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Administrative Appeal and Judicial Review
of Property Tax Assessments in
California—The New Look

By Kenneth A. Ehrman*

I. Introduction

While the clamor in the arena of substantive property tax reform has seized the state's attention, a quiet but momentous advance in procedure has created a new tax equity. This article deals with the unheralded reform that, in the past four years, has given property tax practice in California a new look.

These drastic changes have been important for several reasons. One is that the property tax is still the backbone of California's local revenues. True, it is a whipping boy. Tax reform is a political banner that catches the wind between legislative sessions, but waves rather weakly by the time the lawmakers go home. Despite its critics, the property tax is hard to replace. It raises more money than any other state or local tax. In fiscal year 1968-1969, it provided nearly all local government tax support and about 42 percent of all local and state revenues collected in California.¹

Additionally, the procedural reform has been important from the viewpoint of the health of the body politic and the lawyer's ability to help his client. As to the former, in any society that depends on the consent of the governed, inequity in the tax system—or the feeling of inequity—is a fruitful target for enemies of that society. Lord Herschell, the Nineteenth Century English Lord Chancellor, observed, "Important as it is that people should get justice, . . . it is even more important that they be made to feel and see that they are getting it."²

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Resentment against the property tax may be based on substantive matters, as where a taxpayer who owns a $20,000 home with a $15,000 mortgage realizes that he is paying the same tax as his neighbor whose $20,000 home is free and clear. But deficiencies in his procedural remedies are even more apparent.

The significance of the recent procedural revolution for the lawyer is that now, for the first time in the state's history, a California taxpayer's representative can invoke laws that guarantee him access to and the time to gather the information he needs to prepare a case, prescribe a specified standard for assessment, provide a means to more expertise on the part of reviewing authorities, and expand the scope of judicial review. In short, the lawyer is no longer denied effective tools with which he can work.

The recurring cycle in California's property tax history has been one of constitutional and legislative changes aimed at equality and uniformity, followed by a gradual drift away from these principles and, at fairly regular intervals, sufficient discontent among the taxpayers to spark new constitutional and legislative reforms. California's property tax reform began in 1850 when, just one year after the tax itself came into being in the state's first constitution, the first legislature instituted an equalization procedure. At the same time, the lawmakers violated the state constitutional principle of equality and uniformity by granting exemptions to certain kinds of property, such as jails, schools, churches, and the personal property of widows and orphans up to $1,000. In an attempt to remedy the system's defects, which were primarily attributable to the tendency of locally elected officials to drift away from the equal and uniform principle, the State Board of Equalization was created in 1870. The Board received its present form, with essen-

4. CAL. CONST. art. XI, § 13 (1849).
5. Cal. Stat. 1850, ch. 53, at 135. Equalization in the property tax sense may refer either to the process of treating each taxpayer's property the same as every other taxpayer's property or to the equating of average assessment ratios for large blocks of property, as between classes of property or geographical areas. See generally Report of the Committee on State Equalization of Local Property Tax Assessments, in PROCEEDINGS OF FIFTY-FIRST ANNUAL CONFERENCE—NATIONAL TAX ASSOCIATION 316-25 (1958).
tially its present powers, from the California Constitution of 1879.9

In 1911 the legislature, implementing a constitutional amend-
ment of the year before,10 reserved property tax revenues exclusively
for local governmental needs and shifted the burden of state govern-
ment to other taxes.11 This “separation of sources” was the greatest
substantive property tax reform in the state’s history. Another com-
prehensive change was the 1933 shift of some property tax load through
the creation of a sales tax12 and, soon thereafter, the adoption of a
personal income tax.13

Despite these and other substantive changes over the years, the
legislature never attacked the chaotic state of property tax administra-
tion and procedure. It was not that no one was aware of the defi-
ciencies nor that they went uncriticized. In recent years, a series of
articles by W. Sumner Holbrook, Jr., and Francis H. O’Neill14 and two
articles by Francis J. Carr15 questioned existing procedures and recom-
manded specific reforms.

California was not unique. A national authority stated in 1966
that “the quality of administration of the property tax is universally
worse than the quality of administration we have come to expect in
connection with income and sales taxes.”16 But taxpayers and their
attorneys felt themselves helpless in their attempts to pierce the asses-
sor’s veil of secrecy, arbitrary review procedures, and judicial tolerance
of shifting and unannounced ratios of assessed to fair market value
employed within and among counties. A California assembly commit-
tee put it this way:

For many years, California property owners have paid their ever-
increasing property tax under a set of laws written primarily by the
assessor and for the assessor’s greatest convenience. There was
no central agency with authority for the implementation of the

turn to Democratic Principles, 27 S. Cal. L. Rev. 415, 428-53 (1954); Holbrook &
395 (1952); Holbrook & O’Neill, California Property Tax Trends: 1850-1950 (pt. II),
(1965); Carr, Property Assessments—Protest, Appeal, and Judicial Review, 39 Cal. St.
16. Netzer, Some Alternatives in Property Tax Reform, in The Property Tax:
Problems and Potentials 386 (Tax Institute of America 1967).
property tax law, and each of the 58 assessors interpreted the rules developed by the State Board of Equalization as he thought best. The taxpayer was at the mercy of the administrator and without recourse to the courts except in the case of an obvious violation of one of the confusing sections of the tax code.17

As the state's population exploded and urban pressures increased, feelings of unfairness and discrimination became widespread. Unsavory scandals uncovered in 1965 in the offices of four assessors sparked the explosive reform of California property tax practice and procedure already smouldering under the surface.18 Thirty-four assemblymen joined as coauthors of the assembly bill which, after enactment into law,19 was popularly known as AB 80. That salutary and far-reaching reform passed by the 1966 legislature was the most important procedural transformation of California's property tax since its beginning in 1849. The law was 41 pages long, contained 105 sections, and added to or amended five different codes. It was termed by some "A Bill of Rights for Property Owners."20 Although succeeding legislatures have watered down some of the changes, they have expanded taxpayers' rights in other areas, and the imaginative lawyer's opportunities in this field are wide open.

Taxpayers' utopia did not arrive with AB 80, of course. As long as an assessment depends on such a subjective standard as the market value of an item of property—whether a parcel of real property or an inventory of used machinery—there will be sharp differences of opinion between the taxpayer and the assessing authorities. What is important is that value be determined in the same manner for everyone. As long as the taxpayer is guaranteed the right to know the basis of the assessor's judgment, and is provided with (1) an impartial and competent reviewing panel, (2) meaningful appeal under our judicial system, and (3) the feeling that he is being treated as well as his neighbor, the procedural safeguards cannot be too harshly criticized. He will be able at least to determine whether the constitutional requirement21—the treatment alike of things that are alike—is being met.

21. U.S. CONST. amend. XIV.
II. The New Look in Administrative Remedies

A. At the Assessor’s Level

Generally, an assessor will defend his assessment as vigorously as a mother protecting her children. The taxpayer—and his lawyer—have the burden of piercing that defense if they feel the property has been unfairly assessed. There are two avenues of administrative appeal: direct negotiations with the assessor resulting in a stipulation with him, or an application for reduction and a hearing before the local board of equalization. Both remedies have become more effective due to radical reform in the past 4 years. The principal changes are described below.

