JEFFREY PRANG
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COUNTY OF LOS ANGELES
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August 20, 2018

Senator George Runner, Chairman
State Board of Equalization, 1st District
Sacramento Office
500 Capitol Mall, Suite 1750
Sacramento, CA 95814

Dear Chairman Runner:

BOE AGENDA FOR AUGUST 21, 2018, ITEM G1`

In response to the petition submitted on August 8, 2018, by the California Alliance of Taxpayer Advocates (CATA), this letter will address the Los Angeles County Office of the Assessor's position regarding each of CATA's five proposed amendments to the Property Tax Rules (Rules):

(1) Revenue and Taxation Code section 441(d) "Non-Compliance Hearings" by local Boards:

The Los Angeles County Assessor (LAC Assessor) does not move to deny appeals on a taxpayer's failure to comply with these requests, and nor does the Los Angeles County Assessment Appeals Board (LA AAB) hold these hearings. LA AAB holds pre-conference hearings. However, by law, assessor appraisals of value are presumed correct, and a taxpayer has only themselves to blame when it comes to satisfying their burden of persuasion. That is the consequence courts accord for failure to provide information to the assessor in order to conduct an accurate assessment. (*Simms v. Pope*, (1990) 218 Cal. App. 3d 47) To clarify this point in the Rules, I recommend that if the Board of Equalization (Board) approves this change, that the Board also inform taxpayers of this judicial standard.

(2) Assessors' practices in issuing Section 441(d) information requests:

CATA alleges that some county assessors have engaged in harsh practices in issuing Section 441(d) requests. In prior meetings, the Board has commended LAC Assessor for their letters. Therefore, proposed rules changes may have consequences to our procedures that may negatively impact taxpayers. For example, CATA's recommendation to Rule 305.1(e) to require requests be made, in writing, no less than 20 days prior to a hearing does not work in Los Angeles County. Due to the vast amount of cases that are scheduled with the LA AAB, it is typical that informal requests for information to taxpayers within days of a calendared hearing result in resolution of the cases. If a writing is required no less than 20 days, it is conceivable that cases would be continued at the detriment of taxpayers who could have provided information shortly after a request for information by the assessor.

(3) Assessors' requests for hearing continuances:

It is alleged that <u>some</u> counties ask for continuances after a taxpayer has presented evidence. In Los Angeles County, it is the LA AAB, after hearing the arguments, who determines whether a hearing may be continued. Typically, a hearing will be continued on behalf of the taxpayer to allow them to collect more information for the assessor. However, if the taxpayer has provided <u>new</u> information at the hearing, the assessor will ask the LA AAB for a continuance to review the new information.

(4) Assessors' use of confidential information obtained from one taxpayer through a Section 441(d) request in proceedings before local Boards by other taxpayers:

To fulfill its mandate, assessors use the best and most credible data it has available to fully assess property at its full value. That information may come from many different sources, like CoStar and other analytical databases. Many times that information comes from its own database it maintains. This is not different than a taxpayer relying on a cap rate pulled from CoStar to justify a certain valuation. In fact, the Uniform Standards of Professional Appraisal Practice (USPAP) mandates its members maintain client confidentiality too. The bottom-line is: Eliminating the ability of assessors to use information of other taxpayers as part of an appraisal will prevent assessors to accurately evaluate the property thus relying on the taxpayer's opinion of value which can be drastically different from that of the assessor's opinion. See Exhibit A.

(5) Taxpayer authorizations for the filing of assessment appeal applications:

LA AAB already allows for on-line assessment appeal applications. One size cannot fit all, and it would be irrational to think that what works in LA County with its 40,000 annual appeals will work in counties the fraction of the size.

Sincerely,

JEFFREY PRANG
JP:EY

Honorable Fiona Ma, Member
Honorable Diane Harkey, Member
Honorable, Jerome Horton, Member
Honorable Betty T. Yee, State Controller
c/o Deputy Controller Yvetter Stowers
Dean R. Kinnee, Executive Director
Henry D. Nanjo, Chief Counsel, Legal Department
Joann Richmond-Smith, California State Board of Equalization Proceedings
Charles Leonhardt, CAA President, Plumas County Assessor
Mary C. Wickham, County Counsel
Celia Zavala, Acting Executive Officer

Exhibit A

Differences in Opinions of Value – Los Angeles County

Appellant	Open Appeals	Roll Value	Applicant Opinion	Potential Loss
Tesoro	132	$20.5 B	$8.1 B	$12.4 B
Universal Studios	134	$23.6 B	$11.6 B	$11.9 B
Exxon Mobil	15	$15.1 B	$5.1 B	$10.0 B
Chevron	5	$9.1 B	$1.5 B	$7.5 B
THUMS Long Beach	4	$6.4 B	$0.2 B	$6.2 B
Time Warner	894	$6.7 B	$0.7 B	$6.0 B
LA Live	152	$11.5 B	$5.6 B	$5.9 B
Tidelands	21	$5.8 B	$0.5 B	$5.3 B
Terranea	17	$4.2 B	$1.5 B	$2.7 B
MillerCoors	7	$3.1 B	$0.5 B	$2.6 B
Phillips 66	3	$3.9 B	$1.4 B	$2.5 B
Next Century	7	$4.0 B	$1.7 B	$2.3 B
TOTAL	**1,391**	**$113.9 B**	**$38.5 B**	**$75.4 B**

LA County Assessor Division	Open Appeals	Roll Value	Applicant Opinion	Potential Loss
Major Real Property	7,352	$317.0 B	$157.2 B	$159.8 B
Personal Property	8,154	$120.3 B	$64.1 B	$56.1 B
District Real Property	14,064	$60.5 B	$35.0 B	$25.5 B
Unknown	21	$0.2 B	$0.1 B	$0.1 B
TOTAL	**28,065**	**$497.9 B**	**$256.4 B**	**$241.5 B**

Tax Agents Top 10 by Potential Loss	Open Appeals	Roll Value	Applicant Opinion	Potential Loss
#1	2,292	$77.7 B	$43.5 B	$34.3 B
#2	479	$41.4 B	$8.6 B	$32.8 B
#3	851	$28.3 B	$12.1 B	$16.2 B
#4	1,194	$30.3 B	$14.4 B	$15.9 B
#5	1,493	$27.5 B	$13.7 B	$13.9 B
#6	171	$20.9 B	$8.8 B	$12.1 B
#7	760	$20.3 B	$10.2 B	$10.1 B
#8	511	$19.4 B	$10.9 B	$8.6 B
#9	136	$12.0 B	$7.2 B	$4.8 B
#10	306	$13.0 B	$8.3 B	$4.7 B
TOTAL	**8,193**	**$290.8 B**	**$137.6 B**	**$153.2 B**

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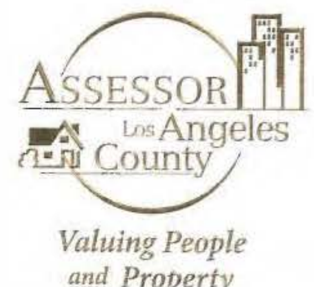

August 17, 2018

Dean R. Kinnee, Executive Director
State Board of Equalization
240 N Street
Sacramento, CA 94814

Dear Mr. Kinnee:

BOE AGENDA FOR AUGUST 21, 2018, ITEM G1

The County of Los Angeles, through its elected Assessor, strongly objects to the proposed amendments to Property Tax Rules 302, 305, 305.1, 305.2, and 323 outlined in Item L1 of the State Board of Equalization Agenda of July 24, 2018 and Item G1 of the August 21, 2018 Agenda.

The Board's own policy provides for an Interested Parties (IP) process prior to the commencement of formal rulemaking. Completion of the IP process ensures that the views of all stakeholders are properly brought forth, considered, and analyzed by the Board and its staff, so that the Board can rely on the best information and analysis possible when it engages in formal rulemaking.

Until now, for well over 20 years, this Board has followed its own interested parties process policy prior to engaging in formal rulemaking. Here however, the Board cancelled the interested parties meeting that was scheduled for August 16. A vote to approve California Alliance of Taxpayer Advocates' (CATA) petition and move forward with formal rulemaking would circumvent the IP process and deprive this board of critical information and analysis it should have before engaging in formal rulemaking.

The County of Los Angeles requests that the Board allow the Interested Parties (IP) process to continue. However, if you decide to push on with Agenda Item G1, we request that the Board conclude that the proposed changes are unnecessary, conflict with existing law, impede the assessor's constitutional duty to obtain relevant taxpayer information, damage the ability of assessors and appeals board to correctly establish fair market value of properties, and interfere with existing assessment appeal processes and procedures.

The proponents mischaracterize their proposed amendments as "*essential for uniformity*" or a "*necessity*" for fair hearings for the average taxpayer. This is simply not true.

To the contrary, the proposed amendments violate both the spirit and the letter of state law. And they jeopardize many of the important safeguards put in place by the Legislature in 1966 when the Reform Act was enacted (Stats. 1966, 1st Ex. Sess. 1966, ch. 147 § 37.).

Their true purpose is to systematically create a regime in which (contrary to the requirements of the Revenue and Taxation Code), taxpayers will turn over only that information which supports their own lower opinion of value while withholding information that does not. The proposed amendments are a Trojan Horse designed to allow big business to escape accurate and correct level of taxation while improperly shifting heavier burdens to honest taxpayers, local governments, schools, fire departments and many other essential government agencies.

I. COMMENCING THE RULEMAKING PROCESS ON AUGUST 21 CIRCUMVENTS THE INITIATED IP PROCESS

A. A Vote on August 21 to Commence a Rulemaking Process Would Circumvent the Essential IP Process

The IP process is integral to the rulemaking process. The Board has implemented two processes when adopting, amending, or repealing a Property Tax Rule:

- An ***informal process*** – commonly referred to as the ***interested parties process*** – to solicit input and resolve any differences of interested parties.
- The formal rulemaking process – the procedures required by the Administrative Procedures Act[1] (APA) administered by the Office of Administrative Law (OAL). The formal rulemaking process is mandated by statute, and all rulemaking efforts must abide by the provisions of the APA.

The IP process developed by the Board has proven to be an effective method of drafting comprehensive proposed Property Tax Rules for consideration by the Board. The insights of the various interested parties and Board staff are vital to ensuring the Board has the information necessary to evaluate the proposed amendments and decide whether to accept, reject or modify them. Without that, the amended rules could have serious unintended consequences the Board has not considered, including consequences that could potentially be harmful to unrepresented taxpayers and perhaps even unfairly chill their participation in the assessment appeal process.

On August 29, 2017, the Board voted to commence the IP process. In December 2017, your Property Tax Department conducted an informal meeting between various stakeholders. Subsequently, letters were submitted to the Board of Equalization (BOE) and the Property Tax Department to address the issues. (Exhibit 1)

The first Interested Parties meeting was held on April 25, 2018. It addressed issues related to (1) requests for taxpayer information from county assessors, (2) the conditions under which an AAB may reject an application for assessment appeal, (3) the conditions under which already-scheduled hearings may be postponed, and (4) other discussion items. The Discussion Document prepared by the Board's Property Tax Department outlined the issues and the parties' positions. (Exhibit 2) The meeting was well attended and the participation was active, however,

[1] Government Code §11340 et seq.

due to the number and complexity of the issues, a substantial number of issues were reserved for the next meeting. (Exhibit 3)

The second IP meeting was noticed for August 16, 2018, however, on July 13, 2018, the Board posted Agenda Item L1 to be heard at the July 24, 2018 BOE meeting to discuss CATA's proposed amendments to the Property Tax Rules. (Exhibit 4) To register my objection to Agenda Item L1 at the July 24th meeting, my office presented a letter on July 23, 2018 outlining my arguments against this interference in the IP process. (Exhibit 5) That second meeting was already scheduled for August 16, 2018, a date that was chosen to allow the assessors time to close the 2018 assessment rolls. (Exhibit 6)

At the August 21 meeting, the Board should not vote to commence formal rulemaking on CATA's petition to amend Property Tax Rules 302, 305, 305.1, 305.2 and 323. A vote on August 21 to commence formal rulemaking meeting would circumvent the existing IP process and deprive this Board of important input and analysis necessary in considering the proposed amendments.

CAA and its member assessors have worked collaboratively with CATA to address their concerns. (Exhibit 7) There has been no demonstrated need for urgency in initiating these rules changes. Even CATA's August 8, 2018 letter does not provide any specific examples of their members' cases that that they allege were negatively impacted by the existing rules. Instead, CATA references vague anecdotes regarding isolated instances of alleged county wrongdoings. Therefore, it appears there is no reason for the Board to deprive itself of important input and analysis resulting from a fully completed Interested Parties process, just to accommodate the timeline and demands of a few tax advocates who represent big businesses.[2]

B. The Board Should Deny CATA's Petition Pursuant to Government Code §11340.7 because it Cannot Satisfy the Minimum Statutory Requirements

The Board should deny CATA's petition to amend the Property Tax Rules under Government Code §11340.7. We believe the proposed amendments could not pass muster with the Office of Administrative Law. Government Code §11346.2 requires that every agency subject to this chapter:

[2] In fact, by doing so, this Board would risk harming taxpayers who prosecute their own cases without tax advocates. For example, CATA seeks to deprive AAB's of the ability to ensure that Applicants have responded to Assessor's 441(d) requests before going to hearing on the merits of their assessment appeal application. CATA suggests that where the Applicant and Assessor have a dispute regarding whether Applicant has documents that must be produced in response to the Assessor's 441(d) request, the Assessor should issue a subpoena and, if necessary, go to the superior court to enforce that subpoena. While CATA's big business clients may have the time and the legal and financial resources to go to court (and even potentially be criminally prosecuted under the provisions of the Revenue and Taxation Code) over whether they have adequately responded to the Assessor's 441(d) requests by providing all information required by law, the ordinary taxpayer does not. Moreover, this process – far more intimidating to the taxpayer than simply discussing with the AAB the status of their 441(d) compliance – would likely have a chilling effect on the homeowners and small business owners who wish to appeal their assessments.

> "shall prepare and submit to the Office [of Administrative Law] with the notice of the proposed action ... [a] notation following the express terms of each California Code of Regulations section, listing the specific statutes or other provisions of law authorizing the adoption of the regulation and listing the specific statutes or other provisions of law being implemented, interpreted, or made specific by that section in the California Code of Regulations."

If the Board were to approve CATA's recommendations for submission to the OAL, the proposed recommendations would not be able to satisfy the requirements of the APA's rulemaking process because many of the amendments proposed by CATA are contrary to controlling state law.

Furthermore, in conducting a rulemaking, the APA requires that an agency evaluate, analyze, and consider certain matters in addition to making specified determinations and findings with regard to the rulemaking action. These include, but are not necessarily limited to:

- A rulemaking agency must find that no alternative would be more effective in carrying out the purpose for which a regulation is proposed, or would be as effective as, and less burdensome, to affected private persons than the adopted regulation, or would be more cost effective and equally effective in effectuating the purpose of the statute.
- A rulemaking agency must determine whether the regulation "may have" or "will not have" a significant, statewide adverse economic impact directly affecting business. The agency must solicit alternatives if it determines that the proposed regulation "may have" a significant adverse economic impact on business.
- A rulemaking agency must describe the potential cost impact of a regulation on a representative private person or business, if known.
- A rulemaking agency must state whether a regulation differs from a federal statute or regulation and avoid unnecessary duplication or conflict.
- A rulemaking agency must determine whether and to what extent the proposed regulations impact: 1) costs to any local agency or school district requiring reimbursement; 2) other non-discretionary cost or savings imposed on local agencies; 3) costs or savings to any state agency; and 4) costs or savings in federal funding to the state.
- A rulemaking agency must evaluate whether the proposed regulation is inconsistent or incompatible with existing state regulations.

In fact, if proposed amendments such as Rule 305.1(e) were to be added, it would have a devastating economic impact on local government by eliminating an assessor's ability to utilize the income approach to value multi-million-dollar income generating business property.[3]

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[3] Proposed Rule 305.1(e) Request for Information states, "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....Information supplied in response to an assessor's request for information shall not entitle the assessor to take a deposition, issue interrogatories, or seek requests for admission. 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."

II. THE PROPOSED AMENDMENTS VIOLATE THE CONSTITUTION, REVENUE &TAXATION CODE AND THE LEGISLATURE'S STATED INTENT

A. Proposed Changes to Rule 305.1 Improperly Infringe Upon Constitutional Rights Granted to County Government in Article XIII, Section 16

Article XIII, Section 16 of the California Constitution, which states that "The county board of supervisors, shall ...adopt rules of notice and procedures for those boards as may be required to facilitate their work and to insure uniformity in the processing and decision of equalization petitions," specifically directs county board of supervisors to adopt rules of notice and procedure to facilitate the work of local assessment appeals boards and to ensure uniformity in the processing of applications before that local assessment appeals. This constitutional right, specifically allows local government, to adopt local procedural rules that reflect the needs and realities *of that particular county*.

A practical reality the Board should also consider is the fact that the particular type of properties under appeal will vary from county to county. Smaller counties are less likely to have, for instance, complex commercial property and industrial property appeals while large and more urban counties are more likely to have such appeals. Los Angeles County has an abundance of appeals from simple appeals filed by homeowners to the exceedingly complex and litigious appeals pertaining to the value of oil and gas fields, hotels, commercial property, and industrial property. Assessment appeal boards and assessors must have discretion and flexibility to deal with the vast differences in the types and complexity of the various appeals presented.

The forced "uniformity" suggested by the taxpayer groups may do more harm than good if it strips assessment appeals boards of their inherent power and discretion to control property tax appeal proceedings, while simultaneously handcuffing assessors from collecting the information they need from taxpayers to properly evaluate and assess their properties.

Superior Court judges deal with many similar challenges when litigants fail to comply with civil discovery orders. In civil cases, judges have the discretion to issue a wide range of sanctions if a party violates a discovery order. Depending on the circumstances of each case, permissible sanctions may include, monetary sanctions, issue sanctions (designating facts as established), evidence sanctions (barring introduction of evidence); terminating sanctions (striking pleadings and dismissal of actions and contempt. (CCP § 2023.030.) All of these types of sanctions have been upheld as within the court's inherent power to control proceedings and within the realm of "minimum due process."

CATA's request for "uniformity" simply cannot override local government's constitutional right to "...adopt rules of notice and procedures for those boards as may be required to facilitate their work and to insure uniformity in the processing and decision of equalization petitions...". Moreover, as explained in your Board's publication entitled "*Hierarchy of Property Tax Authorities*" Property Tax Rules may not conflict with constitutional or statutory law and are binding on state and local governmental entities." (BOE's Letter to Assessors No. 2003/039, 5/29/03, "Hierarchy

of Property Tax Authorities (LTA No. 2003/039), available at http://www.boe.ca.gov/proptaxes/pdf/lta03039.pdf).

B. Proposed Changes to Rule 305.1 Directly Conflict with R & T Code Provisions that Grant Broad Powers to Assessors to Demand Property Information Necessary for the Proper Assessment of Taxable Property.

CATA's proposed amendments are intended to restrict assessors' legal authority to request information and data from taxpayers by making it easier for taxpayers to (1) understate their business property holdings with impunity, (2) stall or avoid an assessor's R & T Code §441(d) requests, and (3) refuse to answer questions or produce documents responsive to a 441(d) request absent a Superior Court order.

In Los Angeles County alone, there are countless instances where taxpayers and their representatives systematically delayed Los Angeles County appraisers' lawful appraisal activities or blatantly refused to comply with lawful requests for information by dishonestly responding that they do not have the information sought, intentionally providing irrelevant information to mislead appraisers or unlawfully ignoring 441 (d) requests all together.

The proposed changes to Rule 305.1(e), also interfere with an assessor's right to issue subpoenas and collect essential information pursuant to Rev. & Tax. Code § 454 and directly conflict with, void or diminish almost every other tool assessors have for detecting falsification or under-reporting of taxable property. Undermining the exchange of information process will also negatively impact the ability of assessors and taxpayers to work together to resolve appeals by stipulation.

An assessor has the right to request and examine all property information held by or accessible to a property owner which he deems relevant and necessary for the proper assessment of taxable property. As explained in the leading case of *Roberts v. Gulf Oil*, the legislative intent behind Rev. & Tax. (R & T) Code §§ 441, 442 and 470 was to provide "local assessors with better tools for detecting falsification and under-reporting on property statements." (*Roberts* v. *Gulf Oil* (1983) 147 Cal.App.3d 770, 783-784.) R & T Code §§ 441, 442 and 470 give "broad grants of power to the assessor to demand information."

As *Roberts* explains at page 784, these powers are very similar to those granted to the Treasury Department under section 7602(a)(1) of the Internal Revenue Code of 1954. (Id.) This is why the *Robert's* court concluded that "[b]ecause the language contained in section 441, subdivision (d), is at least as broad as that contained in 26 United States Code section 7602(a)(1), the holdings in the federal cases are helpful." (*Roberts* at p. 784.) Thus, in California, a taxpayer's obligation to make information and records relevant to the determination of value available for examination by the assessor has always been viewed "in an expansive, not contractive, sense" because the full examination of such records is considered essential to the proper discharge of the assessor's duties. (*Roberts* at p. 786.)

The obligation to provide information does not stop when a taxpayer files an Application for Changed Assessment. As explained in *State Bd. of Equalization v. Ceniceros* (1998) 63 Cal. App.4th 122, 132 "the Legislature anticipated assessors would use [R & T Code §] 441, subdivision (d), requests as a means of prehearing discovery.... we conclude that, after a taxpayer has applied for a reduction in its assessment, assessors may prepare for the hearing on that assessment appeal by demanding information from the taxpayer pursuant to subdivision (d) of section 441."

The proposed amendments to Rule 305.1 directly conflict with an assessor's use of R & T Code § 441(d) requests to gather relevant information needed to prepare for hearings on assessment appeals, conflict with the Legislative intent for R & T Code § 441 and conflict with well-established case law interpreting this important statute, as summarized in attached chart as Exhibit 8.

C. Proposed Changes to Rule 305.1 Conflict with Settled California Case Law Upholding an Assessor's Right to Information Relevant to Taxable Property

The proposed amendments appear to be an attempt to circumvent well-settled California case law upholding an assessor's right to demand information relevant to taxable property. The California Supreme Court has long recognized that a request for property information may only be refused when the requested information concerns tax exempt property or there is no possibility that the requested information will lead to the disclosure of information relevant to the taxable value of property. (*Union Pacific RR v. State Board of Equalization* (1989) 49 Cal.3d 138 at 145).

