Confirmation Notice" to advise the Board and the assessor of the applicant's intention to: (1) appear ready to proceed with the hearing on the scheduled hearing date; or (2) request the continuance of the scheduled hearing date to another regularly-scheduled Board hearing date; or (3) withdraw the pending appeal.

- 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 herein below not less than twenty (20) days prior to the hearing, unless notice is waived by the assessee or the assessee's agent in writing in advance of the hearing or orally at the time of the hearing, or a shorter notice period is stipulated to by the assessor and assessee or the assessee's agent. The notice shall be given to the assessee as shown on 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. The notice shall contain, in addition to time and place of the hearing:
 - (1) A statement that a hearing will be held before the Board to determine whether or not the assessment shall be raised;
 - (2) The assessor's parcel number or numbers of the property as shown on the assessment roll;

(3) A statement that the Board is required to find the full value of the property from the evidence presented at the hearing; and

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

E. At least twenty-one (21) days before the date scheduled for hearing of the applicant's appeal, the applicant (or the applicant's agent) shall mail or otherwise deliver the completed "Assessment Appeal Hearing Date Confirmation Notice" form to the clerk who shall provide a copy to the assessor. The notice form will provide applicant with the following options to indicate that the applicant intends to: (1) appear on the scheduled hearing date; or (2) request the continuance of the scheduled hearing to another regularly-scheduled Board hearing date; or (3) withdraw the appeal.

(1) If the applicant (or applicant's agent) submits the completed confirmation notice form, as required, indicating the applicant will appear, the assessor shall be ready to proceed at the scheduled hearing.

(2) If the applicant (or the applicant's agent) submits the completed confirmation notice form, as required, requesting that the scheduled hearing date be continued to another regularly-scheduled Board hearing date, the Board or clerk shall act upon the continuance request as provided in Rule 27.

(3) If the applicant (or applicant's agent) fails to return the completed confirmation notice form, as required, and appears on the scheduled date of hearing, the Board shall, at the assessor's request, continue the hearing to the next regularly-scheduled monthly Board hearing date. The failure to timely return the completed confirmation notice form shall be deemed to be a continuance request by the applicant (or the applicant's agent) for purposes of Rule 26. If the hearing date is within ninety (90) days of the expiration of the two-year limitations period for hearings set by Revenue and Taxation Code Section 1604 (c), the Board may require the applicant to enter into a written agreement extending and tolling the two-year limitations period as a condition of the continuance.

8. EXCHANGE OF INFORMATION

A. When the assessed value of the property involved, before deduction of any exemption accorded the property is \$100,000 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 \$100,000, either the applicant or the assessor may request such an exchange. The request may be filed with the clerk at the time of filing the application, or may be submitted to the other party and the clerk at any time prior to thirty (30) days before the commencement of the hearing. For purposes of determining the date upon which the exchange was deemed initiated, the date of postmark, as affixed by the United States Postal Service, or the date certified by a bona fide private courier service on the envelope or package containing the information shall control. The clerk shall at the earliest opportunity forward any request filed with the application or a copy thereof to the other party. The request shall contain the basis of the requesting party's opinion of value for each valuation date at issue 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 the sale, the price paid, the terms of the 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 allowable expenses, the capitalization method (direct capitalization or discounted cash flow analysis) 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, installed 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.

The information exchanged shall provide reasonable notice to the other party concerning the subject matter of the evidence or testimony to be presented at the hearing. There is no requirement that the details of the evidence or testimony to be introduced must be exchanged.

- B. If a party requesting an exchange of data by subpart A of this Rule has submitted the data required within the time specified, the other party shall submit a response to the initiating party and the clerk at least 15 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 or she shall submit the response to the address shown on the application or on the request for exchange for information, whichever is filed later. The initiating party and the other party shall provide adequate methods of submission to ensure to the best of their ability that the exchange of information process is completed at least 10 days prior to the hearing.
- C. Whenever information has been exchanged pursuant to this section, the parties may introduce evidence only on matters pertaining to the information 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 such new material at the hearing, the other party, upon request, shall be granted a continuance for a reasonable period of time.
- D. If one party initiates a request for information and the other party does not comply within the time specified in subsection B, the Board may grant a postponement for reasonable period of time. The postponement shall extend the time for responding to the request. If the Board finds willful noncompliance on the part of the noncomplying party, the hearing will be convened as originally scheduled and the noncomplying party may comment on evidence presented by the other party but shall not be permitted to introduce other evidence unless the other party consents to such introduction.

9. REQUEST FOR FINDINGS

Written findings, as provided by Revenue and Taxation Code section 1611.5, shall be made by the AAB if requested by a party, in writing and submitted to the clerk prior to or at the commencement of a hearing. If payment of a fee is required from the party, the fee shall be deposited with the clerk prior to the conclusion of the hearing. A party may abandon a request for findings prior to the conclusion of the hearing and have any submitted fee returned. If a request for findings is abandoned by one party, the other party may submit a written or oral request for the preparation of findings at the conclusion of the hearing and submit any required deposit of fees. If, at the conclusion of the hearing, a party requesting written findings has failed to pay the required deposit, the Board need not prepare written findings. The Board may deny a request made after the conclusion of the hearing that seeks to waive written findings.

