



August 8, 2018

Mr. Dean R. Kinnee  
Executive Director  
State Board of Equalization  
450 N Street, MIC: 73  
P.O. Box 942879  
Sacramento, CA 94279-0073

Re: Petition to Amend SBE Property Tax Rules 302, 305, 305.1, 305.2 and 323

Dear Mr. Kinnee:

Pursuant to California Government Code section 11340.6 and the State Board of Equalization’s authority under Government Code section 15606, paragraphs (c) and (e), the California Alliance of Taxpayer Advocates (“CATA”) petitions the State Board of Equalization (“SBE”) to amend California Code of Regulations (“CCR”), title 18, sections 302, 305, 305.1, 305.2 and 323, also known as SBE Property Tax Rules 302, 305, 305.1, 305.2 and 323 (hereinafter referred to as the “Rules”).<sup>1</sup>

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<sup>1</sup> CATA’s request is made in conjunction with the motion by SBE Member Harkey (seconded by SBE Chairman Runner and concurred in by SBE Member Ma) at the July 24, 2018 SBE Meeting that the Executive Director direct the SBE’s Chief Counsel to prepare a legal analysis for the proposed SBE Rule changes presented in Board Agenda Item L1. at the July 24<sup>th</sup> SBE Meeting. CATA’s petition is presented in accordance with the “Formal Rulemaking Process” discussed at pages 3 through 5 in the SBE’s Letter to Assessors dated April 10, 2014 (LTA No. 2014/021).

Government Code section 11340.6 provides in part “any interested person may petition a state agency requesting the … amendment … of a regulation.”

Government Code section 15606, paragraphs (c) and (e), state in part that the SBE shall “Prescribe rules and regulations to govern local boards of equalization when equalizing and assessors when assessing” and “Prepare and issue instructions to assessors designed to promote uniformity throughout the state and its local taxing jurisdictions in the assessment of property for the purposes of taxation.”

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**Proposed Amendments to Rules 302, 305, 305.1, 305.2 and 323.**

CATA's proposed amendments to the CCR sections or Property Tax Rules listed above are set forth in the attachment to this petition. These sections or Rules relate to the following topics and subjects:

- Rule 302 – The Board's Function and Jurisdiction<sup>2</sup>
- Rule 305 – Application
- Rule 305.1 – Exchange of Information
- Rule 305.2 – Prehearing Conference
- Rule 323 – Postponements and Continuances

The Rules, and the proposed amendments to the Rules, all pertain to the assessment appeal or equalization process before local boards of equalization and county assessment appeals boards (“local Boards”).

The proposed amendments to the Rules address five primary concerns:

- (1) Revenue and Taxation Code section 441(d) “Non-Compliance Hearings” by local Boards;
- (2) Assessors’ practices in issuing Section 441(d) information requests;
- (3) Assessors’ requests for hearing continuances;
- (4) Assessors’ use of confidential information obtained from one taxpayer through a Section 441(d) request in proceedings before local Boards by other taxpayers; and
- (5) Taxpayer authorizations for the filing of assessment appeal applications.

The primary reasons for amending the Rules are: (1) to insure uniformity in assessment practices statewide,<sup>3</sup> and (2) to insure that due process standards are met so that taxpayers receive fair hearings before local Boards.

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<sup>2</sup> “The Board” in this and the other Rules listed below refers to local boards of equalization or county assessment appeals boards.

<sup>3</sup> California Revenue and Taxation Code section 169 provides: “The [State Board of Equalization] shall encourage uniform statewide appraisal and assessment practices.”

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**(1) Section 441(d) Information Requests and Local Board “Non-Compliance” Hearings.**

California Revenue and Taxation Code section 441(d) permits county assessors to request information from taxpayers “for assessment purposes.” In the situation where an assessment appeal application has been filed by a taxpayer and the taxpayer fails to respond to an assessor’s Section 441(d) information request, an assessor has two means of enforcing compliance with the Section 441(d) request. The first method is to proceed to an equalization hearing before the local Board and, when the taxpayer provides the previously requested information at that hearing, to request a continuance pursuant to Section 441(h). The second method is to issue an “assessor’s subpoena” to the taxpayer requiring the taxpayer to provide documents and appear before the assessor. If the taxpayer does not comply with the assessor’s subpoena, the assessor may institute proceedings in Superior Court to obtain a court order requiring the taxpayer to provide documents and otherwise comply with the assessor’s subpoena.

The prior paragraph sets forth the only methods by which an assessor may enforce a Section 441(d) information request. Nevertheless, in recent years some assessors and local Boards have sought to enforce Section 441(d) requests by holding “Section 441(d) Non-Compliance Hearings.” Such hearings generally consist of the assessor presenting his/her Section 441(d) information request and listing what information the assessor believes needs to be provided. Taxpayers are then asked to respond. If the response is incomplete in the judgment of the local Board and the assessor, the hearing on the taxpayer’s assessment appeal application is postponed until the requested information is provided. Some local Boards have also dismissed assessment appeal applications for a taxpayer’s alleged failure to respond to an assessor’s Section 441(d) information request to an assessor’s satisfaction. It is noteworthy that Section 441(d) Non-Compliance Hearings (or what amount to such hearings) are not held in all counties, and many local Boards never hold such hearings.

