

California: Massive shakeup of Board of Equalization under way



David M. Kall | Thursday, July 6, 2017

One of the key provisions contained in the new budget that Gov. Jerry Brown signed into law last week was implementation of AB 102, the [Taxpayer Transparency and Fairness Act of 2017](#). The act effectively dismantles the deeply troubled State Board of Equalization (BOE), which has been on peoples' minds since the Department of Finance issued its March 30, 2017 [Final Report](#) describing the board's problems, which we [detailed](#) at the time.

The BOE, established in 1879 by constitutional amendment, was responsible for:

- Administering various tax and fee programs, including the sales and use tax.
- Adopting rules and regulations to clarify tax laws.
- Acting as an appellate body for the review of property, business and income tax assessments.
- Assessing and allocating the property tax values of railroads and specified utilities.
- Overseeing the property tax assessment practices of all 58 counties in California.

In 2017-18, the BOE budget included \$670.7 million in proposed expenditures, and nearly 5,000 authorized positions with over 600 vacancies. The BOE collects over \$60 billion, more than 30 percent of all state revenues

Chief among the BOE's problems were its unfair tax administration and appeals practices, and violations of state laws pertaining to personnel management. The Taxpayer Transparency and Fairness Act's three

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reforms are the following:

1. Removal of the BOE's elected members from oversight of the day-to-day operations of the organization.
2. Transfer of tax appeal cases away from politicians to independent judges who are experts in tax law.
3. Establishment of the Department of Tax and Fee Administration to manage the BOE's current non-constitutional tax and fee administration responsibilities.

Pursuant to these reforms, the final [Assembly Floor Analysis](#) delineates the statutory changes that took effect on July 1, 2017. In that document, lawmakers set forth the numerous details explaining their efforts, including declaring at the outset that “taxpayers are entitled to a tax administration and appeals process that is fair, transparent, consistent, equitable, and impartial[,] [t]hat taxpayers deserve to have appeals considered by an independent, objective panel with sufficient expertise and a sole focus on tax issues,” and it is their intention “that any appeals forum resolve matters on appeal on a timely basis, for taxpayers and tax administration agencies alike.”

To accomplish lawmakers' goals, the Taxpayer Transparency and Fairness Act establishes the new California Department of Tax and Fee Administration, within the Government Operations Agency. It also creates a new appellate body, the Office of Tax Appeals (OTA), within state government.

Department of Tax and Fee Administration

With respect to the former, it is the governor's duty to appoint the director, subject to Senate confirmation. The director is “solely responsible for selecting persons for career executive assignment positions and other non-civil service managers.” The governor must also appoint a chief deputy director, and chief counsel.

As for the transition itself:

- For all of the BOE's duties to which the department succeeds, the department is vested with, all duties, powers, and responsibilities of the BOE.
- Cases in which the BOE was a party are to continue in the name of the department.
- Employees engaged in functions that transferred from the BOE to the department are to retain their status, positions, and rights.

The Taxpayer Transparency and Fairness Act explicitly prohibits BOE members from engaging in certain activities, such that:

- No BOE board member shall be involved in any budget change proposal for the BOE or the department.
- Nor shall the BOE interfere with, or influence, the process of the board's or the department's legislative analyses, revenue analyses, or any other form of technical assistance requested by the governor or the legislature.
- No board member may represent a person before the BOE before one year after the expiration of their term or after separation from the BOE.
- No staff of a Board member may represent a person before the BOE before one year after separation from employment with that member.

Accordingly, the BOE's remaining authority is limited to the following:

- The review, equalization, or adjustment of a property tax assessment.
- The measurement of county assessment levels and adjustment of secured local assessment rolls.
- The assessment of pipelines, flumes, canals, ditches, and aqueducts lying within two or more counties,

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and property, except franchises, owned or used by regulated railway, telegraph, or telephone companies, car companies operating on railways in the state, and companies transmitting or selling gas or electricity.

- The assessment of taxes on insurers.
- The assessment and collection of excise taxes on the manufacture, importation, and sale of alcoholic beverages in California.
- Adjustment of the rate of the motor vehicle fuel tax for 2018-2019.
- The appointment of an executive director, along with prescription and oversight of his or her duties.

Office of Tax Appeals

The other entity that the Taxpayer Transparency and Fairness Act creates, the OTA, is also to be overseen by a director appointed by the governor, and subject to Senate confirmation. As with the Department of Tax and Fee Administration, the governor is to appoint the chief deputy director and chief counsel also.

For the handling of tax appeals, the OTA's director is tasked with designating the three administrative law judges that are to make up the tax appeals panels. Each administrative law judge, bound by the Code of Judicial Ethics, must be a member of the state bar for at least five years immediately preceding his or her designation to tax appeals panel, and have the requisite knowledge and experience.

The OTA is the successor to, and vested with, all the duties, powers, and responsibilities of the BOE as needed to conduct appeal hearings, and will start hearing appeals as of Jan. 1, 2018, in Sacramento, Fresno, and Los Angeles. Written opinions for tax appeal decisions must be issued, in writing, within 100 days of the final decision.

The [LATimes](#) characterized the reform effort as a "massive shake-up," the most dramatic in the BOE's history. The article noted that the body is under investigation by California's Department of Justice, and its misdeeds include misdirecting \$350 million of sales taxes.



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