

## Memorandum

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

Date: November 21, 2007

From : Kristine Cazadd  
Chief Counsel 

Subject: **December 12, 2007 Board Hearing**  
**Item M – Other Chief Counsel Matters**  
**Distribution of State-Assessee Property Tax Appeals Materials – Analysis & Policy Recommendation**

This memorandum responds to the Board's comments and questions regarding the distribution of untimely or late-filed documents or materials in state-assessee property tax appeals before the Board. At the November 14, 2007, Board meeting, the Board expressed concern regarding staff's failure to distribute to the Board Members U.S. Telepacific Corporation's late-filed response. The petitioner filed the documents in question in response to the State-Assessed Properties Division's (SAPD) analysis in anticipation of the petitioner's waived oral hearing of its petition for reassessment scheduled for that Board meeting.

Both the Appeals Division conference holder and the SAPD staff had previously reviewed the response and determined that its points and arguments were not persuasive. As explained below, the Board's Rules of Practice, as well as the proposed Rules of Tax Appeals, provide that an untimely response shall not be accepted for filing and distribution. However, the Appeals Division and the SAPD staff routinely accept late-filed submissions and other information not provided with the petition or the petitioner's response during the appeals process in order to identify and resolve all outstanding issues. Historically, even though this practice was not codified in the Rules of Practice, such information has been reviewed consistently at the staff level so that staff is adequately prepared to respond to a petitioner's arguments. The question is whether such information should also be provided by staff to the Board Members rather than waiting for the petitioner to submit the information directly to the Board Members prior to or at the hearing. The Appeals Division proposes to provide all documentation to the Board Members based on the authority explained and in the manner described below.

## **Background**

Revenue and Taxation Code (RTC) section 731 provides that the Board is annually required between January 1 and June 1 to send to each state assessee a notice of assessed value of an assessee's unitary property. The notice also advises the assessee that a petition for reassessment must be filed no later than July 20 of that same year.

The Board's Rules of Practice govern the procedures and filing periods for state-assessed property tax appeals. The Board Proceedings Division (BPD) provides a copy of the Rules to each petitioner with a letter acknowledging the receipt of the petition. Rule of Practice (Rule) 5041 provides for the form, content, and manner of filing the petition for reassessment, the SAPD analysis, and the petitioner's response to the analysis:

- The petition is required to include "a statement of the precise elements of the Board's valuation being contested" and "petitioner's appraisal reports, financial studies, and other supporting documents relevant to value." (Rule 5041, subdivision (c).)
- The SAPD staff must submit an analysis of the petition, the related supporting documents, and a staff recommendation for Board action no later than 30 days prior to the date set for hearing or other action on the petition. (Rule 5041, subd. (d).)
- A petitioner may file a written response to the staff analysis no later than 15 days before the date set for hearing or other action on the petition. (Rule 5041, subd. (e).)
- The BPD may grant an extension for submitting the petition, the SAPD analysis, or the petitioner's response upon a showing of reasonable cause, if the request is made before 5 p.m. on the last business day set for filing the materials. (Rule 5041, subd. (f).)
- The petition and related supporting documents, the staff analysis and recommendation and related supporting documents, and the petitioner's response to the staff analysis and recommendation which a petitioner *timely submitted shall be the only documents accepted for filing and distribution by the BPD. Any documents not timely submitted to the BPD shall not be accepted for filing and shall be returned to the party submitting them.* (Rule 5041, subd. (h).)

To summarize the relevant provisions of Rule 5041:

1. A petitioner is required to provide all appraisal reports, financial studies, and other supporting documents when the petition is filed.
2. A petitioner may file a response to the SAPD analysis no later than 15 days before the appeals conference, if one has been requested, or the hearing on the petition, if an appeals conference has not been requested.

3. If a petitioner's response is not timely filed, the BPD may not accept the response for distribution to the Board Members and department staff.

Even though the BPD may not accept untimely-filed documents, such documents may be forwarded to the SAPD and the Appeals Division staffs for the purpose of identifying and resolving issues as described in the following section.

### **Board Staff Practice of Accepting Additional Information**

Notwithstanding the specific filing limitation periods and the requirement that a petition must include all supporting documents, the SAPD and the Legal Department staffs have an established practice of considering submissions of appraisal data and other materials that do not comply with Rule 5041. The *2007 Guidelines for Review of State Assessee and Private Railroad Car Petitions*, dated September 14, 2007 (2007 Guidelines), on page 2, acknowledges the practice and states that the SAPD staff will continue its "existing practice" of accepting such information.

Rule 5324.6 of the proposed Rules of Tax Appeals (recently filed with the Office of Administrative Law) states that "the State-Assessed Properties Division or the Appeals Division may also request additional evidence in order to evaluate the petitioner's opinion of value as set forth in its petition." Thus, the SAPD and the Appeals Division staffs have established a practice to request, secure, or review any information they deem necessary or helpful in addressing issues in a case. Although staff did not previously forward such information to the Board Members, the provision of this rule would logically apply to the Board Members as well as staff. Thus, if staff finds late-filed information from a petitioner to be of assistance in resolving cases, the Board Members would reasonably desire to have such information available for their consideration as well.