When a taxpayer fails to comply with a 441(d) request, an assessor may compel a taxpayer's appearance and examination under oath pursuant to R & T Code § 454. This right was first codified over 100 years ago in 1873 in former Political Code § 3632. The power to subpoena was restated as R & T Code § 454 when the R & T Code was first enacted in 1939. As explained in *Weyse v. Crawford* (1890) 85 Cal. 196, 200:

> "[T]**he assessor ... has a right**, under section 3632 [now R & T Code § 454], **to subpoena the party** making the statement, and also any other person **whom he may supposed to have knowledge upon the subject, and examine him or them on oath, as witnesses are examined, touching any property which is assessable in his county**; or in the absence of a statement, or an insufficient description of real property, he may cite the party to appear in the superior court for such examination, under section 3634 [now R & T Code § 468] where a summary hearing is guaranteed to him, and all proceedings will be had at the expense of the taxpayer **necessary to secure the requisite information for making a proper assessment**." [Emphasis added.]

Revenue & Taxation Code § 454 now provides:

> "**The assessor may subpoena and examine any person in relation to:**
> (a) any statement furnished him, or
>
> (b) **any statement disclosing property assessable in his county** that may be stored with, possessed, or controlled by the person. He may do this in any county where the person may be found, but shall not require the person to appear before him in any other county than that in which the subpoena is served."
> [Emphasis added.]

As summarized above, the proposed changes to Rule 305.1(e) interfere with an assessor's right to issue subpoenas and collect essential information pursuant to R & T Code § 454 and directly conflict with, void or diminish almost every other tool assessors have for detecting falsification or under-reporting of taxable property. Using a Property Tax Rule to frustrate the information gathering powers granted to assessors by the California Legislature over 100 years ago is simply improper. Assessors cannot carry out their statutory duty to assess all taxable property at its full cash value if they are not able to efficiently gather relevant information.

CATA wants to impose "Uniform Rules" that restrict the discretion, judgment and flexibility of assessors and assessment appeals boards to collect the information needed to fairly and accurately equalize assessments for all types of issues, for all types of properties, in all sizes of counties and assessment appeal boards. This demand is unrealistic, unnecessary and unconstitutional. The current rules regarding the conduct of property tax appeal hearings in California do *not deny any applicant due process as required by constitutional and statutory law.* Surely, it is beyond reasonable argument that what may work procedurally for Alpine County will not work for Los Angeles County.

D. CATA's Alleged "Due Process" Concerns Have Not Been Documented

Los Angeles County includes the following charts to illustrate the vast differences between the unsupported claims presented by CATA and the documented statistics for assessment appeals cases filed in Los Angeles County.

Los Angeles County Appeals Filed Application Years 2008 - 2018

Documented statistics for assessment appeals cases filed in Los Angeles County and closed for the years 2014-2018 clearly show that the majority of applications resulted in a withdrawal. The request for information process, both formal (441 (d)) and informal, between the Assessor and taxpayers/agents often resulted in abbreviated and mutually beneficial resolution of the cases and issues in dispute.

Agent Withdrawals
Board* Cases Closed FY 2014 or Later

*Does not include Hearing Officer cases

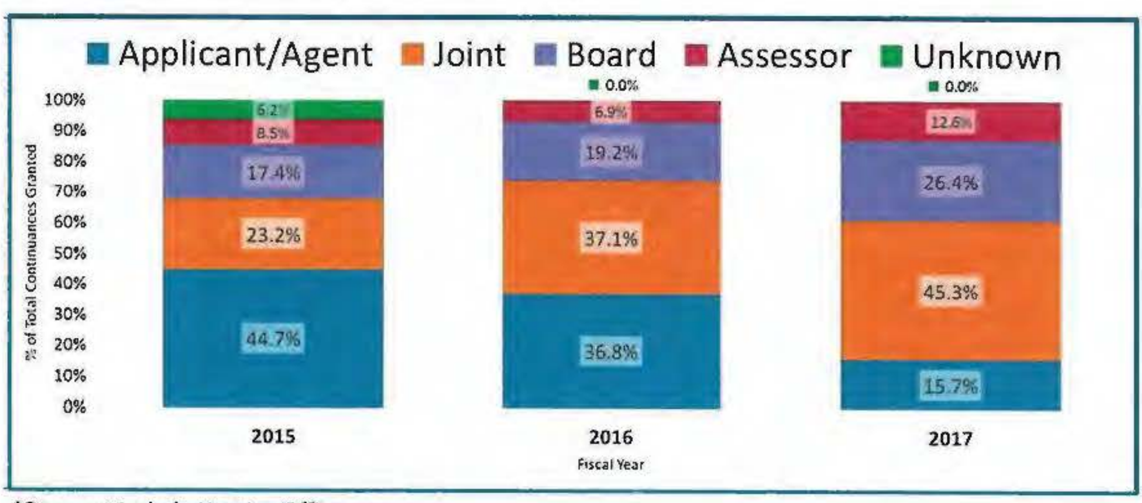
Non-Agent Withdrawals
Board* Cases Closed FY 2014 or Later

*Does not include Hearing Officer cases

In the case of continuances in Los Angeles County, the majority of these have been requested by agents or agents in agreement with the Assessor. A fair percentage of all continuances (14%) were requested either because additional information was needed, or data required verification. Limiting the scope and reach of the 441 (d) process would likely increase the total number of

continuances as well as the percentage of continuances initiated due to information or verified data required by either or both parties.

Board* Continuances – Requesting Party
Fiscal Years 2015, 2016, 2017



*Does not include Hearing Officer cases

III. LOS ANGELES AAB AGREES WITH ASSESSOR'S OBJECTION TO PROPOSED AMENDMENTS TO PROPERTY TAX RULES

The Los Angeles County Assessor's Office and taxpayers have used the current R & T Code §441(d) request of information procedure for many years, and have found the procedure to be an effective, efficient, and cooperative way to smoothly move the assessment appeal process along towards a value hearing on the merits. In Los Angeles County, as is the case in other counties, a large percentage of appeals are either withdrawn or stipulated to after the applicant has provided information requested by the Assessor pursuant to 441(d). Stipulating can be an important avenue in the appeals process as it can save both the assessor and taxpayer the time, energy and cost of an appeal hearing. The vast majority of the time there is rarely a contentious exchange of information process, and it is an effective way to see if the parties can collaborate to resolve issues or narrow issues before a formal hearing is needed. Furthermore, the Los Angeles County Assessment Appeals Board does not deny applications solely on the basis of Rev. & Tax. Code §441(d) noncompliance.

A. The Proposed Amendments to Rule 323 Would Violate Due Process; Create Procedural Problems for AABs; and Conflicts with Other Existing Property Tax Rules. It also Creates Procedural Problems and Ambiguities due to Sloppy Drafting.

Due to its heavy hearing schedule with available hearing dates filled long in advance and myriad complex appeals (e.g. oil refineries and major commercial and industrial properties) that last anywhere from several hearing days to several weeks, it is not possible for the Los Angeles County Assessment Appeals Board to reschedule a continued hearing within 90 days.[4]

The proposed amendment to Rule 323 would effectively force the Los Angeles County Assessment Appeals Board into an untenable position: either (a) deny continuances requested by the Assessor and attempt to equalize property value without the benefit of first receiving properly prepared cases from both sides; or (b) grant the Assessor's requested continuance but risk placing the equalized value at legal jeopardy because granting the continuance violated proposed 90-day limit established by the proposed amendment to Rule 323(d).

The application of the proposed rule amendments from CATA will force the Assessment Appeals Board to violate Rule 323(d). It will not be difficult for the assessee to force a remand of the valuation decision back to the Assessment Appeals Board on procedural grounds alone. The real source of dissatisfaction (whether justified or not) of the unhappy assessee will be the valuation determination and that fundamental issue will not be reviewed by the Superior Court. Multiple and unnecessary litigation over property tax appeals does not serve the public interest as represented by taxpayers and assessors.

The proposed amendment to 323(d) violates due process by drastically limiting an assessor's ability to secure a continuance without imposing the same strictures on continuance requests made by Applicants. It does so in two ways: (1) It sets a 90-day limit on continuance requests made by the Assessor without establishing the same limitation for continuance requests made by the Applicant; (2) It prohibits the AAB from granting a continuance to the Assessor after the Applicant has presented its case without imposing the same prohibition on continuance requests made by the Applicant after the Assessor's case has been presented.

The Assessor's office presents first in five types of assessment appeals: Single family owner-occupied properties, penalty assessments, escape assessments, non-enrollment of purchase price, and when the Assessor intends to request a higher value than is on the roll. Thus, in many cases – and in some counties the vast majority of cases – the Assessor has the burden of going first.

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[4] Los Angeles has four panels running five days a week with 10-30 applications typically scheduled each day before each panel. Additionally, Los Angeles has 27 Hearing Officers. Four times each week, the hearing officers run hearings with agendas of 150 to 300 applications per day. In FY 2017-18 alone, 19,179 property tax appeals were filed in Los Angeles County, down from 40,000 applications per year filed during recession. In Fiscal Year 2017-18 alone, the Los Angeles County Assessment Appeals Board scheduled 54,616 appeals for Board and Hearing Officer hearings. As of July 2018, 26,962 appeals remain pending in the Los Angeles County Assessment Appeals Board scheduling system

Thus, the proposed amendment to Rule 323(d) would violate due process by leaving in place the AAB's unfettered discretion in ruling on continuance requests made by Applicants after the Assessor's case has been presented while prohibiting the AAB from granting identical continuance requests made by the Assessor after the Applicant's case has been presented – it would set up an inherent imbalance in the system.

RTC 1606(d) and Property Tax Rule 305.1(c) expressly provide that whenever a formal exchange of information has been conducted pursuant to RTC 1606 and PTR 305.1, if at the hearing a party introduces new material relating to the information received from the other party, the other party, upon requests, <u>shall</u> be granted a continuance for a reasonable period of time. However, the proposed amendment violates the requirements of RTC 1606(d) and conflicts with PTR 305.1 Where RTC 1606(d) <u>requires</u> that if Applicant introduces such new information, the Assessor <u>shall</u> be granted a continuance upon request, the proposed amendment to PTR 323(d) would <u>prohibit</u> the AAB from granting such a request. Accordingly, adopting this proposed amendment as written is outside of the AAB's statutory authority as the proposed amendment would violate RTC 1606(d). Adoption of the proposed amendment would also create ambiguity doe to the conflict between Property Tax Rule 305.1(c) which would require that the AAB grant the Assessor a continuance and Property Tax Rule 323(d) which would prohibit the AAB from granting the same requested continuance.

Existing Rule 323(c) provides that the AAB may continue a hearing to a later date and provides that at least 10 days before the continued hearing, the clerk shall give written notice of the continued hearing date.

The sloppy drafting of the proposed amendment to Rule 323 would change that notice requirement, or at the very least create ambiguity surrounding it. As drafted, Rule 323 creates Rule 323(d), which focuses on denying and narrowly circumscribing continuances requested by the Assessor; newly created subdivision 323(e) now addresses Applicants' continuance requests and the 10-day written notice requirement.

Because the requirement that the AAB provide 10-days written notice of the continued hearing date to the parties is now contained in a paragraph that otherwise pertains only to continuance requests made by the Applicant, the language of the proposed amendment creates the potential reading that the AAB need give 10-days written notice of the continued hearing date only when the continuance request was made by the Applicant, not when the request was made by the Assessor.

B. Rule 323(c) Amendments Violate Legislative Intent of R & T § 1604

Proposed Rule 323(c)'s language prohibiting postponements "solely on the ground that the applicant has not responded to a request for information made under section 441..." is inconsistent with the longstanding and unchanged Rule 323(a). Rule 323(a) allows each side one postponement *of right i.e. for any reason* as long as the request is timely made.

Additionally, proponents of the rule changes insist that the assessor must use the cited Rev. & Tax. Code remedies when a §441(d) dispute between the assessor and the assessee arises (see R & T Code §§454, 461, 462 468) and the assessor believes that an appropriate §441(d) request has not been responded to by the assessee.

The most glaring problem with this proposed amendment is that it violates Section 1604(c) of the Revenue and Taxation Code. Section 1604 provides that the taxpayer's opinion of value shall prevail (even if it is zero) if the appeal is not heard within two years, absent certain limited exceptions. The most important exception is "where the taxpayer failed to provide full and complete information as required by law." To trigger that very important exception, the assessor must be able to (1) request relevant information from the taxpayer; (2) delay commencement of the hearing on the merits until that information has been produced; and (3) establish on the record the status of Applicant's response to the Assessor's 441(d) request.

The Legislative history for R & T § 1604 clearly expresses the need for taxpayers to comply with assessor's requests for information and the need to continue the 2-year deadline when relevant information has not been timely produced.

The Los Angeles County Assessment Appeals Board supports the alternative proposed language for Rule 323(c) that Ms. Dawn Duran of the City and County of San Francisco submitted to the State Board of Equalization on July 17, 2018 on behalf of CACEO:[5]

> "At the hearing, the board or hearing officer may continue a hearing to a later date. **The board or hearing officer must make every reasonable effort to maintain continuous hearings given the reasonable needs of the county board of equalization or assessment appeals board or county hearing officer and the parties to the proceedings. Before granting such a request, the board or hearing officer must make sure that there is good cause sufficient to justify the continuance.** If the applicant requests a continuance within 90 days of the expiration of the two-year period..." (Proposed language in **bold.**)

C. Proposed Amendment to Rule 305

CATA's proposed amendment to Rule 305 is problematic. The property tax appeals system requires some degree of assurance that an agent-filed application accurately reflects the authorization of the underlying property owner.

The current language of Rule 305 reflects the factual conclusions of the Board of Equalization and local board clerks that agents were filing applications for particular years using out-of-date authorizations and not fully pursuing the appeals process to the detriment of the property owners

[5] Exhibit 9

they supposedly represented. The current language of Rule 305 insures the integrity of the appeal process and avoids the expenditure of unnecessary public resources on appeals that were not pursued or even authorized by the property owner for that tax year.

CATA's proposed amendment to Property Tax Rule 305(a)(5) does not clarify the issue it raises, which is whether or not each agency authorization for an application filed be signed by the property owner in that application year. The CACEO and the Los Angeles County Clerk of the Board are open to appropriately clarifying this procedure to avoid an overly strict yet still effective agent authorization rule.

Los Angeles County supports the alternative language that CACEO proposed, which would amend Rule 305(a)(1)(B) by adding the following language at the end of the current rule, " "...or years indicated in the agent's authorization; an agent's authorization may not cover more than four calendar years in the future, beginning with the year in which the authorization was signed."

D. Proposed Amendment to Rule 305.1

CATA's proposed amendment to Property Tax Rule 305.1, which would require 441(d) requests to be made at least 21 days before a hearing, is unacceptable to the Los Angeles County Assessment Appeals Board. In an appeals system the size of Los Angeles County, such a requirement would increase postponements and continuances and likely further delay in completing appeals hearings.

This proposed amendment is symptomatic of other CATA-proposed amendments for Assessment Appeals Board procedures. In the name of "uniformity", CATA's proposed amendments seek enactment of "one size fits all" procedures regardless of the number of appeals filed in each county. The practical "real life" reality for an appeals system such as the Los Angeles County appeals system is very different from that of small counties..

V. Assessor's Right to Challenge State Board of Equalization Rules

R & T Code § 538, subdivision (a), requires that an assessor bring an action in court if the assessor believes that application of a Property Tax Rule will require property to be assessed in a manner contrary to the California Constitution, a statute, or another rule, or that the assessor believes a Property Tax Rule is unconstitutional or invalid. The proposed changes directly conflict with or violate various provisions of the R & T Code, and invalidate existing Property Tax Rules, as summarized in Exhibit 8.

If the Board approves the rule changes outlined in Agenda Item L1 and G1, the CAA members and the Los Angeles County Assessor, in particular, will have no choice but to file a Section 538 legal action to prohibit this overreach of authority that directly interferes and diminishes the statutory duty assessors uphold to assess all taxable property at its full cash value and to pursue

all other appropriate avenues of judicial remedy the improper enactment of the proposed amendments.

The Los Angeles County Office of the Assessor submits this letter requesting the Board reject CATA's changes, avoid the necessity of a Section 538 legal action against the Board, and allow the IP process to unfold in a thoughtful and considered manner that will allow all stakeholders to be heard. Certainly, Assessors should also be given the opportunity to submit their own set of proposals. To that end, the information contained in this letter will be helpful so the Board and its legal staff are apprised of the legal and factual background animating the Assessor's Office's strenuous objection to these rule changes. Alternatively, we recommend that the Board re-establish the County Assessed Properties Committee to allow discussions that would have occurred during the IP process, to offer all Board member staff to engage the stakeholders in discussion of the issues.

We trust the State Board of Equalization will not approve the petition to amend the property tax regulations that conflict with numerous provisions of the Revenue & Taxation Code, the intent of the Legislature and well settled California case law.

Sincerely,

JEFFREY PRANG
Assessor

JP:EY:ac

c: Senator George Runner, Chariman
Honorable Fiona Ma, Member
Honorable Diane Harkey, Member
Honorable, Jerome Horton, Member
Honorable Betty T. Yee, State Controller
c/o Deputy Controller Yvetter Stowers
Henry D. Nanjo, Chief Counsel, Legal Department
Joann Richmond-Smith, California State Board of Equalization Proceedings
Charles Leonhardt, CAA President, Plumas County Assessor
Mary C. Wickham, County Counsel
Celia Zavala, Acting Executive Officer

EXHIBIT 1

July 7, 2017

Honorable Jerome E. Horton
Member, State Board of Equalization
Chairman, Property Tax Committee
2361 Rosecrans Ave., #450
El Segundo, CA 90245

Re: Assessment appeals process - Intercounty uniformity

Dear Chairman Horton:

The California Alliance of Taxpayer Advocates ("CATA") is a non-profit trade association made up of tax consultants representing taxpayers before County Assessors, The Franchise Tax Board and The State Board of Equalization ("Board"). CATA's purpose is to protect the rights of state and local taxpayers by advancing the professional practice of state and local tax consulting through education, advocacy and high ethical standards.

To this end, the CATA board has some important concerns regarding the assessment appeals board ("AAB") processes in the various counties.

We first wrote to you on September 28, 2016. In that letter, we laid out our concerns, as we do again below, and copied the California Assessors' Association. The California Assessors' Association responded asking that we work with them first to find a way to resolve these issues before seeking redress at the BOE. In our November 18, 2016, letter to you we promised to keep you apprised of our discussions with the California Assessors' Association (CAA) regarding the three categories: (1) Information exchanges; (2) Improper rejection of appeal applications; and (3) Continuous hearing dates.

On Monday, December 19, 2016, we had what we thought was a fruitful conference call with the CAA, only to discover later weeks later, that the group of Assessors, that included CAA President Benson, was in fact not authorized to speak with us on the matter. Assessor Benson required that we send a formal letter to him in his capacity as the President of CAA requesting a meeting. We did so on March 2, 2017. The letter discussed CATA's concerns and requested a representative of CATA be provided an opportunity to address the CAA Board at the CAA April meeting. Our objective was then, and is now, to develop a Letter to Assessors that will provide for uniform processes in counties statewide.

Assessor Benson responded that the matter would be taken up at the CAA meeting in April, but that we would not be permitted to address the CAA Board or any CAA sub-group.

In early May, Assessor Benson relayed to us that a group of Assessors had been organized to address this matter and that a meeting would be scheduled sometime in June. He declined to provide us a list of the Assessors making up this group. Despite repeated emails and phone calls to him to establish a meeting date, we received no response from him, or anyone else, other than the Assessors are busy and he is working on scheduling a meeting.

After 9 months, it is clear that CAA is either unwilling or unable to meet with CATA and that our initial efforts to petition the BOE was the correct path.

Upon your review of this letter and the attachment, we would like to have a brief call to determine how we may best proceed with the BOE.

The practices our members have observed are both unfair and inconsistent between counties. So, we are again writing to report these concerns to you and respectfully request that you exercise your authority to provide counties and taxpayers guidance and oversight under Government Code Section 15606, subdivision (c). Our concerns fall into three categories: (1) Information exchanges; (2) Improper rejection of appeal applications; and (3) Continuous hearing dates.

1. Information Exchanges

We are concerned about the manner in which various counties apply the information exchange procedures between taxpayers and assessors in local property tax assessment appeals. The basic framework for this administrative "discovery" is set forth in Revenue and Taxation Code Section 441. Subdivision (d) requires taxpayers to "make available for examination information or records regarding his or her property." And subdivision (h) states that a taxpayer's failure to provide this information while introducing it during an appeal hearing is grounds for a continuance for the assessor.

Based on input from our members, our objections are summarized as follows:

- Requests should be in writing—no verbal or oral Section 441(d) requests should be allowed or considered by the AAB.
- Overly broad requests that are not limited to information regarding the property in question.
- Assessors must not threaten to resort to the AABs to coerce taxpayer compliance.
- Failure by the Assessors to comply with providing taxpayers or their representatives information requested under Revenue & Taxation Code Section 408(e) ("relating to the appraisal and the assessment of the assessee's property").

- Assessors cannot demand a statement under penalty of perjury as to whether the taxpayer has or does not have the information, or whether the taxpayer has adequately responded to the information request.

- Assessors must make Section 441(d) requests at least two weeks prior to hearing. The information provided by the taxpayer or the taxpayer's agent should be held confidential as provided in Section 451.

- Assessor cannot use information obtained from one taxpayer under 441d and use the same information against a second or any other taxpayer in an assessment appeals board hearing without written authorization from the first taxpayer.

- AABs should not be able to dismiss an assessment appeal application at a pre-hearing conference, or otherwise, because the taxpayer has not responded to a Section 441(d) request. AABs cannot legally limit taxpayers' administrative rights and remedies and cannot dismiss applications for any perceived 441(d) violation.

- Assessors should not issue Section 441(d) requests that also threaten the taxpayer with criminal or administrative penalties for non-compliance within a particular time or if the response is deemed insufficient by the assessor.

2. Improper Rejection of Assessment Appeal Applications

Several counties have been unlawfully rejecting appeal applications based on incorrect interpretation of property tax statutes and regulations. Our objections are summarized as follows:

- County clerks cannot reject applications because of the false belief that agency authorizations must be signed by taxpayers in the same calendar year as the application was filed. While it is true that the agency authorizations must be signed and dated before the appeal applications are filed, California law does not require that they be signed in the same calendar year in which the applications are filed. In fact, agency authorizations can be signed in earlier years as long as they state that the agent is authorized to sign and file applications for the relevant roll years.

- The agency authorization rules must be clarified for processing on-line filings. For in-person filings, current rules require applicants to attach agency authorizations to their appeal applications. But these rules don't work for on-line filings, since there is no way to attach agency authorizations. The attempted application of this obsolete rule has been mixed, at best, and the results have hurt taxpayers.