The written findings of fact 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 methods of valuation used in determining the full value of the property or its components. The County Board shall provide findings within 45 days after the final determination of the Board is entered into the record pursuant to State Board Rule 325 and shall accompany them with a notice that a request for a transcript of the hearing must be made within 60 days after the final determination.

If the prevailing party is represented by an attorney, the Board shall order said party to submit proposed findings of fact and allow the other party a reasonable time for the submission of counter findings and objections.

If the County Board fails to make findings upon request, or if findings made are found by a reviewing court to be so deficient that a remand to the county Board is ordered to secure reasonable compliance with the elements of findings required by section 1611.5 of the Revenue and Taxation Code, the action of the County Board shall be deemed to be arbitrary and capricious within the meaning of section 800 of the Government Code, so as to support an allowance of reasonable attorney's fees against the county for the services necessary to obtain proper findings.

The dollar limitation set forth in section 800 of the Government Code shall not apply to an allowance of attorney's fees pursuant to this section.

The fee of \$125 shall be charged to the appellant per parcel as a precondition to the preparation of written findings and represent an estimate of the actual reasonable costs of preparation and review of the

findings. The Assessor shall not be required to pay for findings under the provisions of Government Code Section 6103.

- A. Owner Occupied Single Family Homes/Mobile Homes and all Assessable Real or Personal Property.

When findings of fact have been issued by the Board, either party or the clerk may submit a written request for clarification about the details of the decision, but such clarification shall not alter the final determination of the Board.

10. HEARING

- A. On the third Monday in July of each year, the Board shall meet to equalize the assessment of property on the local roll and shall continue in session for that purpose from time to time until the business of equalization is disposed of. All hearings before the Board shall be conducted in the manner provided in these Rules.

- B. A hearing must be held and a final determination made on the application within two (2) years of the timely filing of an application for reduction in assessments submitted pursuant to subdivision (a) of section 1603 of the Revenue and Taxation Code, unless the applicant or the applicant's agent and the County Assessment Appeals Board mutually agree in writing or on the record to an extension of time.

- C. If the hearing is not held and a decision is not entered within the two (2) years or the time for hearing waived by written agreement as specified in subpart B of this Rule, the applicant's opinion of value stated in the application shall be conclusively determined to be the full value of the property for the year under appeal except when:

- (1) The applicant has not filed a timely or complete application; or
- (2) The applicant has not submitted a full and complete property statement as required by law with respect to the property which is the subject of the application; or
- (3) The applicant has not fully complied with requests for the exchange of information made under State Board Rule 305.1

or within the provisions of subdivision (d) of Revenue and Taxation Code section 441; or

- (4) The issues involved in the application are the subject of "controlling litigation." As used in this Rule, "controlling litigation" means litigation which identified by written order by the AAB, upon noticed motion and evidentiary hearing, or upon written stipulation of the applicant and the assessor or the request of either applicant or assessor, which is:
 - (a) litigation pending in a state or federal court whose jurisdiction includes Merced County; and
 - (b) directly related to a legal, appraisal or factual issue involved in the application, the court resolution of which would control the resolution of such issue at the hearing; or
- (5) The applicant has initiated proceedings to disqualify a Board member pursuant to Revenue and Taxation Code section 1624.4 within 90 days of the expiration of the two-year period required by Revenue and Taxation Code section 1604.

For applications involving base year value appeals that have not been heard and decided by the end of the two-year period provided in section 1604 of the Revenue and Taxation Code and where the two-year period has not been extended pursuant to subsection B. or C. of this Rule, the applicant's opinion of value will be entered on the assessment roll for the tax year or years covered by the pending application, and will remain on the roll until the fiscal year in which the Board makes a final determination on the application. No increased or escape taxes other than those required by a change in ownership or new construction, or resulting from application of the inflation factor to the applicant's opinion of value shall be levied for the tax years during which the Board fails to act.

For applications appealing decline in value and personal property assessments that have not been heard and decided by the end of the two-year period provided in section 1604, the applicant's opinion of value will be enrolled on the assessment roll for the tax year or years covered by the pending application.

- D. If the applicant has initiated proceedings pursuant to subsection (C)(5) of this Rule, the two-year time period described in subsection (B) shall be extended 90 days.
- E. The applicant shall not be denied a timely hearing and determination pursuant to subpart B of this Rule, by reason of any of the exceptions enumerated in subsection C herein, unless, within two (2) years of the date of the application, the Board, or the clerk at the direction of the Board, gives the applicant and/or applicant's agent written notice of such denial. The notice shall indicate the basis for the denial and inform the applicant of the right to protest the denial. If requested by the applicant or the applicant's authorized agent, the clerk shall schedule a hearing on the validity of the application and shall so notify the applicant, the applicant's agent, and the assessor.
- F. When a hearing is postponed or not scheduled because controlling litigation is pending, the notice to the applicant shall identify the controlling litigation by the name of the case, the court number or the docket number of the case, and the court in which the litigation is pending. If a hearing is postponed because controlling litigation is pending, the hearing must be held and a final determination made within a period of two years after the application is filed, excluding the period of time between the notice of pending litigation and the date that the litigation becomes final. As used in this rule, a litigation decision is deemed final when the related administrative decision or judicial decision identified by the Board as "controlling litigation" is entered and is not subject to further administrative or judicial review or appeal. For purposes of judicial litigation, a decision is considered to be final when the trial court judgment becomes final (upon expiration of any right to further appeal) or, if appealed, when the remittitur order issues from an appellate court and that remittitur order is filed by the trial court. Applicant shall advise the AAB in writing within ten (10) days of the date the litigation becomes final.