There is no authority in any statute or regulation for local Boards to hold Section 441(d) Non-Compliance Hearings, or for assessors to request such hearings. Local Boards are not trained to resolve “discovery” disputes. Further, local Boards lack the “power of contempt” and have no authority to enforce Section 441(d) requests other than to “browbeat” the taxpayer, dismiss the taxpayer’s assessment appeal, or to postpone the hearing on the appeal indefinitely until the taxpayer complies (these latter remedies are not permitted under any law). Moreover, most local Boards rely on the assessor who issued the Section 441(d) information request to also determine whether the taxpayer has complied with the request, which is very unfair to taxpayers, particularly when an assessor’s Section 441(d) request is aggressive or overreaching.

The proposed amendments would prohibit local Boards from holding “Section 441(d) Non-Compliance” hearings in the following ways: (a) stating that local Boards have no jurisdiction to deny an assessment appeal application when a taxpayer has not responded to a Section 441(d)

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request (adding Rule 302(c)); (b) stating that local Boards may not use Prehearing Conferences to deny applications when a taxpayer has not responded to a Section 441(d) request or continuing Prehearing Conferences in such circumstance in order to compel a taxpayer to respond to a Section 441(d) request (adding Rule 305.2(b)); and (c) prohibiting local Boards from postponing valuation hearings on assessment appeal applications when a taxpayer has not responded to a Section 441(d) information request (adding Rule 323(c)).

**(2) Practices of Assessors in Issuing Section 441(d) Requests.**

In recent years, some county assessors have engaged in harsh practices which make taxpayer compliance with Section 441(d) requests difficult and, in some cases, intimidate taxpayers. Those practices include: making verbal Section 441(d) requests, requesting information close to or on the eve of an equalization hearing (with the intention of seeking a postponement of the hearing if the taxpayer does not fully comply prior to the hearing), threatening taxpayers with criminal or administrative penalties for failure to comply (under Revenue and Taxation Code section 462), even though only a District Attorney has the authority to prosecute violations and not an assessor, and issuing requests which are overbroad, burdensome and oppressive.<sup>4</sup>

Proposed Rule 305.1(e) addresses harsh practices by assessors with regard to Section 441(d) requests by requiring that requests: be in writing, be made no less than 20 days prior to an equalization hearing, be accompanied by references to the statutes supporting such requests, not stating that assessors have the authority to impose penalties for non-compliance, and be limited to information relating to the property in issue. Proposed Rule 305.1(e) also prohibits assessors from converting section 441(d) information requests into formal discovery used in civil proceedings in Superior Court, such as depositions, interrogatories and requests for admission, or requiring responses to section 441(d) requests to be submitted with a declaration under penalty of perjury, all of which conflict with the informal nature of assessment appeal proceedings.

**(3) Unfair Hearing Continuances by Assessors.**

In hearings before local Boards, the taxpayer usually presents his or her evidence first. In some counties, at the conclusion of the taxpayer's presentation, the assessor will ask for a continuance of several days or weeks in order to prepare for cross-examination of the taxpayer's case. Because local Boards often do not have days available in order to resume a hearing, this often

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<sup>4</sup> As of the date of this letter, most county assessors have ceased using these practices following complaints by taxpayers, including CATA, to the SBE, and after the California Assessors Association ("CAA") began policing the activities of its members. However, there is no assurance that harsh practices by assessors will not resume in the future.

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results in the assessor cross-examining the taxpayer's case many months or up to a year after the taxpayer's initial presentation.

The practice by assessors of seeking continuances in this fashion is very unfair to taxpayers and gives assessors a significant advantage in equalization hearings. Even where a taxpayer and an assessor have exchanged their appraisals prior to a hearing, either informally or through a formal exchange under Revenue and Taxation Code section 1606, assessors will typically request and local Boards will usually grant assessors continuances to study the taxpayer's case and prepare for cross-examination. In some counties local Boards do not always extend the same courtesy to taxpayers after assessors have presented their appraisal evidence. It is noteworthy that local Boards in some counties do not readily grant assessors continuances, while local Boards in other counties regularly grant such requests.

Proposed Rule 323(d) would prevent the practice of assessors requesting and local Boards granting assessors continuances after taxpayers have presented their cases. The proposed rule would also otherwise prohibit assessors from making serial continuance requests in order to postpone hearings for excessive periods of time.