- Standardized state-wide assessment appeal applications should be considered. Currently, each county develops their own forms based on state-wide guidelines; however, these forms vary county to county and result in accepted or rejected statuses depending upon the specific county.

3. **Continuous hearing dates.**

In some counties, the Assessor asks for indefinite postponement after the taxpayer presents its case-in-chief. This is obviously done to buy time to prepare for cross-examination, thus compromising taxpayers' due process rights. AABs should be required to make every reasonable effort to maintain continuous hearing dates. Delays longer than a week should require a showing of undue hardship on the part of the Assessor.

We appreciate the opportunity to voice the above concerns. Please note that we are open to working with the counties during this process—and with your help and guidance—to building consensus. Thanks in advance for your time and consideration.

Sincerely,

Mardiros H. Dakessian
President
California Alliance of Taxpayer Advocates

cc: Hon. Diane Harkey, Chair, State Board of Equalization
Hon. Fiona Ma, Chair, State Board of Equalization
Hon. George Runner, Member, State Board of Equalization
Hon. Betty T. Yee, State Controller
Rich Benson, President, California Assessors' Association

CALIFORNIA ASSESSORS' ASSOCIATION

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***Past President**

October 12, 2017

Dean R. Kinnee, Deputy Director
State Board of Equalization, Property Tax Department
P. O. Box 942879
Sacramento, CA 94279-0064

Re: Assessment Appeal Practices/441(d) – Interested Parties

Dear Mr. Kinnee:

As I testified at the Board of Equalization meeting on August 29, in response to the California Alliance of Taxpayer Advocates (CATA) complaint earlier this year, the California Assessors' Association (CAA) has worked diligently with California's 58 independently elected assessors for more than six months, to reach consensus, gather input, and draft best practices for improving the process for communicating to taxpayers the information assessors need to perform our constitutional duties to enroll accurate and fair assessments. I am pleased to report that several counties have modified their correspondence in response to the feedback received from both assessors and taxpayers. We welcome the opportunity to participate in the upcoming interested parties process intended to improve best practices, and increase cooperation and compliance by taxpayers.

I have attached a spreadsheet which includes guidelines that the CAA is recommending the BOE utilize as the base document for discussing best practices, including information from taxpayers that assessors require to fairly administer the property tax system. Since assessors are independently elected, and have the final authority for interpreting and implementing their constitutional responsibilities, the guidelines are simple suggestions that assessors can use and modify to fit unique circumstances. The discovery process is not "one size fits all," just as taxpayers and their agents do not conduct their business the same. It is important to note that the content of a Revenue and Taxation Code section 441(d) discovery letter may vary depending upon the nature of the request and the type of property involved. Information needed to assess a mining facility or farm is very different from the information needed to assess an office building, apartment or a high-tech clean room.

Not all taxpayers are cooperative in responding to requests from assessors for information. Consequently, the language of a 441(d) demand letter may reflect the level of cooperation from the taxpayer. The California Constitution and state law empowers assessors, like other taxing agencies, with the authority to request and ultimately demand information necessary for enrolling a timely and accurate assessment. It is our experience that most taxpayers comply with the initial 441(d) request for information, which is intended to explain the law and encourage cooperation. However, in some cases, which assessors will detail during the interested parties process, cooperation has not been forthcoming. In those situations, assessors may impose an increasing level of demand, including a subpoena as a last resort, to obtain information that the taxpayers have in their custody or control.

The contents of the spreadsheet reflect an extensive effort to gather input and reach consensus among assessors.

Finally, the CAA will provide, prior to the interested parties meeting, a comprehensive summary of the laws, rules and legal opinions, including the legal basis for taxpayer cooperation.

Sincerely,

Richard N. Benson

cc:
Hon. Diane Harkey, Chair, State Board of Equalization
Hon. George Runner, Vice-Chair, State Board of Equalization
Hon. Jerome Horton, State Board of Equalization
Hon. Fiona Ma, State Board of Equalization
Hon. Betty T. Yee, State Controller
David J. Gau, Executive Director, State Board of Equalization
Marc A. Aprea, Aprea & Micheli
Mardiros H. Dakessian, President, California Alliance of Taxpayer Advocates
Rob Grossglauser, Pinnacle Advocacy LLC
California Assessors' Association

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November 16, 2017

Via email

Diane L. Harkey, Chairwoman
State Board of Equalization
450 N Street
Sacramento, CA 95814

Dear Ms. Harkey:

Interested Parties Meeting re: County Assessment Appeals

The members of the Clerk of the Board of Supervisors Section of the California Association of Clerks and Election Officials appreciate this opportunity to participate in the Interested Parties Process triggered by complaints of the California Alliance of Taxpayer Advocates (CATA) at your Board's August 29, 2017 meeting about a lack of intercounty uniformity in the assessment appeal process. As you are aware, Clerks of the Board of Supervisors manage the county assessment appeals program in the 58 counties.

Although CATA's complaints focused primarily on issues surrounding the Section 441(d) procedures, some of their concerns specifically had to do with county assessment appeals. And even some of their concerns and suggestions regarding the 441(d) process have spillover effect on county equalization. It is these complaints and concerns that our members wish to comment upon.

We would like to state very clearly that our overall concern is that the county assessment appeals programs function smoothly and efficiently in a cost-effective manner so that taxpayers and assessors, alike, receive fair treatment and an equal opportunity to put on their case before our boards. We realize that the equalization process is an adversarial one. However, we expect that the parties coming before our boards will not engage in game playing intended to advantage one party over the other. These maneuvers only serve to cause unnecessary delays and add severe economic costs to the process and thwart our efforts to provide both parties a just and equitable venue in which to resolve property tax disputes.
We would like to comment on a few of CATA's complaints, specifically with regard to our assessment appeal process, but we also have comments relating to some of the other issues and suggestions that CATA has made that have an indirect, but very significant, effect of the county appeal process that we are responsible for managing.

1. Information Exchanges

- **The assessor must make Section 441(d) requests at least two weeks prior to hearing.**
  Our concern here is that a rigid requirement might add unnecessary postponements in our providing a timely hearing. We believe that 441(d) and 408(e) requests be made more than two weeks in advance of the hearing. However, we would oppose any inflexible timetable that would provide a party with grounds to justify a postponement or continuance of the hearing where one is not truly necessary. While a county board does have - and should have - the authority to grant a disadvantaged party a postponement or continuance, some county boards have so many appeals to handle that they simply can't afford to vacate hearing days due to the parties' failure to comply with a rigid time requirement. Again, we stress the need for the parties to act responsibly, but some flexibility here is crucial.

2. Improper Rejection of Assessment Appeal Applications

- **County clerks cannot reject applications because of the false belief that agency authorizations must be signed by taxpayers in the same calendar year as the application was filed. Agency authorizations can be signed in earlier years as long as they state that the agent is authorized to sign and file applications for the relevant roll years.**
  We agree. However, we would like to point out that some clerks and appeals boards have been very strict about agent authorizations because of a history of abuse by a few tax agents. Over the years there have been many incidents of agents filing old authorization forms or photocopies of old authorization forms that were no longer valid and where, in fact, the taxpayer never authorized the agent to file for the year in question. Some taxpayers never even knew an appeal had been filed on their behalf. This is largely, but not exclusively, a problem with appeal mills.

  We note that Rule 305 prohibits retroactive authorizations and permits an agent to sign and file applications in the specific calendar year in which the application is filed. However, neither statute nor regulation is entirely clear about whether the authorization must be signed in the same calendar year as the appeal. Perhaps some additional clarification in Rule 305 would be useful. We are willing to work with the BOE and the parties in that regard.

- **The agency authorization rules must be clarified for processing on-line filings. For in-person filings, current rules require applicants to attach agency authorizations to their appeal applications. But these rules don't work for on-line filings.**
  We agree that it would be desirable for any county using an on-line filing system to have a mechanism that permits submission of agency authorization on-line. However, some counties simply do not have the necessary funding to do so, at least in the near-term. Although neither law nor rule requires on-line filing, including on-line filing of agent authorization, we are willing to work with the BOE and interested parties to develop an appropriate amendment to Rule 305 to provide some permissive guidance to counties, since the current version of the Rule was issued in 2004, before on-line filing was authorized by law.

- **Standardized state-wide assessment appeal applications should be considered. Although we have BOE guidelines, these forms vary county to county and result in accepted or rejected statuses depending upon the specific county.**
  We don't see the problem here. The BOE standardized the *Application for Assessment Appeal* in 2015. Although a few appropriate variations are permitted by the BOE (counties with a hearing officer program, being one), BOE staff is very strict in making sure a county's form complies with BOE requirements for standardization.

3. Continuous Hearing Dates.

- **In some counties the Assessor asks for indefinite postponements after the taxpayer presents its case-in-chief. This, CATA members believe, is done to buy time to prepare for cross-examination, thus compromising taxpayers' due process rights. AABs should be required to make every reasonable effort to maintain continuous hearing dates. Delays longer than a week should require a showing of undue hardship on the part of the Assessor**
  While we agree that AABs should make every reasonable effort to keep the hearing moving, rather than continue it to some future date, it would not be useful, nor even proper in our view, for the BOE to impose restrictions on the AAB with regard to whether a continuance should be granted or what the appropriate length of continuance should be. This must be left up to the county board to decide, based on arguments presented at the hearing by the parties.

  We are willing to work with the BOE and the parties to develop a sentence for inclusion in the *Assessment Appeals Manual* urging the county board to make every reasonable effort to maintain continuous hearing dates, given the reasonable needs of the county board and of the parties to the proceeding.

We appreciate this opportunity to provide you and your staff our input with respect to CATA's suggestions and complaints. Our members will attend the upcoming meeting with interested parties at your Board's Headquarters next month and we look forward to engaging in a meaningful conversation with all parties. In the meantime, should you or your staff have any questions, please do call me at (213) 200-9610.

Very truly yours,

John McKibben, Chairman
CACEO Board of Equalization Rules Work Group

c: Each Member, State Board of Equalization
Mardiros H. Dakessian, President, CATA
Richard N. Benson, President, California Assessors' Association
Marc Aprea, Legislative Advocate, CATA
Dean Kinnee, Deputy Director, State Board of Equalization
David Yeung, Chief, State Board of Equalization

November 27, 2017

The Honorable Diane Harkey
Chair
California State Board of Equalization
450 N Street
Sacramento, CA 95814

Re: Assessment Appeals Practice/441(d)--Interested Parties

Dear Chairwoman Harkey:

At its August 29 meeting, the State Board of Equalization voted to begin an interested parties process to improve the local assessment appeals process, specifically as it related to assessor information requests. In an October 12 letter, the California Assessor's Association (CAA) presented its views on this issue. I am writing to you on behalf of the California Alliance of Taxpayer Advocates ("CATA") in response to that letter. CATA is dedicated to the professional practice of state and local tax consulting through education, advocacy and high ethical standards. We believe strongly that assessors, taxpayers and assessment appeals boards are best served in a transparent environment.

We are encouraged that the CAA's October 12 letter reported that several counties have modified their correspondence in response to the feedback received from both assessors and taxpayers. We are further encouraged that CAA welcomes the opportunity to participate in the upcoming interested parties process intended to improve best practices, and increase cooperation and compliance by taxpayers. But we have concerns with certain aspects of the CAA October 12 letter.

At the outset, it is important to note that proceedings leading up to an assessment appeal—as opposed to the appeal itself—are where both assessors and taxpayers are most often in conflict. Disputes over discovery under Revenue and Taxation Code Section 441(d)[1] are frequently a subject of contention.

[1] All further statutory references are to the Revenue and Taxation Code. References to "rules" or "regulations" are to corresponding sections of Title 18 of the California Code of Regulations.

This Board's own Assessor's Handbook governing assessment appeals sets the proper tone for addressing this topic:

> "In the administration of the property tax in California, achieving equity in the equalization process requires two elements. First, the taxpayer and the appeals board should have as much relevant information as possible about the value of the property and about the assessment placed on that property by the assessor. Second, all parties must receive an adequate, impartial hearing of any appeal regarding that property."
>
> ... To discharge these duties, most counties have adopted rules of notice and procedure relevant to appeals hearings under their jurisdiction. The divergence of the local rules and practices adopted by the various counties has created confusion for taxpayers who have property in more than one county..."

Fairness and consistency are the goals of the Board in providing this guidance. They are CATA's goals as well. CATA's position is that it is in the best interests of the taxpayer/applicant to cooperate with the assessor by responding to reasonable requests for information that is both relevant and readily available. And although most assessors have fairly applied—and continue to fairly apply—Section 441(d), some assessors and assessment appeals boards have misused this statute. There is also a lack of statewide uniformity in the application of Section 441(d).

A new property tax rule—one that combines the concepts of timely, reasonable and adequate discovery (both for taxpayers and assessors) with constitutional requirements of due process—is necessary and will help provide much needed direction for taxpayers, assessors and appeals boards, clearing a backlog of appeals counties are struggling to resolve. With that said, the following are our concerns with the CAA's letter.

(1) <u>The law requires only that taxpayers make records available to Assessors—nothing more.</u>

Section 441(d) states in pertinent part as follows:

> "At any time as required by the Assessor for assessment purposes, every person shall make available for examination information or records regarding his or her property or any other property located on premises he or she owns or controls. In this connection details of property acquisition transactions, construction costs, rental income and other data relevant to the determination of an estimate of value are to be considered as information essential to the proper discharge of the assessor's duties."

It is clear from the text of Section 441(d) that the taxpayers are not required to submit or mail copies of records. It requires only that the information or records be made available for examination. This is confirmed by Section 470 which states in relevant part:

"Business Records. (a) Upon request of an assessor, a person owning, claiming, possessing or controlling property subject to local assessment shall make available at his or her principal place of business, principal location or principal address in California . . . a true copy of business records relevant to the amount, cost and value of all property that he or she owns, claims, possesses or controls within the county."

The plain language of this statute requires taxpayers to make records available at his or her principal place of business, but there is no requirement or legal obligation for the taxpayer to submit copies of this information by mail or otherwise directly to the Assessor.

As there is no legal authority requiring the taxpayer to mail copies to the assessor and therefore the taxpayer cannot be non-compliant for failure to respond to an assessor's request to send copies of any requested information.

If, on the other hand, the Assessor requests a mutually agreeable time to meet for the purpose of inspecting the information requested at the taxpayer's primary place of business, then the taxpayer would have been required to comply with the request. Accordingly, any request or demand for information letter from the Assessor that cites Section 441(d) requesting that copies be mailed or otherwise delivered to the Assessor is inconsistent with the statutory text. Any Board regulation regarding Section 441(d) requests must also be in keeping with this language.

(2) Assessor's cannot deny a taxpayer's right to a hearing or impose other consequences on taxpayers that are not set forth in statute.

Although CATA respects the Assessor's preference that the taxpayer provide copies of the information being sought, we find no legal support for some of the proposed consequences in the event that a taxpayer fails to comply. Specifically, there is no legal support authorizing the Assessment Appeals Board to compel the applicant to comply with the assessor's request for information nor to deny the appeal.

For example, CAA's Guidelines Consequences for example 2 recommends that "unless you provide the following requested information by [insert date], the Assessor will request a continuance or postponement of your hearing, and ask the Assessment Appeals Board to require you to provide the requested information in advance of the rescheduled hearing date."

These statements are based on the erroneous assumption that the Assessment Appeals Board has the authority to compel taxpayer compliance with the Assessor's interpretation of Sections 441(d) and 470. However, the authority to compel compliance with these statutory discovery provisions is not now and never has been vested in the Assessor or the Assessment Appeals Board. Instead the authority to enforce compliance with Sections 441(d) and 470 is vested in the Superior Courts. This is so because there are criminal penalties which can be imposed under Section 462 for any taxpayer who actually refuses to make information or records available for examination at his principal place of business. These penalties include fines and imprisonment which can only be imposed by the Superior Courts.

Therefore, the Assessment Appeals Board has no authority to order taxpayer compliance nor does it have the authority to deny the taxpayer's application for failure to comply with the Assessor's request for copies of information and records. However, the Assessment Appeals Board does have some limited authority with respect to the discovery provisions of 441(d). This authority can be found under Section 441(h) which reads in part as follows:

> "If a taxpayer fails to provide information to the assessor pursuant to subdivision (d) and introduces any requested materials or information at any assessment appeals board hearing, the Assessor may request and shall be granted a continuance for a reasonable period of time."

This continuance represents the only legal ramifications or consequences that may apply to a taxpayer who fails to respond to a Section 441(d) request. There is no legal provision that allows an assessment appeals board to deny the appeal or to compel the taxpayer to provide the requested information. Accordingly, the sole purpose of the continuance is not to compel additional compliance from the taxpayer, but rather to provide the Assessor additional time to review the materials or information that were requested but not received until the hearing. In other words, this continuance can be granted only if a taxpayer introduces information at a hearing which the assessor previously requested, that the taxpayer failed to make available for inspection before the hearing at the taxpayer's primary place of business.

Therefore, it is our contention that the Assessment Appeals Boards do not have the authority to compel the taxpayer to provide information to the assessor in a manner that is not accordance with Sections 441(d) and 470 of the Revenue and Taxation Code. We further suggest that the Assessment Appeals Boards do not have the legal authority to deny the taxpayer's application by refusing to proceed with the evidentiary hearing based on the Assessor's erroneous interpretation of the property tax laws. This is particularly true when it becomes clear that the authority to compel compliance with Sections 441(d) and 470 of the Code is vested in the Superior Courts. The jurisdiction of the Assessment Appeals Board is limited to granting a continuance under Section 441(h), which can only be exercised after the taxpayer has presented evidence at a hearing which was specifically requested in writing by the Assessor prior to the hearing and not made available for inspection by the taxpayer at his/her principal location of business prior to the hearing.

The most flagrant contravention of Sections 441(d) and 470 concerns one county that maintains two hearing calendars consisting of both "compliant" and "non-compliant" applicants. "Compliant" applicants become compliant only after the assessor informs the Assessment Appeals Board that they have satisfactorily complied with the Assessor's request for information. "Non-compliant" applicants are those who have not done so. The hearing is then automatically continued to a future date for the sole purpose of securing the taxpayer's full compliance with whatever information request the assessor has propounded. There is no legal support for this ongoing violation of taxpayer rights.

In conclusion, there is no legal authority requiring a taxpayer provide copies of any information requested from the assessor in accordance with Section 441(d). In addition, there is no legal support for any consequences against any taxpayer who has failed to comply with an assessor's

441(d) request other than a possible continuance being granted to the assessor in accordance with Section 441(h).

We look forward to working with the Board, Board staff, and the CAA to further our mutual goals of fairness or consistency. Should you have any questions, please contact the undersigned.

Sincerely,

Mardiros H. Dakessian
President
California Alliance of Taxpayer Advocates

cc: Hon. Jerome E. Horton, State Board of Equalization
Hon. Fiona Ma, State Board of Equalization
Hon. George Runner, Member, State Board of Equalization
Hon. Betty T. Yee, State Controller
Rich Benson, President, California Assessors' Association
John McKibben, California Association of Clerks and Election Officials
Dean R. Kinnee, Deputy Director, State Board of Equalization, Property Tax Department
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January 18, 2018

The Honorable Diane Harkey, Chair
California State Board of Equalization
450 N Street
Sacramento, CA 95814

Re: Assessment Appeals Practice/R&T Code 441(d)--Interested Parties

Dear Chair Harkey,

On behalf of the California Assessors' Association (CAA) and in our capacity as Assessors from Plumas and Santa Clara County we write to follow up on the meetings organized by the Board of Equalization's Property Tax Division on December 18, 2017 with the California Assessors Association (CAA), California Association of Clerks and Election Officials (CACEO) and the California Alliance of Taxpayer Advocates (CATA). The purpose of the meeting was to review allegations expressed by CATA concerning Information Exchanges, Assessment Appeal Applications and the scheduling of Assessment Appeal Hearings.

I am pleased to report that significant progress has been achieved since CATA publicly complained to the Board of Equalization (BOE) on September 26, 2016; many of the issues reiterated at the December 18 meeting have now been resolved by changes in practices by local assessors. Marc Aprea, on behalf of CATA agreed with this sentiment and noted in a recent correspondence to the Chair of the Board of Equalization:

"We are encouraged that the CAA's October 12 letter reported that several counties have modified their correspondence in response to the feedback received from both assessors and taxpayers. We are further encouraged that CAA welcomes the opportunity to participate in the upcoming interested parties process intended to improve best practices, and increase cooperation and compliance by taxpayers.... most assessors have fairly applied—and continue to fairly apply—Section 441(d)."

Now that multi-lateral communication has been established by the interested parties regarding the concerns tendered by CATA, we are optimistic that the cooperation will continue as county assessor's tender concerns about the practices of some in the tax advocacy profession. CAA looks forward to working with CATA, BOE, County Counsels and CACEO to find additional changes in practices that will further advance professionalism and ethical standards in the assessment appeals process.

R&T Code 441(d) Letters

During the past year the CAA focused primarily on allegations about some Assessors' letters requesting information. Since then, a number of counties have changed their 441(d) correspondence. We have created specific guidelines that have been adapted by the CAA, covering the process. As a result, the letters that most concerned CATA have now been eliminated. We have provided these guidelines to assessors, CATA and the BOE.

The guidelines make clear that there is a progression in tone between the first R&T Code 441(d) letter, and the letters that follow when the taxpayer fails to respond. For example, the guidelines suggest the initial R&T Code 441(d) letter state:

"It may be possible to agree to reduce the values without a formal hearing if you comply with this letter." or "The majority of appeals can be resolved without a hearing if the necessary information is made available to our office."

If a taxpayer does not respond, the guidelines go on to suggest additional language:
"In order for the Assessor to properly review the assessed value of the property under appeal, you are required to provide the following information: ..."

When we do not receive a response from two written requests, assessors increase the pressure and the CAA guidelines recommend the following language:

"The Assessor is entitled to receive from you, and is hereby requesting, the following information pursuant to Section 441 (d) of the California Revenue and Taxation Code." or "This request is made in accordance with Section 441(d) of the California Revenue & Taxation Code."

When the taxpayer chooses to be hostile toward the assessor's office (and a few are hostile), assessors have no choice but to inform the taxpayer of one of the consequences for failure to cooperate by citing language in R&T Code 441(h), which states:

"If a taxpayer fails to provide information to the assessor pursuant to subdivision (d) and introduces any requested materials or information at any assessment appeals board hearing, the assessor may request and shall be granted a continuance for a reasonable period of time."