11. CHALLENGE OF A BOARD MEMBER

- A. The party affected or the party's 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 such member and shall be signed by the party affected or the party's agent, or by the assessor and shall be filed with the clerk at the earliest practicable opportunity after the discovery of the facts constituting the ground of the member's disqualification, and, in any

event, before the commencement of the hearing on any issue of fact in the proceeding before such member. Copies of the written statement shall be served by the presenting party on each party in the proceeding and on the Board member alleged in the statement to be disqualified.

Within ten (10) days after the filing of any such statement, or ten (10) days after the service of such statement as above provided, whichever is later in time, the Board member alleged therein to be disqualified may file with the clerk a written answer either: (1) consenting in writing that the action or proceeding be tried before another member, in which event the clerk shall appoint a replacement member or (2) denying his or her disqualification, which answer may admit or deny any or all of the allegations contained in such statement and setting forth any additional fact or facts material or relevant to the question of his or her disqualification.

The clerk shall forthwith transmit a copy of such consent or answer to each party. Every such statement and every such answer shall be verified by oath in the manner prescribed by section 446 of the Code of Civil Procedure for the verification of pleadings.

The question of the member's disqualification shall be heard and determined by a Board member, other than the member subject to the disqualification challenge, agreed upon by the parties who have appeared in the proceeding, or, in the event of their failing to agree, by a member assigned to act by the clerk. Within five (5) days after the expiration of the time allowed herein for the member to answer, clerk shall assign a member, to hear and determine the matter of the disqualification.

- B. In order to avoid the appearance of conflict, Board members should refrain from communicating with any applicant or applicant's representative who has an appeal pending before the Board outside of the regularly constituted hearing on the matter. No member shall discuss any application or prospective application at times other than the hearings or deliberations set therefor.

12. SELECTION OF BOARD CHAIR

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

13. QUORUM AND VOTE REQUIRED

The Board shall act as a three (3) member panel designated from time to time by the clerk. No hearing before the assigned Board panel shall be held unless at least two (2) members of the assigned panel of the Board are present. Except as otherwise provided, no decision, determination or order shall be made by less than a majority vote of all the members of the Board who have been in attendance throughout the hearing.

If either party so demands, a hearing must be held before a full three member panel. In the event that only a quorum is present and the applicant demands a hearing before a full three member panel, the Board may request the applicant extend the two-year period provided in section 1604 of the Revenue and Taxation Code if the demand precludes the matter from being heard and decided before the expiration of the two-year period. If the applicant does not extend the two-year period as requested, the Board may deny the applicant's demand for a hearing before a full three member panel.

If a hearing takes place before a panel consisting of two members and they are unable to reach a majority decision, the application shall be reheard before a full three member panel. In any case wherein the hearing takes place before less than a full panel, the parties may stipulate that the absent member or members may read or otherwise become familiar with the record and participate in the vote on the decision.

14. HEARINGS RECORDED

All hearings of the Board shall be recorded or reported or videotaped subject to the conditions set forth in Code of Civil Procedure section 2025, subsection (l)(2). Any person may purchase a transcript or a tape recording of that portion of the hearing that is open to the public upon payment of a reasonable fee, provided the request to purchase has been made within sixty (60) days after the final determination of the Board. The applicant, at the applicant's own expense, may have the hearing reported by a stenographer. If the applicant desires the clerk to arrange for a stenographic reporter, the applicant must ask the clerk to do so in writing at least ten (10) days before the hearing. Only the clerk may certify that the transcript or record of the hearing is accurate and complete. If a stenographic reporter is present, the county may designate the reporter's transcript as the official record upon being filed with the Board.