(1) Written Stipulation

Formerly, once the assessment roll had been delivered to the auditor, there was no procedure for obtaining formal concurrence from the assessor when seeking a reduction of an assessment. Since 1967, however, the assessor has been allowed to enter into a written stipulation with the taxpayer after reconsidering the value of the taxpayer’s property. The stipulation may then be presented to the local board of equalization. The stipulation must be signed by the county legal officer as well as the assessor and it must set forth the reason for the reduction.

This reform relieves the taxpayer of the burden under prior law of making an appearance and presenting a case even though the assessor had concurred in a reduction. Although the board need not accept the stipulated valuation, it normally does. The written stipulation, therefore, is the aim of negotiations with the assessor.

(2) The Standard, Publicly Announced Ratio

The most important procedural reform of the century could be thought of as a matter of substantive law. In fact, however, it is merely a legislative assertion of what the courts have long held the law to be. This reform was simply a direction to county assessors to pro-
ceed legally—that is, to assess all property uniformly in proportion to its value. Specifically, Revenue and Taxation Code section 401 now requires each county assessor to establish a standard ratio of assessed value to full case value.\textsuperscript{29} This ratio must be announced publicly; by 1971 the ratio in each county must be 25 percent.\textsuperscript{30}

The whole idea of an assessment at less than full cash value (market value) is contrary to a literal reading of the constitutional directive that "[a]ll property subject to taxation shall be assessed for taxation at its full cash value."\textsuperscript{31} As a matter of fact, however, fractional assessment was the practice in California in every county right from the beginning.\textsuperscript{32} The practice was recognized by the California Supreme Court as early as 1890,\textsuperscript{33} but it wasn't until 1967 that the court, in \textit{County of Sacramento v. Hickman},\textsuperscript{34} expressly approved the practice. That decision, based on the long administrative practice and the new standard and uniform fraction provided in Revenue and Taxation Code section 401, has been questioned in strong terms.\textsuperscript{35}

The importance of the standard and publicly announced assessment ratio can hardly be exaggerated. Prior to 1966, many assessors used ratios of their choice—illegally applying different ratios to different classes of property, changing these ratios from year to year, and keeping secret from the taxpayers what ratios were being applied to his property. In one county, the assessor assessed residential property at 10.9 percent and commercial properties at double that rate.\textsuperscript{36} Assessors could hide behind the fluctuating ratio to excuse unequal assessments.

Now, not only must the ratio be uniformly applied and publicly announced by the county assessor,\textsuperscript{37} but in addition the State Board of

\textsuperscript{29} Formerly, this section provided that all taxable property was to be assessed at its full cash value. Cal. Stat. 1939, ch. 154, § 401, at 1285.
\textsuperscript{30} \textit{CAL. REV. & TAX. CODE} § 401.
\textsuperscript{31} \textit{CAL. CONST.} art. XI, § 12.
\textsuperscript{32} EHRMAN & FLAVIN, \textit{supra} note 3, at 28-29.
\textsuperscript{33} San Jose & A.R.R. v. Mayne, 83 Cal. 566, 570, 23 P. 522, 523 (1890).
\textsuperscript{34} 66 Cal. 2d 841, 428 P.2d 593, 59 Cal. Rptr. 609 (1967).
\textsuperscript{36} \textit{Report of the Senate Fact Finding Committee on Revenue and Taxation, Property Taxes and Other Local Revenue Sources} 99 (1965), in 1965 \textit{SUPP. TO THE APPENDIX OF THE JOURNAL OF THE SENATE}.
\textsuperscript{37} \textit{CAL. REV. & TAX. CODE} § 401.
Equalization must independently determine what it considers the average ratio for each county each year and make its figure public on the third Monday in July.\(^3\) This means that the taxpayer now has the burden only of showing what the market value of his property is, since the assessed value must be the announced fraction of true market value. Formerly, it was up to the taxpayer to show that he was assessed at a higher ratio than other property in the county—a practical impossibility. As the Assembly Interim Committee on Revenue and Taxation pointed out, “It is absurd to give the taxpayer the right to appeal and then completely frustrate this right by requiring him to make impossible proofs.”\(^3\)

By 1970 all but eight counties had announced a 25 percent ratio,\(^4\) and the State Board of Equalization’s survey showed the range of actual ratios to be within 6 percent of that figure.\(^5\)

There is one continuing violation of the standard ratio principle—the assessment ratio for utility properties. These properties are assessed by the State Board of Equalization rather than the county assessor.\(^6\) They had been assessed for many years at 50 percent of market value. To avoid a dramatic shift of the tax burden from utilities to owners of locally assessed property, the Board has made a gradual reduction in the utility property assessment ratio. By 1969, it was assessing the operating properties of most utilities at 33 percent.\(^7\)

(3) Access to Information

Before 1967 two major barriers denied the taxpayer an effective remedy in case of an unfair assessment. First, he could not obtain meaningful information from the assessor as to the basis of the assessment and therefore had no handle for an attack.\(^8\) Second, even if he pried loose some data, it was often useless in an appeal to the local board of equalization because of the deficiencies of these bodies.\(^9\)

\(^3\) Id. § 1817.
\(^4\) 1966 Assembly Report, supra note 17, at 53.
\(^5\) The eight counties are: Fresno (22%), Humboldt (24%), Imperial (23%), Marin (23%), Napa (22.5%), Sacramento (23.6%), Siskiyou (23%), and Stanislaus (20%). Cal. State Bd. of Equalization Information Release, April 8, 1970; CCH State Tax Rep.—Calif. ¶ 71-001 (1970).
\(^7\) CAL. CONST. art. XIII, § 14.
\(^9\) See text accompanying notes 46-48 infra.
\(^10\) See text accompanying notes 84-88 infra.
Until 1961, except for a general state policy in favor of disclosure of information in a public official's possession, the taxpayer's only right to inspect the assessor's records came from the negative statement that "any information and records in the assessor's office which are not required by law to be kept or prepared by the assessor are not public documents and shall not be open to public inspection." Under that provision, assessors generally maintained that the only records open to inspection were map books and the assessment roll.

The 1961 amendment to Revenue and Taxation Code section 408 ordered the assessors to permit an assessee to inspect

any information and records, whether or not required to be kept or prepared by the assessor, relating to the appraisal and the assessment of his property, except information and records which also relate to the property or business affairs of a person other than the assessee.

The 1966 reform extended this right to include the possibility of securing a court order to permit inspection of records relating to the property or business affairs of another taxpayer.

The 1969 legislature further broadened the right of inspection by requiring the assessor to provide "market data" to a taxpayer who requests it. "Market data" means any information in the assessor's possession, whether or not required to be prepared or kept by him, relating to the sale of any property comparable to the property of the assessee, if the assessor bases his assessment of the assessee's property on such comparable sale or sales.

