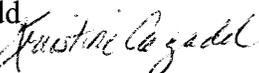


M e m o r a n d u m

To: Honorable Judy Chu, Ph.D., Chair
Honorable Betty T. Yee, Vice Chairwoman
Honorable Bill Leonard
Honorable Michele Steel
Honorable John Chiang

Date: March 25, 2008

From: Kristine Cazadd
Chief Counsel 

Subject: **State Assessee Property Tax Appeals Procedures – Alternative Proposals for Distribution of Unsolicited Late Materials and Revision of Hearing Summaries April 8, 2008 Board Meeting – Property Tax Matters – Item L**

This memorandum responds to the Board's direction given at the March 19, 2008, Board meeting as a follow up to the discussion of Agenda Item M1, *Discussion of Board Hearing Procedures for Briefing, Submitting Evidence and Requesting Clarification*, to propose alternative procedures for the distribution and consideration of unsolicited late submitted materials in state assessee property tax appeals. The Board's discussion focused on the circumstances under which unsolicited late materials should be distributed, whether those materials should be reviewed and summarized by the Appeals Division, and whether consideration of such information should be reflected as part of the administrative record in the appeal process. Set forth below is a description of the current practice for the distribution of unsolicited late materials and the proposed alternatives for the Board's consideration.

Current Practice

If unsolicited late material is submitted directly to the Board Proceedings Division (BPD) with regard to a state assessee property tax appeal, the current practice is for the BPD to return it to the petitioner with a letter notifying the petitioner that it is late and may not be accepted for distribution under the Board's Rules for Tax Appeals. The BPD also provides a copy of the material to the Board Members, the Appeals Division, and the State-Assessed Properties Division (SAPD) and the Tax and Fees Program Division (TFPD) with a courtesy copy of the letter to the petitioner. If unsolicited late material is submitted directly to the Appeals Division, the Appeals Division forwards it to BPD which follows the foregoing process of notifying the petitioner and providing copies to Board Members, the SAPD and the TFPD.

Proposed Alternative Procedures

1. Disposition of Unsolicited Late Material.

a. Return but send copies.

BPD prepares a letter that explains that the enclosed documents are untimely and being returned pursuant to Rules for Tax Appeals (RTA) section 5324.6, subdivision (d). A copy of the return letter is sent to Board Members, the Appeals Division, the SAPD and the TFPD *with* a copy of all enclosed documents.

b. Return but send copies; notify petitioner that information may not be considered.

Same as alternative a. but the return letter would notify the petitioner that due to lateness the Board and staff may not have time to give it consideration.

c. Return but no copies are sent.

BPD prepares a return letter that explains that the enclosed documents are untimely and being returned pursuant to RTA section 5324.6, subdivision (d). A copy of the return letter is sent to Board Members, the Appeals Division, the SAPD and the TFPD *without* a copy of all enclosed documents.

d. Amend RTA to allow unsolicited late submissions.

Alternative c., above, with the Board ordering that RTA section 5324.6 be revised to allow submission of unsolicited late documents under certain circumstances. RTA section 5324.6 provides that unsolicited late material will be returned to the petitioner and, thus, implies that such material will not be considered. By amending section 5324.6, petitioners would be on notice that such material may be considered by the Board and staff.

2. Admission into the Administrative Record.

If unsolicited late material is returned but copies are sent as under current practice, it does not automatically become part of the administrative record of the appeal, because it has not been accepted as timely filed under the RTA. In order to admit such material into the administrative record, a formal request may be made as follows:

a. A Board Member may request a brief or evidence at any time by contacting the Appeals Division, under RTA section 5341, subdivision (b).

A Board Member, upon receiving a copy of a returned late submission, may request that the Appeals Division admit such unsolicited late submission as part of the administrative record. Upon receiving a request from the Board Member, the Appeals Division will notify all parties and the other Board Members of the Board Member's request to admit the late submission into the administrative record. Similarly, under RTA section 5325.6, subdivision (c), the Appeals Division

may also request further briefing or evidence; thus, if the Appeals Division determines that the unsolicited late submission should be admitted to the administrative record, the Appeals Division will so notify all parties and the Board Members that the late submission is being admitted into the administrative record.

b. Returned unsolicited late submissions are not admitted as part of the administrative record and the Appeals Division will not consider such submissions.

