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LOCAL EQUALIZATION PRACTICE
IN CALIFORNIA

Alexander R. Early*

NATURE OF BOARDS OF EQUALIZATION.

Our boards of equalization are created by article XIII, section 9 of the California constitution. The State Board of Equalization assesses the properties described in section 14 of the same article, which are basically public utilities termed "State assessed property." The state board also assesses and equalizes certain municipally-owned property located outside the limits of the municipal entity which owns it.

The local county boards of supervisors perform the function of county boards of equalization. It is their duty "to equalize the valuation of the taxable property in the county for the purpose of taxation." They may not adjust the assessments of property assessed by the State Board of Equalization, nor those of publicly-owned land. They may equalize assessments of property which it is the duty of the county assessor to assess, direct the assessor to assess taxable property which has escaped assessment, change the quantity or description of property, and cancel assessments and make new ones where the originals are incomplete.

The supreme court has held that the county board has the duty to determine the value of all property for assessment purposes upon the same basis. In making such determination:

"the board is exercising judicial functions, and its decision as to the value of the property and the fairness of the assessment so far as amount is concerned constitutes an independent and conclusive judgment of the tribunal created by law for the determination of that question," adjudicating necessarily that "property is assessed at the same value proportionately as all the other property in the county,"...7

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1 CAL. REV. & TAX. CODE § 108.
2 CAL. CONST. art. XIII, § 1; CAL. REV. & TAX. CODE §§ 1822, 1867 and 1901.
3 CAL. CONST. art. XIII, § 9; CAL. REV. & TAX. CODE § 1603.
4 People v. Supervisors of Sacramento County, 15 Cal. 321 (1881).
6 CAL. REV. & TAX. CODE § 1611.
7 Southern Pacific Land Co. v. San Diego County, 183 Cal. 543, 546, 191 Pac. 931, 933 (1920).
The decision of the board will not be reversed unless there is a showing of arbitrary action on the part of the board or of some action which is equivalent to fraud. Recently in *Eastern-Columbia, Inc. v. County of Los Angeles,*\(^8\) the court held that "county boards of equalization are creatures of the Constitution itself (art. XIII, sec. 9, California State Constitution), and are quasi-judicial bodies."\(^9\)

**LOCAL EQUALIZATION FOR PROPERTY TAXPAYERS**

In California a taxpayer’s only opportunity to obtain relief from an assessment of his property for *ad valorem* tax purposes that he contends is unfair, excessive, or discriminatory is by petition to the appropriate board of equalization.\(^10\) There is a disputable presumption that the assessment is correct;\(^11\) hence the burden of proof is on the taxpayer.\(^12\) This presumption is a formidable obstacle. It is evidence\(^13\) and will support a decision in favor of an assessment even in the face of strong uncontradicted evidence of the opposing party.\(^14\) In *Hannon v. Madden*\(^15\) a taxpayer sought to invalidate assessments, charging the local board of trustees with fraud in imposing assessments and in denying relief when the assessments were protested. The court upheld the valuations because the taxpayer failed to establish fraud or an abuse of discretion by evidence sufficiently convincing to overcome the presumption. The court said:

> If official acts may be explained on any reasonable theory of duty honestly, even though mistakenly performed, they must be resolved in favor of the presumption, which may not be lightly ignored. This is doubly true where no substantial evidence, as in the instant case, points to a corrupt motive or dishonest purpose on the part of the

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\(^8\) 61 Cal. App. 2d 734, 143 P.2d 992 (1943).


\(^12\) Bank of America v. Mundo, 37 Cal. 2d 1, 5, 229 P.2d 345, 347 (1951); Utah Construction Co. v. Richardson, 187 Cal. 649, 654, 203 Pac. 401, 403 (1921); Western Union Telegraph Co. v. County of Los Angeles, 160 Cal. 124, 126-27, 116 Pac. 564, 565 (1911).

\(^13\) CAL. CODE CIV. PROC. §§ 1957, 206 (2).


\(^15\) 214 Cal. 251, 5 P.2d 4 (1931).
accused. A wide divergence of views, especially in matters where local
taxation is involved, frequently exists.\textsuperscript{16}

The United States Supreme Court has recognized this principle in
property tax assessment cases.\textsuperscript{17}