The assessor has to give the taxpayer the name of the buyer and seller, location, date of sale, and the consideration paid for the property. The only limitation is that he may not show the taxpayer "any document relating to the business affairs or property of another." It should be

50. Id., amended by Cal. Stat. 1966 (1st Extra. Sess. 1966), ch. 147, § 36, at 660. There are many unsolved problems in securing such a court order. See Ehrman & Flavin, supra note 3, at 239-49 and text accompanying notes 179-88 infra.
52. Id. § 408(d).
53. Id.
noted that few assessors volunteer the information, and the attorney has to be aware he can demand it.

The taxpayer also has the right under 1970 legislation to inspect market data in the hands of the State Board of Equalization when his property has been appraised as part of an intercounty equalization survey. The assessee must, however, inspect the matter at a Board division office within 30 days of notification that the Board has so appraised his property.

This market-data provision is an extremely important weapon in the taxpayer's arsenal. No longer may an assessor, hiding behind a pledge of secrecy, refuse to tell the taxpayer on what comparable sale he relied, then introduce the sales as evidence at the equalization hearing.

(4) Information Regarding the Assessment

Prior to the enactment of AB 80 the taxpayer often had trouble finding out—before receiving his tax bill—the assessed value of his property, the market value the assessor had placed on it, and the method of valuation used. The only requirement for notification of the taxpayer under prior law was in the case of an increase in the assessment of 25 percent or more. If the taxpayer first learned about the assessment when he got his tax bill in November, it was too late to appeal, because the county board of supervisors did not meet to equalize property assessments after the third Monday of the preceding July. In addition, since the tax bill often went to a lending institution rather than to the owner, on occasion the homeowner knew only that his monthly loan payments had been increased and was unaware of the higher assessment.

Under present law, by July 1 the assessor must notify every property owner of the new assessment, the ratio of assessed value to fair market value, the proposed full cash value of the property, and how and when the taxpayer can protest the assessment. A lawyer may properly ask clients to review their new assessments and to contact

55. CAL. REV. & TAX. CODE § 1820.
56. EHRMAN & FLAVIN, supra note 3, at 48.
59. 1966 Assembly Report, supra note 17, at 47.
60. CAL. REV. & TAX. CODE § 619.
him promptly in case of an apparent unjustified increase. He should also be aware of the remedies of a taxpayer who has not received the required notice from the assessor.61

(5) Exchange of Information

Another aid to the property taxpayer's attempt to secure equity is a 1969 law providing for an exchange of information between a protesting taxpayer and the assessor.62 If the taxpayer has filed an application for reduction, he may submit the information on which he bases his own opinion of the value of his property to the assessor at least 20 days before the equalization hearing. The assessor must then, at least 10 days before the hearing, reciprocate with the information on which he based the assessment. After such an exchange, the use of additional evidence at the hearing is strictly limited.63

Since the taxpayer can secure much information from the assessor without disclosing his own data,64 he may be unnecessarily limiting his presentation by initiating an exchange. Nevertheless, it may be a useful alternative procedure and a means of discovering the assessor's case.65

(6) Notification of Values in Property Statements

A statute added in 196966 requires the assessor, at the taxpayer's request, to disclose by July 15 the assessor's determination of the full cash value of each category of personal property reported by the taxpayer under Revenue and Taxation Code section 441. This breakdown is of special utility to businesses with assets subject to depreciation and obsolescence, as well as to those businesses with fluctuating inventories.

(7) State Board Valuation Rules

The State Board of Equalization has been ordered by the legisla-

61. Id. § 620. See also EHRMAN & FLAVIN, supra note 3, at 39-40 (Supp. 1969).
62. CAL. REV. & TAX. CODE § 1608.7. The information which can be obtained by use of this procedure includes detail under every valuation method. Id.
63. Id.
64. Id. § 408.
65. For a more complete discussion of this new discovery substitute, its advantages, disadvantages, and alternatives, see EHRMAN & FLAVIN, supra note 3, at 69, 72-73 (Supp. 1969).
66. CAL. REV. & TAX. CODE § 443.1. To obtain the benefits of this statute, the taxpayer need only file his property statement in a timely manner and in duplicate "with a request that the assessor mark on the duplicate statement opposite each category of property reported on the statement, the full cash value of such category of property as determined by the assessor . . . ." Id.
tute to prescribe rules and regulations for the valuation of property; these rules and regulations are binding on the assessor. Formerly, the guidelines issued by the Board (mostly in the form of the Assessor's Handbook, a complete and competent work) were just that—suggestions. The assessor was still free to use any method of valuation he wished, subject only to a limited court review if his method were clearly arbitrary.

The new Board rules, contained in the Administrative Code, are public information available to the taxpayer and his lawyer. They provide the means by which the taxpayer can detect any departure by the assessor from the required standards.

(8) Legislative Standards of Comparability

The 1969 legislature provided standards of comparability binding on county assessors and the State Board of Equalization when using a comparable-sales method of valuation. Although in a sense this legislation is simply a restatement of generally recognized principles of appraisal, it sets out specific criteria which must be met before the taxpayer's property may be valued by a comparison with the sale of another piece of property. The sale must be sufficiently near in time to the lien date, and the property sold must be sufficiently close geographically and sufficiently alike in character, size, usability, and legal restrictions to the taxpayer's property to make it clear that the cash equivalent price of the other piece of property does, in fact, shed light upon the value of the taxpayer's property.

B. Appeals to Local Boards of Equalization

If negotiation with the assessor has not resulted in a stipulation, the next remedy is to appeal to the local board of equalization. This may be the county board of supervisors, or, in some counties, a specially constituted assessment appeals board consisting of three full-time members.

The right to notice and a hearing on a property tax assessment is

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67. CAL. GOV'T CODE § 15606.
68. CAL. STATE BD. OF EQUALIZATION, ASSESSORS' HANDBOOK (1948-1968).
69. EHRMAN & FLAVIN, supra note 3, at 45-46.
70. See text accompanying notes 124-31 infra.
72. CAL. REV. & TAX. CODE §§ 402.5, 1815.4.
73. Id.
74. CAL. REV. & TAX. CODE § 1603.
a constitutional right; a denial of that right is a denial of due process.\textsuperscript{75} Every taxpayer is entitled to have his assessment “equalized.” In other words, the assessment should be adjusted so that it is neither higher nor lower than other assessments in proportion to the value of the property assessed. Nevertheless, in practically every case the first step in seeking equalization should be negotiation with the assessor. In such discussions, the taxpayer can determine whether he has a case worth pursuing and what the assessor’s case is. This approach is not always possible, however, since sometimes it is too late for the assessor to make a change in the assessment.\textsuperscript{76}

It has been held that a taxpayer need not apply for relief to a local board of equalization before going to court when the property is wholly exempt from tax,\textsuperscript{77} outside the jurisdiction,\textsuperscript{78} nonexistent,\textsuperscript{79} or when the statute is unconstitutional.\textsuperscript{80} As a matter of practice, however, it probably is best to apply to the administrative board for a reduction in every case.\textsuperscript{81} Such a course seems advisable in light of a recent opinion of the California Supreme Court which stated:

If any question of valuation exists, it would be irrelevant that plaintiff also challenges the assessment as “arbitrary” or void on constitutional grounds. [Citations omitted.] If prior recourse to the board on the question of valuation might have avoided the necessity of deciding the constitutional issue, or modified its nature, plaintiff’s action was properly dismissed.\textsuperscript{82}

\textsuperscript{75} Nickey v. Mississippi, 292 U.S. 393, 396 (1934); Bandini Estate Co. v. County of Los Angeles, 28 Cal. App. 2d 224, 227-30, 82 P.2d 185, 187-88 (1938).