If the unsolicited late submission is returned and not made part of the administrative record, the Appeals Division will not consider it. However, a petitioner has the right to request that such material be admitted at the oral hearing. Although the Board may permit a party to submit evidence at the hearing, petitioners should be made aware that under RTA section 5523.6, subdivision (b) the Board is not required to delay or postpone the hearing in order to consider evidence submitted at the hearing. In addition, the Board will consider any objections to, and comments on, the evidence presented at the oral hearing in assigning weight to such evidence. For example, the SAPD may object on the ground that the late-submitted material constitutes a financial report or appraisal study that the petitioner was required to submit with the petition pursuant to RTA section 5323.4. And finally, the Board may refuse to allow the presentation of evidence that it considers irrelevant, untrustworthy, or unduly repetitious.

3. Summarizing the Content of Unsolicited Late Information.

If the unsolicited late material is admitted into the administrative record under issue 2, above, then ordinarily such material would be included in the presentation of facts, analysis and conclusion of the Hearing Summary. However, if the late submission is admitted into the record after the Hearing Summary has been distributed, the following alternative methods for presentation of the material for the Board's consideration are proposed:

a. Revise Hearing Summary whenever feasible.

The Appeals Division will have discretion to determine whether to revise the Hearing Summary when it is feasible to do so under the circumstances. When a revision is feasible, it will include:

- An amended statement of facts and, if appropriate, an amended statement of law.
- A revised analysis to explain the effect of the evidence and recommend the weight that the Board should give it.
- A revised conclusion and recommendation, if appropriate.

If the SAPD believes that the late submitted material supports a further adjustment and, in the view of the Appeals Division, the material constitutes substantial evidence for the adjustment, the Appeals Division will revise the conclusion and recommendation accordingly.

If it is not feasible to revise the Hearing Summary, then the Appeals Division will be prepared at the hearing to orally comment on the late submitted material and, if possible, to provide an analysis of the effect of the material on the issue or issues presented.

b. Revise Hearing Summary when feasible but not less than 3 days before the hearing.

The Appeals Division will have discretion to determine whether to revise the Hearing Summary when it is feasible to do so under the circumstances; but in any event not within 3 days of the Board meeting upon which the matter is being considered. The Hearing Summary will be revised as described in alternative a.

c. No Hearing Summary Revision – Separate Summary for Admitted Late Submitted Information.

The Appeals Division will not revise the Hearing Summary but, when feasible, will separately summarize late submitted information only if it has been admitted to the administrative record by providing a description of the information and the issue to which it relates.

d. No Hearing Summary Revision – Separate Summary for Any Unsolicited Late Information.

In addition, the Board could also direct the Appeals Division to prepare a separate summary for all unsolicited late information, when feasible, regardless of whether it has been admitted into the administrative record. The summary will provide a description of the information and the issue to which it relates.

For ease of reference, we have attached to this memorandum a table that summarizes the foregoing proposed alternatives. If you have any questions please contact Louis Ambrose, Tax Counsel IV, Appeals Division, at (916) 445-5580.

Approved: _____


Ramon J. Hirsig
Executive Director

KC:te

Attachment: Summary of Proposed Alternatives Table

cc: Mr. Ramon Hirsig MIC:73
Mr. David Gau MIC:63
Mr. Jefferson Vest MIC:85
Mr. Robert Lambert MIC:82
Mr. Stanley Siu MIC:61
Mr. Louis Ambrose MIC:85
Ms. Shirley Johnson MIC:85
Ms. Carole Ruwart MIC:82
Mr. Brad Heller MIC:82

Summary of Proposed Alternatives

1. Disposition of Unsolicited Late Material

a. Return but copies sent.	b. Return but copies sent, notify petitioner information may not be considered.	c. Return and no copies sent.	d. Return, no copies sent but amend RTA to allow for unsolicited late submitted material.
----------------------------	---	-------------------------------	---

2. Admission into Administrative Record

a. Board Members or Appeals Division may request admission to administrative record with notification to the parties.	b. Returned unsolicited late submissions will not be admitted to administrative record or considered by Appeals Division.
---	---

3. Summarizing Late-Submitted Materials

a. Revise Hearing Summary when feasible.	b. Revise Hearing Summary when feasible but no less than 3 days before hearing.	c. Only admitted material will be separately summarized.	d. Any unsolicited late material will be separately summarized.
--	---	--	---