



STATE OF CALIFORNIA

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No. 2020/063

December 16, 2020

TO CLERKS OF THE BOARD, COUNTY ASSESSORS
AND INTERESTED PARTIES:

**ASSESSMENT APPEALS BOARDS
REMOTE HEARINGS DURING THE COVID-19 PANDEMIC**

Note: This letter supersedes LTA No. 2020/057, dated November 18, 2020.

Following COVID-19 "shelter-in-place" orders, the State Board of Equalization (Board) led the formation of the *BOE COVID-19 County Boards of Equalization/Assessment Appeals Boards Collaborative Workgroup*. The Collaborative Workgroup is comprised of experts representing taxpayers, County Assessors, clerks of assessment appeals boards, and county counsels. The purpose of the Collaborative Workgroup is to examine and report on the most pressing local assessment issues arising from the COVID-19 pandemic and to find best practices and other guidance that meets the consensus of the workgroup.

One such issue was the need for further guidance pertaining to both the conduct of and the increased use of remote hearings by local assessment appeals boards or local boards of equalization (appeals boards). The guidance in this letter follows meetings of the Collaborative Workgroup on August 18 and 19, 2020, September 23, 2020, and discussions at the Board Meetings on October 21 and November 18, 2020, and is to be read consistently with existing statutes, Property Tax Rules, and the Board's *Assessment Appeals Manual*. This Letter To Assessors (LTA) provides general principles guiding appeals boards when holding remote hearings. The Board will consider issuing additional guidance that applies to remote hearings as other unresolved or new issues are addressed in the future.

In providing this guidance, as well as future guidance, the Board considers its duty to balance statewide uniformity against the need for county flexibility to hold hearings according to different local needs; the recognition that existing rules governing hearing procedures continue to apply to hearings conducted remotely; and the recognition that the conduct of remote hearings should, to the extent possible, mirror the conduct of in-person hearings.

Authority to Conduct Remote Hearings

Section 18 of article XIII of the California Constitution and Government Code section 15606, subdivision (c), authorize the Board to provide guidance to appeals boards when holding hearings to equalize the value of property on the local roll, as required under section 16 of article XIII of the California Constitution.

Current statutes and regulations set forth rules and procedures an appeals board must follow when holding hearings. No statute may be construed as prohibiting an appeals board from holding

hearings remotely. (See Revenue and Taxation Code, §§1616 and 1752.4.) Therefore, appeals boards have the administrative authority and option to provide either in-person hearings or remote hearings, or both. Both in-person and remote hearings must adhere to all state and local public health and safety standards.

Rights of Hearing Participants

In the conduct of remote hearings, it is of paramount importance that, as required by Property Tax Rule (Rule) 302, subdivision (a)(1), the appeals board "ensures that all applicants are afforded due process and given the opportunity for a timely and meaningful hearing." As an initial matter, this includes a taxpayer's right to meet either remotely or in-person. Participants may reject a remote hearing and receive a postponement until an in-person hearing is available, or may reject an in-person hearing and receive a postponement until a remote hearing is scheduled. Therefore, if an appeals board does not schedule a remote or in-person hearing as desired, the participant may avail themselves of postponement of the hearing in accordance with Rule 323. In this regard, public health impacts resulting from the pandemic constitute reasonable cause for a postponement under Rule 323.

If a remote hearing is scheduled, appeals boards must provide notices to all parties informing them of remote hearing access instructions, coaching and/or training videos, staff availability, and accommodations for special needs.

Technology

Appeals boards may select the best platform based on their needs, priorities, security, and ease for the user. With the use of any remote hearing platform, however, technological issues may occur. Appeals boards should have a plan to deal with interruptions caused by technological issues. Appeals board clerks should monitor and inform participants of any interruptions; the appeals board chair should call a recess until the problem is resolved. If it cannot be resolved, the parties may stipulate to continuing or recessing the hearing, and the appeals board may decide whether to accept the stipulation or recess or continue the hearing in accordance with Rule 323. Furthermore, training for appeals board staff, appeals board members, and all participants is essential and should occur on a regular basis and be instituted as a core part of a county's remote hearing program.