The guidelines also suggest citing R&T Code Section 501 which reads:

"Failure to furnish information. If after written request by the assessor, any person fails to comply with any provision of law for furnishing information required by Sections 441 and 470, the assessor, based upon information in his (or her) possession, shall estimate the value of the property and, based upon this estimate, promptly assess the property."

Finally the CAA has urged assessors to limit language stating that the taxpayer will be "subject to possible enforcement actions, subpoena or penalties, as provided under California Law and Regulations."

Clearly, there is a progression. Recognizing that some of the letters could be misinterpreted, assessors have now changed some of the letters that were cited in CATA's original package of examples.

Yet assessors like any taxing authority, including the BOE, must be able to impose an increasing level of demand on taxpayers, including a subpoena as a last resort, to obtain information from taxpayers.

We disagree with any efforts to create a standard "one size fits all" for 441(d) letters; it is not realistic, nor in the best interest of the appellant or the assessor. The new Apple "Spaceship" headquarters in Santa Clara County is different than a strip shopping center or a small office building in another county and properly assessing each requires different information. At the December 18 meeting there also appeared agreement by CATA and assessors that discovery correspondence to a Fortune 500 company should be different from letters to residential property owners and small businesses.

CAA Response to CATA's List of Concerns

BOE staff presented the CAA, CACEO and CATA with 3 major categories of issues, which were:

1. Information exchanges
2. Improper rejection of assessment appeal applications
3. Continuous hearing dates

A substantial portion of the December 18 meeting concerned the first of the three groups of issues. In summary, assessors believe they have addressed most of CATA's concerns. Where existing law/legal opinions exist, assessors do not support creation of unnecessary property tax regulations to restate existing law. Below are the specific sub items from the "list of CATA's concerns ..." and the CAA's feedback.

1. Information Exchanges

- *Requests for information should be in writing—no verbal or oral Section 441(d) requests should be allowed or considered by the AAB.*
  CAA: Assessors generally agree; requests for information should be in writing. As there is agreement, we recommend dropping this item from consideration during the interested parties' process.

- *Overly broad requests that are not limited to information regarding the property in question.*
  CAA: This complaint is overly broad and subjective. Assessors strive to comply with Attorney General opinion 84-1104, and do not intentionally make overly broad requests. There is general agreement that assessors should follow the Attorney General's opinion. Consequently, we recommend dropping this item from consideration during the interested parties' process.

- *Assessors must not threaten to resort to the AABs to coerce taxpayer compliance.*
  CAA: As noted above assessors have removed from their R&T Code 441(d) letters any language CATA perceived as threatening or coercive. In the interest of informing taxpayers, many who have never filed an appeal, assessors will continue to advise taxpayers of the legal consequences for failure to cooperate with reasonable requests for information. Assessors have addressed CATA's concerns and we recommend dropping this item from consideration during the interested parties' process.

- *Failure by the Assessors to comply with providing taxpayers or their representatives information requested under Revenue & Taxation Code Section 408(e) ("relating to the appraisal and the assessment of the assessee's property").*
  CAA: The law is clear, R&T Code 408(e) specifies what information assessors must provide to taxpayers. The examples provided by CATA of failure to adhere to R&T Code 408(e) have been addressed, and the letters have been modified to reflect changes in practices. It is unnecessary to create

a rule that merely restates the law. Therefore, we recommend dropping this item from consideration during the interested parties' process.

- *Assessors cannot demand a statement under penalty of perjury as to whether the taxpayer has or does not have the information, or whether the taxpayer has adequately responded to the information request.* *CAA:* Agreed. R&T Code 441(d) does not state that the assessor can require the taxpayer to provide a compliance statement under penalty of perjury. However, if the assessor determines that information is incomplete or not forthcoming, the assessor can bring the R&T Code 441(d) non-compliance to the attention of the Assessment Appeals Board at a prehearing conference. In some counties, the Assessment Appeals Board holds a non-compliance hearing to discuss the assessor's request for information, the status of the applicant's response, discuss any compliance issues with the parties in an effort to resolve them, obtain agreement about when compliance will take place, and schedule a hearing on the merits of the application for a mutually agreeable date thereafter. In appropriate circumstances, the AAB may discuss with the parties resolving the dispute regarding R&T Code 441(d) compliance by allowing the applicant to submit a sworn statement under penalty of perjury that the applicant does not have responsive documents.

- *Assessors must make Section 441(d) requests at least two weeks prior to hearing.*
CAA: Disagree. R&T Code 441(d)(1) begins with "At any time, as required by the assessor for assessment purposes..." Nevertheless, we agree with CACEO "some county boards have so many appeals to handle that they simply can't afford to vacate hearing days due to the parties' failure to comply with a rigid time requirement." In the interest of an efficient assessment appeals process, assessors oppose an inflexible and arbitrary deadline. Any rule would disproportionately harm the majority of applicants who are principally homeowners and small business owners.

- *The information provided by the taxpayer or the taxpayer's agent should be held confidential as provided in Section 451.*
CAA: This item was deferred and not discussed. Nevertheless assessors agree information provided by the taxpayer or the taxpayer's agent should be held confidential as provided in Sections 408 and 451. Assessors will continue to use information that is public, disclosed during a hearing and widely available. Therefore, we recommend dropping this item from consideration during the interested parties' process.

- *Assessors cannot use information obtained from one taxpayer under 441(d) and use the same information against a second or any other taxpayer in an assessment appeals board hearing without written authorization from the first taxpayer.*
CAA: This item was deferred and not discussed. Nevertheless assessors agree information provided by the taxpayer or the taxpayer's agent should be held confidential as provided in Sections 408 and 451. Assessors will continue to use information that is public, disclosed during a hearing and widely available. Therefore, we recommend dropping this item from consideration during the interested parties' process.

- *AABs should not be able to dismiss an assessment appeal application at a pre-hearing conference, or otherwise, because the taxpayer has not responded to a Section 441(d) request. AABs cannot legally limit taxpayers' administrative rights and remedies and cannot dismiss applications for any perceived 441(d) violation.*
CAA: The attached letter from Deputy County Counsel Marcy L. Berkman, who represents the Santa Clara County Assessment Appeals Board, discusses the legal authority of the Assessment Appeals

Board to hold a pre-hearing conference, sometimes referred to as a "441(d) non-compliance hearing." The purpose of these hearings is to discuss and address the status of outstanding R&T Code 441(d) requests and the anticipated compliance schedule. The appeals board can then set the hearing on the merits of the appeal for a mutually agreeable date following R&T Code 441(d) compliance.

If an applicant or their agent fails to appear at the prehearing conference/R&T Code 441(d) non-compliance hearing, the Assessment Appeals Board can dismiss the application for lack of appearance at the hearing. Such dismissal results from the failure to appear at the hearing, not from the R&T Code 441(d) non-compliance itself. In Santa Clara County, for example, if an applicant or their agent fails to appear at the R&T Code 441(d) non-compliance hearing, the application is dismissed for lack of appearance. However if the applicant/agent inadvertently missed the hearing for example, they can then file a request for reinstatement of the appeal.

- *Assessors should not issue Section 441(d) requests that also threaten the taxpayer with criminal or administrative penalties for non-compliance within a particular time or if the response is deemed insufficient by the assessor.*
  CAA: Agreed. The CAA, as noted above, supports the use of multiple letters that progress in tone and enumeration of consequences. Correspondence should educate taxpayers as to the administrative and criminal penalties for noncompliance long before seeking these remedies. Therefore, we recommend dropping this item from consideration during the interested parties' process.

2. Improper Rejection of Assessment Appeal Applications

- *County clerks cannot reject applications because of the false belief that agency authorizations must be signed by taxpayers in the same calendar year as the application was filed. While it is true that the agency authorizations must be signed and dated before the appeal applications are filed, California law does not require that they be signed in the same calendar year in which the applications are filed. Agency authorizations can be signed in earlier years as long as they state that the agent is authorized to sign and file applications for the relevant roll years.*
  CAA: We concur with CACEO and support additional clarification in Rule 305.

- *The agency authorization rules must be clarified for processing on-line filings. For in-person filings, current rules require applicants to attach agency authorizations to their appeal applications. But these rules don't work for on-line filings, since there is no way to attach agency authorizations. The attempted application of this obsolete rule has been mixed, at best, and the results have hurt taxpayers.*
  CAA: We concur with CACEO and support additional clarification in Rule 305.

- *Standardized state-wide assessment appeal applications should be considered. Currently, each county develops their own forms based on state-wide guidelines; however, these forms vary county to county and result in accepted or rejected statuses depending upon the specific county.*
  CAA: We agree with CACEO that this is not an issue as "the BOE standardized the Application for Assessment Appeal in 2015. Although a few appropriate variations are permitted by the BOE (counties with a hearing officer program, for example), BOE staff is very strict in making sure a county's form complies with BOE requirements for standardization."

3. Continuous Hearing Dates

- *In some counties, the Assessor asks for indefinite postponement after the taxpayer presents its case-in-chief. This is obviously done to buy time to prepare for cross-examination, thus compromising taxpayers' due process rights. AABs should be required to make every reasonable effort to maintain*

continuous hearing dates. Delays longer than a week should require a showing of undue hardship on the part of the assessor.
CAA: We concur with CACEO and "are willing to work with the BOE and the parties to develop a sentence for inclusion in the Assessment Appeals Manual urging the county board to make every reasonable effort to maintain continuous hearing dates, given the reasonable needs of the county board and of the parties to the proceeding."

As noted above, significant progress has occurred during the past 12 months with tangible changes in practices by assessors. The CAA is happy to continue working with tax agents and CATA to continue modifications in practices that improve communications with taxpayers and efficient processing of appeals for <u>all</u> taxpayers. For example the CAA would support incorporation into a "Letter to Assessor" of the attached guidelines developed last year by the CAA.

Except where noted above, the CAA opposes any unnecessary and burdensome regulations that are redundant of existing laws, legal opinions, annotations, handbooks etc. In keeping with current practices when a taxpayer believes the assessor's staff have conducted themselves in a manner inconsistent with the law, the taxpayer should contact the assessor directly. In those instances where disagreement remains, the taxpayer should contact both the CAA and the BOE property tax division stating their specific concerns.

The current system works well for the vast majority of assessment appeal applicants as evidenced by the number of appeals filed that do not result in a hearing, or the Assessment Appeals Board agrees with the applicant. In the most recent (2015-16) BOE Budget Workload and Assessment Appeals Activities report, the data indicates that 80% of all appeals do not go to a hearing and among the 20% that do go to a hearing the taxpayer receives a reduction in 70% of the cases. The current system works well, and the BOE should not create new regulations that impede the efficient processing of appeals and adversely impact the vast majority of applicants.

Sincerely,

Charles W. Leonhardt
CAA President
Assessor, Plumas County

Lawrence E. Stone,
Assessor, Santa Clara County

Enc: CATA Guidelines
Letter, Santa Clara County

cc: John McKibben, CACEO
Mark Aprea, CATA

Rob Grossglauser, CAA Advocate
Edward Yen, General Counsel, Los Angeles Assessor's Office
BOE Members
David Yeung, BOE
Marcy Berkman, Santa Clara County Appeals Board Counsel

GUIDELINES FOR INITIAL 441(d) REQUESTS
DRAFT

#	Component	Description	Comments	Sample 1	Sample 2 (For subsequent notices if applicable)
1	Purpose	State the main purpose of the 441(d) letter. If you've not received a response to previous letters, the purpose should always remain the same	The assessor can make a 441(d) request at anytime for assessment purposes; it does not have to be related to an appeal.	"The Office of the Assessor is in the process of reviewing your assessment appeal application and additional information is required to consider your request for a reduction." OR "We are in the process of reviewing the assessed value of the above-referenced property relative to the valuation date(s) under appeal, and we are requesting the following information." OR "The majority of appeals can be resolved rapidly and without a hearing if the necessary information is made available to our office"	"In an earlier letter, the Assessor requested specific information relating to the above-referenced property. To date, you have failed to comply with the Assessor's request." OR "We sent a request on [date] for information required for the above referenced assessment appeal. As of the date of this notice, our office has not received a response" - RECOMMEND AGAINST - "By providing the requested information, you will not be subject to possible enforcement actions or penalties as provided under California Laws and Regulations."
2	Benefit	Explain why a timely response will benefit the taxpayer.		"It may be possible to agree to reduce the values without a formal hearing if you comply with this letter." OR "The majority of appeals can be resolved without a hearing if the necessary information is made available to our office."	"In order for the Assessor to properly review the assessed value of the property under appeal, you are required to provide the following information:..."
3	Legal Authority	State the pertinent R&T code section(s)	Reference R&T Code 441(d) as the legal authority for the request. Reference R&T Code 451 as to the legal authority for keeping the information confidential.	This request is made in accordance with Section 441(d) of the California Revenue & Taxation Code. AND/OR "The information supplied will be held in accordance with Section 451 of the California Revenue & Taxation Code.	"The Assessor is entitled to receive from you, and is hereby requesting, the following information pursuant to Section 441 (d) of the California Revenue and Taxation Code." OR "This request is made in accordance with Section 441(d) of the California Revenue & Taxation Code."
4	Information Requested	Provide a specific list of items that the taxpayer is required to provide pursuant to 441(d).	In letter(s), it is important to be specific in requests for documentation. If there is no response to previous notices, perhaps state that you are "renewing" your earlier request for documentation for assessment purposes.	Examples include: Rent roll for the property as of valuation date or lien date; Income and expense reports for specific years; lease agreements, purchase agreements (if the property sold); asking rents for vacant space, current listings, offers or marketing efforts for the subject property; description and actual cost of any new construction, and any other information relevant to the determination of the property's fair market value." OR "A copy of any appraisal and/or proforma performed on the property for any purpose other than this appeal, performed within two years of the valuation date(s) under appeal."	"I have renewing my request for the following information: rent roll for the property as of valuation date or lien date; Income and expense reports for specific years; lease agreements, purchase agreements (if the property sold); asking rents for vacant space, current listings, offers or marketing efforts for the subject property; description and actual cost of any new construction, and any other information that would affect the property's fair market value." OR "A copy of any appraisal and/or proforma performed on the property for any purpose other than this appeal, performed within two years of the valuation date(s) under appeal."
5	Optional Information	This is additional information that is not required under 441(d) but the assessee may voluntarily provide.	You can cite the language in 441(d): "other data relevant to the determination of an estimate of value are to be considered as information essential to the proper discharge of the assessor's duties."	"To further assist us in the review and to help expedite the process, the Assessor is requesting the following information: your opinion of value and supporting data including an appraisal and/or analysis with appropriate independent documentation, such as comparable sales, comparable rents and cap rates." OR "An interior and exterior site inspection may be necessary. Please contact the undersigned to arrange an appointment as soon as possible." OR "We welcome any additional information which you believe is relevant to a proper determination of value." OR "We will review and consider any additional information which you believe is relevant to a proper determination of value."	"To further assist us in the review and to help expedite the process, the Assessor is renewing its request for the following information: An appraisal and/or analysis supporting your opinion of value with appropriate independent documentation, such as market sales for the date under appeal, performed within two years of the valuation date, and no later than 90 days after the lien date under appeal." OR "We welcome any additional information that you believe supports your opinion of value such as a formal appraisal, a pro-forma, or a less formal value estimate that might include comparable sales and/or comparable rental data." OR "It is essential that this information is supplied to our office by [insert date]."
6	Due Date	Provide a reasonable due date to respond to the request	441(d) does not specify a deadline for a response, however, offices should inform the taxpayer of a deadline to return information to the office. Offices should use their judgement when setting deadlines, although most counties ask for compliance within two (2) weeks or thirty (30) days. Contact information for your office should be provided in the case where an extension is requested.	"The requested information must be provided by SPECIFIC DATE." OR "It is essential that this information is supplied to our office within 30 days from the date of this letter."	It is essential this information is supplied to our office by (insert date).
7	Consequence	Provide the assessee with the consequence of a non-response (invoke appropriate code section or local rule to compel the applicant to comply with the request)[1]	You can cite language in R&T 441(h): If a taxpayer fails to provide information to the assessor pursuant to subdivision (d) and introduces any requested materials or information at any assessment appeals board hearing, the assessor may request and shall be granted a continuance for a reasonable period of time. Additionally, you can cite R&T Code Section 501 which reads, "Failure to furnish information. If after written request by the assessor, any person fails to comply with any provision of law for furnishing information required by Sections 441 and 470, the assessor, based upon information in his (or her) possession, shall estimate the value of the property and, based upon this estimate, promptly assess the property."		Pursuant to Revenue & Taxation Code section 441(h), if you fail to provide information to the assessor and introduces any requested materials or information at the hearing, the assessor may request and shall be granted a continuance for a reasonable period of time. OR "Unless you provide the following requested information by [insert date], the Assessor will request a continuance or postponement of your hearing, and ask the Assessment Appeals Board to require you to provide the requested information in advance of the rescheduled hearing date" OR "This is your second notice. If you fail to respond by ______, Revenue and Taxation Code section 501 requires the Assessor to estimate the value of your property based upon the information in the Assessor's possession, and promptly assess the property based on this assessment." RECOMMEND AGAINST - "You will be subject to possible enforcement actions, subpoena or penalties, as provided under California Law and Regulations.

[1] Recommended "best practice" is to progressively and iteratively cite consequences for non compliance starting with cooperation enabling accuracy in the initial assessment all the way to exercise of subpoena and misdemeanor penalty under Section 462 after all other consequences have been cited.

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December 14, 2017

Via E-Mail Only
Larry Stone
Assessor
Office of the Assessor
70 West Hedding Street, 5th Floor, East Wing
San Jose, CA 95110

Re: Santa Clara County Assessment Appeals Board Local Rule 305.2 -1(b)

Dear Mr. Stone:

I am the counsel for the Santa Clara County Assessment Appeal Board. I understand that on December 18, 2017, the State Board of Equalization will be meeting with the California Alliance of Taxpayer Advocates (CATA) and the California Assessor's Association regarding various concerns expressed by CATA, one of which pertains to Santa Clara County Assessment Appeal Board (Santa Clara County AAB) Local Rule 305.2-1(b). That Local Rule governs the portion of the Santa Clara County AAB agenda pertaining to appeals where the Applicant is non-compliant with the Assessor's 441(d) request.

Over the many years that I have served as counsel for the Santa Clara County AAB, it has been my experience that utilizing this prehearing conference procedure for cases that are non-compliant with the Assessor's 441(d) request ensures a smooth process for determining when the Applicant anticipates being able to comply with the Assessor's 441(d) request and scheduling a value hearing on the merits for a date thereafter that is mutually convenient for the parties.

If you wish to do so, please feel free to share this letter explaining the statutory framework and Santa Clara County AAB's Local Rule 305.2-1(b) with the interested parties at the upcoming State Board of Equalization meeting.

A. STATUTORY FRAMEWORK

1. California Constitution. Article XII Section 16 of the Constitution specifically directs county boards of supervisors to adopt rules of notice and procedure to facilitate the work of local assessment appeals boards and to ensure uniformity in the processing of applications before that local assessment appeal board.

2. Property Tax Rule 305.2 Expressly Authorizes Prehearing Conferences. Property Tax Rule 305.2(a) provides that the county board of supervisors may establish prehearing conferences and rules of procedure for such prehearing conferences. *Inter alia,* pursuant to Rule 305.2(a), prehearing conferences can be used to determine the status of information requests and to schedule a date for the assessment appeals board to consider evidence on the merits of the Application.

3. Revenue and Taxation Code Section 441(d). Revenue and Taxation Code section 441(d) requires taxpayers to provide the Assessor with information and records regarding their property. Typically, the Assessor sends a 441(d) letter requesting certain information regarding the property that is the subject of the assessment appeal application.

4. Revenue and Taxation Code Section 1604/Property Tax Rule 309. Revenue and Taxation Code Section 1604(c)(2) and Property Tax Rule 309(c)(3) govern tbe scheduling of AAB hearings in situations where the Applicant has not fully complied with the Assessor's 441(d) request for information.

Section 1605 and Property Tax Rule 309(c)(3) anticipate that where an Applicant is not fully compliant in responding to the Assessor's 441(d) request, the Application likely will **not** be set for a value hearing. Section 1605 and Property Tax Rule 309(c)(3) expressly provide that where an Applicant is not fully compliant with Section 441(d), the two-year rule that would otherwise require the Applicant's opinion of value to be determined to be the basis for the property taxes does not apply. Section 1605(e) and Property Tax Rule 309(e) direct that if a hearing will not be held within two years because of the Applicant's 441(d) non-compliance, the Applicant shall be so notified.

5. Revenue and Taxation Code Section 462 – Criminal Misdemeanor.

Not only does the Revenue and Taxation Code anticipate that an assessment appeal application will not be set for hearing within two years if the Applicant has not fully complied with Section 441(d), but it also provides criminal penalties for Applicants who do not comply with the Assessor's 441(d) requests. Revenue and Taxation Code 462 provides that every person is guilty of a misdemeanor who, after written request by the Assessor, refuses to make available any information which is required by Section 441(d). Section 462 imposes, upon conviction of such an offense, up to six months in the County jail or a fine or both. It further imposes additional fines on non-compliant corporations.

While Section 462 provides a means for the Assessor to resort to criminal law and criminal penalties to enforce compliance with Section 441(d), I have observed that the Santa Clara County AAB has been reticent to urge the Assessor to resort to using criminal law as a cudgel to enforce Section 441(d) compliance. This is especially true since the use of Local Rule 305.2-1(b) has proven to provide a smooth, efficient and amicable means to schedule a timeline for the

Applicant to provide the information requested by the Assessor and for the parties and Santa Clara AAB to schedule the value hearing for a mutually agreeable date thereafter.

Moreover, regular resort to the criminal court via Section 462 in every case of 441(d) non-compliance by an Applicant (rather than using Local Rule 305.2-1(b)) would not be in the interests of judicial efficiency and judicial economy, either for the Superior Court or the Assessment Appeals Board.

In contrast, use of the Local Rule 305.2-1(b) procedure has proven to be an effective and efficient method of amicably determining whether there are any difficulties preventing 441(d) compliance, ascertaining when compliance can be achieved, and promptly scheduling a value hearing on the merits for a date thereafter that is mutually convenient for the parties.

B. SANTA CLARA COUNTY AAB LOCAL RULE 305.2-1

The Santa Clara County Assessment Appeals Board has used its 441(d) noncompliance procedure for many years, and has found the procedure to be an effective, efficient and cooperative way to smoothly move the assessment appeal process along towards a value hearing on the merits. This process is expressly authorized by Santa Clara County Local Rule 305.2-1, which is part of the Santa Clara County AAB Local Rules that were established and adopted by the Santa Clara County Board of Supervisors.