\section*{Exhaustion of Administrative Remedy}

Repeatedly the courts have stated the general rule that before
a taxpayer may seek judicial relief from an excessive assessment
he must first exhaust his administrative remedy with the appro-
priate board of equalization.\textsuperscript{18} Although there are exceptions, they
must be clearly understood, since failure to seek relief from the
board of equalization when required is fatal.\textsuperscript{19} This was dramati-
cally illustrated in the companion cases of \textit{Luce v. City of San
Diego}\textsuperscript{20} and \textit{Mahoney v. City of San Diego}.\textsuperscript{21} In each case tax-
payers challenged assessments as unfair and discriminatory because
land, improvements, and personal property had admittedly been
valued by the assessor at different fractions of value. The taxpayers
in \textit{Mahoney} initially sought relief from the local board of equaliza-
tion, but those in \textit{Luce} did not. The board denied the petitions of
the taxpayers in the \textit{Mahoney} case, but this was reversed by the
California Supreme Court. Simultaneously the court denied relief
to the plaintiffs in the \textit{Luce} case solely because they had failed to
petition the local board of equalization for a reduction of their
assessments. As the two cases involved identical facts, it is unlikely
that the plaintiffs in the \textit{Luce} case would have been more fortunate
in a hearing before the board of equalization than were those in the
\textit{Mahoney} case. Nevertheless, exhaustion of that remedy is
jurisdictional to the courts.

The fact that an administrative board has already decided
other cases involving similar facts adversely to the petitioner will
never excuse disregarding the administrative remedy.\textsuperscript{22} Likewise,

\begin{itemize}
\item \textsuperscript{16} \textit{Id.} at 268, 5 P.2d at 11.
\item \textsuperscript{17} \textit{Great Northern Railroad Co. v. Weeks}, 297 U.S. 135, 139, (1935) (Butler).
\item \textsuperscript{20} 198 Cal. 405, 245 Pac. 190 (1926).
\item \textsuperscript{21} 198 Cal. 388, 245 Pac. 189 (1926).
\item \textsuperscript{22} \textit{Abelleira v. District Court of Appeal}, 17 Cal. 2d 280, 300-01, 109 P.2d 942,
\end{itemize}
a taxpayer may not contest an action for collection of a delinquent tax on the ground of excessive assessment unless he has first exhausted his remedy before the board of equalization.23

There are exceptions to the requirement that an aggrieved taxpayer must first seek relief from the board of equalization before seeking relief in court where: (1) property has been assessed which was wholly or partly exempt;24 (2) the assessor has erroneously assumed the existence of, and proceeded to assess, property which was non-existent;25 (3) property outside the jurisdiction has been included in the assessment;26 or (4) the property taxed was owned by someone other than the person to whom it was assessed27 and was not otherwise taxable to the assesse as the person claiming, possessing, or controlling it.28

Many of the earlier opinions implied that an attack upon an assessment in part, rather than in toto, raised an issue of overvaluation that required initial presentation to the board of equalization.29 This rule was ignored in Parr-Richmond Industrial Corp. v. Boyd30 and was expressly disapproved in Star-Kist Foods, Inc. v. Quinn.31 In the Star-Kist case the court held that "the necessity of recourse to the board is properly determined by the nature of the issues in dispute, and not by whether an assessment is attacked in part or in toto."32 The test applied in this important opinion was whether there was a factual question of valuation which the

25 Pacific Coast Co. v. Wells, 134 Cal. 471, 66 Pac. 657 (1901); Associated Oil Co. v. County of Orange, 4 Cal. App. 2d 5, 40 P.2d 887 (1935).
26 Kern River Co. v. County of Los Angeles, 164 Cal. 751, 130 Pac. 714 (1913); Stewart etc. Co. v. County of Alameda, 142 Cal. 660, 76 Pac. 481 (1904).
29 See, e.g., City and County of San Francisco v. County of San Mateo, 36 Cal. 2d 196, 201, 222 P.2d 860, 863 (1950); These cases are exhaustively reviewed in Van Alstyne, Equalisation as a Prerequisite to Recovery of Taxes on Exempt Property, 1 U.C.L.A. L. Rev. 303 (1954).
31 54 Cal. 2d 507, 354 P.2d 1, 6 Cal. Rptr. 545 (1960); see, comment, 48 CALIF L. Rev. 806, 813 (1960).
32 Id. at 510, 354 P.2d at 3, 6 Cal. Rptr. at 547.
board has special competence to decide.\textsuperscript{33} Since the only issue was the constitutionality of section 107.1 of the California Revenue and Taxation Code, which established the method of valuing certain possessory interests in realty, the court held that recourse to the local board of equalization was not required before the taxpayer sought a judicial determination.\textsuperscript{34}