15. PRE-HEARING CONFERENCE

- A. A pre-hearing conference may be set by the clerk at the request of the applicant or the applicant's agent, the assessor, or at the direction of the Board. These hearings may be scheduled to resolve issues such as, but not limited to: (1) the present status of the appeal; (2) whether the parties have engaged in or completed necessary case preparation, discovery or settlement of non-controverted issues; (3) the factual and legal issues in dispute; (4) the names of the witnesses to be called, the order of testimony and the anticipated duration of the hearings; (5) the readiness of the parties to proceed with the hearings; (6) the status of information requests; (7) combining applications into a single hearing; (8) bifurcating the hearing issues; (9) scheduling a date for the hearing on the merits of the application; and (10) disclosure of such other matters as the Board deems appropriate to facilitate and expedite the hearing and resolution of the case. The Board may require the parties to submit written pre-hearing status reports or written motions. Any party may submit a written status report or motion without formal Board direction. If such reports or motions are requested or permitted, the applicant and Assessor shall submit their respective pre-hearing status reports or any motions for relief in writing, with the report or motion filed with the Clerk of the Merced AAB and served by mail on the other party not less than ten (10) County business days before the date scheduled for pre-hearing. The failure of an applicant or the Assessor to serve and file a pre-hearing report (if so ordered), to appear or to fully participate in a pre-hearing conference, if unexcused by the Board, shall constitute abandonment of the appeal and provide grounds for denial of the appeal on the merits.
- B. In addition to the pre-hearing conference provisions set out in Rule 15 (A), above, all appeals that are designated by the AAB as "high value contested appeals" shall be scheduled for a pre-hearing conference not later than July 15 of the year following the calendar year in which the appeals are filed or, for appeals filed outside the normal appeal period, within one (1) year of the date of filing of the appeal. Each party shall submit their respective status reports in writing, with the report filed with the clerk and served by mail on the other party not less than ten (10) regular County business days before the date scheduled for the pre-hearing. The purpose of such written reports and pre-hearings shall be to disclose to the Merced AAB and to discuss, at the direction of the Merced AAB, any or all of the information items set forth in 16. A. above. Thereafter, further pre-hearings shall be conducted at least once every ONE-HUNDRED EIGHTY (180) days until the case is heard and decided or otherwise resolved. The failure of an applicant or

the Assessor to serve and file a pre-hearing report, to appear at a pre-hearing or to fully participate in good faith in a scheduled pre-hearing conference, if unexcused by the Board, shall constitute abandonment of the appeal and provide grounds for denial of the appeal on the merits.

- C. The clerk of the Board shall set the matter for a pre-hearing conference and notify the applicant or the applicant's agent and the assessor in writing of the time and date of the conference. Notice of the time, date, and place of the conference shall be given not less than 30 days prior to the conference, unless the assessor and the applicant stipulate orally or in writing to a shorter notice period.

16. COMPLETION OF DISCOVERY AND EXCHANGE OF INFORMATION

The applicant and the assessor shall complete any and all discovery and exchange of information authorized by law prior to the equalization hearing. Any objections to requests for disclosure made to the other party under Revenue and Taxation Sections 408, 441-470 or 1606 or to complain of unreasonable or unlawful difficulties encountered by either party in obtaining information believed to be necessary to proceed to hearing may be brought to the attention of the Merced AAB by means of a written request for pre-hearing conference. Upon good cause shown, the Merced AAB shall make findings concerning the failure of a party to respond to requests for information and the impacts of such failures on the requirements to timely hear the appeals under the provisions of Revenue and Taxation Code Section 1604 (c). Continuances for the conduct of discovery or for the pursuit of court action to enforce discovery demands or subpoenas shall be granted by the Board only upon a showing of good cause. To expedite the hearing and to carry out its equalization duties, the Board may in its discretion order compliance with discovery demands and subpoenas as provided by Rule 17.

17. ORDER TO PRODUCE INFORMATION AND SANCTIONS

Upon its own motion or upon written request of the applicant or the assessor and a showing of good cause, the Board may order the applicant or the assessor to produce before it that oral or documentary evidence which is determined by the Board to be relevant and necessary to a determination of the full cash value of the subject property. Failure on the part of the applicant or the assessor to comply with such order may result in the imposition by the Board of one or more of the sanctions authorized by Code of Civil Procedure section 2023, subsections (b)(2),(b)(3) and (b)(4)(A)-(D), if the Board deems such an order necessary to carry out its equalization duties and to expedite the hearing.

18. EXHIBITS

- A. In all equalization appeals other than those designated as “high value contested appeals”, all exhibits, maps, letters, papers, documents, charts, etc., submitted by the parties shall be marked for identification or received into evidence at the hearing. The parties shall submit all marked and identified original exhibits to the Board Clerk together with five (5) accurate photocopies of each exhibit. Three (3) copies of each exhibit shall be given to the presiding Board members, one (1) copy of each exhibit shall be given to the opposing party, and one (1) copy shall be given to the legal advisor to the Board. The parties may, but are not required, to provide letter or legal size copies of large exhibits.
- B. For all appeals designated as “high value contested appeals” each party shall:
- (1) Pre-mark (by party's name and exhibit number), pre-hole punch and lodge with the Clerk of the Board an original and five (5) copies of all exhibits, maps, letters, papers, documents, slides and/or 8 ½ by 11" copies of any large charts that the party intends to introduce into evidence as part of the party's “case-in-chief” to support that party's contentions in the appeal hearing. This rule shall not restrict the ability of a party to introduce new rebuttal evidence or new evidence that impeaches the credibility of the other party's witnesses or evidence. Said exhibits shall be lodged with the Board Clerk not less than five (5) County business days prior to the date scheduled for the commencement of the hearing. A full and accurate copy of all such pre-marked exhibits shall be delivered to the opposing party not less than ten (10) County business days prior to the date scheduled for the hearing.
 - (2) Not less than ten (10) County business days prior to the date scheduled for the hearing, file with the Board Clerk and serve the other party with a legal brief or written argument for the appeal. This argument shall consist of not more than twenty-five (25) pages in length (including appendices and exhibits) setting forth:
 - (a) The pertinent facts of the case;
 - (b) The party's opinion of value and support for such opinion;
 - (c) The issues to be decided by the Board;
 - (d) The party's legal and valuation arguments;

- (e) Any motion to exclude evidence, to restrict the presentation of evidence in open session or to bifurcate proceedings;
- (f) Such other information that the party believes to be relevant to the equalization of the taxable value of the property subject to appeal.