Pursuant to Local Rule 305.2-1, where an assessment appeal application has been scheduled for hearing, but the Applicant has not been fully compliant in responding to a 441(d) request from the Assessor's office, the matter is placed on the 441(d) noncompliance portion of the Santa Clara County AAB's Agenda. [Local Rule 305.2-1(b)(1).] For items placed on this 441(d) noncompliance portion of the agenda, at the time of the hearing, the Assessor's office provides a copy of the 441(d) letter and explains the nature of the Applicant's noncompliance. [Local Rule 305.2-1(b)(2)(A).] The Applicant then advises when they anticipate compliance with the Assessor's 441(d) request will be completed and explains the reasons for any anticipated compliance issues. [Local Rule 305.2-1(b)(2)(B).] The parties then advise the board regarding what date they anticipate being ready to go to hearing. [Local Rule 305-1(b)(2)(C).] Typically, the Santa Clara County AAB then works with the parties to select a mutually agreeable date for the value hearing. In some cases, the parties and AAB decide that the next scheduled hearing date should be a broader pre-hearing conference pursuant to Local Rule 305.2-1(a).

It has been my experience that the Local Rule 305.2-1(b) procedure functions smoothly, efficiently and cooperatively – both where Applicants are represented by agents and where Applicants are self-represented. In the case of self-represented Applicants, I have observed the process frequently helps non-compliant Applicants better understand what information the Assessor is seeking and better understand whether they have information in their possession that is responsive to the Assessor's 441(d) requests. In cases where the Applicants are represented hy agents, I have observed that most agents utilize the process smoothly and find it useful in setting

a timeline for compliance and a mutually convenient value hearing date. In fact, I have observed a number of occasions wherein the Applicant (or perhaps the Applicant's prior agent) has not provided the Applicant's current agent with an outstanding 441(d) request that pre-dated the current agent, and thus the pre-hearing process has helped the current agent to facilitate moving their client's assessment appeal along. I have also observed that Applicants – whether self-represented or represented by agents – tend to appreciate the opportunity to work amicably in scheduling a 441(d) compliance timeline and in scheduling a value hearing for a mutually convenient date thereafter.

I appreciate the opportunity to provide input regarding Santa Clara County AAB's Local Rule 305.2-1. I can be reached at 408-299-5928 if you have any questions.

Very truly yours,

JAMES R. WILLIAMS
County Counsel

Marcy L. Berkman

MARCY L. BERKMAN
Deputy County Counsel

MLB:mlb

Document in ProLaw

January 19, 2018

Mr. David Yeung
Chief
Property Tax Department - County Assessed Properties Division
State Board of Equalization
450 N Street
Sacramento, CA 94279-0064

RE: Concerns/Issues Related to the Assessment Appeals Process.

Dear David:

On behalf of the California Alliance of Taxpayer Advocates ("CATA"), I want to take this opportunity to thank you and the other State Board of Equalization staff for convening a meeting with members from CATA, CAA and CACEO on December 18, 2017 to discuss concerns/issues related to the assessment appeals process. CATA is dedicated to the professional practice of state and local tax consulting through education, advocacy and high ethical standards. We believe strongly that assessors, taxpayers and assessment appeals boards are best served in a transparent environment.

However, I must express CATA's great disappointment that at the outset of the December 18 meeting Dean Kinnee announced there would be no "Interested Parties" Process, rather that the December 18 meeting and any subsequent meeting would be informal meetings. We were further disappointed that even before this meeting was concluded and all the issues aired, staff opined that there would likely be no regulatory changes, only the prospect of a Letter to Assessors (LTA).

December 18, 2017, Meeting Contrary to BOE Members' Direction, Fails Transparency Test & Denies BOE Members the Ability to Attend Meetings

First, this change by staff is in direct conflict with the unanimous and explicit direction the Members of the BOE gave to staff at the August 29, 2017 BOE meeting. Among the Board Member comments are the following (a full transcript may be found attached):

Board Member Horton stated, ". . . I would concur that there should be an interested parties process in order to have some uniformity throughout the state of California." BOE Member Horton went on to say, ". . . in order to make an interested parties process fruitful, we should set a date for the interested parties and begin that process, and we have asked the property tax unit to begin that process . . .." BOE Member Horton concluded by stating, ". . . 1) we can assure that all the parties that are impacted are present and have an opportunity to testify. 2) they have an understanding of what all the issues are prior to their testimony, so that they are not coming to a hearing and all of a sudden, they are learning of another issue, to the extent that we can, we will flush out what those issues are and the present them, to all of the parties for some consideration, but that interested parties process can be expedited, and I would ask the Department to sort of speak to expediting it. Traditionally, historically, it has been 5-6 months." [Emphasis added]

Board Member Runner stated, ". . . I think just to see if we are all on the same, or at least the consensus that it seems that there is an interest to establish an expedited interested parties process in order to move through this, get this thing done, so that we can see if we can come to consensus. I think it is important that we are able to participate in that and that we guide that. Because at the end of the day, there will be a product, and then that product is then what we are able to communicate for a consistent application of property tax law, and issues, once we have that product in hand." [Emphasis added]

Finally, Yvette Stowers on behalf of Board Member Yee stated, "Just one comment, madam chair, quickly, it's late. I just want to say we do support an interested parties meeting, as well, and looking at the one letter from LA County, it is a very positive letter. I would suggest that staff gets it and when you guys move forward with the IP process and see if there is a way to have a standard letter placed onto the BOE website so that the Assessors can have easy access to it." [Emphasis added]

In addition to being in direct conflict with the unanimous and explicit direction the Members of the BOE gave to staff at their August 29, 2017 meeting, the lack of an interested parties process runs the real risk of excluding an interested party in the process and preventing all the parties from being present and having the opportunity to testify. Since there was no formal public notice of the December 18 meeting, CATA received several calls from interested parties who had heard about such a meeting but could not find any information about the date, time and location of the meeting and how they might call in. If CATA received such calls, we can only imagine that there were other interested parties who did not know of the meeting and or how to participate. The lack of an "Interested Parties" Process also gives the impression that there is a lack of transparency. In addition to excluding interested parties, the lack of an "Interested Parties" Process also has the effect of excluding Members of the Board of Equalization from being able to participate in these meetings, understanding firsthand the issues raised and the views of taxpayers, Assessors and the Assessment Appeals Boards.

Therefore, in support of following the direction of the BOE Members, in order to ensure public access to these meeting and providing transparency and finally to allow the BOE Members the opportunity to attend and participate in these meetings, CATA strongly urges BOE staff to initiate an "Interested Parties" Process as they were directed on August 29, 2017.

BOE Staff Pre-Maturely Concludes No to Regulations

First, it is inconceivable to CATA that even before the December 18 meeting was concluded and all the issues aired, that staff would opine that there would likely be no regulatory changes, only the prospect of a Letter to Assessors (LTA). This provided to CATA the appearance that staff had already concluded what the outcome would be.

CATA also concurs with Board Member Horton in his statement at the August 29, 2017, BOE meeting that there has not been a thorough review of the regulations governing the Assessment Appeals process since the 1990s. It strikes CATA that staff is summarily dismissing a review of these regulations and is prematurely concluding there will be no changes to the regulations.

We urge staff and the Members of the BOE, to come at these issues with an open mind not a predisposition.

Staff suggesting that there would likely be no regulatory changes, only the prospect of a LTA fails to recognize that an LTA is not enforceable by the BOE or the taxpayer and that any Assessor or Assessment Appeals Board is free to ignore a LTA.

While LTAs provide an ongoing "advisory service" for county assessors and other interested parties, they do not have the force or law like a statute or a regulation. In CATA's view, the only way for the Assessment Appeals practices to be enforceable is for the BOE to adopt regulations.

The practices our members have observed are both unfair and inconsistent between counties. So, we are bringing these concerns before you and respectfully request that you exercise your authority to provide counties and taxpayers direction and oversight under Government Code Section 15606, subdivision (c).

It states, "The State Board of Equalization shall do all of the following:

(c) Prescribe rules and regulations to govern local boards of equalization when equalizing, and assessors when assessing, including uniform procedures for the consideration and adoption of written findings of fact by local boards of equalization as required by Section 1611.5 of the Revenue and Taxation Code."

By convening an interested party's meeting, the BOE does not commit itself to adopting regulations nor does it commit the BOE to a specific regulatory outcome. Rather, the interested parties process provides the following:

- It offers all interested parties the opportunity to provide the BOE with their views on how the Assessment Appeals Process needs to be improved;

- It will allow the BOE to evaluate the perspectives of all interested parties and determine their merit; and

• Finally, it will provide the BOE the opportunity to decide what to do and whether it best done via regulation or LTA.

CATA is prepared to provide the BOE Members, BOE staff and all interested parties proposed regulatory changes for your consideration. However, if there is a predisposition that no regulatory changes will even be considered, then there is no purpose in our doing so.

Parties Should Also Seek to Meet Outside the Interested Parties Process

At the August 29, 2017, BOE Meeting BOE Member Horton, in an effort to make the most of the "Interested Parties" Process, also encouraged all parties to meet outside the interested parties process and to find agreement on solutions. CATA agreed then and agrees now. CATA and representatives from CAA did meet on November 30 for two hours. Those discussions were fruitful in airing the issues, but did not lead to resolving any issues. Subsequent to the November 30 meeting, CATA asked on several occasions to again meet, both before and after the December 18 meeting. Unfortunately, while CAA promised CATA future proposed meeting dates, none have been offered. This is reminiscent of CAA's prior unresponsiveness. We, therefore, would ask that the BOE again urge CAA and the other parties to not just participate in the "Interested Parties" Process, but to also work outside that process to resolve the issues.

Assessment Appeals Issues

The below restates the issues we have raised with you since our initial letter in September of 2016. It is important to note that proceedings leading up to an assessment appeal—as opposed to the appeal itself—are where both assessors and taxpayers are most often in conflict. Disputes over discovery under Revenue and Taxation Code Section 441(d)[1] are frequently a subject of contention.

This Board's own Assessor's Handbook governing assessment appeals sets the proper tone for addressing this topic:

> "In the administration of the property tax in California, achieving equity in the equalization process requires two elements. First, the taxpayer and the appeals board should have as much relevant information as possible about the value of the property and about the assessment placed on that property by the assessor. Second, all parties must receive an adequate, impartial hearing of any appeal regarding that property."
>
> "... To discharge these duties, most counties have adopted rules of notice and procedure relevant to appeals hearings under their jurisdiction. The divergence of the local rules and practices adopted by the various counties has created confusion for taxpayers who have property in more than one county..."

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[1] All further statutory references are to the Revenue and Taxation Code. References to "rules" or "regulations" are to corresponding sections of Title 18 of the California Code of Regulations.

Fairness and consistency are the goals of the Board in providing this guidance. They are CATA's goals as well. CATA's position is that it is in the best interests of the taxpayer/applicant to cooperate with the assessor by responding to reasonable requests for information that is both relevant and readily available. And although most assessors have fairly applied—and continue to fairly apply—Section 441(d), some assessors and assessment appeals boards have misused this statute. There is also a lack of statewide uniformity in the application of Section 441(d).

A new property tax rule—one that combines the concepts of timely, reasonable and adequate discovery (both for taxpayers and assessors) with constitutional requirements of due process—is necessary and will help provide much needed direction for taxpayers, assessors and appeals boards, clearing a backlog of appeals counties are struggling to resolve. With that said, the following are our concerns with the CAA's letter.

(1) The law requires only that taxpayers make records available to Assessors—nothing more

Section 441(d) states in pertinent part as follows:

"At any time as required by the Assessor for assessment purposes, every person shall make available for examination information or records regarding his or her property or any other property located on premises he or she owns or controls. In this connection details of property acquisition transactions, construction costs, rental income and other data relevant to the determination of an estimate of value are to be considered as information essential to the proper discharge of the assessor's duties."

It is clear from the text of Section 441(d) that the taxpayers are not required to submit or mail copies of records. It requires only that the information or records be made available for examination. This is confirmed by Section 470 which states in relevant part:

"Business Records. (a) Upon request of an assessor, a person owning, claiming, possessing or controlling property subject to local assessment shall make available at his or her principal place of business, principal location or principal address in California . . . a true copy of business records relevant to the amount, cost and value of all property that he or she owns, claims, possesses or controls within the county."

The plain language of this statute requires taxpayers to make records available at his or her principal place of business, but there is no requirement or legal obligation for the taxpayer to submit copies of this information by mail or otherwise directly to the Assessor.

As there is no legal authority requiring the taxpayer to mail copies to the assessor and therefore the taxpayer cannot be non-compliant for failure to respond to an assessor's request to send copies of any requested information.

If, on the other hand, the Assessor requests a mutually agreeable time to meet for the purpose of inspecting the information requested at the taxpayer's primary place of business, then the taxpayer would have been required to comply with the request. Accordingly, any request or demand for information letter from the Assessor that cites Section 441(d) requesting that copies

be mailed or otherwise delivered to the Assessor is inconsistent with the statutory text. Any Board regulation regarding Section 441(d) requests must also be in keeping with this language.

(2) Assessor's cannot deny a taxpayer's right to a hearing or impose other consequences on taxpayers that are not set forth in statute.

Although CATA respects the Assessor's preference that the taxpayer provide copies of the information being sought, we find no legal support for some of the proposed consequences in the event that a taxpayer fails to comply. Specifically, there is no legal support authorizing the Assessment Appeals Board to compel the applicant to comply with the assessor's request for information nor to deny the appeal.

For example, in CAA's Guidelines Consequences it recommends that "unless you provide the following requested information by [insert date], the Assessor will request a continuance or postponement of your hearing, and ask the Assessment Appeals Board to require you to provide the requested information in advance of the rescheduled hearing date."

These statements are based on the erroneous assumption that the Assessment Appeals Board has the authority to compel taxpayer compliance with the Assessor's interpretation of Sections 441(d) and 470. However, the authority to compel compliance with these statutory discovery provisions is not now and never has been vested in the Assessor or the Assessment Appeals Board. Instead the authority to enforce compliance with Sections 441(d) and 470 is vested in the Superior Courts. This is so because there are criminal penalties which can be imposed under Section 462 for any taxpayer who actually refuses to make information or records available for examination at his principal place of business. These penalties include fines and imprisonment which can only be imposed by the Superior Courts.

Therefore, the Assessment Appeals Board has no authority to order taxpayer compliance nor does it have the authority to deny the taxpayer's application for failure to comply with the Assessor's request for copies of information and records. However, the Assessment Appeals Board does have some limited authority with respect to the discovery provisions of 441(d). This authority can be found under Section 441(h) which reads in part as follows:

"If a taxpayer fails to provide information to the assessor pursuant to subdivision (d) and introduces any requested materials or information at any assessment appeals board hearing, the Assessor may request and shall be granted a continuance for a reasonable period of time."

This continuance represents the only legal ramifications or consequences that may apply to a taxpayer who fails to respond to a Section 441(d) request. There is no legal provision that allows an assessment appeals board to deny the appeal or to compel the taxpayer to provide the requested information. Accordingly, the sole purpose of the continuance is not to compel additional compliance from the taxpayer, but rather to provide the Assessor additional time to review the materials or information that were requested but not received until the hearing. In other words, this continuance can be granted only if a taxpayer introduces information at a hearing which the assessor previously requested, that the taxpayer failed to make available for inspection before the hearing at the taxpayer's primary place of business.

Therefore, it is our contention that the Assessment Appeals Boards do not have the authority to compel the taxpayer to provide information to the assessor in a manner that is not accordance with Sections 441(d) and 470 of the Revenue and Taxation Code. We further suggest that the Assessment Appeals Boards do not have the legal authority to deny the taxpayer's application by refusing to proceed with the evidentiary hearing based on the Assessor's erroneous interpretation of the property tax laws. This is particularly true when it becomes clear that the authority to compel compliance with Sections 441(d) and 470 of the Code is vested in the Superior Courts. The jurisdiction of the Assessment Appeals Board is limited to granting a continuance under Section 441(h), which can only be exercised after the taxpayer has presented evidence at a hearing which was specifically requested in writing by the Assessor prior to the hearing and not made available for inspection by the taxpayer at his/her principal location of business prior to the hearing.

The most flagrant contravention of Sections 441(d) and 470 concerns one county that maintains two hearing calendars consisting of both "compliant" and "non-compliant" applicants. "Compliant" applicants become compliant only after the assessor informs the Assessment Appeals Board that they have satisfactorily complied with the Assessor's request for information. "Non-compliant" applicants are those who have not done so. The hearing is then automatically continued to a future date for the sole purpose of securing the taxpayer's full compliance with whatever information request the assessor has propounded. There is no legal support for this ongoing violation of taxpayer rights.

We also want to provide a brief discussion of State Board of Equalization v. Ceniceros (1998) 63 Cal. App. 4th 122, 73 Cal.Rptr.2d 539. First, the Court cited Midstate Theatres, Inc. v Board of Supervisors, supra, 46 Cal.App.3d at p. 208, which held, "A taxpayer has a right to a hearing on his property tax assessment, and if an application for a hearing is denied for insufficient legal reason there is a denial of due process."

In the Ceniceros case, the Court discussed that the Riverside Board of Supervisors passed local Rule 10 on July 12, 1994, which attempted to enforce "discovery procedures" on both the applicant and the assessor. If the taxpayer failed to comply with these pre-hearing discovery requirements the appeal would be denied. Concurrently if the assessor failed to comply with these pre-hearing discovery requirements the value as placed on the appeal by the applicant would be enrolled.

On October 8, 1996 the BOE filed for a writ of mandate seeking the revocation of Rule 10 by the Riverside Board of Supervisors. On that same day the Riverside Board of Supervisors amended Rule 10 removing the previously established consequences to both the taxpayer and the Assessor for failure to comply with these pre-hearing discovery requirements.

Nonetheless, the BOE proceeded forward with its efforts to have Rule 10 reversed for several reasons. One of the more important of these reasons was reiterated by the Court in its discussion portion of its ruling where it stated, "The SBE contends that if a taxpayer fails to comply with the assessor's request for information, the hearing on the taxpayer's assessment appeal will be

continued indefinitely until the taxpayer complies to the satisfaction of the assessor. It concludes that the appeal might never come to hearing, and Rule 10 therefore denies taxpayers due process."

The court went on to rule that these concerns raised by the BOE were not valid due to the protections afforded the taxpayer under Section 441(d), 441 (h) and 470. The court continued,

"Nothing in the rule provides or suggests that the hearing on the appeal will not be set until the taxpayer has complied with the assessor's demands for information. The rule says only that the hearing will be continued if (1) the taxpayer has failed to comply and (2) the taxpayer introduces evidence which should have been disclosed in response to the assessor's request. Therefore, the grounds for a continuance cannot be shown to exist until after the hearing has commenced.

"Nor does the rule provide that, once continued, the hearing may not be resumed until the taxpayer belatedly complies with the assessor's request and the assessor is satisfied with the adequacy of that response. The continuance is not designed to provide time for the taxpayer to make a further response to the assessor's request. The evidence having been disclosed by its introduction at the hearing, requiring another disclosure directly to the assessor would serve no purpose. Instead, the reason for the continuance of the hearing is to allow the assessor time in which to evaluate and attempt to rebut the previously undisclosed evidence introduced at the hearing by the taxpayer." [Emphasis added]

This court decision demonstrates that there is no legal authority requiring a taxpayer to provide copies of any information requested from the assessor in accordance with Section 441 (d). In addition, there is no legal support for any consequences other than a possible continuance being granted to the assessor in accordance with Section 441 (h). It is also important to note that the concerns raised by the BOE in its action against the Riverside Board of Supervisors regarding due process were valid. Assessment appeals are in fact being continued indefinitely until the taxpayer complies to the satisfaction of the assessor in at least one county which has formalized a Compliant/Non-Compliant hearing agenda as outlined earlier herein.

We look forward to working with the Board, Board staff, and all interested parties to further our mutual goals of transparency, fairness and consistency. Should you have any questions, please let us know.

Thank you for considering our views.

Sincerely,

Mardiros H. Dakessian
President
California Alliance of Taxpayer Advocates

cc: Hon. Diane Harkey, Chair, State Board of Equalization
Hon. Jerome E. Horton, Member, State Board of Equalization
Hon. Fiona Ma, Member, State Board of Equalization
Hon. George Runner, Member, State Board of Equalization
Hon. Betty T. Yee, State Controller
Charles W. Leonhardt, Plumas County Assessor, CAA President
John McKibben, California Association of Clerks and Election Officials
Dean R. Kinnee, Executive Director, State Board of Equalization
Angie Berry, Senior Specialist Property Appraiser, State Board of Equalization
Margie Wing, Senior Specialist Property Appraiser, State Board of Equalization

January 19, 2018

Mr. David Yeung
Chief, Property Tax Department - County Assessed Properties Division
State Board of Equalization
450 N Street
Sacramento, CA 94279-0064

Dear Mr. Yeung,

Thank you for the opportunity to provide additional comments to the interested parties meeting pertaining to local property tax assessment and appeals procedures on December 18. We appreciate your facilitation of the meeting between taxpayer organizations and county assessors, and look forward to working with you on these and other issues.

Best regards,

Therese Twomey
Director of State Fiscal Policy
California Taxpayers Association

Cc: Hon. Betty T. Yee, California State Controller
Hon. Diane Harkey, State Board of Equalization
Hon. George Runner, State Board of Equalization
Hon. Jerome E. Horton, State Board of Equalization
Hon. Fiona Ma, State Board of Equalization

As of January 19, 2018

Comments to State Board of Equalization IPM – Local Property Tax Assessment and Appeals Procedures

General Observations:

1. On December 18, 2017, the State Board of Equalization (BOE) moderated a meeting between representatives of taxpayer organizations and county assessors. The purpose of the meeting was to discuss concerns raised by taxpayers relative to local property tax assessment and appeal procedures – namely, the lack of uniformity among the 58 counties. We appreciate the BOE staff facilitating the meeting and the participation of the county assessors.

   Discussion topics covered concerns beginning with Section 441(d) information requests and through the course of the appeals filing/hearing process. While the parties generally agree that greater clarity/specificity would be helpful, we differ in whether regulations or Letters to Assessors (LTAs) would be the more effective approach. Some assessors were concerned that the former would limit their autonomy.

   LTAs and other non-binding guidelines serve certain purposes, but they are inadequate for addressing practices that, inadvertent or not, encroach upon the taxpayers' rights to due process, confidentiality and remedies. We believe fundamental issues such as these need to be addressed through a formal rulemaking process that institutes requisite regulatory assessment rules and practices, so taxpayers in all counties are afforded equal rights and remedies.