The courts have made it clear that if an assessment is legally a nullity, there is no requirement to bring the matter before the board of equalization as a prerequisite to judicial relief.\textsuperscript{35} This principle will undoubtedly govern the determination of an issue posed in the trial courts of several counties, \textit{i.e.}, must questions of the classification of property as personalty or fixtures (the latter are taxable as real property\textsuperscript{36}) be submitted to the board of equalization? There is no simple answer. The cases uniformly support the conclusion that if misclassification results in a void assessment, resort to the board of equalization is unnecessary;\textsuperscript{37} but if the property remains taxable despite such misclassification, although perhaps at a lower tax rate,\textsuperscript{38} resort to the board of equalization is required.\textsuperscript{39} Discrimination results if property which is liable for taxation either as realty or as personalty is misclassified and is consequently subjected to incorrect tax rates. Questions of discrimination are always matters for the board of equalization.\textsuperscript{40}

On the other hand, if tax-exempt personal property such as that owned by national banks\textsuperscript{41} or possessory interests in tax-exempt government-owned personal property\textsuperscript{42} should be misclassified as fixtures on the assessment roll, the assessment is a nullity and

\begin{footnotes}
\item[33] Ibid.
\item[34] Ibid.
\item[36] Cal. Rev. & Tax. Code §§ 103-06.
\item[37] See Trabue Pittman Corp. v. County of Los Angeles 29 Cal. 2d 385, 175 P.2d 512 (1946).
\item[38] Certain special taxing districts such as lighting maintenance districts and the Los Angeles County Flood Control District have power to tax realty but not personalty. Los Angeles County Flood Control Act § 10, Unccodified Water Act, Cal. Stats. 1915, ch. 755 § 10, p. 4463.
\item[40] Ibid.
\item[42] General Dynamics Corp. v. Los Angeles County, 51 Cal. 2d 59, 330 P.2d 794 (1958).
\end{footnotes}
Some experienced attorneys avoid this problem by first petitioning the board of equalization for relief in all matters involving assessments for property tax-purposes. Thus they bring their cases within the rule that “when a board of equalization purports to decide a question of law, or refuses to hear a case on the ground that it involves only a question of law to be decided by the courts, a taxpayer has the right to resort to the courts for determination of such question.” 44 Even though it appears probable that an assessment may be declared altogether void by a court, if evidence of overvaluation exists, astute counsel will not overlook the possibility of partial relief in the form of a reduction in assessed value by the board of equalization. In recent years county boards of equalization have been noted for their liberality in reducing the assessments on fraternal lodges, private schools, and non-profit quasi-charitable properties. Taxpayer suits to set aside such reductions are rare. 45 Furthermore, Revenue and Taxation Code section 504 was amended by the 1963 Legislature to permit the reduction of a penal assessment 46 by the county board of equalization. 47

Clerical Error

The situation of the overassessed taxpayer who has neglected to take advantage of his administrative remedy by petitioning the board of equalization for relief is not always hopeless. If an overassessment was caused by a clerical error of the assessor and the intended assessment can be ascertained from any papers in the assessor’s office, the error may be corrected on the assessment roll under Revenue and Taxation Code section 4831. If a tax based on such an overassessment has already been paid, a refund may be obtained under section 5096(c).

Likewise, overassessment of personal property caused by erroneous information furnished by a taxpayer 48 to the assessor may be corrected on the assessment roll, if the error can be ascertained

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by the assessor from an audit of the taxpayer’s books of account or other papers. If, however, the tax has already been paid, it is doubtful whether section 5096 will permit payment of a refund. This legislative oversight will undoubtedly be corrected at the next regular session of the Legislature. Similar provisions govern the correction of errors made by the State Board of Equalization in assessing state assessed property.

**Equalization Hearings**

A county board of equalization begins proceedings after giving notice as prescribed by its rules. The board may increase or lower any assessment on the local roll in order to achieve equalization. So long as the required notice is given, the board may act on its own initiative to raise an assessment even in the absence of a complaint stating that it is too low and requesting that it be increased. Actual notice is sufficient. Any defects or informalities in the form of the notice are waived by the appearance of the taxpayer.

Particularly significant is the holding in *Birch v. Board of Supervisors* that notice must be of the intended action of the board. In that case after a hearing on the taxpayers’ petition for assessment reduction, the board increased the assessment. Despite the presence and participation of the taxpayers at the hearing, the court held that the board lacked power to increase the assessment because of its failure to give the taxpayers notice of its intention to do so! The court refused to invoke the doctrine of estoppel.

A county board of equalization may raise or lower individual assessments, but not the entire assessment roll. This prevents use of an obvious device to circumvent statutory ceilings on tax rates. The State Board of Equalization may increase or lower the entire roll of any county in order to achieve intercounty equalization.