**(4) Use of Confidential Third-Party Taxpayer Information in Equalization Hearings.**

California Revenue and Taxation Code sections 451 and 481 provide that information supplied by a taxpayer to an assessor "shall be held secret." This secrecy requirement extends to information supplied by taxpayers to assessors in response to Section 441(d) information requests.

In recent years, assessors in some counties have started using confidential information obtained from one taxpayer through a Section 441(d) request in equalization hearings before local Boards for other taxpayers. In order to do so, assessors "de-identify" the confidential information so that the owner of the information cannot be determined.

This use of de-identified confidential information obtained through Section 441(d) requests nearly always prevents the taxpayer against whom the information is used from being able to cross-examine the information during the equalization hearing. Due process and fairness standards require that taxpayers be permitted to cross-examine evidence presented by a taxing authority. (*Interstate Commerce Commission v. Louisville & N.R. Co.* (U.S. Supreme Court, 1913) 227 U.S. 88, 93; *Universal Consol. Oil Co. v. Byram* (Calif. Supreme Court, 1944) 25 Cal.2d 353, 361.) In fact, SBE Property Tax Rule 313(e) requires that taxpayers be permitted to cross-examine the evidence presented in equalization hearings before local Boards. Moreover, assessors' presentation of de-identified information to local Boards prevents those Boards from being able to fairly evaluate and determine whether evidence presented by assessors is reliable

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and credible. Finally, the use of de-identified information obtained through Section 441(d) requests in public equalization hearings is unfair to the taxpayers who provided such information with an expectation of secrecy under Sections 451 and 481. It also pits one taxpayer against another because the taxpayer against whom the de-identified but secret information is being used is strongly motivated to learn the source of such information and disclose the information for purposes of cross-examination.

The use of de-identified information obtained through Section 441(d) requests does not occur in all counties. Some assessors rely heavily on such information in the presentation of cases before local boards, while other assessors never use such information.

Revenue and Taxation Code section 408(e)(3) permits a taxpayer against whom an assessor seeks to use de-identified confidential information to seek a confidentiality order from the Superior Court thereby permitting an assessor to release confidential information. However, the procedure for obtaining a Section 408(e)(3) order is complicated, time-consuming and usually expensive as it requires the taxpayer to bring an ancillary proceeding in Superior Court. It is not economic for many taxpayers, and particularly smaller taxpayers, to pursue relief under Section 408(e)(3). Moreover, the assessor and/or the owner of the confidential information may oppose the request for a confidentiality order, so there is no assurance that the Superior Court will grant the taxpayer the necessary confidentiality order.

The proposed amendment to Rule 305.1, adding paragraph (e), would remedy the situation described above, and eliminate a great unfairness to taxpayers, by adding the following sentence to the Rule: “Information supplied by one taxpayer shall not be used by the assessor in an assessment appeals board hearing of another taxpayer, including a taxpayer in another county, without written authorization of the first taxpayer.” This language has the following benefits: (a) it places the burden of obtaining authority to use confidential information in equalization hearings on the party who seeks to use such information, the assessor;<sup>5</sup> (b) it removes the heavy burden of seeking permission to disclose such information from taxpayers against whom de-identified confidential information is used; (c) it allows third parties who own the confidential information to know whether and how their confidential information is being used by an assessor, and to object to such use instead of relying on an assessor to maintain the information’s secrecy through some type of de-identification process; and (d) it permits local Boards to have full information regarding the evidence presented to them so that they can determine whether such information is reliable and credible as quasi-judicial fact-finding tribunals.

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<sup>5</sup> The assessor is always the only party that knows the identity of the owner of the confidential information; placing the burden of obtaining permission for disclosure of information on the assessor is therefore appropriate.

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**(5) Taxpayer Authorizations for Filing Assessment Appeal Applications.**

California law requires that an assessment appeal application filed by an agent be submitted along with a signed statement by the property owner/taxpayer (usually called an “Agent’s Authorization”) that the agent is authorized by the property owner/taxpayer to file the application. The advent of on-line assessment appeal applications has created some issues with respect to execution and filing of Agent’s Authorizations. The proposed amendments to Rule 305 would: (a) permit Agent Authorizations to be attached to electronically-filed assessment appeal applications (amending Rule 305(a)(1)); (b) permit Agent Authorizations to be signed by a taxpayer in a different calendar year than the year for which the assessment appeal application is filed (an issue that arises when a taxpayer gives a multi-year Agent Authorization, and for other reasons) (adding Rule 305(a)(5)); and (c) for those counties which permit on-line filing of assessment appeal applications, require the SBE to prescribe what is included in the on-line applications (amending Rule 305(c)(1)). The proposed amendments to Rule 305 reflect current practice in most California counties, and the amendments will prevent confusion surrounding these issues from arising in the future.

**Necessity for Amendments to Rules and Request for Formal Rulemaking Process.**

The practices by assessors and local Boards described above vary from county to county, creating a lack of uniformity and disparity in the treatment of taxpayers statewide. The proposed amendments to the Rules are necessary in order to insure uniform treatment of taxpayers in every county in California.