The failure of a party to submit such exhibits or briefs to the Board Clerk and/or serve the other party with pre-marked exhibits shall constitute grounds for the imposition of sanctions pursuant to Rule 18.

- (3) In the Board's discretion, before or at the conclusion of evidentiary proceedings, the Board may direct the parties to submit valuation calculations, written closing arguments, rebuttal arguments, supplemental briefs or proposed findings of fact within a limited period of time after the close of evidence. The Board may limit the length of any such post-hearing briefs or arguments so as not to exceed twenty-five (25) pages (including appendices and exhibits).

19. HEARING PROCEDURE

Hearings on applications shall proceed as follows:

- A. The Chair or the Clerk shall announce the number of the application and the name of the applicant. The Chair shall then determine if the applicant or the applicant's agent is present. If neither is present, the Chair shall ascertain whether the Clerk has notified the applicant of the time and place of the hearing. If the notice has been given and neither the applicant nor the applicant's agent is present, the application shall be denied for lack of appearance, or, for good cause of which the Board is timely informed, prior to the hearing date, the Board may postpone the hearing. If the notice has not been given, the hearing shall be postponed to a later date and the clerk directed to give proper notice thereof to the applicant.
- B. If the applicant or the applicant's agent is present, the assessor, the Chair or the Clerk shall announce the nature of the application, the assessed value as it appears on the local roll and the applicant's opinion of the full value of the property as appears on the application, and identify the subject property. The Chair may request that either or both parties briefly describe the subject

property, the issues the Board will be requested to determine, and any agreements or stipulations agreed to by the parties.

- C. In applications where the applicant has the burden of proof, the Board shall require the applicant or the applicant's agent to present his or her evidence first, and then the Board shall determine whether the applicant has presented proper evidence supporting his or her position. This is sometimes referred to as the burden of production.

In the event the applicant has met the burden of production, the Board shall then require the assessor to present his or her evidence. The Board shall not require the applicant to present evidence first when the hearing involves:

- (1) A penalty portion of an assessment.
- (2) The assessment of an owner-occupied single-family dwelling or the appeal of an escape assessment, and the applicant has filed an application that provides all of the information required in State Board Rule 305(c) and has supplied all information as required by law to the assessor. In those instances, the chair shall require the assessor to present his or her case to the Board first. With respect to escape assessments, the presumption in favor of the applicant provided in State Board Rule 321(b) does not apply to appeals resulting from situations where an applicant failed to file a change in ownership statement, a business property statement, or to obtain a permit for new construction.
- (3) A change in ownership and the assessor has not enrolled the purchase price, and the applicant has provided the change of ownership statement required by law. The assessor bears the burden of proving by a preponderance of the evidence that the purchase price, whether paid in money or otherwise, is not the full cash value of the property.

- D. All testimony shall be taken under oath or affirmation.

- E. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Failure to enter timely objection to evidence constitutes a waiver of the objection. The Board may act only upon the basis of evidence properly admitted into the record. Board members may not act or decide an application based upon consideration of prior knowledge

of the subject property, information presented outside of the hearing, or personal research. A full and fair hearing shall be accorded the application. There shall be reasonable opportunity for the presentation of evidence, for cross-examination of all witnesses, for argument and for rebuttal. The party having the burden of proof shall have the right to open and close the argument.

- F. When the assessor requests the Board find a higher assessed value than he or she placed on the roll and offers evidence to support the higher value, the chair shall determine whether or not the assessor gave notice in writing to the applicant or the applicant's agent by personal delivery or by deposit in the United States mail at least ten (10) days before the hearing directed to the address given on the application. If notice and a copy of the evidence to be offered by the assessor have been timely supplied to the applicant, the assessor may introduce such evidence at the hearing. When the assessor proposes to introduce evidence to support a higher assessed value than the value on the roll, the assessor no longer has the presumption accorded in State Board Rule 321(a) and the assessor shall present evidence first at the hearing, unless the applicant has failed to supply all the information required by law to the assessor. The foregoing notice requirement shall not prohibit the Board from a finding of a higher assessed value when it has not been requested by the assessor.
- G. Hearing shall be open, accessible, and audible to the public except that:
 - (1) Upon conclusion of the evidentiary portion 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 or the assessor to close to the public a portion of the hearing relating to trade secrets. For purposes of this rule, a "trade secret" is that information defined by section 3426.1 of the Civil Code. Such a request may be made by filing with the clerk a declaration under penalty of perjury that evidence is to be presented by the assessor or the applicant that relates to trade secrets whose disclosure to the public will be detrimental to the business interests of the owner of the trade secrets. The declaration shall state the estimated time it will take to present the evidence. Only evidence relating to the trade secrets may be presented during the time the hearing is closed, and such evidence shall be confidential unless otherwise agreed by the party to whom it relates.