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49 Cal. Rev. & Tax. Code § 4831.5.
50 Cal. Rev. & Tax. Code §§ 4876 and 4876.5.
51 Cal. Rev. & Tax. Code § 108 defines “State assessed property” as including all property subject to local taxation which § 14 of art. XIII of the Cal. Const. requires the State Board of Equalization to assess. This consists primarily of public utility properties.
53 Ibid.
54 Allison Ranch Mining Co. v. Nevada Co., 104 Cal. 161, 37 Pac. 875 (1894).
55 Ibid.
57 191 Cal. 235, 215 Pac. 903 (1923).
tion, but may change only those individual assessments which it has itself made.

**Equalization Seasons**

With the exception (commencing in 1964) of Los Angeles County, boards of supervisors meet as boards of equalization annually on the first Monday in July to equalize the assessment of property on the local roll. The code requires that they continue in session for that purpose, from time to time, until the business of equalization is completed, "but not later than the third Monday in July." There is a wide-spread misconception among board members and tax officials that because of this provision the life of a county board of equalization expires at midnight of the third Monday in July (or the last day to which an extension has been granted under Revenue and Taxation Code section 155); that thereafter the board lacks jurisdiction to act. Boards in several counties conduct hearings of marathon duration, severely restrict the time for cross-examination and argument, and unnecessarily subject themselves to the charge of being impatient and arbitrary, in an attempt to complete the hearings before this illusory deadline.

Actually, the courts have always reasoned that this provision is directory and not jurisdictional. In *Universal Consolidated Oil Co. v. Byram* the court voided the action of the board of equalization. It was argued that the court should then compute the correct assessment of the taxpayer's property rather than remand the case to the board of equalization to make this determination because the equalization period had expired. The supreme court disagreed. It conceded that:

> the life of the board of equalization is limited by statute, but that provision is directory only and does not deflect from the statutory scheme that the authorized tribunal pass upon matters properly within its jurisdiction though in the completion of its work it must act at a time beyond the prescribed period.

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60 Cal. Const. art. XIII, § 9; Cal. Rev. & Tax. Code §§ 1815-1832.5.
61 Wells Fargo & Co. v. State Board of Equalization, 56 Cal. 191 (1880).
64 Ibid. Also note that Cal. Rev. & Tax. Code § 155 permits the State Board of Equalization to extend the time fixed for the performance of any act by a county board of equalization "for not more than 30 days, or, in case of public calamity, 40 days."
66 Ibid.
67 Id. at 362-63, 153 P.2d at 752.
So long as a proper application for assessment reduction is timely filed, this reasoning indicates that if necessary, it may be heard and decided even after the stroke of statutory midnight.

Equalization hearings upon escape or penal assessments which are made outside the regular period may be held at the request of the assessor or any taxpayer at any regular meeting of the board of supervisors during the calendar month following the month in which the assessment is made.

In Los Angeles County equalization petitions may be filed between the fourth Monday in September and the fourth Monday in November; hearings may take place from the fourth Monday in September until the last day of the following March. Pursuant to section 9.5 of article XIII of the California constitution and Revenue and Taxation Code sections 1620-29, the Los Angeles County Board of Supervisors has created two tax appeals boards to perform this function in that county commencing in 1964.

**FORM OF PETITIONS**

Section 1607 of the Revenue and Taxation Code provides that no reduction shall be made in an assessment on the local roll “unless the party affected or his agent makes and files with the county board a verified, written application for it, showing the facts claimed to require the reduction.” The purpose of this application is to give the assessor an opportunity to investigate before the hearing. Consequently, informality in these petitions is allowed, but merely indentifying an assessment and stating that it is “protested” is not enough. Statements of the ground upon which relief was sought such as “unequal value,” when coupled with a description of the property, its assessed value, and the requested assessed value, have been held to be sufficient. Even where the petition to the board of equalization merely alleged “excessive valuation,” it was considered adequate where the application was presented on a form prescribed by the county, and no objection was made to its sufficiency either at the time of filing or at the hearing.

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68 Cal. Rev. & Tax. Code §§ 503, 531, 531.5 and 1061.
EQUALIZATION ISSUES

The “equalization” of the assessed value of petitioner’s property with that of the other property in the district is the purpose of all equalization proceedings. Was there any discrimination or unfairness in the assessment of the petitioner’s property that results in subjecting it to a disproportionate share of the property tax burden? Was the property improperly classified as fixtures instead of personalty, thus subjecting it to additional special assessment district charges? Is it one of the most frequent type of case in which the petitioner alleges that his property has not been “assessed at the same value proportionately as all other property in the county”?

Solvent credits, the only intangible personal property now taxed in California, are taxed at a different tax rate than other property. Thus a board of equalization must consider the relative tax burden imposed on such property generally throughout the county, if discrimination is alleged in their assessment. Intangibles are assessed at their actual value rather than at a fraction.