2. Non-binding guidelines generally have failed to achieve uniformity among the 58 counties.

   In a recent example, assessors and taxpayers came together to promulgate guidelines for wind energy properties. The provisions were the result of mutual agreement by the parties, and the guidelines were adopted in June 2017. However, we are informed that six montsh later, a number of counties (including some that were part of the joint effort) have ignored the rules. Clearly, statewide uniformity cannot be accomplished if guidelines are voluntary.

We respectfully urge the BOE to commence a formal IPM and rulemaking process to promote uniform local assessment and appeal procedures so taxpayers in similar tax situations receive uniform, fair and equal tax treatment – regardless of their county of operations.

Specific Comments:

There were a number of issues raised in a July 7, 2017 letter from the California Alliance of Taxpayer Advocates to BOE members. CalTax's specific comments and recommendations for regulatory amendments below relate to those issues.

1. Relative to Information Exchanges, we submit the following comments:

    a. The majority of Section 441(d) information requests for taxpayer information are submitted in writing. To ensure that taxpayers are appropriately notified of the request, and because information obtained therein will be presented as evidence in Assessment Appeals Board (AAB) hearings, we suggest regulations be amended to require that all Section 441(d) request be in writing.

       Acknowledging that there may be need for flexibility, we suggest that the regulations could allow the taxpayer and assessor, by written mutual agreement, to waive the requirement for written communication under reasonable circumstances (i.e., to avoid a hearing delay/continuance).

    b. So taxpayers and assessors are better informed of their rights and responsibilities, we suggest regulations be amended to require a quasi-standardized Section 441(d) request form that (1) cites the appropriate statutes/provisions relative to taxpayers' and assessors' rights and responsibilities; (2) informs the taxpayer and the assessor that information obtained in a Section 441(d) request is confidential per Section 451; and (3) provides a narrative portion for assessors to inform taxpayers of the information/records being requested. A standardized format would help avoid misleading/threatening request letters.

       We recommend that the requirements be stipulated in regulations, but that the form itself be promulgated in the assessors' handbook to facilitate any necessary updates.

    c. Currently, some counties refuse to provide taxpayers with information used to derive the appraisal and assessment of the taxpayer's property. It is critical that the taxpayer be provided this information in order to validate,

or invalidate an assessor's valuation. Withholding of this information places the taxpayer at an unfair disadvantage.

We suggest that regulations be amended to provide a process and timeline for assessors to provide the taxpayer, upon request, information relating to the appraisal and assessment of the taxpayer's property.

d. Taxpayers sometimes receive 441(d) right before the scheduled appeals hearing or pre-hearing conference, without sufficient time to respond. This can result in hearing delays/continuances.

   To ensure sufficient time for the parties to provide and review new facts, we suggest that regulations require all Section 441 (d) requests to be transmitted by a time period (i.e., two weeks or some other date) prior to a hearing. Furthermore, to provide flexibility, the regulations could allow the taxpayer and the assessor, by written mutual agreement, to agree to some other date or waive the requirement entirely.

e. Revenue and Taxation Code Section 451 provides confidential protection for information provided in a Section 441(d). However it appears that some assessors are citing information relating to one taxpayer as evidence against a different taxpayer, without proper written authorization.

   So assessors are better informed, we suggest that regulations reiterate the confidentiality provisions of Section 451 and that a standardized consent form be developed in the assessors' handbook.

2. Relative to Improper Rejection of Assessment Appeal Applications, we submit the following:

   a. It appears that some appeal applications have been rejected based on the perception that taxpayers are withholding information. Whether this is true or not, due process requires that taxpayers be afforded an opportunity before the AAB. If the AAB determines that there is insufficient information or the presented facts do not support the taxpayer's position, then the AAB will decide against the taxpayer.

      To ensure due process, we suggest that regulations reaffirm that AABs are authorized to postpone a hearing for a reasonable period (i.e., two weeks or some other period), but not to dismiss an appeal application on the grounds that the taxpayer has not responded or has been unable to provide information requested.

b. Some of the provisions related to in-person filings need to be updated to reflect procedures better suited to online filings (i.e., email communication/transmittal, electronic signatures, agency authorizations, etc.).

   We suggest that taxpayers and assessors look to the Franchise Tax Board and other tax agencies as guides to identify methods by which assessors may be able to accelerate a transition to electronic communication and transmittal.

From:	Peter Michaels
To:	Yeung, David
Cc:	Kinnee, Dean; Berry, Angie; Nisson, Mark
Subject:	Assessment Appeals Process/Disclosure of Redacted information and Data by Assessor to Taxpayer
Date:	Monday, February 05, 2018 4:55:26 PM
Attachments:	Assessment Appeals Process Agenda 12-18-17.docx IP.Assessment.Appeals.Process.discount.rate.derivation.summary.020518.PDF IP.Assessment.Appeals.Process.taxpayer.request.020518d.PDF IP.Assessment.Appeals.Process.county.counsel.reply.020518b.pdf

Hi Dave ~ further to our recent face-to-face discussion in Sacramento, and our follow-up telephone conversation last week, this message identifies a specific issue that, we believe, warrants focused attention during the Interested Parties exchange on the Assessment Appeals Process.

As mentioned, the topic was considered, inconclusively, during a previous Interested Parties exchange (with which Dean Kinnee is well familiar). I'm guessing that a fair amount of research and writing was generated by that earlier proceeding. Assuming it is not outdated, that work product could be useful now.

Specifically, I represent a group of taxpayers that has filed assessment appeals with a local board. The assessor apparently used the same source information in valuing all taxpayers in our group. We have asked the assessor to provide data underlying the contested assessments. In response, the assessor's counsel has declined to produce the requested information and data, citing Revenue and Taxation Code Section 408(e)(3). Instead, the assessor has provided our group with a one-page "Discount Rate Derivation Summary", listing (unidentified) sales, "Year Sold", and "Rate".

Of course, we agree that proprietary and confidential business trade secret information and data must be safeguarded from disclosure. That interest must, however, be harmonized with a taxpayer's legal right to know exactly how an assessed value was determined and whether (or not) necessary adjustments were made by the assessor. We urge the Board to work with assessors and taxpayers to strike a balance between these competing interests.

ATTACHED, in addition to the agenda for the Board's (December 18, 2017) Pre-Interested Parties Meeting, please find:

1. "Discount Rate Derivation Summary", received from county assessor. It is impossible to validate or discredit the assessor's discount rate based on the scant information shown on this 'derivation summary'. Were the underlying transactions simple sales of comparable stand-alone property units? Or, were development rights, favorable agreements, distribution rights, or other tangible or intangible property interests included in the 'comparable' transactions? Were adjustments made, based on the comparative

size and output of the underlying assets? The taxpayer is obviously at a fatal disadvantage before an assessment appeals board if the taxpayer is categorically foreclosed from demonstrating with specificity that an assessment is incorrect.

2. Correspondence (redacted) from one member of our group to the assessor requesting specific underlying assessment data and information.

3. Reply correspondence (redacted) from county counsel to taxpayer, citing R&TC Section 408(e)(3), in declining to provide the requested information and data.

Thank you ~ Peter

LAW OFFICE of PETER MICHAELS

6114 La Salle Avenue, #445
Oakland, CALIFORNIA 94611-2802

peter@pmichaelslaw.com

510.547.0255 866.908.1878

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From: Yeung, David [mailto:David.Yeung@boe.ca.gov]
Sent: Wednesday, December 20, 2017 2:03 PM
To: Peter Michaels <peter@pmichaelslaw.com>
Cc: Kinnee, Dean <Dean.Kinnee@boe.ca.gov>; Berry, Angie <Angie.Berry@boe.ca.gov>; Nisson, Mark <Mark.Nisson@boe.ca.gov>
Subject: RE: REQUEST for attendee list/Pre-Interested Parties Meeting (Monday, December 18, 2017)

Hello Michael – Angie Berry and Mark Nisson are the contacts for this project. However both will be out for the holidays. in their absence. I will arrange to have attendance list sent to you and to have your name added to the attendee and distribution lists.

Happy Holidays!

David Yeung, Chief
County-Assessed Properties Division
Property Tax Department

Discount Rate Derivation Summary - [redacted]

	Year Sold	Rate
Sale 1	2011	11.10%
Sale 2	2011	11.82%
Sale 3	2011	12.54%
Sale 4	2011	12.21%
Sale 5	2011	11.57%
Sale 6	2012	8.87%
Sale 7	2012	8.85%
Sale 8	2012	8.47%
Sale 9	2012	8.64%
Sale 10	2014	8.11%
Sale 11	2014	7.97%
Sale 12	2014	7.99%
Sale 13	2014	8.18%
Sale 14	2014	8.16%

All rates include 1.1% for ad valorem taxes

Sales Rates.pdf - Adobe Reader

File Edit View Document Tools Window Help

1 / 1 95.2% Find

#2

Discount Rate Derivation Summary - [redacted]

	Year Sold	Rate	
Sale 1	2011	11.10%	
Sale 2	2011	11.82%	
Sale 3	2011	13.88%	*
Sale 4	2011	12.54%	
Sale 5	2011	14.74%	*
Sale 6	2011	12.21%	
Sale 7	2011	11.57%	
Sale 8	2012	8.87%	
Sale 9	2012	8.85%	
Sale 10	2012	8.47%	
Sale 11	2012	8.64%	
Sale 12	2014	8.11%	
Sale 13	2014	7.97%	
Sale 14	2014	7.99%	
Sale 15	2014	8.18%	
Sale 16	2014	8.16%	

All rates include 1.1% for ad valorem taxes

July 17, 2017
VIA US MAIL, Certified Return Receipt

Re:

Dear

I am Property Tax Counsel for which owns the As you know, we have filed appeals of our 2015/2016 assessments and are scheduled for hearings before the Assessment Appeals Board on October 11, 2017.

It appears as though a major point of contention is the pre-tax discount rate that was derived and used in the income approach valuation. Your office provided us with a document entitled "Discount Rate Derivation Summary – ", attached to this letter for your reference.

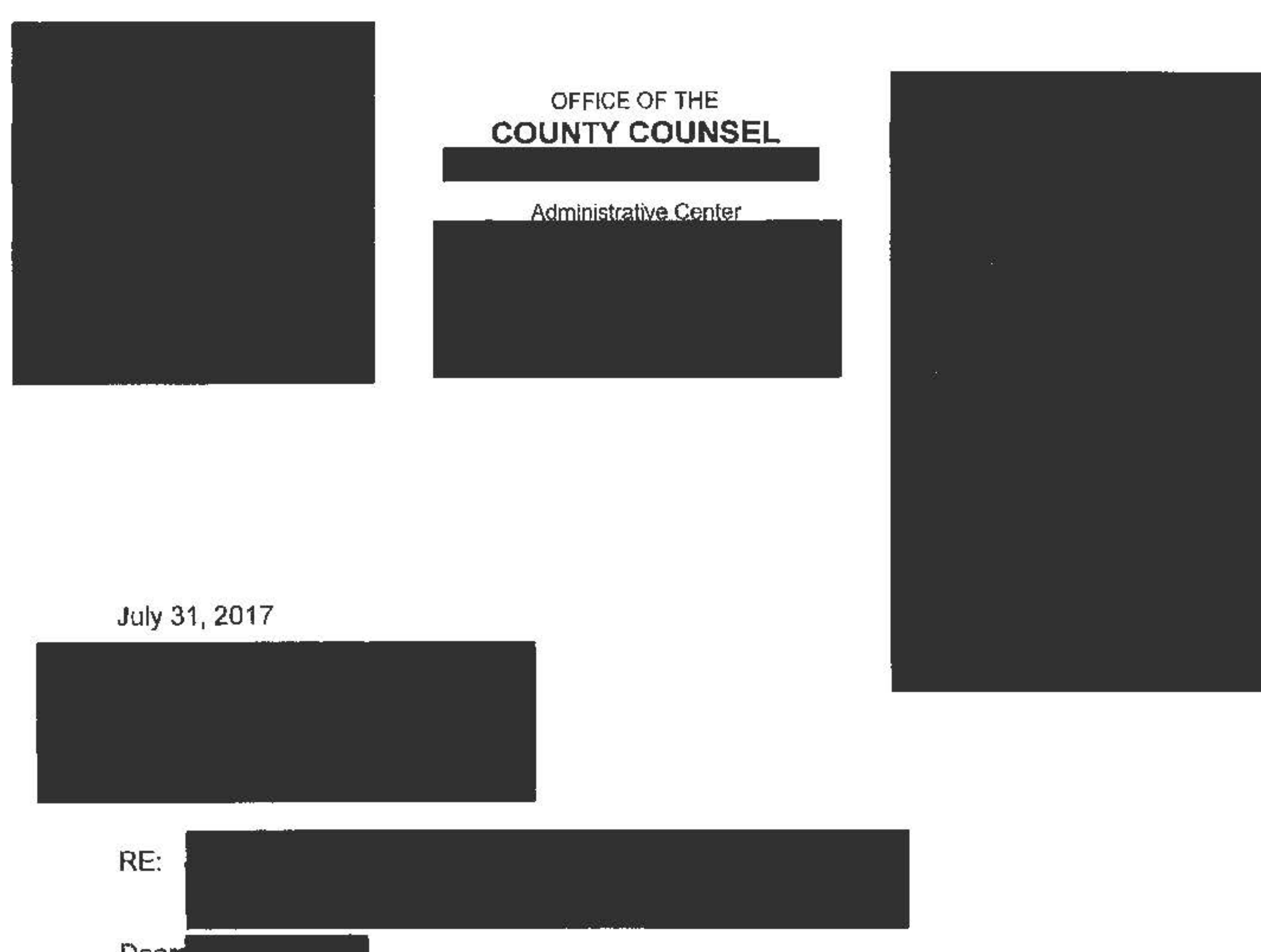
In preparation for the hearing and possible resolution of our 2015/2016 assessment, I am requesting any and all information that was used to arrive at the rates that are indicated on the document. Specifically, please provide the parties to each transaction, the date of the transaction, in-service date of the project, location, purchase price, , technology used, number whether or not any were involved and any other information your office used to derive the discount rate for each transaction. Additionally, in order for the data to be meaningful, we would like to see the calculations that were performed to arrive at the discount rate.

I appreciate that there may be issues of confidentiality involved and we are happy to supply you with a signed non-disclosure or confidentiality agreement that protects the information. I am sure you agree that as a matter of law and due process, we are entitled to know the data and information upon which your office relied in deriving this very important piece of the assessment conclusion.

I would appreciate your providing that information to me within 15 days of this request. Please feel free to contact me should you have any questions and thank you in advance for your cooperation.

Very truly yours,

Enclosure



July 31, 2017

RE:

Dear

Thank you for your request for the underlying data from our sales study of Unfortunately, this information is confidential, is not part of the public record, and cannot be released to another party without following the procedure outlined in California Revenue & Taxation Code section 408. The Assessor takes great care to protect the confidentiality of the information provided by taxpayers and will not release information relating to the property of another without following the appropriate legal standards. This protection is afforded to all the information provided by the taxpayers, including yours.

Specifically, California Revenue & Taxation Code section 408, subdivision (e)(3) provides:

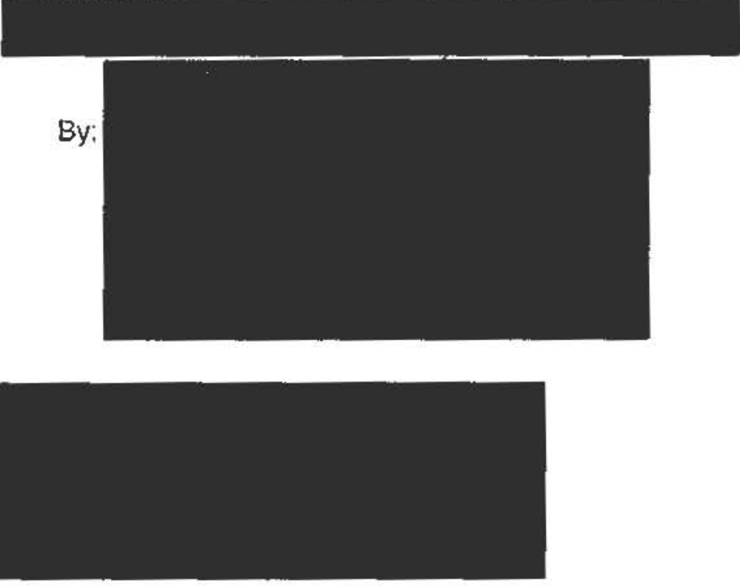
> Except as provided in Section 408.1, an assessee, or his or her designated representative, may not be permitted to inspect or copy information and records that also relate to the property or business affairs of another, unless that disclosure is ordered by a competent court in a proceeding initiated by a taxpayer seeking to challenge the legality of the assessment of his or her property.

For purposes of notification that your company is seeking this information, the Assessor will be happy to provide a list of property transfers. It appears to us that those property owners are parties of interest with respect to the data held by the Assessor and are thus entitled to notice of the court action and an opportunity to appear and protest the release of their

confidential data.

Please contact me should you wish to be provided with the list of transfers, or should you have any further questions.

Sincerely,



By;

Benson's Appeals Concerns; 12/28/17

1.	RTC 1624.1 Requires amendment to prevent the double standard that an assessor employee is disqualified from serving on a board for three years while not applying the same standard to a practicing tax agent for three years. In fact, the existing statue allows a practicing tax agent to serve as a Board member while simultaneously practicing in the field against assessors.
2.	RTC 1624.2 This 1967 section regarding conflict of interest is sorely out of date. Given the frequency, legal implications, and substantial fiscal issues before Boards, consider adopting the same standard of Code of Ethics by OTA Reg 30825.
3.	To prevent abuse of Property Tax Rule 305(e), it's ambiguity needs to be corrected to ensure that (B) and (C) reconcile, and to prevent the effect of the amendment is not to request relief additional to or different in nature from that originally requested.
4.	Property Tax Rules should state that Assessment Appeals Board members must comply with the ethics training requirement of Govemment Code section 53234.
5.	Assessment Appeals Board members should have minimum 6 hours annual continuing education requirement specific to assessment appeals, new legislation, assessment law, and assessment procedures. Exceptions may be granted to recognize 2 hours in a related field like for California Certified appraisers, Appraisal Institute or like.
6.	Property Tax Rule 323(a); "Good cause" should be better described to prevent less the appropriate excuses to postpone or continue a hearing. Consider recent OTA Reg. 30823 Among the factors OTA may consider in determining whether there is reasonable cause for a postponement or deferral include: (1) A party or a representative of a party cannot appear at a hearing or meet a briefing deadline due to the illness of that person or a member of that person's immediate family; (2) A party or a representative of a party cannot appear at a hearing or meet a briefing deadline due to an unavoidable scheduling conflict; (3) A party has obtained a new representative who requires additional time to become familiar with the case; (4) All parties desire a postponement; (5) A stay has been imposed in the taxpayer's bankruptcy action; or (6) Pending court litigation or pending regulatory action by CDTFA may be relevant to the resolution of the issues on appeal.
7.	All subpoena procedures should be simply and clearly described for efficient implementation. This includes RTC 454, 468, 1609.4, Property Tax Rules 322, and any related information regarding expediency to the court's calendar.
8.	RTC 167. In a post Proposition 13 environment RTC 167 should be changed to prevent a simple opinion of value gaining the presumption over and above a bona-fide sales price qualifying pursuant to the terms of RTC 110(b). 167. Presumption affecting burden of proof. (a) Notwithstanding any other provision of law to the contrary, and except as provided in subdivision (b) <u>and section 110 subdivision (b)</u>, there shall be a rebuttable presumption affecting the burden of proof in favor of the taxpayer or assessee who has supplied all information as required by law to the assessor in any administrative hearing involving the imposition of a tax on an owner-occupied single-family dwelling, the assessment of an owner-occupied single-family dwelling pursuant to this division, or the appeal of an escape assessment.

	(b) Notwithstanding subdivision (a), the rebuttable presumption described in that subdivision shall not apply in the case of an administrative hearing with respect to the appeal of an escape assessment resulting from a taxpayer's failure ~~either~~ to supply all information as required by law to the assessor ~~file with the assessor~~ including, but not limited to, a change in ownership statement or a business property statement, or to obtain a permit for new construction.
9.	RTC 674(a) Has created an unfair hardship for assessors, not equally applied to other parties, in qualifying competent appraisal consultants. Not only does this reveal and risk impeachment of an assessor's witness, it compromises due process and fair play in an administrative hearing environment. It is possible to qualify a competent assessor consultant by other reasonable means without imposing a competitive bidding process upon the assessor.
10.	As a consumer protection measure, specific and standards should be adopted to inform consumers about entering into contracts that may bind them to tax agent payments when assessors have affected or continued an assessment reduction independent of any actions by the tax agent. Further, consumers should be informed about contracts binding for multiple years unless constructively revoked by the consumer. In addressing these matters additionally consider the contents of OTA Reg 30703.

EXHIBIT 2

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
PROPERTY TAX DEPARTMENT
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0064
1-916-274-3350 • FAX 1-916-285-0134
www.boe.ca.gov

SEN. GEORGE RUNNER (RET.)
First District, Lancaster

FIONA MA, CPA
Second District, San Francisco

JEROME E. HORTON
Third District, Los Angeles County

DIANE L. HARKEY
Fourth District, Orange County

BETTY T. YEE
State Controller

DEAN R. KINNEE
Executive Director

STATE BOARD OF EQUALIZATION
INTERESTED PARTIES MEETING
Assessment Appeals Process
450 N Street, Room 122, Sacramento
April 25, 2018 1:00 p.m. – 5:00 p.m.

NOTICE
Wednesday, April 25, 2018

Staff of the State Board of Equalization (BOE) will hold an interested parties meeting to discuss issues related to (1) requests for taxpayer information by county assessors, (2) the conditions under which an Assessment Appeals Board may reject an application for assessment appeal, (3) the conditions under which already-scheduled appeals hearings may be postponed, and (4) other items submitted for discussion. The objective of this meeting is to allow interested parties to offer their points of view on these issues and, where possible, find common ground.

Background

For more than a year, taxpayer groups and county assessors have informally discussed issues involving taxpayer due process, assessor requests for information, and general fairness of the assessment appeals process. In August 2017, one taxpayer group—the California Alliance of Taxpayer Advocates (CATA)—presented its concerns at the BOE's Taxpayers' Bill of Rights hearing. Representatives from the California Assessors' Association (CAA) and the California Association of Clerks and Election Officials (CACEO) also presented their concerns at that hearing. After hearing discussion, staff committed to initiating an Interested Parties process to facilitate resolution of the issues.