20. LEGAL COUNSEL

Any party may be represented by legal counsel. There is an exception when an assessment protest is heard by an assessment 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.

21. EXAMINATION OF APPLICANT BY BOARD

Except as hereinafter provided, no reduction of an assessment or change in ownership or new construction determination shall be made unless the Board examines, on oath, the applicant or the applicant's agent concerning the value of the property and/or the facts upon which the change of ownership or new construction determination is based, 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 by the person affected or the authorized agent making the application, as to the full value and assessed value of the property and/or a determination regarding a change in ownership or new construction, which stipulation sets forth the facts upon which the agreed upon 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 and set or reset the application for hearing.
- B. The Board may, in its discretion, waive the examination of the applicant or the applicant's 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 the applicant's 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 no less than 30 days before the commencement of the hearing on the application. If the Board waives the examination of the applicant or the applicant's agent, it shall decide the case on the merits of the application and on the basis of any evidence properly produced at the hearing by the assessor.

22. PERSONAL APPEARANCE BY APPLICANT: APPEARANCE BY AGENT

- A. The applicant must appear personally at the hearing or be represented by an agent who shall be thoroughly familiar with the facts pertaining to the matter before the Board except as otherwise provided in these Rules. Any person intending to act as agent shall file with the clerk written authority to represent the applicant at the hearing.
- (1) If the application was filed by the applicant, any person (other than a California licensed attorney retained by the applicant or a person mentioned in subsections C, D, except an agent, or E) who appears at the hearing purporting to act as agent for the applicant shall first file with the clerk a written authorization, signed by the applicant, to represent the applicant at the hearing.
 - (2) If at the hearing the applicant is represented by a person other than the person who was originally authorized by the applicant to appear at the hearing, that person shall present to the Board a written authorization signed by the applicant indicating the applicant's consent to the change in representation.
 - (3) The written authorization required pursuant to this regulation shall include the information required by State Board Rule 305(a) and shall clearly state that the agent is authorized by the applicant to appear at hearings before the Board.
- B. 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.
- C. Where the applicant is a corporation, limited partnership, or a limited liability company, the business entity shall make an appearance by the presence of any officer, employee, or an authorized agent, thoroughly familiar with the facts pertaining to the matter before the Board.
- D. A husband may appear for his wife, or a wife for her husband, and sons or daughters for parents or vice versa.

- E. If an agent is previously authorized by the applicant to file an application, no further authorization is required for that agent to represent the applicant at the subsequent hearing.

23. BURDEN OF PROOF

- A. Subject to exceptions set by law, it is presumed that the assessor has properly performed his or her duties. The effect of this presumption is to impose upon the applicant the burden of proving that the value on the assessment roll is not correct, or where applicable, property in question has not been otherwise correctly assessed. The law requires that the applicant present independent evidence relevant to the full value of the property or other issue presented by the application.
- B. If the applicant has presented evidence, and the assessor has also presented evidence, then the Board must weigh all of the evidence to determine whether it has been established by a preponderance of the evidence that the assessor's determination is incorrect. The presumption that the assessor has properly performed his or her duties is not evidence and shall not be considered by the Board in its deliberations.
- C. The assessor has the burden of establishing the basis for imposition of a penalty assessment.
- D. Exceptions to subpart A apply in any hearing involving the assessment of an owner-occupied single-family dwelling or an escape assessment. In such instances, the presumption in section 167 of the Revenue and Taxation Code affecting the burden of proof in favor of the applicant who has supplied all information to the assessor as required by law imposes upon the assessor the duty of rebutting the presumption by the submission of evidence supporting the assessment.
- E. In hearings involving change in ownership, except as provided in section 110 of the Revenue and Taxation Code, the purchase price is rebuttably presumed to be the full cash value. The party seeking to rebut the presumption bears the burden of proof by a preponderance of the evidence.
- F. In weighing evidence, the Board shall apply the same evidentiary standard to the testimony and documentary evidence presented by the applicant and the assessor. No greater relief may be granted than is justified by the evidence produced during the hearing.

24. SUBPOENAS

- A. At the request of a party in advance of the hearing or at the time of the hearing, the Board or the Clerk on authorization from the Board may issue subpoenas for the attendance of witnesses at the hearing. The Board may issue a subpoena upon its own motion. A subpoena may be served on any resident of the State of California or any person or business entity found within the state. All subpoenas shall be obtained from the Board.
- B. If a subpoena is issued at the request of a party, he or she is responsible for serving it and for the payment of witness fees and mileage.
- C. 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.
- D. In the event a State Board of Equalization employee is subpoenaed pursuant to section 1609.5 of the Revenue and Taxation Code at the request of the applicant and the County Board grants a reduction in the assessment, the County Board may reimburse the applicant in whole or in part for the actual witness fees paid pursuant to section 1609.5.
- E. If a party desires the Board to issue a subpoena, the party shall make the written request sufficiently in advance of the scheduled hearing date so that the subpoenaed party has an adequate opportunity to fully comply with the subpoena prior to the commencement of the hearing. Upon such request, the Board may, whenever possible, issue subpoenas pursuant to sections 1609.4 and 1609.5 of the Revenue and Taxation Code. Subpoenas shall be restricted to compelling the appearance of a person or the production of things at the hearing and shall not be utilized for purposes of prehearing discovery. A subpoena issued near in time to or after commencement of the hearing should be as limited as possible, and a continuance of the hearing may be granted, if requested, for a reasonable period of time.
- F. No subpoena to take a deposition shall be issued nor shall depositions be considered for any purpose by the Board.