The equalization of escape and penal assessments involves additional issues peculiar to the requirements of the statutes under which they are made. In most cases there are only two questions of fact for the board of equalization to consider: (1) the fair market value of the property involved, and (2) the ratio (or fraction) of assessed value to fair market value generally prevailing throughout the county. Multiplication of the two gives an assessed value as equalized with property generally throughout the county. This value can then be compared by the board with the actual assessment of which complaint is made. If the actual assessment is higher than this equalized value, it should be correspondingly reduced. No matter how sympathetic a board of equalization may be to a petitioning taxpayer, it cannot grant any relief unless it can determine from the evidence before it both the fair market value of the petitioner’s property and the fraction (or ratio) of fair market

75 CAL. CONST. art. XIII, § 9; CAL. REV. & TAX. CODE §§ 1603-05, 1821-23, 1832.5.
76 Dawson v. Los Angeles County, 15 Cal. 2d 77, 98 P.2d 495 (1940).
77 Simms v. County of Los Angeles, 35 Cal. 2d 303, 315, 217 P.2d 936, 944 (1950).
79 CAL. REV. & TAX. CODE § 2153.
80 Dawson v. Los Angeles County, 15 Cal. 2d 77, 98 P.2d 495 (1940); CAL. CONSTR. art. XIII, § 14.
81 CAL. REV. & TAX. CODE § 1059.
82 CAL. REV. & TAX. CODE §§ 503, 531, 531.5 and 1061.
value at which property generally has been assessed throughout the entire county. Unless the taxpayer introduces substantial evidence of fair market value and the general assessment ratio, he will have failed to make a prima facie case entitling him to relief.

The district court of appeal in *Wild Goose Country Club v. County of Butte*\(^8\) upheld the decision of the board of equalization because no evidence was presented at the board hearing of the value of the taxpayer's land.\(^8\) The same result was reached in *Merchants Trust Company v. Hopkins*,\(^8\) where the court stated:

> no evidence of any inequality of assessment, and no competent evidence of the value of the property assessed, [was] presented to the board of equalization. It is evident from this that appellant did not sustain the burden of proof which rested upon it in the proceeding before the board of equalization to show that the assessment was either unequal or excessive and hence cannot now attack the action of the board on either of those grounds.\(^8\)

Similar decisions were rendered in *Southern California Telephone Co. v. County of Los Angeles*,\(^8\) where the court affirmed a superior court nonsuit involving millions of dollars because there was no proof of value,\(^8\) and *Crothers v. County of Santa Cruz*,\(^8\) where the court again required proof of fair market value.\(^8\)

It has often been unsuccessfully argued that a particular assessment need not be compared with the assessments of properties generally throughout the county, but that it is sufficient if comparison is made with a small number of other properties.\(^9\) The courts have repeatedly rejected this argument. The rule in the *Wild Goose Country Club* case is expressly followed in *Birch v. County of Orange*,\(^8\) the court holding that the assessment in question should be compared with the average assessment of all the other properties in the county to determine whether an unequal burden has been placed on the petitioning taxpayer. The court then dismissed the contention that it is sufficient if comparison is made with a small number of properties by stating that "when it is shown that his assessment is not disproportionate to that of other property generally, to reduce his assessment merely because the property of a few

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84 60 Cal. App. 339, 212 Pac. 711 (1922).
85 Id. at 341, 212 Pac. at 711.
86 103 Cal. App. 473, 284 Pac. 1072 (1930).
87 Id. at 479, 284 Pac. at 1074.
89 Id. at 126, 113 P.2d at 782.
91 Id. at 225, 311 P.2d at 560.
92 E.g., see appellant's briefs in A. F. Gilmore Co. v. County of Los Angeles, 186 Cal. App. 2d 471, 9 Cal. Rptr. 67 (1960).
93 88 Cal. App. 82, 262 Pac. 788 (1927).
others is assessed too low would only increase the inequalities already existing in the assessment-roll of the county.\textsuperscript{94} There is an impressive line of cases both before and after the \textit{Birch} decision which support this view that the challenged assessment is to be compared with the average assessment of all other property in the county.\textsuperscript{95} This is the general rule followed throughout the United States.\textsuperscript{96}

Perhaps the error most frequently made by petitioners is that of proving that a relatively small number of other properties are underassessed as compared with their own assessments. Such a spot disparity does not establish a right to relief.\textsuperscript{97} The comparison must be with the county-wide average. Even proof by a complaining taxpayer that other taxpayers have escaped taxation altogether affords no reason for invalidating his assessments.\textsuperscript{98}