The practices by some assessors and some local Boards also cause some taxpayers to be treated unfairly and interfere with taxpayers’ rights to due process in equalization proceedings. At present, the Rules do not address the practices described above, and the amendments to those Rules are necessary in order to protect every taxpayer’s right to receive fair treatment and due process in equalization proceedings.

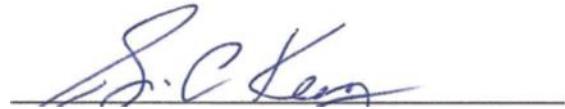
CATA respectfully requests that this petition be placed on the Agenda for the SBE’s August 21, 2018 meeting, specifically under the Chief Counsel Matters, Agenda Item G. (Rulemaking).

In addition, CATA respectfully requests that at its August 21<sup>st</sup> meeting the SBE vote to commence a rulemaking process under the Administrative Procedures Act (“APA”) for the amendments to the Rules as proposed by this petition. If a majority of the SBE’s Members vote to commence the rulemaking process, CATA asks that the SBE publish a Notice of Proposed Action in accordance with APA procedures at the earliest possible date.

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Thank you for your consideration of this petition.

Sincerely,



Sean Kelley  
President

Attachment

cc: Senator George Runner, Chairman (w/ Attachment)  
Honorable Fiona Ma, Member (w/ Attachment)  
Honorable Diane Harkey, Member (w/ Attachment)  
Honorable Jerome Horton, Member (w/ Attachment)  
Honorable Betty T. Yee, State Controller  
c/o Deputy Controller Yvette Stowers (w/ Attachment)  
Henry D. Nanjo, Chief Counsel, Legal Department (w/ Attachment)  
Joann Richmond-Smith, Chief, Board Proceedings Division (w/ Attachment)  
CATA Board of Directors

## **Rule 302. THE BOARD'S FUNCTION AND JURISDICTION.**

Authority: Section 15606, Government Code.

Reference: Sections 531.1, 1603, 1604 and 1605.5, Revenue and Taxation Code.

**(a)** The functions of the board are:

(1) To lower, sustain, or increase upon application, or to increase after giving notice when no application has been filed, individual assessments in order to equalize assessments on the local tax assessment roll,

(2) To determine the full value and, where appealed, the base year value of the property that is the subject of the hearing,

(3) To hear and decide penalty assessments, and to review, equalize and adjust escaped assessments on that roll except escaped assessments made pursuant to Revenue and Taxation Code section 531.1,

(4) To determine the classification of the property that is the subject of the hearing, including classifications within the general classifications of real property, improvements, and personal property. Such classifications may result in the property so classified being exempt from property taxation.

(5) To determine the allocation of value to property that is the subject of the hearing, and

(6) To exercise the powers specified in section 1605.5 of the Revenue and Taxation Code.

**(b)** Except as provided in subdivision (a)(4), the board has no jurisdiction to grant or deny exemptions or to consider allegations that claims for exemption from property taxes have been improperly denied.

**(c)** The board has no jurisdiction to deny an application solely on the ground that the applicant has not responded to a request for information made under section 441 of the Revenue and Taxation Code.

**(d)** The board acts in a quasi-judicial capacity and renders its decision only on the basis of proper evidence presented at the hearing.

History: Adopted May 11, 1967, effective June 11, 1967.

Amended May 21, 1968, effective June 26, 1968.

Amended June 4, 1969, effective June 6, 1969.

Amended May 5, 1971, effective June 10, 1971.

Amended December 17, 1975, effective January 25, 1976.

Amended January 6, 2000, effective April 22, 2000.

Amended June 30, 2004, effective August 25, 2004.

## **Rule 305. APPLICATION.**

Authority: Section 15606, Government Code.

Reference: Sections 51, 166, 170, 408.1, 469, 619, 1603, 1603.5, 1604, 1605, 1636, 5097, and 5097.02, Revenue and Taxation Code. Section 25105.5, Government Code.

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

### **(a) ELIGIBLE PERSONS.**

(1) An application is filed by a person affected or the person's agent, or a relative mentioned in regulation 317 of this division. If the application is made by an agent, other than an authorized attorney licensed to practice in this state who has been retained and authorized by the applicant to file the application, written authorization to so act must be filed with the application. For purposes of signing an application on behalf of an applicant, an agent shall be deemed to have been duly authorized if the applicant's written agent authorization is on the application or attached to each application at the time it is filed with the board. In any county that provides for a taxpayer to file an appeal on line, the board shall provide a mechanism for an agency authorization to be attached to the on-line filing. The attached authorization shall include the following:

- (A) The date the authorization statement is executed;
- (B) A statement to the effect that the agent is authorized to sign and file applications in the specific calendar year in which the application is filed;
- (C) The specific parcel(s) or assessment(s) covered by the authorization, or a statement that the agent is authorized to represent the applicant on all parcels and assessments located in the specific county;
- (D) The name, address, and telephone number of the specific agent who is authorized to represent the applicant;
- (E) The applicant's signature and title; and
- (F) A statement that the agent will provide the applicant with a copy of the application.