In December 2017, staff conducted an informal meeting between CATA, CAA, CACEO and other taxpayer groups to further discuss the issues. Additionally, subsequent correspondence submitted by the parties elaborated further on their respective positions or, in some cases, submitted new issues for consideration. The issues and the parties' positions, where provided, are summarized in staff's "Assessment Appeals Process Agenda and Discussion Document," available on our website. This notice and related information are available on the BOE website at http://www.boe.ca.gov/proptaxes/asmappealprocess.htm.

Contact Person

If you expect to attend the meeting, please contact Ms. Angie Berry at angie.berry@boe.ca.gov or 1-916-274-3376. If you would like to participate by teleconference, dial **1-888-822-7517**. The participant pass code is 8467007.

The meeting location is accessible to people with disabilities. Please contact Ms. Berry if you require special assistance.

Sincerely,

/s/ David Yeung

David Yeung, Chief
County-Assessed Properties Division
Property Tax Department

DY:mn

Assessment Appeals Process
Agenda and Discussion Document for April 25, 2018 Meeting

Issue 1: Requests for Taxpayer Information from County Assessors

1. The law requires only that taxpayers make records available to Assessors—nothing more. **(CATA)**

COMMENTS:

CATA
Section 441(d) states in pertinent part as follows:

> "At any time as required by the Assessor for assessment purposes, every person shall make available for examination information or records regarding his or her property or any other property located on premises he or she owns or controls. In this connection details of property acquisition transactions, construction costs, rental income and other data relevant to the determination of an estimate of value are to be considered as information essential to the proper discharge of the assessor's duties."

It is clear from the text of Section 441(d) that the taxpayers are not required to submit or mail copies of records. It requires only that the information or records be made available for examination. This is confirmed by Section 470 which states in relevant part:

> "Business Records. (a) Upon request of an assessor, a person owning, claiming, possessing or controlling property subject to local assessment shall make available at his or her principal place of business, principal location or principal address in California . . . a true copy of business records relevant to the amount, cost and value of all property that he or she owns, claims, possesses or controls within the county."

The plain language of this statute requires taxpayers to make records available at his or her principal place of business, but there is no requirement or legal obligation for the taxpayer to submit copies of this information by mail or otherwise directly to the Assessor.

As there is no legal authority requiring the taxpayer to mail copies to the assessor and therefore the taxpayer cannot be non-compliant for failure to respond to an assessor's request to send copies of any requested information.

If, on the other hand, the Assessor requests a mutually agreeable time to meet for the purpose of inspecting the information requested at the taxpayer's primary place of business, then the taxpayer would have been required to comply with the request. Accordingly, any request or demand for information letter from the Assessor that cites Section 441(d) requesting that copies be mailed or otherwise delivered to the Assessor is inconsistent with the statutory text. Any Board regulation regarding Section 441(d) requests must also be in keeping with this language.[1]

BOE Staff

We believe that, so long as an assessor's request does not mislead the taxpayer into believing that penalties or other consequences might apply if requested copies of documents are not supplied, there is no reason to place legal restrictions on the assessor's decision to *request* copies. In many if not most cases it is more convenient and efficient for both taxpayer and assessor if the taxpayer provides copies.

2. Assessors cannot deny a taxpayer's right to a hearing or impose other consequences on taxpayers that are not set forth in statute. **(CATA)**

COMMENTS:

CATA

Although CATA respects the Assessor's preference that the taxpayer provide copies of the information being sought, we find no legal support for some of the proposed consequences in the event that a taxpayer fails to comply. Specifically, there is no legal support authorizing the Assessment Appeals Board to compel the applicant to comply with the assessor's request for information nor to deny the appeal.

For example, CAA's Guidelines Consequences for example 2 recommends that "unless you provide the following requested information by [insert date], the Assessor will request a continuance or postponement of your hearing, and ask the Assessment Appeals Board to require you to provide the requested information in advance of the rescheduled hearing date."

These statements are based on the erroneous assumption that the Assessment Appeals Board has the authority to compel taxpayer compliance with the Assessor's interpretation of Sections 441(d) and 470. However, the authority to compel compliance with these statutory discovery provisions is not now and never has been vested in the Assessor or the Assessment Appeals Board. Instead the authority to enforce compliance with Sections 441(d) and 470 is vested in the Superior Courts. This is so because there are criminal penalties which can be imposed under Section 462 for any taxpayer who actually refuses to make information or records available for examination at his principal place of

[1] Letter from CATA to Board Chair Diane Harkey dated November 27, 2017.

business. These penalties include fines and imprisonment which can only be imposed by the Superior Courts.

Therefore, the Assessment Appeals Board has no authority to order taxpayer compliance nor does it have the authority to deny the taxpayer's application for failure to comply with the Assessor's request for copies of information and records. However, the Assessment Appeals Board does have some limited authority with respect to the discovery provisions of 441(d). This authority can be found under Section 441(h) which reads in part as follows:

> "If a taxpayer fails to provide information to the assessor pursuant to subdivision (d) and introduces any requested materials or information at any assessment appeals board hearing, the Assessor may request and shall be granted a continuance for a reasonable period of time."

This continuance represents the only legal ramifications or consequences that may apply to a taxpayer who fails to respond to a Section 441(d) request. There is no legal provision that allows an assessment appeals board to deny tbe appeal or to compel the taxpayer to provide the requested information. Accordingly, the sole purpose of the continuance is not to compel additional compliance from the taxpayer, but rather to provide the Assessor additional time to review the materials or information that were requested but not received until the hearing. In other words, this continuance can be granted only if a taxpayer introduces information at a hearing which the assessor previously requested, that the taxpayer failed to make available for inspection before the hearing at the taxpayer's primary place of business.

Therefore, it is our contention that the Assessment Appeals Boards do not have the authority to compel the taxpayer to provide information to the assessor in a manner that is not accordance with Sections 441(d) and 470 of the Revenue and Taxation Code. We further suggest that the Assessment Appeals Boards do not have the legal authority to deny the taxpayer's application by refusing to proceed with the evidentiary hearing based on the Assessor's erroneous interpretation of the property tax laws. This is particularly true when it becomes clear that the authority to compel compliance with Sections 441(d) and 470 of the Code is vested in the Superior Courts. The jurisdiction of the Assessment Appeals Board is limited to granting a continuance under Section 441(h), which can only be exercised after the taxpayer has presented evidence at a hearing which was specifically requested in writing by the Assessor prior to the hearing and not made available for inspection by the taxpayer at his/her principal location of business prior to the hearing.

The most flagrant contravention of Sections 441(d) and 470 concerns one county that maintains two hearing calendars consisting of both "compliant" and "non-compliant" applicants. "Compliant" applicants become compliant only after the

assessor informs the Assessment Appeals Board that they have satisfactorily complied with the Assessor's request for information. "Non-compliant" applicants are those who have not done so. The hearing is then automatically continued to a future date for the sole purpose of securing the taxpayer's full compliance with whatever information request the assessor has propounded. There is no legal support for this ongoing violation of taxpayer rights.

In conclusion, there is no legal authority requiring a taxpayer provide copies of any information requested from the assessor in accordance with Section 441(d). In addition, there is no legal support for any consequences against any taxpayer who has failed to comply with an assessor's 441(d) request other than a possible continuance being granted to the assessor in accordance with Section 441(h).[2]

CAA

[CAA is] pleased to report that significant progress has been achieved since CATA publicly complained to the Board of Equalization (BOE) on September 26, 2016; many of the issues reiterated at the December 18 meeting have now been resolved by changes in practices by local assessors. Marc Aprea, on behalf of CATA agreed with this sentiment and noted in a recent correspondence to the Chair of the Board of Equalization:

> "We are encouraged that the CAA's October 12 letter reported that several counties have modified their correspondence in response to the feedback received from both assessors and taxpayers. We are further encouraged that CAA welcomes the opportunity to participate in the upcoming interested parties process intended to improve best practices, and increase cooperation and compliance by taxpayers.... most assessors have fairly applied-and continue to fairly apply- Section 441(d) ."

Now that multi-lateral communication has been established by the interested parties regarding the concerns tendered by CATA, we are optimistic that the cooperation will continue as county assessor's tender concerns about the practices of some in the tax advocacy profession. CAA looks forward to working with CATA, BOE, County Counsels and CACEO to find additional changes in practices that will further advance professionalism and ethical standards in the assessment appeals process.[3]

BOE Staff

BOE staff is committed to working with parties to seek resolution on issues raised.

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[2] *Ibid.*

[3] Letter from CAA to Board Chair Diane Harkey dated January 18, 2018.

3. Require all section 441(d) requests to be in writing **(CATA, CalTax)**

COMMENTS:

CalTax

To ensure that taxpayers are appropriately notified of the request, and because information obtained therein will be presented as evidence in Assessment Appeals Board (AAB) hearings, we suggest regulations be amended to require that all Section 441(d) requests be in writing. Acknowledging that there may be need for flexibility, we suggest that the regulations could allow the taxpayer and assessor, by written mutual agreement, to waive the requirement for written communication under reasonable circumstances (i.e., to avoid a hearing delay/continuance).[4]

CAA

Assessors generally agree; requests for information should be in writing. As there is agreement, we recommend dropping this item from consideration during the interested parties' process.[5]

BOE Staff

We agree that all requests for information under section 441(d) should, as a matter of good practice, be in writing. We suggest adding language to the Assessment Appeals Manual to emphasize the point.

4. Standardized format for section 441(d) requests **(CalTax)**

COMMENTS:

CalTax

So taxpayers and assessors are better informed of their rights and responsibilities, we suggest regulations be amended to require a quasi-standardized Section 441(d) request form that (1) cites the appropriate statutes/provisions relative to taxpayers' and assessors' rights and responsibilities; (2) informs the taxpayer and the assessor that information obtained in a Section 441(d) request is confidential per Section 451; and (3) provides a narrative portion for assessors to inform taxpayers of the information/records being requested. A standardized format would help avoid misleading/threatening request letters.[6]

We recommend that the requirements be stipulated in regulations, but that the form itself be promulgated in the assessors' handbook to facilitate any necessary updates.[7]

[4] Letter from CalTax to David Yeung, Chief, County-Assessed Properties Division dated January 19, 2018.
[5] Letter from CAA to Board Chair Diane Harkey dated January 18, 2018.
[6] Letter from CalTax to David Yeung, Chief, County-Assessed Properties Division dated January 19, 2018.
[7] *Ibid.*

CAA

We disagree with any efforts to create a standard "one size fits all" for 441(d) letters; it is not realistic, nor in the best interest of the appellant or the assessor. The new Apple "Spaceship" headquarters in Santa Clara County is different than a strip shopping center or a small office building in another county and properly assessing each requires different information. At the December 18 meeting there also appeared agreement by CATA and assessors that discovery correspondence to a Fortune 500 company should be different from letters to residential property owners and small businesses.[8]

BOE Staff

Staff stands ready to work with the parties to develop a standardized format. The parties should bear in mind, however, that the assessor's authority to request information under the statute is quite broad, [9] and any standardized format must inform the taxpayer about the consequences for failing to comply with an assessor's lawful request.

5. Limiting scope of section 441(d) requests to the property under appeal **(CATA)**

COMMENTS:

CAA

This complaint is overly broad and subjective. Assessors strive to comply with Attorney General opinion 84-1104, and do not intentionally make overly broad requests. There is general agreement that assessors should follow the Attorney General's opinion. Consequently, we recommend dropping this item from consideration during the interested parties' process.[10]

BOE Staff

Section 441(d) was intended to be a broad grant of power to the assessor to obtain the information deemed by the assessor as essential to performing his duties. In *Roberts v. Gulf*, the court found that in section 441(d) "[t]he term "essential" serves to prohibit harassment by the taxing authority," not to place upon the assessor constraints in obtaining needed information.

At the same time, section 452 prohibits any question on the property statement that is not germane to the assessment function. An assessor should, therefore, be careful to avoid using requests for information under section 441(d) that might be overly broad for the specific property being assessed.

6. Coercive or threatening language in section 441(d) requests **(CATA)**

COMMENTS:

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[8] Letter from CAA to Board Chair Diane Harkey dated January 18, 2018.

[9] See, for example, *Roberts v. Gulf Oil Corp.* 147 Cal.App.3d 770.

[10] Letter from CAA to Board Chair Diane Harkey dated January 18, 2018.

CAA

During the past year the CAA focused primarily on allegations about some Assessors' letters requesting information. Since then, a number of counties have changed their 441(d) correspondence. We have created specific guidelines that have been adapted by the CAA, covering the process. As a result, the letters that most concerned CATA have now been eliminated. We have provided these guidelines to assessors, CATA and the BOE.

The guidelines make clear that there is a progression in tone between the first R&T Code 441(d) letter, and the letters that follow when the taxpayer fails to respond. For example, the guidelines suggest the initial R&T Code 441(d) letter state:

"It may be possible to agree to reduce the values without a formal hearing if you comply with this letter." or "The majority of appeals can be resolved without a hearing if the necessary information is made available to our office."

If a taxpayer does not respond, the guidelines go on to suggest additional language:
"In order for the Assessor to properly review the assessed value of the property under appeal, you are required to provide the following information: ... "

When we do not receive a response from two written requests, assessors increase the pressure and the CAA guidelines recommend the following language:

"The Assessor is entitled to receive from you, and is hereby requesting, the following information pursuant to Section 441(d) of the California Revenue and Taxation Code." or "This request is made in accordance with Section 441(d) of the California Revenue & Taxation Code."

When the taxpayer chooses to be hostile toward the assessor's office (and a few are hostile), assessors have no choice but to inform the taxpayer of one of the consequences for failure to cooperate by citing language in R&T Code 441(h), which states:

"If a taxpayer fails to provide information to the assessor pursuant to subdivision (d) and introduces any requested materials or information at any assessment appeals board hearing, the assessor may request and shall be granted a continuance for a reasonable period of time."

The guidelines also suggest citing R&T Code Section 501 which reads:

"Failure to furnish information. If after written request by the assessor, any person fails to comply with any provision of law for furnishing information required by Sections 441 and 470, the assessor, based upon information in his (or her)

possession, shall estimate the value of the property and, based upon this estimate, promptly assess the property."

Finally the CAA has urged assessors to limit language stating that the taxpayer will be "subject to possible enforcement actions, subpoena or penalties, as provided under California Law and Regulations."

Clearly, there is a progression. Recognizing that some of the letters could be misinterpreted, assessors have now changed some of the letters that were cited in CATA's original package of examples.

Yet assessors like any taxing authority, including the BOE, must be able to impose an increasing level of demand on taxpayers, including a subpoena as a last resort, to obtain information from taxpayers.

As noted above, assessors have removed from their R&T Code 441(d) letters any language CATA perceived as threatening or coercive. In the interest of informing taxpayers, many who have never filed an appeal, assessors will continue to advise taxpayers of the legal consequences for failure to cooperate with reasonable requests for information. Assessors have addressed CATA's concerns and we recommend dropping this item from consideration during the interested parties' process.[11]

BOE Staff

We agree with CAA. In the absence of compliance with initial requests, the taxing authority must have the ability, in subsequent requests, to progressively inform the assessee of the lawful consequences of failing to comply. At the same time, assessors should take care that initial requests treat assessees under the assumption that they will freely comply, as most assessees do.

7. Assessors' compliance with taxpayer requests under section 408(e) **(CATA, CalTax)**

COMMENTS:

CalTax

Currently, some counties refuse to provide taxpayers with information used to derive the appraisal and assessment of the taxpayer's property. It is critical that the taxpayer be provided this information in order to validate, or invalidate an assessor's valuation. Withholding of this information places the taxpayer at an unfair disadvantage. We suggest that regulations be amended to provide a process and timeline for assessors to provide the taxpayer, upon request, information relating to the appraisal and assessment of the taxpayer's property.[12]

[11] Letter from CAA to Board Chair Diane Harkey dated January 18, 2018.
[12] Letter from CalTax to David Yeung, Chief, County-Assessed Properties Division dated January 19, 2018.

CAA

The law is clear, R&T Code 408(e) specifies what information assessors must provide to taxpayers. The examples provided by CATA of failure to adhere to R&T Code 408(e) have been addressed, and the letters have been modified to reflect changes in practices. It is unnecessary to create a rule that merely restates the law. Therefore, we recommend dropping this item from consideration during the interested parties' process.[13]

BOE Staff

Subdivision (f)(3) of section 408 already provides that if the assessor fails to comply with an assessee's request under either subdivision (d) or (e), and the assessor introduces any of the requested information at an assessment appeals hearing, then the assessee, upon request, shall be granted a continuance for a reasonable period of time.

Note, however, that nothing in section 408 mandates a specific time frame within which requests under subdivisions (d) or (e) must be granted. Instead, subdivision (f), paragraph (1) requires that permission for the assessee's inspection or copying requested information "shall be granted as soon as reasonably possible...."

We agree with CAA that there is no need to create a rule that merely restates existing law.

8. Assessors cannot demand a statement under penalty of perjury as to whether the taxpayer has or does not have the information, or whether the taxpayer has adequately responded to the information request. **(CATA)**

COMMENTS:

CAA

Agreed. R&T Code 441(d) does not state that the assessor can require the taxpayer to provide a compliance statement under penalty of perjury. However, if the assessor determines that information is incomplete or not forthcoming, the assessor can bring the R&T Code 441(d) non-compliance to the attention of the Assessment Appeals Board at a prehearing conference. In some counties, the Assessment Appeals Board holds a non-compliance hearing to discuss the assessor's request for information, the status of the applicant's response, discuss any compliance issues with the parties in an effort to resolve them, obtain agreement about when compliance will take place, and schedule a hearing on the merits of the application for a mutually agreeable date thereafter. In appropriate circumstances, the AAB may discuss with the parties resolving the dispute regarding R&T Code 441(d) compliance by allowing the applicant to submit a sworn statement under penalty of perjury that the applicant does not have responsive documents.[14]

---

[13] Letter from CAA to Board Chair Diane Harkey dated January 18, 2018.

[14] Letter from CAA to Board Chair Diane Harkey dated January 18, 2018.

1 **BOE Staff**
2 We agree with CATA and CAA.
3
4
5 9. Statutory minimum time before hearing for responding to section 441(d) requests
6 **(CATA, CalTax)**
7
8 COMMENTS:
9
10 **CalTax**
11 Taxpayers sometimes receive 441(d) right before the scheduled appeals hearing or
12 pre-hearing conference, without sufficient time to respond. This can result in
13 hearing delays/continuances. To ensure sufficient time for the parties to provide
14 and review new facts, we suggest that regulations require all Section 441 (d)
15 requests to be transmitted by a time period (i.e., two weeks or some other date)
16 prior to a hearing. Furthermore, to provide flexibility, the regulations could allow
17 the taxpayer and the assessor, by written mutual agreement, to agree to some
18 other date or waive the requirement entirely.[15]
19
20
21 **CAA**
22 Disagree. R&T Code 441(d)(l) begins with "At any time, as required by the
23 assessor for assessment purposes... " Nevertheless, we agree with CACEO "some
24 county boards have so many appeals to handle that they simply can't afford to
25 vacate hearing days due to the parties' failure to comply with a rigid time
26 requirement." In the interest of an efficient assessment appeals process, assessors
27 oppose an inflexible and arbitrary deadline. Any rule would disproportionately
28 harm the majority of applicants who are principally homeowners and small
29 business owners.[16]
30
31 **CACEO**
32 Our concern here is that a rigid requirement might add unnecessary
33 postponements in our providing a timely hearing. We believe that 441(d) and
34 408(e) requests [should] be made more than two weeks in advance of the hearing.
35 However, we would oppose any inflexible timetable that would provide a party
36 with grounds to justify a postponement or continuance of the hearing where one is
37 not truly necessary. While a county board does have - and should have - the
38 authority to grant a disadvantaged party a postponement or continuance, some
39 county boards have so many appeals to handle that they simply can't afford to
40 vacate hearing days due to the parties' failure to comply with a rigid time
41 requirement. Again, we stress the need for the parties to act responsibly, but
42 some flexibility here is crucial.[17]
43

[15] Letter from CalTax to David Yeung, Chief, County-Assessed Properties Division dated January 19, 2018.
[16] Letter from CAA to Board Chair Diane Harkey dated January 18, 2018.
[17] Letter from CACEO to Board Chair Diane Harkey dated November 16, 2017.

1 **BOE Staff**
2 We agree with CAA and CACEO. RTC 441(d) allows an assessor to request
3 information "at any time." Additionally, there is no statute prescribing a specific
4 minimum time period, and the Board cannot contradict existing law through the
5 rulemaking process. Instead, we suggest adding language to the Assessment
6 Appeals Manual emphasizing that assessors should, wherever feasible, allow
7 assessees reasonable time periods for responding to requests for information.
8
9 10. Confidentiality of taxpayer information as provided in section 451 **(CATA, CalTax)**
10
11 COMMENTS:
12
13 **CalTax**
14 Revenue and Taxation Code Section 451 provides confidential protection for
15 information provided in a Section 441(d). However it appears that some assessors
16 are citing information relating to one taxpayer as evidence against a different
17 taxpayer, without proper written authorization. So assessors are better informed,
18 we suggest that regulations reiterate the confidentiality provisions of Section 451
19 and that a standardized consent form be developed in the assessors' handbook.[18]
20
21 **CAA**
22 Assessors agree information provided by the taxpayer or the taxpayer's agent
23 should be held confidential as provided in Sections 408 and 451. Assessors will
24 continue to use information that is public, disclosed during a hearing and widely
25 available. Therefore, we recommend dropping this item from consideration during
26 the interested parties' process.[19]
27 **BOE Staff**
28 The confidentiality statutes have long been in effect, and have been interpreted by
29 the courts. We see no reason for additional clarifying language by way of
30 regulation, but we would support adding language to the Assessment Appeals
31 Manual to emphasize the relevant points.
32
33 11. Assessor cannot use information obtained from one taxpayer under 441(d) and use the
34 same information against a second or any other taxpayer in an assessment appeals board
35 hearing without written authorization from the first taxpayer. **(CATA)**
36
37 COMMENTS:
38
39 **CAA**
40 Assessors agree information provided by the taxpayer or the taxpayer's agent
41 should be held confidential as provided in Sections 408 and 451. Assessors will
42 continue to use information that is public, disclosed during a hearing and widely

[18] Letter from CalTax to David Yeung, Chief, County-Assessed Properties Division dated January 19, 2018.
[19] Letter from CAA to Board Chair Diane Harkey dated January 18, 2018.

available. Therefore, we recommend dropping this item from consideration during the interested parties' process.[20]

BOE Staff

In general, 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, and not relating to the business affairs of another taxpayer. (*Chanslor-Western Oil & Dev. Co. v. Cook* (1980) 101 Cal.App.3d 407.) Of course, the confidential information of third parties may not be disclosed even in a closed hearing. (*Chanslor-Western Oil v. Cook* (1980) 101 Cal.App.3d 407; *Trailer Train Co. v. State Bd. of Equalization* (1986) 180 Cal.App.3d 565

We agree with CAA, however, that information that has been disclosed during a public hearing is thereafter available to anyone.