### **U.S. Telepacific Petition for Reassessment**

The matter that gave rise to this discussion was the hearing on the petition for reassessment of U.S. Telepacific Corporation (7757) (SAU 07-005). The petitioner originally requested an appeals conference and an oral hearing on the petition. The petitioner was notified that its appeals conference was scheduled on October 9, 2007, and that its response to the SAPD analysis was due no less than 15 days prior to the conference. However, the petitioner filed its response to the SAPD analysis on October 5, 2007, 4 days prior to the conference. Upon receipt, the BPD informed the petitioner's representative that the response could not be accepted for filing and distribution. Despite this, the representative stated that he was providing the material to the SAPD and the Appeals Division staffs for discussion at the appeals conference.

The SAPD and the Appeals Division staffs reviewed and discussed the information with the petitioner's representative at the appeals conference. The information identified the factual basis for the petitioner's claim for an additional adjustment for exempt application software. The SAPD staff requested further documentation to confirm that the costs identified by the petitioner had not already been included in staff's determination of the adjustment (of approximately \$19 million) already allowed for exempt application software in the 2007 Board-adopted unitary value. The petitioner's representative stated at the conference that he would attempt to obtain the information requested.

However, on October 25, 2007, the representative informed the SAPD and the Appeals Division staffs that the petitioner's system of recordkeeping did not permit the extraction of the specific cost items requested.

On November 14, 2007, the day before the scheduled oral hearing, the petitioner's representative contacted the BPD to request a postponement of the hearing because the petitioner's untimely response had not been distributed to the Board Members and he wished to discuss the response with the Board Members. The representative also stated that one of the documents submitted with the response might be confidential but he would not be able to determine whether this was so until after the hearing date. In the event that it was confidential, he stated that the petitioner would waive its oral hearing so that the document would not become subject to public disclosure. Notwithstanding these issues, the petitioner's representative subsequently informed the BPD on November 14, 2007, that the petitioner waived its appearance at the hearing.

At the hearing, Chairwoman Yee and Boardmember Leonard both expressed concern about the fact that the petitioner's response had not been distributed to the Board Members. Appeals Division staff explained that the response was untimely and that it was the BPD's policy, in accordance with the Rules of Practice, not to distribute late-filed documents. Both Chairwoman Yee and Boardmember Leonard stated that they wanted to receive all information submitted by petitioners for their review and consideration.

In view of the Board's direction that U.S. Telepacific Corporation's response and attached information should have been distributed, staff proposes the following procedures for the distribution of materials submitted by petitioners in support of their appeals. Summarized below are the types of information typically received by department staff, the manner in which such information has been treated in the past, and the Appeals Division's proposal to provide the information to Board Members.

### **Staff Proposal – Distribution of Information Not Complying with Rule 5041**

#### **Untimely Filed Responses**

Overview: As explained above, untimely responses are not accepted for filing and distribution by the BPD but are typically reviewed by the SAPD in order to determine whether the information provided supports additional adjustments to a petitioner's unitary value. If an appeals conference has been scheduled, the Appeals Division will request that the petitioner bring the information to the conference for discussion and a description of the information and discussion will be included in the hearing summary. In some instances, when the presentation of the information is helpful in explaining the issues and arguments, the Appeals Division has attached the information as an exhibit to the hearing summary.

Staff Proposal: The BPD will provide a courtesy copy to Board Members, the Appeals Division, and the Tax and Fee Programs Division with the notice of rejection of any late-filed documents with electronic copies of the rejected materials attached.

**Information Provided Directly to the SAPD**

Overview: Petitioners regularly provide information directly to the SAPD during the appeal process. If the SAPD determines that the information supports a petitioner's requested reduction, the SAPD will revise its value recommendation accordingly. If the SAPD makes such a value recommendation, the Appeals Division will summarize the information and the reasons for the value reduction in the Summary and Recommendation. However, this information has not generally been distributed to Board Members.

Staff Proposal: The SAPD will forward an electronic copy of the information to the Board Members and the Appeals Division.

**Documentation Provided to the Appeals Division at and after the Appeals Conference**

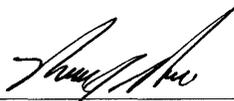
Overview: At an appeals conference, a petitioner may bring documents that were not provided with the petition or the petitioner's response. The Appeals Division has accepted this information for consideration and discussion. In many conferences, the Appeals Division has requested that the petitioner and the SAPD engage in a post-conference exchange of information to attempt the resolution of an issue. As explained above, such information has not been routinely provided to the Board Members but is summarized in the hearing summary.

Staff Proposal: If the Appeals Division considers the information relevant and summarizes it in the hearing summary, then the information will either be attached to the hearing summary or forwarded in electronic form via email to the Board Members. If the Appeals Division determines that the information should not be considered because, for example, it is irrelevant or submitted at the last minute, then the Appeals Division will so advise the petitioner and inform the petitioner that the information may be presented to the Board at the oral hearing. A copy of the email with the information attached will be forwarded to the Board Members, the SAPD, and the Tax and Fee Programs Division.

**Conclusion**

If you have any questions regarding this matter, please contact Tax Counsel IV Lou Ambrose at (916) 445-5580.

Approved: \_\_\_\_\_

  
Ramon J. Hirsig  
Executive Director

cc: Mr. Ramon J. Hirsig (MIC:73)  
Mr. David Gau (MIC:63)  
Ms. Anita Gore (MIC:86)

Mr. Robert Lambert	(MIC:82)
Mr. Jefferson D. Vest	(MIC:85)
Mr. Lou Ambrose	(MIC:85)
Mr. Anthony S. Epolite	(MIC:85)