25. WITHDRAWAL OR DISMISSAL OF APPLICATION

After the filing of an application for a reduction of an assessment, the authority for the withdrawal or dismissal of such an application rests solely with the Board. Upon written request submitted to the clerk, the applicant may seek a withdrawal or dismissal of an application from the Board. If the assessor objects to a withdrawal or dismissal of an application, that objection and the basis thereof shall be submitted to the Board in writing.

26. CONTINUANCE

- A. The applicant and/or the assessor shall be allowed one postponement as a matter of right, the request for which must be made not later than 21 days before the hearing is scheduled to commence. If the applicant requests a postponement as a matter of right within 120 days of the expiration of the two-year limitation period provided in section 1604 of the Revenue and Taxation Code, the postponement shall be contingent upon the applicant's written agreement to extend and toll indefinitely the two-year period subject to termination of the agreement by 120 days written notice by the applicant. The assessor is not entitled to a postponement as a matter of right if the request is made within 120 days of the expiration of the two-year period, but the Board, in its discretion, may grant such a request. Any subsequent requests for a postponement must be made in writing, and good cause must be shown for the proposed postponement. A stipulation by an applicant and the assessor shall be deemed to constitute good cause, but shall result in extending and tolling indefinitely the two-year limitation period subject to termination of the agreement by 120 days written notice by the applicant. Any information exchange dates remain in effect based on the originally scheduled hearing date notwithstanding the hearing postponement, except as provided in State Board Rule 305.1(d).
- B. The clerk shall have the authority to grant all continuances which are a matter of right and all continuances based on a stipulation by applicant and the assessor. Requests for continuance shall be considered as far in advance of the hearing date as practicable.
- C. At the hearing, the Board may continue a hearing to a later date. If the applicant requests a continuance within 90 days of the expiration of the two-year period specified in section 1604 of the Revenue and Taxation Code, the Board may require a written extension signed by the applicant extending and tolling the two-year period indefinitely subject to termination of the agreement by

120 days written notice by the applicant. The Clerk shall inform the applicant or the applicant's agent and the assessor in writing of the time and place of the continued hearing, not less than 10 days prior to the new hearing date, unless the parties agree in writing or on the record to waive written notice.

27. DECISION

- A. Acting upon proper evidence before it, the Board shall determine the full value of the property, including land, improvements, and personal property that is the subject of the hearing. The determination of the full value shall be supported by a preponderance of the evidence presented during the hearing. The Board shall consider evidence of value derived by the use of any of the valuation methods described in the State Board Rules. It shall determine whether the method(s) used was (were) properly applied, considering the type of property assessed, governmentally imposed land use restrictions, and any recorded conservation easements as described in Civil Code section 815.1 et seq., by examining the factual data, the presumptions, and the estimates relied upon. The Board shall also determine the classification, amount, and description of the property that is the subject of the hearing, the existence of a change in ownership or new construction, or any other issue that is properly before the Board, or that is necessary to determine the full value of the property. The Board shall provide to the clerk such details as are necessary for the implementation of the Board's decision.
- B. The Board's authority to determine the full value of property or other issues, while limited by the laws of this state and the laws of the United States and usually exercised in response to an application for equalization, is not predicated on the filing of an application nor limited by the applicant's request for relief. When an application for review includes only a portion of an appraisal unit, whether real property, personal property, or both, the Board may nevertheless determine the full value, classification, or other facts relating to other portions that have undergone a change in ownership, new construction or a change in value. Additionally, the Board shall determine the full value of the entire appraisal unit whenever that is necessary to the determination of the full value of any portion thereof.

The Board is not required to choose between the opinions of value promoted by the parties to the appeal, but shall make its own

determination of value based upon the evidence properly admitted at the hearing.

An appraisal unit of property is a collection of assets that functions together, and that persons in the marketplace commonly buy and sell as a single unit or that is normally valued in the marketplace separately from other property, or that is specifically designated as such bylaw.

- C. A motion and order to deny an application for reduction in an assessment or any portion thereof, because of the nonappearance of the applicant or his agent at the pre-hearing or at the hearing or because of the applicant's failure to carry his burden of proof, shall be deemed to be a determination or finding that the full value of the property which is the subject of the application or part thereof is as determined by the assessor and further that the assessed value of said property shall remain as set forth on the assessment roll of the county.
- D. The Board, the applicant and appraisal witnesses shall be bound by the same principles of valuation that are legally applicable to the assessor.
- E. The Board shall neither raise nor lower the entire local roll.
- F. When valuing a property by comparison with sales of other properties, the Board shall consider only those sales that, in its judgment, involve properties similar in size, quality, age, condition, utility, amenities, site location, legally permitted use or other physical attributes to the property being valued. When valuing property for purposes of either the regular roll or the supplemental roll, the Board shall not consider a sale if it occurred more than ninety (90) days after the date for which the value is being estimated. The provisions for exclusion of any sale occurring more than 90 days after the valuation date do not apply to the sale of the subject property.