(2) If a photocopy of the original authorization is attached to the application, the agent shall be prepared to submit an original signed authorization if requested by the board. The application form shall show that the agent's authorization was attached to the application. An agent must have authorization to file an application at the time the application is filed; retroactive authorizations are not permitted.

(3) If the applicant is a corporation, limited partnership, or a limited liability company, the agent authorization must be signed by an officer or authorized employee of the business entity.

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

**(5) No application shall be rejected because the agency authorization is signed by a taxpayer in a different calendar year than the application was filed.**

**(b) SIGNATURE AND VERIFICATION.** The application shall be in writing and signed by the applicant or the applicant's agent with declaration under penalty of perjury that the statements made in the application are true and that the person signing the application is one of the following:

- (1) The person affected, a relative mentioned in regulation 317 of this division, an officer of a corporation, or an employee of a corporation who has been designated in writing by the board of directors or corporate officer to represent the corporation on property tax matters;
- (2) An agent authorized by the applicant as indicated in the agent's authorization portion of the application; or
- (3) An attorney licensed to practice law in this state who has been retained by the applicant and who has been authorized by the applicant, prior to the time the application is filed, to file the application.

**(c) FORMS AND CONTENTS.** The county shall provide, free of charge, forms on which applications are to be made.

(1) The application form, both hardcopy and on-line versions, shall be prescribed by the State Board of Equalization and shall require that the applicant provide the following information:

- (A) The name and address of the applicant.
- (B) The name and address of the applicant's agent, if any. If the applicant is represented by an agent, both the applicant's actual mailing address and the agent's mailing address shall be provided on the application.
- (C) The applicant's written authorization for an agent, if any, to act on the applicant's behalf.
- (D) A description of the property that is the subject of the application sufficient to identify it on the assessment roll.
- (E) The applicant's opinion of the value of the property on the valuation date of the assessment year in issue.
- (F) The roll value on which the assessment of the property was based.
- (G) The facts relied upon to support the claim that the board should order a change in the assessed value, base year value, or classification of the subject property. The amount of the tax or the amount of an assessed value increase shall not constitute facts sufficient to warrant a change in assessed values.

(2) The form shall also include:

- (A) A notice that a list of property transfers within the county, that have occurred within the preceding two-year period, is open to inspection at the assessor's office to the applicant upon

payment of a fee not to exceed ten dollars (\$10). This requirement shall not apply to counties with a population under 50,000 as determined by the 1970 decennial census.

**(B)** A notice that written findings of fact will be prepared by the board upon request if the applicable fee is paid. An appropriate place for the applicant to make the request shall be provided.

(3) An application may include one or more reasons for filing the application. Unless permitted by local rules, an application shall not include both property on the secured roll and property on the unsecured roll.

(4) An application that does not include the information required by subsection (c)(1) of this regulation is invalid and shall not be accepted by the board. Prompt notice that an application is invalid shall be given by the clerk to the applicant and, where applicable, the applicant's agent. An applicant or the applicant's agent who has received notice shall be given a reasonable opportunity to correct any errors and/or omissions. Disputes concerning the validity of an application shall be resolved by the board.

(5) An application that includes the correct information required by subdivision (1) is valid and no additional information shall be required of the applicant on the application form.

(6) If the county has appointed hearing officers as provided for in Revenue and Taxation Code section 1636, the application form shall advise the applicant of the circumstances under which the applicant may request that the application be heard by such an officer.

(7) If an application appeals property subject to an escape assessment resulting from an audit conducted by the county assessor, then all property, both real and personal, of the assessee at the same profession, trade, or business location shall be subject to review, equalization, and adjustment by the appeals board, except when the property has previously been equalized for the year in question.

**(d) TIME OF FILING.**

(1) An application appealing a regular assessment shall be filed with the clerk during the regular filing period. A regular assessment is one placed on the assessment roll for the most recent lien date, prior to the closing of that assessment roll. The regular filing period for all real and personal property located in a county is:

(A) July 2 through September 15 when the county assessor elects to mail assessment notices, as defined in section 619 of the Revenue and Taxation Code, by August 1 to all owners of real property on the secured roll; or

(B) July 2 through November 30 when the county assessor does not elect to mail assessment notices by August 1 to all owners of real property on the secured roll.

Additionally, an application appealing a base year value for the most recent lien date, where that value is not the value currently on the assessment roll, shall be filed with the clerk during the regular filing period beginning July 2 but no later than September 15 or November 30, as applicable.