\textsuperscript{76} An assessor has no jurisdiction to make changes in the assessment role on his own authority once the roll has been delivered to the auditor, except to correct certain types of errors not involving the assessor’s exercise of judgment as to value. Savings & Loan Soc’y v. City & County of San Francisco, 146 Cal. 673, 676, 80 P. 1086, 1088 (1905); 46 CAL. JUR. 2D Taxation § 192, at 707 (1959). See CAL. REV. & TAX. CODE §§ 4831, 4832, 4840 for kinds of corrections specifically allowed by statute.


\textsuperscript{78} Kern River Co. v. County of Los Angeles, 164 Cal. 751, 755-56, 130 P. 714, 715 (1913).

\textsuperscript{79} Pacific Coast Co. v. Wells, 134 Cal. 471, 66 P. 657 (1901); Associated Oil Co. v. County of Orange, 4 Cal. App. 2d 5, 40 P.2d 887 (1935).

\textsuperscript{80} Star-Kist Foods, Inc. v. Quinn, 54 Cal. 2d 507, 354 P.2d 1, 6 Cal. Rptr. 545 (1960). See generally EHRMAN & FLAVIN, supra note 3, at 471-73.


\textsuperscript{82} Stenocord Corp. v. City & County of San Francisco, 2 Cal. 3d 984, 988, 471 P.2d 966, 969, 88 Cal. Rptr. 166, 169 (1970).
The improvements in taxpayer remedies in local equalization procedures becomes strikingly clear when one reads the 1964 article by Alexander R. Early which authoritatively summarizes the situation before the procedural reform.\textsuperscript{83} The most significant improvements in the procedural aspect of appeals to local boards of equalization are discussed below.

\textbf{(1) Assessment Appeals Board}

Prior to 1962, the equalizing body in all counties was the board of supervisors.\textsuperscript{84} Political pressures, need for county revenues, dearth of experience among the supervisors in tax and valuation matters, and lack of time to hear complex cases generally render these local elective officials inadequate for this purpose. Criticism was widespread.\textsuperscript{85} A 1962 constitutional amendment authorized the legislature to create special appointive three-man appeals boards to hear taxpayers' protests of their assessments in counties with a population of 400,000 or more.\textsuperscript{86} The legislature followed through with Revenue and Taxation Code sections 1620 to 1630; special provisions for Los Angeles County were also added in sections 1750 to 1765. In 1966 the constitutional provision was amended to authorize special assessment appeals boards in all counties.\textsuperscript{87} The operation of such boards, however, is costly, and only 10 of the state's 58 counties had created them by fiscal year 1969-1970.\textsuperscript{88}

In those counties having assessment appeals boards, the additional time available for consideration of appeals, the partial insulation from county fiscal needs and other political pressures, and the increased expertise have provided taxpayers with an effective remedy. There is, however, room for improvement in both the qualification standards for board membership and in the procedures used by some of the boards.

\textsuperscript{83} Early, Local Equalization Practice in California, 4 SANTA CLARA LAW. 147 (1964).

\textsuperscript{84} CAL. CONST. art. XIII, § 9.


\textsuperscript{86} CAL. CONST. art. XIII, § 9.5 (1962).

\textsuperscript{87} CAL. CONST. art. XIII, § 9.5.

The 1969 legislature provided an additional safeguard by giving a taxpayer—and the assessor—the right to disqualify a board member.89

(2) Assessment Hearing Officer

A new level of hearing has been added by the 1970 legislature, although its use is optional with the taxpayer and it is limited to properties with an assessed value of $12,500 or less.90 This is a hearing before an "assessment hearing officer."91 The county board of supervisors may appoint one or more assessment hearing officers,92 and each hearing officer must have the qualifications set out for assessment appeals board members.93 A hearing before an assessment hearing officer may be requested by a taxpayer who has properly filed an application for reduction on property within the jurisdictional amount.94

Neither the taxpayer nor the board is bound by the recommendation of the hearing officer. If the taxpayer agrees with the recommendation, he may request the board to accept it, which it can then do without further testimony.95 If he disagrees, he may make application within 21 days after the officer's decision for a full hearing by the board.96

(3) Extension of Period for Filing and Hearing Protests

A further measure to make local equalization hearings more meaningful was the extension of the period for filing and hearing assessment protests. Before 1967, even though the assessment was not placed on the roll until July 1,97 a taxpayer had to file his application for reduction in assessment before the third Monday in July. The hearing period was limited to 2 weeks in July.98 It is obvious that a taxpayer

89. Cal. Rev. & Tax. Code § 1624.3.
90. Id. § 1637.
92. Cal. Rev. & Tax. Code § 1636. If the county board of supervisors so desires, it may contract with the Office of Administrative Procedure for the services of a hearing officer. Id.
93. Id. § 1624.
94. Id. § 1638.
95. Id. § 1641.
96. Id.
97. Id. § 616.
could not prepare and that a harried board of supervisors could not completely hear cases of any complexity in such a short period.

The 1970 legislature provided that in counties of the second to ninth classes inclusive (Alameda, Orange, Sacramento, San Diego, San Bernardino, San Francisco, San Mateo and Santa Clara)\(^9\) the period for filing protests is from July 2 to September 15. In Los Angeles County it is from the third Monday in July to September 15.\(^{100}\) In all other counties it is from July 2 to August 26.\(^{101}\) This gives the taxpayer or his attorney adequate time to investigate the assessment, negotiate with the assessor, and, if necessary, prepare a proper application for reduction. The local boards of equalization now hear appeals "until the business of equalization is disposed of."\(^{102}\)

Local boards generally conduct no hearings before the final date for filing the application. The State Board of Equalization rules provide that the local boards need not conduct any hearings prior to that deadline.\(^{103}\)

(4) Availability of State Board Ratios

During the equalization period, the standard ratio required by Revenue and Taxation Code section 401 assumes overriding importance to the protesting taxpayer.\(^{104}\) Previously, before the assessor was required to make public the ratio at which he was assessing, the taxpayer had no way to prove that his property was not properly assessed. Although the taxpayer might have proven a certain market value, the assessor could assert that he was using a ratio of assessed to full cash value which, applied to that proven market value, would result in the figure entered on the assessment roll. The only way a taxpayer could challenge the ratio was by doing a county-wide appraisal himself. Such a requirement is obviously ridiculous on its face.