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 property 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.

28. NOTICE AND CLARIFICATION OF DECISION

A. A Board may announce its decision to the parties at the conclusion of the hearing, or it may take the matter under submission. The decision becomes final when:

- (1) The vote is entered into the record at the conclusion of the hearing provided no findings of fact are requested by either party, and all parties are present at the hearing or the hearing is subject to stipulation by both parties. The County may provide a written notice of the decision.
- (2) A written notice of the decision is issued provided no findings of fact are requested by either party, and the decision is taken under submission by the Board at the conclusion of the hearing. The County shall issue a written notice of the decision no later than 120 days after the conclusion of the hearing. The clerk shall notify the applicant in writing of the decision of the Board by United States mail addressed to the applicant or to the applicant's agent at the address given in the application.
- (3) A written notice of the decision is issued or the findings of fact are issued, whichever is earlier, provided findings of fact are requested. The county shall issue a written notice of the decision no later than 120 days after the conclusion of the hearing. If so requested by an applicant or an applicant's agent, the determination shall become final upon issuance of the findings of fact which the Board shall issue no later than 180 days after the conclusion of the hearing. Such a request must be made by the applicant or the applicant's agent prior to or at the conclusion of the hearing. If the conclusion of the hearing is within 180 days of the expiration of the two-year period specified in section 1604 of the Revenue and Taxation Code, the applicant shall agree in writing to extend the two-year period. The extension shall be for a period equal to 180 days from the date of the conclusion of the hearing.

29. INTEREST REQUIRED FOR FILING OF APPLICATION

No application shall be accepted for filing nor heard by the Board unless the applicant is a "person affected" or "party affected," as defined in Rule 1(H). A lien holder on property is not a "person affected" or "party affected" and may not file an assessment appeal without the written authorization to

act on behalf of the person who actually owns, claims, possesses or controls the subject property on the lien date.

30. RECONSIDERATION AND REHEARING

The decision of the Board upon an application is final. The Board shall not rehear or reconsider an application or modify a decision, except as hereinafter provided.

The Board may modify a decision which contains a ministerial clerical error. In addition, the Board may reconsider an application denied solely because of the nonappearance of the applicant, if the applicant: (a) files a written request for reconsideration within thirty (30) days from the date of mailing of notification of denial due to nonappearance; and (b) furnishes evidence establishing, to the satisfaction of the Board, excusable good cause for the failure to appear or to make a timely request for postponement. The Board shall not consider a request for reconsideration unless it is accompanied by a written waiver of the two (2) year period provided in Revenue and Taxation Code section 1604 (c). Applicants who fail to request reconsideration within the period set, or whose requests for reconsideration are denied, may refile an appeal of the base year value during the next regular filing period in accordance with Revenue and Taxation Code section 80.

31. JUDICIAL REVIEW

Judicial review of the decisions of the Assessment Appeals Board may be sought by means of a suit for refund of property taxes erroneously or illegally collected brought under Revenue and Taxation Code Sections 5141-5142.

In order to seek review of a Board decision, it is necessary to obtain a statement of decision from the Board (as provided in Rule 10) and to make a request in writing for a copy of the tape-recorded transcript of proceedings within sixty (60) days of the date of decision (Revenue and Taxation Section 1610). The clerk of the AAB is unable to prepare typed transcripts. Upon the deposit of reasonable costs of comparison, the clerk will certify typed transcripts made from the AAB tape recorded record.

If the applicant has not filed a claim for refund of taxes as part of the assessment appeal, the applicant is required to file a claim for property tax refund with the Board of Supervisors of the County of Merced under the provisions of Revenue and Taxation Code section 5097. This section

requires that a person seeking a tax refund submit a claim, verified under oath, the facts of the dispute with the County and the amount of taxes sought to be refunded.

Upon rejection of the claim by action of the Board of Supervisors or upon denial of the assessment appeal (if the refund claim is filed as part of the assessment appeal), the applicant has a period of six (6) months to file a suit for refund of taxes in the Merced County Superior Court.

Because of the legal requirements that must be satisfied in order to successfully pursue a property tax refund suit, applicants contemplating suit should promptly seek competent professional legal advice.

32. APPLICATION FOR EQUALIZATION BY BOARD MEMBER OR ALTERNATE OR CLERK OF THE BOARD STAFF

An application for equalization filed by a member of the Assessment Appeals Board or by Clerk of the Board staff or an application where the member/staff represents their spouse, domestic partner, parent, or child shall be heard before an assessment appeals panel for that issue consisting of three special alternate members appointed by an order of the Presiding Judge of the Superior Court of the County of Merced.