(2) An application appealing an escape assessment or a supplemental assessment must be filed with the clerk no later than 60 days after the date of mailing printed on the notice of assessment or the postmark date, whichever is later, or no later than 60 days after the date of mailing printed on the tax bill or the postmark date, whichever is later, in the county of Los Angeles and in those counties where the board of supervisors has adopted a resolution to that effect, pursuant to section 1605 of the Revenue and Taxation Code.

(3) An application appealing a proposed reassessment made for property damaged by misfortune or calamity pursuant to section 170 of the Revenue and Taxation Code must be filed with the clerk no later than six months after the date of mailing of the notice of proposed reassessment by the assessor. The decision of the board regarding the damaged value of property shall be final, however, the decision regarding the reassessment made pursuant to section 170 shall create no presumption regarding the value of the property subsequent to the date of the damage.

(4) An application may be filed within 60 days of receipt of a notice of assessment or within 60 days of the mailing of a tax bill, whichever is earlier, when the taxpayer does not receive the notice of assessment described in section 619 of the Revenue and Taxation Code at least 15 calendar days prior to the close of the regular filing period. The application must be filed with an affidavit from the applicant declaring under penalty of perjury that the notice was not timely received.

(5) An application will be deemed to have been timely filed:

(A) If it is sent by U.S. mail, properly addressed with postage prepaid and is postmarked on the last day of the filing period or earlier within such period; or

(B) If proof satisfactory to the board establishes that the mailing occurred on the last day of the filing period or within such period. Any statement or affidavit made by an applicant asserting such a timely filing must be made within one year of the last day of the filing period.

(6) An application filed by mail that bears both a private business postage meter postmark date and a U.S. Postal Service postmark date will be deemed to have been filed on the date that is the same as the U.S. Postal Service postmark date, even if the private business postage meter date is the earlier of the two postmark dates. If the last day of the filing period falls on Saturday, Sunday, or a legal holiday, an application that is mailed and postmarked on the next business day shall be deemed timely filed. If the county's offices are closed for business prior to 5 p.m. or for the entire day on which the deadline for filing falls, that day shall be considered a legal holiday.

(7) Except as provided in sections 1603 and 1605 of the Revenue and Taxation Code, the board has no jurisdiction to hear an application unless filed within the time periods specified above.

**(e) AMENDMENTS AND CORRECTIONS.**

(1) An applicant or an applicant's agent may amend an application until 5:00 p.m. on the last day upon which it might have been timely filed.

(2) After the filing period has expired:

- (A)** An invalid application may be corrected in accordance with subsection (c)(4) of this regulation.
- (B)** The applicant or the applicant's agent may amend an application provided that the effect of the amendment is not to request relief additional to or different in nature from that originally requested.
- (C)** (i) Upon request of the applicant or the applicant's agent, the board, in its discretion, may allow the applicant or the applicant's agent to make amendments to the application in addition to those specified in subdivisions (A) and (B) to state additional facts claimed to require a reduction of the assessment that is the subject of the application.
- (ii) The applicant or the applicant's agent shall state the reasons for the request, which shall be made in writing and filed with the clerk of the board prior to any scheduled hearing, or may be made orally at the hearing. If made in writing, the clerk shall provide a copy to the assessor upon receipt of the request.
- (iii) As a condition to granting a request to amend an application, the board may require the applicant to sign a written agreement extending the two-year period provided in section 1604 of the Revenue and Taxation Code.
- (iv) If a request to amend is granted, and upon the request of the assessor, the hearing on the matter shall be continued by the board for no less than 45 days, unless the parties mutually agree to a different period of time.
- (3) An applicant or an applicant's agent shall be permitted to present testimony and other evidence at the hearing to support a full value that may be different from the opinion of value stated on the application. The presentation of such testimony or other evidence shall not be considered a request to amend or an amendment to the application.
- (f) CLAIM FOR REFUND.** If a valid application is designated as a claim for refund pursuant to section 5097 of the Revenue and Taxation Code, the applicant shall be deemed to have challenged each finding of the board and to have satisfied the requirements of section 5097.02 of the Revenue and Taxation Code.
- (g) RETENTION OF RECORDS.** The clerk may destroy records consisting of assessment appeal applications when five years have elapsed since the final action on the application. The records may be destroyed three years after the final action on the application if the records have been microfilmed, microfiched, imaged, or otherwise preserved on a medium that provides access to the documents. As used in this subsection, "final action" means the date of the final decision by the board.
- (h) CONSOLIDATION OF APPLICATIONS.** The board, on its own motion or on a timely request of the applicant or applicants or the assessor, may consolidate applications when the applications present the same or substantially related issues of valuation, law, or fact. If applications are consolidated, the board shall notify all parties of the consolidation.

History: Adopted May 11, 1967, effective June 11, 1967.  
Amended December 11, 1967, effective January 13, 1968.