Under AB 80, not only must the assessor announce his standard ratio,\(^{105}\) but the State Board of Equalization must also make its own independent determination of the actual ratio used by the assessor for

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99. "[T]he several counties of the State are classified according to their population . . . ." CAL. GOV'T CODE § 28021. For a breakdown of California counties by population and the population requirement for classes one through nine, see CAL. GOV'T CODE §§ 28020, 28022-30.
100. CAL. REV. & TAX. CODE § 1607.
101. Id.
102. Id. § 1603.
104. See text accompanying notes 29-43 supra.
105. CAL. REV. & TAX. CODE § 401.
each county and announce that finding publicly not later than August 23.\textsuperscript{106} This means that the taxpayer knows the Board's ratio by the time the equalization hearings begin.\textsuperscript{107}

The local board of equalization is now required to establish the assessed value of the protesting taxpayer's property at the lowest of: (1) an amount based on the county assessor's announced ratio; (2) an amount based on 115 percent of the board's announced ratio; (3) an amount based on the actual ratio of all property in the county.\textsuperscript{108} Since the ratios of the State Board of Equalization and the county assessors are now publicly available, the only burden on the taxpayer is to show the true value of his property. An assessment is automatically equalized once the local board of equalization has determined the market value.

(5) \textit{Subpoena Powers and Written Findings}

A further procedural reform in aid of the taxpayer's effort to secure effective relief is the 1966 revision\textsuperscript{109} that enables the local board of equalization to subpoena books, records, maps, and documents, as well as witnesses. The State Board of Equalization rules give the taxpayer the right to require the local board to issue such subpoenas.\textsuperscript{110}

The taxpayer may also have the board make written findings of fact that must set out all material points, including a statement of the method or methods of valuation it used in redetermining the assessment.\textsuperscript{111} If the attorney is diligent in securing proper findings, he will have laid a good foundation for judicial appeal.

(6) \textit{Two-Year Presumption}

The value placed on the roll by the assessor is presumed correct, and the burden is on the taxpayer to prove it wrong.\textsuperscript{112} Thus, the taxpayer must present to the board of equalization independent evidence

\textsuperscript{106} \textit{Id.} §§ 1815, 1817-19.
\textsuperscript{108} \textit{Cal. Rev. & Tax. Code} § 1605.
\textsuperscript{109} \textit{Id.} § 1609.
\textsuperscript{110} \textit{Cal. Ad. Code tit. 18, § 322 (1969).}
\textsuperscript{111} \textit{Cal. Rev. & Tax. Code} § 1605.5.
of the value of his property, instead of merely knocking down the assessor's case.\textsuperscript{113}

The legislature has relieved the taxpayer of this burden of proof in some cases. One is the case of a penalty assessment, where the burden is on the assessor.\textsuperscript{114} The more important exception to the general rule is a 1968 statute intended to relieve the taxpayer of the burden of fighting a stubborn or vengeful assessor who refuses to accept the judgment of the local board. When the board changes the assessed value of a parcel of real property in either of 2 preceding years from the value as reflected on the assessment roll, or as recommended, proposed, or stipulated by the assessor, the value for the current year is rebuttably presumed to be that which was determined by the board.\textsuperscript{115} If within 2 years the board again makes a change in the assessed value of the property, the new value set by the board benefits from the presumption for another 2 years.

The presumption does not apply if the board merely accepts, but does not change, a stipulated valuation agreed upon by the taxpayer and the assessor under Revenue and Taxation Code section 1608. Nor does it apply if the zoning or use by use permit has been changed, the assessed value was changed due to an inter-county equalization order of the State Board of Equalization, or there has been a physical change for which a permit was required. The presumption does not apply to property under initial construction, trade fixtures, or property given relief from assessment because of damage due to a major disaster.\textsuperscript{116} The State Board of Equalization has issued detailed regulations regarding notices and other procedural matters in connection with this presumption.\textsuperscript{117}

(7) Recognition of Enforceable Restrictions

An enforceable restriction on the use of land obviously affects the

\textsuperscript{113} \textit{CAL. REV. & TAX. CODE} § 1605. The requirement that the taxpayer produce independent evidence to overcome the presumption is one on which many a taxpayer has stubbed his toe. Recent examples of a taxpayer's defeat, despite an admittedly unconvincing assessor's case, are found in Jones Lumber Corp. v. Brickwedel, 274 A.C.A. 723, 79 Cal. Rptr. 62 (1969), and Los Angeles Dodgers, Inc. v. County of Los Angeles, 260 Cal. App. 2d 679, 67 Cal. Rptr. 341 (1968).

\textsuperscript{114} \textit{CAL. AD. CODE} tit. 18, § 321(a) (1969).

\textsuperscript{115} \textit{CAL. REV. & TAX. CODE} § 1616.

\textsuperscript{116} \textit{Id.} CAL. CONST. art. XIII, § 2.8, provides that property damaged by a major misfortune or calamity may be reassessed after the lien date of a given tax year if the government subsequently declares the area in which the property was located to be in a state of disaster.

\textsuperscript{117} \textit{CAL. AD. CODE} tit. 18, § 305.5 (1969).
value of the land. Formerly, the assessor often ignored the depressing effect of restrictions by assuming that because the restriction might be modified or lifted in the near future, it did not really affect the market value of the property as compared with otherwise similar property.\textsuperscript{118} The 1966 legislature imposed on the assessor the burden of proving that an enforceable restriction on use might be removed or substantially modified in the predictable future if he wished to ignore the restriction in assessing the property. Otherwise, he must value it only on the basis of the permitted uses.\textsuperscript{119}

The presumption that the restrictions will not be removed or substantially modified in the predictable future is rebuttable by the assessor. If he cannot overcome the presumption with a preponderance of the evidence, he may not base the assessment on sales of otherwise comparable land not subject to similar restrictions.\textsuperscript{120} Alternatively, the assessor may try to show that the restrictions have a minimal effect on the value of the parcel being assessed.\textsuperscript{121}

To help the taxpayer take advantage of the presumption, the legislature also provided that he may introduce as evidence at a local board of equalization hearing a written statement from the local governing body declaring that it does not intend to modify or remove the restriction in the predictable future.\textsuperscript{122} That statement then constitutes a rebuttable presumption in favor of the taxpayer.\textsuperscript{123}

\textsuperscript{118} EHRMAN & FLAVIN, \textit{supra} note 3, at 262.

\textsuperscript{119} CAL. REV. & TAX. CODE § 402.1. Enforceable restrictions include, but are not necessarily limited to, zoning and "any recorded contractual provisions limiting the use of lands entered into with a governmental agency pursuant to state laws or applicable local ordinances." \textit{Id.} This would include contracts under the Williamson Act (CAL. GOV'T CODE §§ 51200-95) and the Open-Space Easement Law (\textit{Id.} §§ 51050-65). Whether or not restrictions in private agreements are included is an open question. See text accompanying notes 189-92 \textit{infra}.

\textsuperscript{120} CAL. REV. & TAX. CODE § 402.1.

\textsuperscript{121} \textit{Id.}

\textsuperscript{122} \textit{Id.} § 1630.

