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March 6, 2013

The Honorable George Runner
Chair, Property Tax Committee
State Board of Equalization
500 Capitol Mall, Suite 1750
Sacramento, CA 95814

Via e-Mail to rbennion@boe.ca.gov

Dear Senator Runner:

Property Tax Rule 308.6 - Application for Equalization by Member, Alternate Member or Hearing Officer

The Clerk of the Board of Supervisors members of the California Association of Clerks and Election Officials (CACEO) are opposed to a portion of proposed Rule 308.6, which appears as an Issue Paper on the Property Tax Committee agenda for the Board of Equalization's meeting of March 12, 2013. We would like to propose that the language of the draft Rule be changed to more correctly reflect the plain language of one of the statutes on which the Rule is based, as described below.

Existing law in Revenue and Taxation Code Section 1622.6 provides for the creation of a special alternate assessment appeals board when an application for equalization has been filed pursuant to Section 1603 by county employees and officers specified in Section 1612.7 (employees of the clerk of the assessment appeals board, assessment appeals board members, *et al.*) or if any of these employees or officials have decided to represent, say, an immediate family member, in an assessment appeal proceeding under the circumstances permitted by law. This is intended to prevent conflicts of interest, or the appearance of conflicts of interest, from arising in the county in which an appeal has been filed.

Section 1622.6 was amended by AB 824, which was authored by Assemblymember Diane Harkey (Ch. 477 of 2009). This bill was sponsored by our association (CACEO) at the request of the Clerk of the Board of Supervisors of Orange County. The proposed legislation was reviewed and approved for sponsorship and support of the association by the Clerk of the Board of Supervisors Legislative Committee.

Then-existing law in Section 1622.6 required that appeals of this type be heard by a special alternate assessment appeals board appointed by the presiding judge of the county. Although instances such as these are very infrequent, when it is used the presiding judge procedure can be slow and cumbersome and can result in a special alternate board that is made up of individuals who are completely unfamiliar with and inexperienced in assessment appeal proceedings. Moreover, none of these individuals would be likely to have even attended your Board's training that is required by Section 1624.01, let alone have actual experience with the appeals board.

Paragraph (1) of subdivision (b) of Section 1622.6, as amended by AB 824, authorizes the clerk of the board of the county in which such an appeal is filed, <u>at the discretion of the clerk</u>, to have these appeals heard before a special alternate board consisting of three members who are qualified and in good standing in another county in California.

It is our understanding that your Board's staff originally drafted language for Rule 308.6 that an application "may only be referred to a county if there is an agreement for the referral between the two counties." During the interested parties process, a county raised a concern that the earlier draft of Rule 308.6 might be interpreted to mean that the procedure could not be used unless there was a formal contract between county boards of supervisors to do so. This was not the intent of AB 824 and we believe that the plain language of Section 1622.6 clearly indicates that this special alternate board procedure is established at the discretion of the clerk and requires no other "agreement" than that between the two clerks involved.

Staff attempted to address the concern about a possible formal agreement being required by redrafting the sentence to require the approval of the assessment appeals board that would hear the appeal. The revised proposed Rule 308.6 would state in subsection (b), in the last sentence: "Applications may only be referred to a county if that county's assessment appeals board has consented to accept the referral." We believe this is clearly inconsistent with Section 1622.6 and is wholly inconsistent with the intent of AB 824.

Then sentence in the revised Rule 308.6(b) is unacceptable and, as pointed out, is inconsistent with Section 1622.6, as enacted by the Legislature. Under the law, assessment appeals boards have no authority to do anything other than adjudicate disputes. Appeals boards are purely quasi-judicial bodies. They have no executive authority, no administrative powers, they do not set public policy, nor are they advisory to any governing body or other local body that does set public policy. They do not supervise or manage staff and, in fact, they have no authority to even adopt their own rules. Again, they are purely adjudicatory in nature. Attempting to give assessment appeals boards some sort of administrative or executive power in a Property Tax Rule is inappropriate and inconsistent with the law.

Having been closely involved in the development and drafting of AB 824, I can tell you that both version of the proposed rule are certainly inconsistent with the clerks' intent in sponsoring the bill. Again, the procedure envisioned by the clerks was that the only action or "agreement" that was needed to empanel this type of special alternate board was the "agreement" between the two clerks involved.

Since the bill was enacted, there have been a handful of instances where the procedure created by AB 824 has been followed. Orange and Los Angeles Counties and Santa Clara County and the City and County of San Francisco have used the procedure with success. There may have been other instances of it elsewhere in California that I am not aware of.

Again, in developing the language in Section 1622.6, CACEO chose the phrase "At the discretion of the clerk" advisedly. Clerks did intend that selecting the alternative of having such appeals heard by sitting members of an appeals board in a nearby county be left to the decision of the affected clerks. Obviously, if a clerk in the second county did not wish to assist, then the clerk in the county where the appeal was filed must either try another county or go to the presiding judge.

Recommendation
If your committee believes that clarification with regard to an "agreement" is necessary in the Rule, our members respectfully urge your committee to revise the second sentence in subsection (b) of proposed Property Tax Rule 308.6 to read as follows:

> Applications may only be referred to a county if that county's <u>clerk of the</u> assessment appeals board has consented to accept the referral.

This change would sufficiently clarify how this process is to work and would be wholly consistent with the intent and the plain language of Revenue and Taxation Code Section 1622.6.

CACEO members appreciate your consideration and we look forward to working with you and the staff of your Board to finalize Rule 308.6.

Should you have any questions, please call me at (213) 200-9610. I look forward to seeing you at the March 12, 2013 Board meeting.

Sincerely,

John McKibben, Chairman
BOE Rules Work Group

c: Each member, Board of Equalization
David J. Gau, Deputy Director, Property and Special Taxes Department
Dean Kinnee, Chief, County-Assessed Properties Division

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