Amended May 21, 1968, effective June 26, 1968.  
Amended November 20, 1968, effective November 22, 1968.  
Amended June 4, 1969, effective June 6, 1969.  
Amended May 6, 1970, effective June 6, 1970.  
Amended April 14, 1972, effective May 14, 1972.  
Amended June 13, 1974, effective June 14, 1974.  
Amended April 7, 1977, effective May 22, 1977.  
Amended July 31, 1980, effective November 19, 1980.  
Amended July 27, 1982, effective December 30, 1982.  
Amended and effective October 23, 1997.  
Amended April 5, 2000, effective June 30, 2000.  
Amended June 30, 2004, effective August 25, 2004.

## **Rule 305.1. EXCHANGE OF INFORMATION AND REQUEST FOR INFORMATION.**

Authority: Section 15606(c), Government Code.

Reference: Sections 408, 441, 451, 1606 and 1609.4, Revenue and Taxation Code.

**(a) REQUEST FOR EXCHANGE OF INFORMATION.** When the assessed value of the property involved, before deduction of any exemption accorded the property, is \$100,000 or less, the applicant may file a written request for an exchange of information with the assessor; and when the assessed value before deduction of any exemption exceeds \$100,000, either the applicant or the assessor may request such an exchange pursuant to section 1606 of the Revenue and Taxation Code. The request may be filed with the clerk at the time an application for hearing is filed or may be submitted to the other party and the clerk at any time prior to 30 days before the commencement of the hearing. For purposes of determining the date upon which the exchange was deemed initiated, the date of postmark as affixed by the United States Postal Service, or the date certified by a bona fide private courier service on the envelope or package containing the information shall control. The clerk shall, at the earliest opportunity, forward any request filed with the application or a copy thereof to the other party. The request shall contain the basis of the requesting party's opinion of value for each valuation date at issue and the following data:

(1) COMPARABLE SALES DATA. If the opinion of value is to be supported with evidence of comparable sales, the properties sold shall be described by the assessor's parcel number, street address or legal description sufficient to identify them. With regard to each property sold there shall be presented the approximate date of sale, the price paid, the terms of sale (if known), and the zoning of the property.

(2) INCOME DATA. If the opinion of value is to be supported with evidence based on an income study, there shall be presented: the gross income, the allowable expenses, the capitalization method (direct capitalization or discounted cash flow analysis), and rate or rates employed.

(3) COST DATA. If the opinion of value is to be supported with evidence of replacement cost, there shall be presented:

(A) With regard to improvements to real property: the date of construction, type of construction, and replacement cost of construction.

(B) With regard to machinery and equipment: the date of installation, replacement cost, and any history of extraordinary use.

(C) With regard to both improvements and machinery and equipment: facts relating to depreciation, including any functional or economic obsolescence, and remaining economic life.

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

**(b) TRANSMITTAL OF EXCHANGE DATA TO OTHER PARTY.** If the party requesting an exchange of data under the preceding subsection has submitted the data required therein within the specified time, the other party shall submit a response to the initiating party and to the clerk at least 15 days prior to the hearing. The response shall be supported with the same type of data required of the requesting party. When the assessor is the respondent, he or she shall submit the response to the address shown on the application or on the request for exchange of information, whichever is filed later. The initiating party and the other party shall provide adequate methods of submission to ensure to the best of their ability that the exchange of information process is completed at least 10 days prior to the hearing.

**(c) PROHIBITED EVIDENCE; NEW MATERIAL; CONTINUANCE.** Whenever information has been exchanged pursuant to this regulation, the parties may introduce evidence only on matters pertaining to the information so exchanged unless the other party consents to introduction of other evidence. However, at the hearing, each party may introduce new material relating to the information received from the other party. If a party introduces such new material at the hearing, the other party, upon request, shall be granted a continuance for a reasonable period of time.

**(d) NONRESPONSE TO REQUEST FOR EXCHANGE OF INFORMATION.** If one party initiates a request for information and the other party does not comply within the time specified in subsection (b), the board may grant a postponement for a reasonable period of time. The postponement shall extend the time for responding to the request. If the board finds willful noncompliance on the part of the noncomplying party, the hearing will be convened as originally scheduled and the noncomplying party may comment on evidence presented by the other party but shall not be permitted to introduce other evidence unless the other party consents to such introduction.

**(e) REQUEST FOR INFORMATION.** An assessor's request for information pursuant to section 441 of the Revenue and Taxation Code shall be made in writing, limited to information relating to the property at issue, and be issued no less than 20 days prior to a hearing before a county board of equalization or assessment appeals board. The assessor's request shall also recite the Revenue and Taxation Code section or sections authorizing the request so that the recipient is notified of his or her legal obligations in responding to the request. The assessor's request shall not state that the assessor has authority to impose criminal penalties or administrative sanctions against the recipient of the request. Information supplied in response to an assessor's request must be held secret by the assessor under sections 451 and 481 of the Revenue and Taxation Code. Information supplied by one taxpayer shall not be used by the assessor in an assessment appeals board hearing of another taxpayer, including a taxpayer in another county, without written authorization from the first taxpayer. The issuance of an assessor's request for information shall not entitle the assessor to take a deposition, issue interrogatories, or seek requests for admissions. Nor shall the recipient of an assessor's request be required to submit a declaration under penalty of perjury when responding to an assessor's request.