\textsuperscript{123} \textit{Id.} § 1630(d). The 1970 legislature created two new rebuttable presumptions binding the assessor in his appraisal of Williamson Act land. One is that the present agricultural use of the restricted land is its highest and best \textit{agricultural} use, CAL. REV. & TAX. CODE § 431. The purpose is to prevent assessors from claiming a farmer should be raising a more profitable crop. The other provides that "prudent management" does not include recreational use of farm land, CAL. REV. & TAX. CODE § 423. This section is designed to keep assessors from assessing potential hunting rights on a farm if the farmer does not in fact lease such rights.
III. New Look in Judicial Review of Assessments

A. The Former Situation

Although judicial review of the actions of an assessor is not a due process requirement,124 some court proceeding under certain circumstances is provided in every state.125 Until 1969 California had been among those states which limited judicial review of the findings of a local board of equalization to cases of fraud, arbitrary action, or an abuse of discretion.126 California, indeed, was one of the few states where the taxpayer's appeal of the value placed on the roll by the assessor ended for all practical purposes with the local board of equalization. More than half the states allow the taxpayer to appeal his assessment to a state agency and many others provide judicial review on factual questions.127

The narrow scope of judicial review in California was widely criticized.128 As one writer pointed out:

While a limited scope of review of the judgments of quasi-judicial bodies is not at all unusual, it does not seem appropriate in this case in view of the fundamental differences between the local boards of equalization and typical administrative tribunals. Whether property has been unequally assessed is not a policy-laden issue. It is, rather, a highly technical question which the members of the board quite generally lack the expertise to consider properly.129

It was generally conceded that a decision of the local board of equalization was like a trial court decision130 which, in the absence of fraud or abuse of discretion, is conclusive.131

125. See Hellerstein, The Appeal Machinery in Property Taxation, in PROCEEDINGS OF FIFTY-FIRST ANNUAL CONFERENCE—NATIONAL TAX ASSOCIATION 429 (1958), for an overview of appellate procedures in property taxation throughout the country. For a more recent survey see ASSESSORS INFORMATION DIGEST, May 1967, at 1-12.
127. See note 125 supra.
B. The Present Situation

Until 1968 California could be classified with the more restrictive states. The 1968 legislature made the first inroads on the position of the local board of equalization as the court of last resort. It added to the section governing equalization hearings the following language: "At the hearing the final determinations by the board shall be supported by the weight of the evidence." Although this amendment did not go so far as to call for a trial de novo in superior court, it does seem to have substituted the so-called "independent judgment" or "weight of the evidence" test for the "substantial evidence" test in property tax court appeals.

The "substantial evidence" test has been described as calling for the court to examine the record below to see whether there was any evidence from which a reasonable man acting reasonably might have reached the same decision as the local board. The "weight of the evidence" test, on the other hand, requires the court to review the record and substitute its independent judgment for that of the local board—in other words, to reweigh the evidence produced at the hearing. The above definitions of these terms are usually applied in the setting of pure administrative proceedings, whereas local boards of equalization are acting in a judicial capacity. However, the 1968 legislative addition to Revenue and Taxation Code section 1605.5, quoted above, would be rendered meaningless by any other interpretation. The section as amended uses the mandatory "shall be supported," and its meaning seems clear.

Ironically, perhaps, support for the view that California's administrative mandamus rules apply to local equalization proceedings is found in a case in which the assessor appealed a local board's decision granting a reduction. The court, although recognizing the constitu-

132. See note 125 supra.
tional and quasi-judicial nature of assessment appeals boards, said:

Whatever may be the rule in jurisdictions where no express statutory provision has been made for reviewing the orders of administrative agencies, or other bodies exercising quasi-judicial powers, it is clear that such review is provided in California by Code of Civil Procedure section 1094.5.\(^{140}\)

The court did not reach the issue of whether a board of supervisors, when acting as a board of equalization, should be considered the same as an assessment appeals board for this purpose.\(^{141}\) It did, however, recognize that members of boards of supervisors, when sitting as a board of equalization, compose a distinct constitutional body even though the persons are the same.\(^{142}\)

The new statutory requirement means, in effect, that the court must stand in the shoes of the local board and decide on its own whether the determination below was in fact proper and in accordance with the weight the reviewing court gives to evidence produced at the equalization hearing. Thus, although the reform as it regards judicial review has not gone as far as some would like,\(^{143}\) California has now joined the national trend toward liberalization of the right to judicial review of assessments.

IV. Possibilities for Further Reform

This article limits its discussion of other possible improvements in California's property tax system to procedural matters. There are, indeed, many areas of substantive law in which the people, the legislature, and the courts can contribute to the fight for equity in property taxation. For example, widespread abuse and deception in the field of exemptions (most of which are disguised subsidies) cry out for reform. In the field of procedure, despite the fact that the law has come a long way in the last 4 years, numerous recommendations made by commentators in the past deserve consideration.

A. State Tax Court

One recurring thought calls for the establishment of a state tax court which, in the view of some, would hear not only property tax

\(^{140}\) Id. at 833, 73 Cal. Rptr. at 470.
\(^{141}\) Id. at 834, 73 Cal. Rptr. at 471-72.
\(^{142}\) Id. at 834, 73 Cal. Rptr. at 471.
\(^{143}\) It is the author's understanding that the State Board of Equalization, in its proposed property tax reform package for 1970, had initially included the idea of a de novo judicial review of property tax assessment appeals, but eliminated the recommendation from its final proposal because of pressure from assessors.
appeals but also appeals from the imposition of other taxes.\textsuperscript{144} In 1945, a proposal for a state court of tax appeals was put on the ballot as a constitutional amendment.\textsuperscript{146} The voters defeated it. In 1955, an assembly committee suggested that an administrative board of tax appeals be established,\textsuperscript{146} and the Governor's Committee on Organization of State Government suggested in 1959 that the State Board of Equalization should function as a board of tax appeals.\textsuperscript{147}

In 1964 another commentator, hailing a "trend toward the establishment of independent appellate bodies with exclusive jurisdiction of tax controversies,"\textsuperscript{148} suggested that the "litigation of property tax disputes . . . be transferred to a state tax court with jurisdiction to adjust discrepancies and a small claims division to expedite matters."\textsuperscript{149} Richard Nevins, a State Board of Equalization member testifying before the Assembly Committee on Revenue and Taxation in 1963, proposed a system of tax courts to handle assessment reviews.\textsuperscript{150} These courts, rather than the superior court, would take appeals directly from the local board of equalization.

Although a state tax court system might have its merits, and has been operating successfully in states such as Wisconsin,\textsuperscript{151} Massachusetts,\textsuperscript{152} and New Jersey,\textsuperscript{153} it is the author's opinion that a more liberalized judicial review in the existing court system, combined with more expertise at the local level, should provide adequate relief. The assignment of property tax cases to judges with special experience would be preferable to creation of a new layer of judiciary.

\textsuperscript{144} See, e.g., Holbrook & O'Neill, \textit{The California Property Tax: Proposed Means of Return to Democratic Principles}, 27 S. Cal. L. Rev. 415, 450-53 (1954), in which the authors recommended that a special appellate body with statewide jurisdiction be established.

\textsuperscript{145} Assembly Constitutional Amendment 39, Cal. Stat. 1945, ch. 150, at 3165.


\textsuperscript{149} Id. at 497.

\textsuperscript{150} \textit{Report of the Assembly Interim Committee on Revenue and Taxation, Problems of Property Tax Administration in California} 143 (1964), in \textit{Appendix to Journal of the Assembly}, vol. 1 (1965).

