SECTION 441(d) NON-COMPLIANCE HEARINGS

(Proposed Amendments to Property Tax Rules 302, ~~305.1 and~~ 305.2 and 323)

1. **The Proposed Amendments are only stating what the current law is; the Proposed Amendments do not create any new laws.**

   Local Assessment Appeals Boards (AABs) are **not** empowered to dismiss assessment appeal applications or to postpone hearings on assessment appeal applications when a taxpayer/assessee/applicant does not respond to an R&TC Section 441(d) information request from an assessor.

2. **There are already remedies available to assessors for handling situations in which applicants do not respond to a Section 441(d) information request.**

   a. R&TC Section 501. If applicant does not supply information, assessor estimates value of property based on information in his possession.

   b. R&TC Section 441(h). When applicant presents information during an AAB equalization hearing that assessor previously requested, assessor may request and shall be granted a continuance.

   c. R&TC Section 454. Assessor may issue a subpoena to examine the taxpayer/assessee/applicant.

   d. R&TC Section 468. Assessor may apply to Superior Court for an order compelling taxpayer/assessee/applicant to appear and answer before the Court.

3. **Legal provisions that require AABs to determine whether information has been supplied to an assessor do not contemplate or permit AABs to dismiss or postpone the hearing on an assessment appeal application.**

   a. R&TC Section 1604(c)(2), 2nd ¶ and Property Tax Rule 309(c)(3).

   - AAB required to determine whether applicant's opinion of value must be enrolled if assessment appeal application not decided by AAB within two years.
   - AAB's determination is contingent upon whether "applicant has failed to provide full and complete information as required by law."
   - If AAB determines applicant has not supplied information, applicant's opinion of value is not enrolled.
   - AAB IS NOT EMPOWERED TO DISMISS APPEAL OR POSTPONE THE HEARING ON THE APPEAL.

b. Property Tax Rule 313(f).

- AAB required to determine whether assessor has burden of proof when assessor requests that AAB find higher value than value on the assessment roll ("raise letter" situation).
- AAB's determination is contingent upon whether "applicant has failed to supply all the information required by law to the assessor."
- If AAB determines applicant has not supplied information, burden of proof does not fall on the assessor.
- AAB IS NOT EMPOWERED TO DISMISS APPEAL OR POSTPONE THE HEARING ON THE APPEAL.

c. Property Tax Rule 321(d).

- R&TC Section 167 and Property Tax Rule 321(a) put burden of proof in AAB proceedings involving owner-occupied single-family dwellings and escape assessment on the assessor (also remove presumption of correctness in favor of the assessor).
- Placing burden of proof on assessor and waiver of presumption of correctness in favor of assessor are contingent on a finding by the AAB that "the applicant … has supplied all information to the assessor as required by law."
- If AAB determines applicant has not supplied information, burden of proof does not fall on assessor and assessor retains presumption of correctness.
- AAB IS NOT EMPOWERED TO DISMISS APPEAL OR POSTPONE THE HEARING ON THE APPEAL.

4. Denial of assessment appeal applications by AABs only occurs in two situations.

a. Property Tax Rule 313(a). Applicant fails to appear at equalization hearing before AAB.

b. Property Tax Rule 324(a). Applicant fails to carry burden of proof by preponderance of evidence at equalization hearing before AAB.

Proposed Amendment to Property Tax Rule 305 (adding subparagraph (e))

Chanslor-Western Oil v. Cook (1980) 101 Cal.App.3d 407

> Respondent argues that in defending his assessment of the Chevron property the assessor has the right to use any information in his possession, even if it relates to the business affairs of another taxpayer. Respondent relies upon section 1609.4, which sets forth certain procedures to be used in a hearing on an application for reduction of assessments, and which states in part: "The assessor may introduce new evidence of full cash value of a parcel of property at the hearing and may also introduce information obtained pursuant to Section 441." However, the procedural rules for the conduct of such hearings are subject to the qualification that they shall not "be construed as permitting any violation of Section 408 or 451." (§ 1609.6 (formerly § 1609.1).) In order to construe all sections harmoniously, which we are required to do (Code Civ.Proc., § 1858), we must conclude that the assessor's use of "information obtained pursuant to Section 441" **is limited to either market data or information obtained from the taxpayer seeking the reduction.** (Ehrman and Flavin, *Taxing California Property* (1st ed. 1967) § 270, pp. 247-247 & fn. 9; Id. (2d ed. 1979), pp. 357-358.) (Bolding and underscoring added)

- Assessor cannot use confidential information of 3rd parties at all
- Assessor cannot use confidential information of 3rd parties even if it is de-identified
- *Trailer Train* is an SBE case and does not apply to local assessment
- SBE's *Assessment Appeals Manual* does not mention or follow *Trailer Train*

There is great unfairness in assessors' use of de-identified 3rd party information in assessment appeal hearings

- Only assessor has the 3rd party information and only assessor knows the source of the 3rd party information
- De-identification denies applicants' due process right to cross-examine evidence, even though case law and Property Tax Rule 313(e) mandate "reasonable opportunity … for cross-examination"
- De-identification keeps AABs from obtaining reliable and credible information which the SBE's *Assessment Appeals Manual* says is required for AABs to adjudicate appeals
- Some counties use de-identified 3rd party information, but others do not, so there is lack of uniformity
- Cost of obtaining the confidentiality order referred to in R&TC 408(e)(3) is prohibitive - most applicants cannot afford the cost