History: Adopted May 6, 1970, effective June 6, 1970.

Amended May 5, 1971, effective June 10, 1971.

Amended June 13, 1974, effective June 14, 1974.

Amended July 27, 1982, effective February 10, 1983.

Amended January 5, 2000, effective April 22, 2000.

Amended and effective September 19, 2002.

**Rule 305.2. PREHEARING CONFERENCE.**

Authority: Section 15606(c), Government Code.

Reference: Article XIII, Section 16, California Constitution; and Section 1601 et seq., Revenue and Taxation Code.

**(a)** A county board of supervisors may establish prehearing conferences. If prehearing conferences are established, the county board of supervisors shall adopt rules of procedure for prehearing conferences. A prehearing conference may be set by the clerk at the request of the applicant or the applicant's agent, the assessor, or at the direction of the appeals board. The purpose of a prehearing conference is to resolve issues such as, but not limited to, clarifying and defining the issues, determining the status of exchange of information requests and requests for information, stipulating to matters on which agreement has been reached, combining applications into a single hearing, bifurcating the hearing issues, and scheduling a date for a hearing officer or the board to consider evidence on the merits of the application.

**(b)** At a prehearing conference, the board shall not deny an application solely on the ground that the applicant has not responded to a request for information made under section 441 of the Revenue and Taxation Code. The board shall not continue a prehearing conference to a later date in order to compel an applicant to respond to a request for information under section 441.

**(c)** The clerk of the board shall set the matter for a prehearing conference and notify the applicant or the applicant's agent and the assessor of the time and date of the conference. Notice of the time, date, and place of the conference shall be given not less than 30 days prior to the conference, unless the assessor and the applicant stipulate orally or in writing to a shorter notice period.

History: Adopted January 5, 2000, effective April 22, 2000.

## Rule 323. POSTPONEMENTS AND CONTINUANCES.

Authority: Section 15606, Government Code.

Reference: Sections 1605.6 and 1606, Revenue and Taxation Code.

**(a)** The applicant and/or the assessor shall be allowed one postponement as a matter of right, the request for which must be made not later than 21 days before the hearing is scheduled to commence. If the applicant requests a postponement as a matter of right within 120 days of the expiration of the two-year limitation period provided in section 1604 of the Revenue and Taxation Code, the postponement shall be contingent upon the applicant's written agreement to extend and toll indefinitely the two-year period subject to termination of the agreement by 120 days written notice by the applicant. The assessor is not entitled to a postponement as a matter of right if the request is made within 120 days of the expiration of the two-year period, but the board, in its discretion, may grant such a request. Any subsequent requests for a postponement by the applicant or the assessor must be made in writing, and good cause must be shown for the proposed postponement. A stipulation by an applicant and the assessor shall be deemed to constitute good cause, but shall result in extending and tolling indefinitely the two-year limitation period subject to termination of the agreement by 120 days written notice by the applicant. Any information exchange dates remain in effect based on the originally scheduled hearing date notwithstanding the hearing postponement, except as provided in regulation 305.1(d) of this subchapter.

**(b)** A board of supervisors may delegate decisions concerning postponement to the clerk in accordance with locally adopted rules. Requests for postponement shall be considered as far in advance of the hearing date as is practicable.

**(c)** The board shall not postpone the hearing on an application solely on the ground that the applicant has not responded to a request for information made under section 441 of the Revenue and Taxation Code.

**(d)** At the hearing, the board or a hearing officer may continue a hearing to a later date. If the assessor requests a continuance, it shall be for no more than 90 days unless the assessor demonstrates undue hardship to the satisfaction of the board or the assessor and the applicant mutually agree to a longer period of time. The board shall not grant the assessor a continuance after the applicant has presented his or her case, however, the assessor may be granted a continuance under section 441(h) of the Revenue and Taxation Code if the applicant has introduced information at the hearing which had previously been requested of the applicant by the assessor.

**(e)** If the applicant requests a continuance within 90 days of the expiration of the two-year period specified in section 1604 of the Revenue and Taxation Code, the board may require a written extension signed by the applicant extending and tolling the two-year period indefinitely subject to termination of the agreement by 120 days written notice by the applicant. The clerk shall inform the applicant or the applicant's agent and the assessor in writing of the time and place of the continued hearing not less than 10 days prior to the new hearing date, unless the parties agree in writing or on the record to waive written notice.

History: Adopted May 11, 1967, effective June 11, 1967.  
Amended May 21, 1968, effective June 26, 1968.  
Amended November 20, 1968, effective November 22, 1968.  
Amended October 6, 1999, effective April 22, 2000.