\textsuperscript{151} Wis. Stat. Ann. § 73.01 (1957).


B. Judicial Trial De Novo

Another frequent recommendation is that the superior court provide for a trial de novo on a taxpayer's appeal from a local board of equalization. This is available in a number of states. One commentator recommended that a judicial trial de novo be available on the issue of uniformity of assessments in counties lacking separate assessment appeals boards. This suggestion was echoed by a legislative committee which also made an alternative proposal. It suggested allowing appeals to the State Board of Equalization on questions of fact in counties without an assessment appeals board. The committee pointed out that an appeal to the judiciary on factual questions is possible in at least 25 states and that "the long-suffering California property-tax payer is denied the legal rights now afforded the income- and sales-tax payers."

Based on experience with local boards of supervisors in smaller counties, the author would endorse a wider scope of judicial review in the absence of more expert and impartial administrative hearings on value questions.

C. Narrower Margin of Assessor's Error

Since 1967 the taxpayer has had a right to have his assessment reduced to 115 percent of the ratio determined by the State Board of Equalization for the county. In other words, the assessor is allowed a 15 percent margin of error. Thus, some taxpayers might be assessed 15 percent higher than the county average as determined by the State Board without being entitled to relief from the local board.

The Assembly Committee on Revenue and Taxation wanted a tolerance limit of 10 percent, but the county assessors successfully resisted that proposal. Although the present tolerance limit is an assessment utopia compared with the uncontrolled situation in existence prior to 1966, it still appears unduly high. A 10 percent tolerance would be fairer to the taxpayers and should not unduly burden the assessor.

154. See note 125 supra.
156. 1966 Assembly Report, supra note 17, at 57.
157. Id.
159. 1966 Assembly Report, supra note 17, at 20.
D. More Frequent State Board Surveys

The present law provides that the State Board of Equalization sample assessments in each county every 3 years.\textsuperscript{160} Between triennial physical sample samplings, the Board projects its full-value estimates by trending. This involves the adjustment of its prior year’s finding on the basis of changes in school enrollment, retail sales, wages, and other factors.\textsuperscript{161}

Because the taxpayer has the right to have his assessment reduced to 115 percent of the Board’s determination of the ratio for his county, an unduly high trending may deprive him of a reduction to which he is entitled. The State Board of Equalization felt that trending every 2 years rather than every 3 years would produce more accurate results,\textsuperscript{162} but the proposal was defeated during the 1966 legislative discussions.

The ostensible reason for making the spot check every 3 years instead of every 2 years was the additional cost to the state, but there is some evidence that much, if not all, of the cost would be recaptured through reassessment of underassessed property.\textsuperscript{163} The 2-year cycle should be instituted now, and when modern techniques and attendant technical advantages permit, the survey should be done every year.

E. Qualifications for Assessment Appeals Board

The purpose of creating special assessment appeals boards to sit in place of boards of supervisors as local equalizing bodies was to provide expertise and insulation from the pressures of time and politics.\textsuperscript{164} The three-man board is appointed by the board of supervisors, and the original legislation had only one qualification for appointment as a member—that the nominating supervisor believed him to be “by experience and training” qualified for the job.\textsuperscript{165} The 1966 legislature added that an assessment appeals board member must have a minimum of 5 years’ professional experience in California as an accountant, a licensed real estate broker, an attorney, or an accredited

\textsuperscript{160} Cal. Rev. & Tax. Code § 1815.
\textsuperscript{161} Id. § 1817.
\textsuperscript{162} Memorandum of H.F. Freeman, Executive Secretary, California State Board of Equalization, to Hon. John T. Knox, Mar. 29, 1966, in 1966 Assembly Report, supra note 17, at 29.
\textsuperscript{163} Id.
\textsuperscript{164} 1966 Assembly Report, supra note 17, at 35, 54.
appraiser, or be "a person who the nominating member of the board of supervisors has reason to believe is possessed of competent knowledge of property appraisal and taxation." The last phrase, in effect, opened the door to political appointments without the necessary consideration of expertise.

To carry out the original intent of the law, the door pried open in 1966 should be shut by requiring special qualification in fact instead of in theory. The author is under no illusion that this would guarantee a greater number of competent board members, but it would increase the odds.

F. Provision for Receipt of Confidential Information

In some cases the taxpayer, particularly one in a competitive business, has faced a dilemma—should he open up confidential records to public scrutiny, or should he forego the possibility of relief from an unfair assessment? Extreme prejudice may result from public disclosure of information concerning the value of his property. Even though the law attempts to protect this kind of information while it is in the hands of the assessor, there are no similar guarantees of confidentiality under present appellate procedures; thus, the taxpayer may be unwilling to appeal.

A procedure should be devised by which the taxpayer can make a showing that he would be seriously damaged by the public disclosure of information necessary to appeal his case. If the showing is convincing to the board, such testimony could be taken in closed session and that part of the record sealed. There is nothing to prevent a local board of equalization from adopting such a procedure since each may adopt its own rules of conduct as long as they do not conflict with State Board of Equalization rules.

Such a procedure was invoked by the author in an assessment appeal before the board of supervisors in San Benito County in 1969.  

166. CAL. REV. & TAX. CODE § 1624.
167. See the confusing and apparently conflicting provisions regarding confidentiality in CAL. REV. & TAX. CODE §§ 408, 451, 1605.1 & 1609.
168. One method for revealing a trade secret in camera and for sealing the record has been suggested in American Dirigold Corp. v. Dirigold Metals Corp., 104 F.2d 863, 865 (6th Cir. 1939).
169. See CAL. AD. CODE tit. 18, §§ 302-26 (1969) for the California State Board of Equalization rules applicable to local boards.
170. In re Granite Rock Co., Hearing on Application for Reduction in Assessment, before the San Benito County Board of Supervisors sitting as a local board of equalization (November, 1969).
First, a foundation was laid by testimony from the applicant's president as to the need for secrecy of certain information. The board of supervisors then determined that it had the right to close the hearing for the receipt of such information. Its determination was based in large part on a 1968 letter from the California Attorney General to the County Counsel of Butte County,171 stating that a county board of supervisors sitting as a board of equalization is not bound by the closed meeting laws.172 The Attorney General pointed out that such boards are sitting in a quasi-judicial and not in a legislative capacity, and, although they are made up of the same individuals, they are wearing different hats.173

In the absence of clear legislative authority, a local board of equalization might be persuaded to adopt a procedure insuring the confidentiality of the taxpayer's proferred evidence by reference to the California laws protecting trade secrets.174 California adheres to the Restatement of Torts definition of a trade secret,175 which includes within the definition any "compilation of information . . . used in one's business . . . which gives him an opportunity to obtain an advantage over competitors who do not know or use it."176 The Evidence Code recognizes a privilege to protect trade secrets177 in both judicial and nonjudicial proceedings.178 Therefore, it seems that property valuation information could, in many instances, qualify for treatment as a trade secret in hearings held by the board of equalization.

The delicate balance between the public policy of full disclosure through open hearings and the right of a taxpayer to a meaningful day in court is one that may be hard to define. The taxpayer has, however, a basic right to protect himself against an unfair assessment and the laws should protect that right. Possibly this can be done only by vesting a certain amount of discretion in the local board of equalization.