Document Submission

Counties may require the electronic submission of evidence up to three business days before the commencement of a remote hearing but are encouraged to require only two business days. Counties may require evidence submitted by hard copy to be submitted up to seven days before the commencement of a remote hearing but are encouraged to allow exceptions as appropriate.

In compliance with Rule 313 and as required for in-person hearings, evidence submitted by a party prior to the commencement of a remote hearing must not be made accessible to the other party until the hearing commences and the subject evidence has been introduced.

In further compliance with Rule 313, counties shall allow day-of-the-hearing electronic submissions in remote hearings for all rebuttal evidence and documents for witness impeachment, and for correcting errors as appropriate.

PDF documents are preferred in order to protect document integrity, but other forms may be accepted by the appeals board clerks as appropriate.

All parties must be able to present evidence (written and oral) as well as direct and cross examination of witnesses and documents in real time at remote hearings per Rules 302(a)(1) and 313(e), and Revenue and Taxation Code (RTC) sections 1609 and 1610.2. Unless freely agreed otherwise by the parties, all board members and the parties must also be able to view all documents that have been introduced into evidence and hear all parties in real time in order for the board to render its decision only on the basis of proper evidence presented at the hearing in compliance with Rule 302. Once introduced, the board members and the parties must have the ability to view and download the full exhibit at their discretion independent from the controlled screen display shown during the remote hearing. Additionally, the public must be able to hear the remote hearing as required by RTC section 1605.4.

Technological platforms for remote hearings should have the ability for evidence to be viewed in real-time and the ability to prevent trade secrets from being viewed by the public. In the event of a connectivity problem, the absence of an available IT resource, or other challenge, the appeals board has legal authority to grant a continuance as it deems appropriate.

Technological Efficiencies

Counties already conducting remote hearings are encouraged to continue to protect their investment, perfect their system, troubleshoot issues, and train staff. Counties not yet conducting remote hearings have flexibility to continue to conduct in-person hearings, subject to their respective health and safety protocols, and may develop future long-term contingency plans for efficiently utilizing technology to conduct remote hearings as appropriate. The greatest efficiencies of long-term utilization may be realized for procedural matters (postponement requests, reading in stipulations/recommendations, pre-hearing conferences, etc.) and for low-value property hearings with few documents. Contingency plans suggested for enhancing efficiencies in counties utilizing remote hearings may include, but are not limited to:

- Establish recessing procedures to troubleshoot issues.
- Provide IT assistance prior to and during the hearings.
- Provide contact information (phone numbers) to contact parties and appeals board members in the event of technical difficulties.
- Establish continuance procedures in the event that a technological problem cannot be resolved.

Additionally, appeals boards should not deny a timely request for reinstatement if the assessment appeal application was denied due to a party's technical difficulties.

Continuing Role of the Board

The Board is charged with prescribing rules and regulations to govern local boards of equalization (i.e., appeals boards) when equalizing. (See Government Code, §15606, subdivision (c).) The Board has determined that no immediate new Property Tax Rule or rule amendments are necessary in order to facilitate remote hearings. In addition to promulgating rules and regulations, the Board has an important clearinghouse role in facilitating communication and training regarding remote

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hearing procedures, practices, questions, and protections among the counties and providing transparency for all participants. Therefore, the Board will provide additional guidance to counties through LTAs and additions to the *Assessment Appeals Manual* with regard to remote hearing issues and training as they are addressed, and will regularly inform counties of remaining items to be addressed, as well as any new legislation or rule-making efforts that may occur in the future.

If you have questions or comments regarding the guidance for remote hearings, please contact the County-Assessed Properties Division at 1-916-274-3350.

Sincerely,

/s/ David Yeung

David Yeung
Deputy Director
Property Tax Department

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