Proof that the assessor has used an erroneous method of valuing property carries no weight unless the taxpayer also shows that the resulting assessment is excessive or discriminatory.\textsuperscript{99} If the resulting assessment is correct, the method used to arrive at the assessment is unimportant; if the result is clearly wrong, the method would not save it.\textsuperscript{100}

Neither by constitution nor by statute is the assessor directed to follow any particular method to determine value.\textsuperscript{101} The test is not what someone else thinks is a proper method of valuation, but whether the method used by the assessor was legitimate, fair, and

\textsuperscript{94} Id. at 86, 262 Pac. at 789.
\textsuperscript{96} In re Rick's Appeal, 402 Pa. 209, 67 A.2d 261 (1961); Robinson v. Stewart, 316 Ore. 532, 339 P.2d 432 (1959); Redmond v. City of Jackson, 143 Miss. 114, 108 So. 144 (1926); Note, \textit{Inequality in Property Tax Assessments, 75 Harv. L. Rev. 1374 (1962).}
\textsuperscript{99} Ambassador Hotel Corporation v. County of Los Angeles, 94 Cal. App. 143, 147, 270 Pac. 726, 728 (1928).
\textsuperscript{100} Bailey v. Megan, 102 F.2d 651, 654 (8th Cir. 1939); In re Ewa Plantation Co., 384 P.2d 287, 298 (Haw. 1963); Hammermill Paper Co. v. City of Erie, 372 Pa. 85, 95 A.2d 422 (1952).
reasonable. Of course, "exact equality is not possible under any system of taxation."

**Cyclical Reappraisal Programs**

In these days of industrial growth, population explosion, inflation, and constantly changing property values, it has not been unusual for assessors to lag in their work. Properties once assessed at full cash value are placed on current assessment roles at the value determined in an earlier year, which is only a fraction of present value. No discrimination or unfairness results if the properties are assessed at the same uniform fraction of value. In *Rittersbacher v. Board of Supervisors* the California Supreme Court held:

It is the assessor's recognized duty to see that the valuation placed on the various kinds of property shall be in proportion to the worth of such properties. If it is proportional and all are treated alike, no one contends that the taxpayer must be charged a full hundred per cent, for such is not required by the law. It is also recognized that the assessment on personal property shall be on a basis which is fair to the owners of real property so that neither shall suffer to the advantage of the other.

Obviously, if full value assessments are reduced by a uniform fraction, an inversely proportionate increase in tax rates will produce exactly the same tax revenue from the same property. Experience indicates, however, that properties do not advance or decline uniformly in value from year to year. Instead, some advance rapidly while others depreciate in value. Under these circumstances an annual reappraisal by the assessor of only part of a county (the remainder of the county being placed on the current assessment roll at values established in earlier years) may result in some assessments that are excessive because made at a fraction of value or ratio that exceeds the county-wide average. In many instances county assessors have taken several years to reappraise an entire

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105 *220 Cal. 535, 32 P.2d 135 (1934), cert. denied, 293 U.S. 592 (1934).*
106 *Ibid.* at 139.
county. The question arises whether it is legal to put the reappraised properties on the current assessment roll at values increased over prior years before the entire reappraisal has been completed.

This problem arose in Alberts v. Board of Supervisors.\(^{108}\) As part of a continuing reassessment program two-thirds of San Mateo County was reappraised in 1959 at 25 per cent of value. This resulted in substantial increases over prior years' assessments in two-thirds of the county. Assessments in the remainder of the county were left unchanged. The reappraisals were made where the need was greatest, as rapidly and as thoroughly as was possible. The complaining taxpayers contended that changes in value should not be added to the assessment roll until the entire program had been completed. The court disagreed and upheld the assessments. The basic reappraisal program was similar to one which had been upheld by the United States Supreme Court in Sunday Lake Iron Co. v. Township of Wakefield,\(^{109}\) despite an obvious but temporary inequality it produced. The court noted, however, that while the complaining taxpayers had assumed that assessments in the area not reappraised were at less than 25 per cent of value, they failed to prove this. The case seemed to be distinguishable because of this failure of proof.

Later a similar problem from another county came before the same court in Lord v. County of Marin.\(^{110}\) Again the assessments were upheld, the court remarking that "we approved a similar cyclical reappraisal program carried on in San Mateo County."\(^{111}\) This interpretation of its earlier opinion by the court would seem to be decisive.\(^{112}\) In these cases the California courts have clearly upheld the validity of cyclical reappraisal programs where the assessor has done his best to do his duty; quaere, what if he had done anything less?

**Evidence at Board Hearings**

Despite expressions in some cases that the strict rules of evidence do not apply in equalization hearings,\(^{113}\) the county board of equalization acts in a judicial capacity and thus can make orders only on the basis of "legal evidence."\(^{114}\)

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\(^{109}\) 247 U.S. 350 (1918).