171. Letter from Attorney General of California to County Counsel of Butte County, Mar. 6, 1968.
172. CAL. GOV'T CODE §§ 54950-60.
173. Letter from Attorney General of California to County Counsel of Butte County, Mar. 6, 1968. This distinction was also made in Napa Sav. Bank v. County of Napa, 17 Cal. App. 545, 548, 120 P. 449, 450 (1911).
174. E.g., CAL. EVID. CODE § 1060, allowing an owner of a trade secret to refuse to disclose it, and to prevent others from disclosing it in all proceedings; CAL. CODE CIV. PROC. § 2019(b)(1), allowing the court to make protective orders prohibiting inquiry into secret processes, developments, or research.
175. RESTATEMENT OF TORTS § 757, comment b at 5 (1939).
177. CAL. EVID. CODE § 1060.
178. CAL. EVID. CODE §§ 901, 910 & Comment—Law Revision Comm'n.
G. Access to Information and Prehearing Discovery

Despite the taxpayer’s new and vastly improved opportunities to secure the information relevant to an assessment protest,\textsuperscript{179} he is still handicapped by the provision that prohibits him from inspecting information in the assessor’s office relating to the assessment of his property if that information also relates to the property or business affairs of another person.\textsuperscript{180} Assessors generally strictly construe this prohibition in order to deny the taxpayer information. An exception to the prohibition, added in 1966, is so lacking in definition that it has proven almost useless. This provision permits the assesse to inspect information and records relating to the appraisal of his property even though they also relate to the property or business affairs of another. The assessor, however, is required to allow such an inspection only if “ordered to do so by a competent court in a proceeding initiated by [a] taxpayer seeking to challenge the legality of his assessment.”\textsuperscript{181}

Assuming that such information is needed to prove the taxpayer’s case, how does he secure the authorized court order? Apparently there is no clear answer. To obtain the court order, the above provision seems to require the taxpayer to “challenge the legality of his assessment” in the court from which he seeks the order. Herein lies the dilemma. On the one hand, challenging the assessment by judicial action prior to the equalization board hearing will generally be held premature because administrative remedies will not have been exhausted.\textsuperscript{182} On the other hand, challenging the assessment by judicial action subsequent to the equalization hearing would be futile because the court will only consider the record of the equalization board hearing.\textsuperscript{183}

It has been suggested that the taxpayer might avoid the dilemma by initiating a court action early in the period for filing applications for reduction in assessment, and framing the complaint to pose a jurisdictional question;\textsuperscript{184} in such a case, administrative remedies need not be exhausted. The court order for disclosure might then be secured in that action, and the information obtained in time to be used at an equalization board hearing. It is doubtful, however, that this ex-

\textsuperscript{179} See text accompanying notes 44-66 supra.
\textsuperscript{180} CAL. REV. & TAX. CODE §§ 408(b), (d).
\textsuperscript{181} Id. § 408(b).
\textsuperscript{184} EHRMAN & FLAVIN, supra note 3, at 128-30.
pensive and disingenuous maneuver is what the legislature had in mind in providing for disclosure by court order.

A related and unresolved question is whether the taxpayer has the right to use discovery methods to help prepare his case for an equalization board hearing. Of some help is the 1969 legislative provision for securing the assessor's comparable-sales data used to assess the taxpayer's property. In many cases, however, there are other types of information (such as income and replacement costs data) which are more pertinent to a particular case. Despite the usefulness of such information, it became more difficult to obtain when the 1967 legislature specifically enjoined local boards from issuing subpoenas to take depositions, or from considering depositions for any purpose. It is unclear whether this prevents the use of other discovery devices, such as interrogatories.

Can the taxpayer bring an action to perpetuate testimony under Code of Civil Procedure section 2017 and thus obtain depositions from or otherwise secure information from the assessor? In Hunt-Wesson Foods, Inc. v. County of Stanislaus, the court said the taxpayer could not. It reasoned that the only possible utility of the perpetuation proceeding prior to an equalization hearing would be discovery, since depositions would not be admissible either in the equalization hearing or in court; the purpose of Code of Civil Procedure section 2017, the opinion continues, is not to facilitate discovery but is to preserve evidence for introduction in a future court case.

The confused situation of the remotely accessible court order to secure information relating to affairs of another person, and the apparent obstacles to normal discovery in preparation for an equalization hearing may leave the taxpayer bereft of the evidence he needs to prepare a proper case. If the court-order provision is to have meaning, the legislature should clarify and further define the circumstances under which it is proper and how it is to be secured. The legislature should also provide for a taxpayer's action against the assessor for refusal to disclose evidence vital to establishment of the value of the taxpayer's property. The court, in such an action, should be allowed to determine, under a protective order if necessary, the im-

188. Prior attempts to get the California Supreme Court to allow discovery before equalization hearings, also based on the propriety of a petition to perpetuate testimony, were refused by the court without comment. Id. at 112-13, 77 Cal. Rptr. at 835-36.
importance of the information to the protesting taxpayer's case.

H. Clarification of Revenue and Taxation Code Section 402.1

As discussed above, the legislature has provided that land subject to enforceable restrictions on its use shall be valued in accordance with the permitted uses, and it is rebuttably presumed that the restriction will stay in effect for the predictable future. The assessor and the local board of equalization must consider the restrictions in valuing the property. Revenue and Taxation Code section 402.1 states:

Restrictions shall include but are not necessarily limited to zoning restrictions limiting the use of land and any recorded contractual provisions limiting the use of lands entered into with a governmental agency pursuant to state laws or applicable local ordinances.

This sentence has been construed differently by various county counsel and taxpayers' representatives. No appellate court has dealt with the question. Does it apply, for example, to agreements among private persons such as lease restrictions or deed restrictions?

Some assessors ignore restrictions that are not imposed by a governmental entity, or to which a governmental entity is not a party with the right of enforcement, on the theory that the private parties may rescind the restrictions at any time. The same argument could of course be made as to contracts under the Williamson Act or the Open-Space Easement Law. Thus, it seems the root question should be, "Is the market value of the property, in fact, affected?"

Certainly a deed restriction that gives a member of the public the right to bring an action in case of a violation affects the value of the property. Similarly, those restrictions in which a large number of other property owners have an interest worth protecting would affect the value of the restricted property. The author believes that the legislature should clarify the matter by specifically including private restrictions on use within Revenue and Taxation Code section 402.1. Such a clarification could assure both the protection and the fairness which was intended by enactment of the section.

Conclusion

This article's review, though brief, should be a clear indication of the wide scope of remedies now available to the taxpayer who feels

189. See text accompanying notes 118-23 supra.
192. Id. §§ 51050-65.
his assessment is unfair. It remains for California lawyers to become aware of the broad avenues of protest and to lead their clients down them. Professor Donald G. Hagman has pointed out that "although the California property tax produces revenues second only to those produced in California by the federal income tax, there are only a handful of lawyers in California who could hold themselves out as property tax specialists."193 If California lawyers take note, and the further reforms recommended above are instituted, California could indeed be the first state in tax equity as well as in population.