\(^{111}\) Id. at 27, 29 Cal. Rptr. at 250.

\(^{112}\) Other similar cases are annotated at 76 A.L.R.2d 1071-81; see also Perry v. State Tax Commission, 103 N.H. 264, 169 A.2d 785 (1961).

\(^{113}\) See, e.g., Rancho Santa Margarita v. County of San Diego, 135 Cal. App. 134, 142-43, 26 P.2d 716 (1933).

In *Oakland v. Southern Pacific Co.*\(^{115}\) the court stated that "it has become the settled rule in this state that the board can only act upon evidence in raising or lowering an assessment."\(^{116}\) In *Merchants Trust Co. v. Hopkins*\(^{117}\) the court held that no "competent evidence" of the value of the property was presented to the board of equalization; hence "appellant did not sustain the burden of proof which rested upon it in the proceeding before the board of equalization to show the assessment was either unequal or excessive and hence cannot now attack the action of the board on either of those grounds."

Since the boards of equalization are created by the California constitution,\(^{118}\) it would appear that their decisions may not be based on inadmissible hearsay evidence to which objection was made.\(^{119}\) Even the Administrative Procedure Act, which does not apply to equalization proceedings, provides that hearsay evidence (although admissible for certain limited purposes) is not sufficient to support a finding unless it would be admissible over objection in civil actions.\(^{120}\) In some jurisdictions the hearsay rule has been described not as a mere technical rule of evidence, but as a basic rule of exclusion.\(^{121}\)

Exclusionary rules peculiar to equalization proceedings are contained in Revenue and Taxation Code sections 408 and 451. These rules deprive a taxpayer of access to property statements and other information in the assessor's office which relate to the property or business affairs of others. A similar provision of the Personal Income Law\(^{122}\) has been upheld by the California Supreme Court.\(^{123}\)

The United States Supreme Court has said that "the principles governing the ascertainment of value for the purposes of taxation are the same as those that control in condemnation cases. . . ."\(^{124}\) The same rule has been followed by the California courts.\(^{125}\)

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115 131 Cal. 226, 63 Pac. 371 (1900).
116 *Id.* at 230, 63 Pac. at 372.
118 CAL. CONST. art. XIII, § 9.
119 *Cf.*, Englebretson v. Industrial Accident Commission, 170 Cal. 793, 151 Pac. 421 (1915).
120 CAL. GOV. CODE § 11513(c).
121 See, e.g., Novicki v. Department of Finance, 373 Ill. 342, 26 N.E.2d 130 (1940).
122 CAL. REV. & TAX. CODE § 19282.
of fair market value is by the same methods developed in eminent
domain proceedings.126

Proof of the ratio of assessed value to fair market value
generally prevailing throughout the county should be relatively
simple. Section 1610 of the Revenue and Taxation Code requires
the presence of the assessor at equalization hearings, and the ques-
tion can be put to him. A study based upon a random sampling of
sales prices (reduced to their cash equivalent) and assessments
throughout the county should suffice, if the sampling is of adequate
size. Evidence that a petitioner's property is assessed at a sub-
stantially higher fraction of its value than several other properties
will justify an inference of overassessment.127

Because future Los Angeles County Board of Equalization
hearings will commence in September,128 after publication of the
State Board of Equalization ratio studies,129 those studies will be
available as evidence of the current ratio of assessed to fair market
value of locally-assessable tangible property. Other counties which
conduct their equalization hearings before such publication will
not enjoy this advantage.

Assessments and assessment ratios in other years appear to
be of little relevance. Assessment ratios have varied from county
to county, and within the same county from year to year, as illus-
trated by the following cases:

De Luz Homes, Inc. v. County of San Diego130 35%
Fairfield Gardens v. County of Solano131 25%
Victor Valley v. County of San Bernardino132 20%
El Toro Development Co. v. County of Orange133 70%
Birch v. County of Orange134 in 1916: 33 1/3%
in 1918: 40%
Michael Todd Co. v. County of Los Angeles135 35%
Lockheed Aircraft Corp. v. County of Los Angeles136 45%

Assessments made in prior years are separate and distinct from

126 See, e.g., County of Los Angeles v. Faus, 48 Cal. 2d 672, 312 P.2d 680 (1957);
127 Birch v. County of Orange, 88 Cal. App. 82, 86, 262 Pac. 788, 789 (1927). In
130 45 Cal. 2d 546, 559, 290 P.2d 544, 552 (1955).
134 88 Cal. App. 82, 87, 262 Pac. 788, 790 (1927).
those made for the present year. Hence they are not receivable as evidence that this year’s assessment is invalid.137

PROCEDURE AT BOARD HEARINGS

Common sense is necessary to present a case successfully before a county board of equalization. Board members are not experienced judges, and they are not likely to have legal training. Unlike the members of many administrative boards and commissions, they are not selected because of any special competence to perform their duties. They are elected officials, sensitive to criticism, fundamentally eager to be fair, sharing a layman’s intolerance of legal technicalities, and impatient to decide cases promptly. The “jugular vein” technique of advocacy is in order. Yet the experienced lawyer realizes that he must always protect his record to appeal from an adverse decision.

Probably the board’s members will have been furnished with copies of the excellent Handbook for County Boards of Equalization prepared in 1960 by the County Supervisors Association of California, which is written in language even a client should understand. Intended to assist members of boards of equalization, it is also invaluable to those who appear before them.

Pursuant to section 9 of article XIII of the California constitution, Revenue and Taxation Code section 1605, and Government Code section 25003, county boards of equalization customarily adopt written rules of procedure which govern their proceedings. These vary from county to county and often change. Copies may be obtained from the clerk of the local county board of supervisors who is ex officio clerk of the county board of equalization. Important provisions govern the form of petitions, meeting dates, filing time, affidavits, subpoenas, and use of stenographic reporters. Regulations for equalization proceedings of the State Board of Equalization may be found in Title 18, Chapter 2 of the California Administrative Code. These local rules, if reasonable, may not be ignored; violating them could prove fatal to a client’s cause.138

Although the board has power to regulate the order of proof, it is customary for the taxpayer to proceed first in presenting the evidence, since he has the burden of proof.139 A brief opening state-

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ment on behalf of the taxpayer often helps a board to understand the testimony which follows. If the qualifications of an expert property valuation witness are already well-known to board members, the attorney need not remind the board of them. Instead he should protect the record by offering into evidence an affidavit of the witness setting out his qualifications. Since the witness is present under oath and subject to cross-examination, opposing counsel will hesitate to object to this procedure. If he should object, the taxpayer has gained an important psychological advantage.

If his position is doubtful, the attorney may withdraw the offered affidavit and qualify the expert witness in the customary fashion. If he does use affidavits, the attorney should furnish copies to opposing counsel in advance of the hearing in order to save time. He should avoid the temptation to include in such an affidavit material which is otherwise inadmissible, such as expressions of opinion for which no foundation has been laid.

Questions from board members are often an unwelcome interruption, but they come more frequently than in court. The code requires that relief must be denied by the board unless all pertinent questions are answered. The taxpayer's chances of success are greatly enhanced if they are answered promptly, briefly, and completely.

If an objection is sustained to evidence which has been offered, the attorney must not neglect to make a proper offer of proof. Otherwise, in the event of a court review where there is no trial de novo on questions of valuation, the taxpayer may be assumed to have abandoned the point. If the evidence is an essential part of his prima facie case, a successful review in court would be thwarted.

**Judicial Review**

Judicial review of equalization hearings is by suit under Revenue and Taxation Code section 5138 for refund of taxes paid under protest, or by suit under section 5103 after rejection by the board of supervisors of a claim for refund. Mandamus and the other extraordinary legal writs are not available to review either an assessment or the action of the board of equalization, because prompt payment of taxes is vital to the operation of local government. An action to recover a refund of taxes paid is an adequate

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140 CAL. REV. & TAX. CODE § 1608.

legal remedy and is now the exclusive method of judicial review of property tax proceedings.\textsuperscript{142}

There can be no trial de novo on issues which the board of equalization has jurisdiction to determine.\textsuperscript{143} The only issue for a court is whether there was substantial evidence before the board of equalization to support its determination.\textsuperscript{144}

\textsuperscript{142} Star-Kist Foods, Inc. v. Quinn, 54 Cal. 2d 507, 6 Cal. Rptr. 545, 354 P.2d 1 (1960); City of Long Beach v. Board of Supervisors, 50 Cal. 2d 674, 328 P.2d 964 (1958); Jillson v. Board of Supervisors of County of Sacramento, 221 A.C.A. 231, 34 Cal. Rptr. 419 (1963).

\textsuperscript{143} Bank of America v. Mundo, 37 Cal. 2d 1, 229, P.2d 345 (1951); Universal Consolidated Oil Co. v. Byram, 25 Cal. 2d 353, 153 P.2d 746 (1944).

\textsuperscript{144} Bank of America v. Mundo, 37 Cal. 2d 1, 229 P.2d 345 (1951); Kaiser Co. v. Reid, 30 Cal. 2d 610, 626, 184 P.2d 879, 889 (1947).