12. AABs should not be able to dismiss an assessment appeal application at a pre-hearing conference, or otherwise, because the taxpayer has not responded to a Section 441(d) request. AABs cannot legally limit taxpayers' administrative rights and remedies and cannot dismiss applications for any perceived 441(d) violation. **(CATA, CalTax)**

COMMENTS:

CalTax

It appears that some appeal applications have been rejected based on the perception that taxpayers are withholding information. Whether this is true or not, due process requires that taxpayers be afforded an opportunity before the AAB. If the AAB determines that there is insufficient information or the presented facts do not support the taxpayer's position, then the AAB will decide against the taxpayer. To ensure due process, we suggest that regulations reaffirm that AABs are authorized to postpone a hearing for a reasonable period (i.e., two weeks or some other period), but not to dismiss an appeal application on the grounds that the taxpayer has not responded or has been unable to provide information requested.[21]

CAA

As discussed in the letter submitted by the Santa Clara County Counsel's office, Assessment Appeals Boards have legal authority to hold a pre-hearing conference, sometimes referred to as a "441(d) non-compliance hearing." The purpose of these hearings is to discuss and address the status of outstanding R&T Code 441(d) requests and the anticipated compliance schedule. The appeals board can then set the hearing on the merits of the appeal for a mutually agreeable date following R&T Code 441(d) compliance.

If an applicant or their agent fails to appear at the prehearing conference/R&T Code 441(d) non-compliance hearing, the Assessment Appeals Board can dismiss

[20] Letter from CAA to Board Chair Diane Harkey dated January 18, 2018.
[21] Letter from CalTax to David Yeung, Chief, County-Assessed Properties Division dated January 19, 2018.

the application for lack of appearance at the hearing. Such dismissal results from the failure to appear at the hearing, not from the R&T Code 441(d) non-compliance itself. In Santa Clara County, for example, if an applicant or their agent fails to appear at the R&T Code 441(d) non-compliance hearing, the application is dismissed for lack of appearance. However if the applicant/agent inadvertently missed the hearing for example, they can then file a request for reinstatement of the appeal.[22]

BOE Staff

We agree with CAA.

13. Assessors should not issue Section 441(d) requests that also threaten the taxpayer with criminal or administrative penalties for non-compliance within a particular time or if the response is deemed insufficient by the assessor. **(CATA)**

COMMENTS:

CAA

Agreed. The CAA, as noted above, supports the use of multiple letters that progress in tone and enumeration of consequences. Correspondence should educate taxpayers as to the administrative and criminal penalties for noncompliance long before seeking these remedies. Therefore, we recommend dropping this item from consideration during the interested parties' process.[23]

BOE Staff

We agree. Other than property statements, section 441(d) does not impose penalties for failure to comply with requests for information. Instead, the consequence of an assessee's failure to provide other information to the assessor is that if the taxpayer introduces such requested information at an assessment appeals board hearing the assessor may request, and shall be granted, a continuance for a reasonable period of time.

[22] Letter from CAA to Board Chair Diane Harkey dated January 18, 2018.
[23] *Ibid.*

Issue 2: Conditions under which an Assessment Appeals Board may Reject an Application for Assessment Appeal

14. County clerks cannot reject applications because of the false belief that agency authorizations must be signed by taxpayers in the same calendar year as the application was filed. While it is true that the agency authorizations must be signed and dated before the appeal applications are filed, California law does not require that they be signed in the same calendar year in which the applications are filed. Agency authorizations can be signed in earlier years as long as they state that the agent is authorized to sign and file applications for the relevant roll years. **(CATA)**

    COMMENTS:

    CACEO
    We agree. However, we would like to point out that some clerks and appeals boards have been very strict about agent authorizations because of a history of abuse by a few tax agents. Over the years there have been many incidents of agents filing old authorization forms or photocopies of old authorization forms that were no longer valid and where, in fact, the taxpayer never authorized the agent to file for the year in question. Some taxpayers never even knew an appeal had been filed on their behalf. This is largely, but not exclusively, a problem with appeal mills.

    We note that Rule 305 prohibits retroactive authorizations and permits an agent to sign and file applications in the specific calendar year in which the application is filed. However, neither statute nor regulation is entirely clear about whether the authorization must be signed in the same calendar year as the appeal. Perhaps some additional clarification in Rule 305 would be useful. We are willing to work with the BOE and the parties in that regard.[24]

    CAA
    We concur with CACEO and support additional clarification in Rule 305.[25]

    BOE Staff
    We agree with CACEO.

15. The agency authorization rules must be clarified for processing on-line filings. For in-person filings, current rules require applicants to attach agency authorizations to their appeal applications. But these rules don't work for on-line filings, since there is no way to attach agency authorizations. The attempted application of this obsolete rule has been mixed, at best, and the results have hurt taxpayers. **(CATA, CalTax)**

    COMMENTS:

[24] Letter from CACEO to Board Chair Diane Harkey dated November 16, 2017.
[25] Letter from CAA to Board Chair Diane Harkey dated January 18, 2018.

CalTax

Some of the provisions related to in-person filings need to be updated to reflect procedures better suited to online filings (i.e., email communication/transmittal, electronic signatures, agency authorizations, etc.). We suggest that taxpayers and assessors look to the Franchise Tax Board and other tax agencies as guides to identify methods by which assessors may be able to accelerate a transition to electronic communication and transmittal.[26]

CACEO

We agree that it would be desirable for any county using an on-line filing system to have a mechanism that permits submission of agency authorization on-line. However, some counties simply do not have the necessary funding to do so, at least in the near-term. Although neither law nor rule requires on-line filing, including on-line filing of agent authorization, we are willing to work with the BOE and interested parties to develop an appropriate amendment to Rule 305 to provide some permissive guidance to counties, since the current version of the Rule was issued in 2004, before on-line filing was authorized by law.[27]

CAA

We concur with CACEO and support additional clarification in Rule 305.[28]

BOE Staff

We agree with CACEO and CAA, and stand ready to work with the parties to clarify Rule 305.

16. Standardized state-wide assessment appeal applications should be considered. Currently, each county develops their own forms based on state-wide guidelines, however, these forms vary county to county and result in accepted or rejected statuses depending upon the specific county. **(CATA)**

CACEO

We don't see the problem here. The BOE standardized the Application for Assessment Appeal in 2015. Although a few appropriate variations are permitted by the BOE (counties with a hearing officer program, being one), BOE staff is very strict in making sure a county's form complies with BOE requirements for standardization.[29]

CAA

We agree with CACEO that this is not an issue as "the BOE standardized the Application for Assessment Appeal in 2015. Although a few appropriate variations are permitted by the BOE (counties with a hearing officer program, for

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[26] Letter from CalTax to David Yeung, Chief, County-Assessed Properties Division dated January 19, 2018.
[27] Letter from CACEO to Board Chair Diane Harkey dated November 16, 2017.
[28] Letter from CalTax to David Yeung, Chief, County-Assessed Properties Division dated January 19, 2018.
[29] Letter from CACEO to Board Chair Diane Harkey dated November 16, 2017.

example), BOE staff is very strict in making sure a county's form complies with BOE requirements for standardization."[30]

BOE Staff

We agree with CACEO and CAA.

[30] Letter from CAA to Board Chair Diane Harkey dated January 18, 2018.

Issue 3: Conditions under which Already-Scheduled Appeals Hearings may be Postponed

17. In some counties the Assessor asks for indefinite postponements after the taxpayer presents its case-in-chief. This, CATA members believe, is done to buy time to prepare for cross-examination, thus compromising taxpayers' due process rights. AABs should be required to make every reasonable effort to maintain continuous hearing dates. Delays longer than a week should require a showing of undue hardship on the part of the Assessor. **(CATA)**

COMMENTS:

CACEO
While we agree that AABs should make every reasonable effort to keep the hearing moving, rather than continue it to some future date, it would not be useful, nor even proper in our view, for the BOE to impose restrictions on the AAB with regard to whether a continuance should be granted or what the appropriate length of continuance should be. This must be left up to the county board to decide, based on arguments presented at the hearing by the parties.[31]

We are willing to work with the BOE and the parties to develop a sentence for inclusion in the Assessment Appeals Manual urging the county board to make every reasonable effort to maintain continuous hearing dates, given the reasonable needs of the county board and of the parties to the proceeding.[32]

CAA
We concur with CACEO and "are willing to work with the BOE and the parties to develop a sentence for inclusion in the Assessment Appeals Manual urging the county board to make every reasonable effort to maintain continuous hearing dates, given the reasonable needs of the county board and of the parties to the proceeding."

BOE Staff
We agree with CACEO and CAA, and stand ready to work with the parties to develop language for inclusion in the Assessment Appeals Manual.

[31] Letter from CACEO to Board Chair Diane Harkey dated November 16, 2017.
[32] *Ibid.*

Other Issues

Note: Items 18-28 were submitted after the meeting on December 18, 2017, and are presented here for comment at the interested parties meeting.

18. Disclosure of redacted identifying information about properties from which market data is derived **(Peter Michaels)**

    COMMENTS:

    Peter Michaels
    I represent a group of taxpayers that has filed assessment appeals with a local board. The assessor apparently used the same source information in valuing all taxpayers in our group. We have asked the assessor to provide data underlying the contested assessments. In response, the assessor's counsel has declined to produce the requested information and data, citing Revenue and Taxation Code Section 408(e)(3). Instead, the assessor has provided our group with a one-page "Discount Rate Derivation Summary", listing (unidentified) sales, "Year Sold", and "Rate".

    Of course, we agree that proprietary and confidential business trade secret information and data must be safeguarded from disclosure. That interest must, however, be harmonized with a taxpayer's legal right to know exactly how an assessed value was determined and whether (or not) necessary adjustments were made by the assessor. We urge the Board to work with assessors and taxpayers to strike a balance between these competing interests.[33]

19. Amend section 1624.1 to apply the same 3-year cooling off period to tax agents seeking to serve on AABs as is applied to former assessor employees **(Rich Benson, Marin County Assessor/Recorder/Clerk)**

    COMMENTS:

    Benson
    RTC 1624.1. Requires amendment to prevent the double standard that an assessor employee is disqualified from serving on a board for three years while not applying the same standard to a practicing tax agent for three years. In fact, the existing statue allows a practicing tax agent to serve as a Board member while simultaneously practicing in the field against assessors.[34]

20. Amend section 1642.2 conflict of interest statute to conform with OTA Reg. 30825 **(Rich Benson)**

    COMMENTS:

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[33] Email from Peter Michaels to David Yeung, Chief, County-Assessed Properties Division, February 5, 2018.
[34] Submission from Rich Benson, Marin County Assessor, December 28, 2017.

Benson

RTC 1624.2. This 1967 section regarding conflict of interest is sorely out of date. Given the frequency, legal implications, and substantial fiscal issues before Boards, consider adopting the same standard of Code of Ethics by OTA Reg 30825.[35]

21. Clarify Rule 305(e) **(Rich Benson)**

COMMENTS:

Benson

To prevent abuse of Property Tax Rule 305(e), its ambiguity needs to be corrected to ensure that (B) and (C) reconcile, and to prevent the effect of the amendment is not to request relief additional to or different in nature from that originally requested.[36]

22. Amend Property Tax Rules to require AAB members to receive ethics training as provided in Govt. Code section 53234 **(Rich Benson)**[37]

23. Require AAB members to annually receive 6 hours of continuing education **(Rich Benson)**

COMMENTS:

Benson

Assessment Appeals Board members should have minimum 6 hours annual continuing education requirement specific to assessment appeals, new legislation, assessment law, and assessment procedures. Exceptions may be granted to recognize 2 hours in a related field like for California Certified appraisers, Appraisal Institute or like.[38]

24. Amend Rule 323(a) to make more specific the meaning of "good cause" for a postponement **(Rich Benson)**

COMMENTS:

Benson

Property Tax Rule 323(a); "Good cause" should be better described to prevent less the appropriate excuses to postpone or continue a hearing. Consider recent OTA Reg. 30823 Among the factors OTA may consider in determining whether there is reasonable cause for a postponement or deferral include:

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[35] *Ibid.*
[36] *Ibid.*
[37] *Ibid.*
[38] *Ibid.*

1) A party or a representative of a party cannot appear at a hearing or meet a briefing deadline due to the illness of that person or a member of that person's immediate family;
2) A party or a representative of a party cannot appear at a hearing or meet a briefing deadline due to an unavoidable scheduling conflict;
3) A party has obtained a new representative who requires additional time to become familiar with the case;
4) All parties desire a postponement;
5) A stay has been imposed in the taxpayer's bankruptcy action; or
6) Pending court litigation or pending regulatory action by CDTFA may be relevant to the resolution of the issues on appeal.[39]

25. Clarify and simplify subpoena procedures under sections 454, 468, 1609.4, and Rule 322 **(Rich Benson)**

COMMENTS:

Benson
All subpoena procedures should be simply and clearly described for efficient implementation. This includes RTC 454, 468, 1609.4, Property Tax Rules 322, and any related information regarding expediency to the court's calendar.[40]

26. Amend section 167 to remove the value presumption for escape assessments resulting from failure to provide all information lawfully requested by the assessor **(Rich Benson)**

COMMENTS:

Benson
RTC 167. In a post Proposition 13 environment RTC 167 should be changed to prevent a simple opinion of value gaining the presumption over and above a bona-fide sales price qualifying pursuant to the terms of RTC 110(b).

167. Presumption affecting burden of proof. (a) Notwithstanding any other provision of law to the contrary, and except as provided in subdivision (b) and section 110 subdivision (b) there shall be a rebuttable presumption affecting the burden of proof in favor of the taxpayer or assessee who has supplied all information as required by law to the assessor in any administrative hearing involving the imposition of a tax on an owner-occupied single-family dwelling, the assessment of an owner-occupied single-family dwelling pursuant to this division, or the appeal of an escape assessment.

(b) Notwithstanding subdivision (a), the rebuttable presumption described in that subdivision shall not apply in the case of an administrative hearing with respect to

[39] *Ibid.*
[40] *Ibid.*

the appeal of an escape assessment resulting from a taxpayer's failure ~~either~~to ~~file with the assessor~~supply all information as required by law to the assessor, including, but not limited to, a change in ownership statement or a business property statement, or to obtain a permit for new construction.[41]

27. Section 674(a) **(Rich Benson)**

COMMENTS:

Benson
RTC 674(a) Has created an unfair hardship for assessors, not equally applied to other parties, in qualifying competent appraisal consultants. Not only does this reveal and risk impeachment of an assessor's witness, it compromises due process and fair play in an administrative hearing environment. It is possible to qualify a competent assessor consultant by other reasonable means without imposing a competitive bidding process upon the assessor.[42]

28. Consumer protection measure. Consider OTA Reg. 30703 **(Rich Benson)**

COMMENTS:

Benson
As a consumer protection measure, specific and standards should be adopted to inform consumers about entering into contracts that may bind them to tax agent payments when assessors have affected or continued an assessment reduction independent of any actions by the tax agent. Further, consumers should be informed about contracts binding for multiple years unless constructively revoked by the consumer. In addressing these matters additionally consider the contents of OTA Reg 30703.[43]

[41] *Ibid.*
[42] *Ibid.*
[43] *Ibid.*

EXHIBIT 3

Assessment Appeals Process
Interested Parties Meeting
April 25, 2018

Summary

Staff of the State Board of Equalization (staff) met with interested parties to discuss issues related to local assessment appeals. In general, the issues fell into three categories: (1) requests for taxpayer information by county assessors, (2) rejection of applications for assessment appeals, and (3) postponement of appeals hearings.

Parties Present

Present were individual assessors, including the president of the California Assessors' Association (CAA); representatives of the California Association of Clerks and Elected Officials (CACEO); representatives of the California Alliance of Taxpayer Advocates (CATA); a representative of the California Taxpayers' Association (CalTax); and staff.

Documents

The issues and the parties' positions were outlined in a discussion document prepared by staff and posted to the project website at www.boe.ca.gov/proptaxes/asmappealprocess.htm prior to the meeting. The discussion document was based on written input provided by the parties; that input was also posted to the project website. These documents formed the basis for the discussion.

CATA distributed several documents at the meeting; those documents have since been posted to the project website.

Impressions

- In general, assessors, CACEO, and staff agreed that, where clarifying guidance might be issued, it should be in the form of advisory Letters To Assessors or revisions to the Assessment Appeals Manual. CATA and CalTax, by contrast, expressed the view that legally enforceable changes to the property tax rules or state statutes would be more effective.

- For a small minority of issues, all parties agreed that rule changes or statutory amendments would be appropriate.

Conclusion

Due to the number of issues and their complexity a second meeting is needed to adequately address them. That meeting, expected in late summer after assessors have completed their work for the 2018 assessment rolls, will be scheduled and announced by staff in the coming weeks.

EXHIBIT 4

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
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SEN. GEORGE RUNNER (Ret.)
First District, Lancaster

FIONA MA, CPA
Second District, San Francisco

JEROME E. HORTON
Third District, Los Angeles County

DIANE L. HARKEY
Fourth District, Orange County

BETTY T. YEE
State Controller

DEAN R. KINNEE
Executive Director

STATE BOARD OF EQUALIZATION MEETING
450 N Street, Room 121, Sacramento
NOTICE AND AGENDA
Meeting Agenda (as of 7/24/2018, 1:00 PM)

Tuesday, July 24, 2018

9:30 a.m. Pledge of Allegiance

Board Meeting Convenes*

Agenda items occur in the order in which they appear on the agenda. When circumstances warrant, the Board's Chair may modify the order of the items on the agenda. Agenda Changes will be listed when applicable. This meeting will be webcast live.

There are no items for the following matters:
A. Special Taxes Appeals Hearings
B. Property Tax Appeals Hearings
C. Public Hearing
D. Tax Program Nonappearance Matters – Consent
E. Tax Program Nonappearance Matters – Adjudicatory
F. Other Tax Program Nonappearance Matters

Chief Counsel Matters
There are no items for the following matters:
G. Rulemaking
H. Property and Special Taxes
I. Other Chief Counsel Matters

Administrative Session
Items that appear under these matters provide information to the Members and may require Board action or direction.

J. Consent Agenda .... Ms. Richmond-Smith
(Contribution Disclosure forms not required pursuant to Gov. Code, § 15626.)

J1. Retirement Resolution +
- Lois Campbell

J2. Approval of Board Meeting Minutes
- June 26, 2018 +

J3. Report on Time Extensions for Napa and Siskiyou Counties to complete and submit 2018-19 Local Assessment Roll, pursuant to Revenue and Taxation Code section 155 +

K. Other Administrative Matters

K1. Executive Director's Report .... Mr. Kinnee

1. Organizational Update

   Report on the status of pending and upcoming organizational issues.

2. Approval of the 2019 Board Workload Plan +

   The plan consists of the 2019 Board meeting calendar, annual property tax calendars, and significant dates considered in setting Board meeting dates.

K2. Chief Counsel Report
There are no items for this matter.

K3. Property Tax Deputy Director's Report

1. Report on Training and Certification Programs + ... Mr. Yeung

   Report on training and certification programs administered by the Board.

2. Overview of the Private Railroad Car Tax + ... Mr. Durham

   Staff to provide overview of the private railroad car tax program.

3. Fiscal Year 2018-19 Private Railroad Car Tax Rate 'CF' + ... Mr. Durham

   Report on computation of the tax rate applicable to the 2018-19 Private Railroad Car Tax Assessment.

4. Adoption of the 2018 Private Railroad Car Roll 'CF' ....Mr. Harris

   Staff recommendation for the lien date 2018 assessment of private railroad cars under the provisions of the Private Railroad Car Tax Law.

5. Overview of Unitary and Nonunitary Property + ... Mr. Reisinger

   Staff to provide overview of unitary and nonunitary property classifications.

6. Adoption of the 2018 State-Assessed Property Roll 'CF' .... Mr. Reisinger

   Staff recommendation on the allocations of the unitary values adopted by the Board in May 2018, plus adjustments based on prior Board action and staff-recommended nonunitary values.

K4. Legislative, Research & Statistics Division Chief's Report
There are no items for this matter.

L. Board Member Requested Matters
Items that appear under these matters provide information to the Members and may require Board action or direction.

L1. Discussion of, and proposed changes to Regulations 302, *The Board's Function and Jurisdiction;* 305, *Application;* 305.1, *Exchange of Information;* 305.2, *Prehearing Conference;* and, 323, *Postponement and Continuances* + ...Ms. Ma

~~L2. BOE Legal Opinion on *Assessment Appeals – Exchange of Information*, Revenue and Taxation Code section 1606; whether an assessor's office must provide opinion of value to taxpayer before an assessment appeals board hearing + ... Mr. Horton~~

L3. Discussion regarding legislation to change the monthly Board meeting requirement to a quarterly meeting requirement + ... Ms. Harkey

M. Public Policy Hearings
There are no items for this matter.

Announcement of Closed Session .... Ms. Richmond-Smith

N. Closed Session

N1. Discussion and action on personnel matters (Gov. Code, § 11126(a)(1)).

Announcement of Open Session.. Ms. Richmond-Smith

Adjourn

General information regarding Board Meetings can be found at *www.boe.ca.gov/meetings/boardcomm.htm*. If you would like specific information regarding items on this Notice and Agenda, please telephone (916) 322-2270 or email: *MeetingInfo@boe.ca.gov*. Please be advised that material containing confidential taxpayer information cannot be publicly disclosed.

If you wish to receive this Notice and Agenda electronically, you can subscribe at *www.boe.ca.gov/agenda*.

If you wish to listen to and/or view a live broadcast of the Board meeting, please go to *www.boe.ca.gov* and click on in the Board Meetings Section.

The hearing location is accessible to people with disabilities. Please contact Rose Smith at (916) 323-9656, or email *Rose.Smith@boe.ca.gov* if you require special assistance.

Joann Richmond-Smith, Chief
Board Proceedings Division

*	Public comment on any agenda item, other than a Closed Session item, will be accepted at that meeting.
+	Material is available for this item.
'CF'	Constitutional Function – The Deputy State Controller may not participate in this matter under Government Code section 7.9.

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0080
(916) 322-2270 • FAX (916) 324-3984
www.boe.ca.gov

SEN. GEORGE RUNNER (Ret.)
First District, Lancaster

FIONA MA, CPA
Second District, San Francisco

JEROME E. HORTON
Third District, Los Angeles County

DIANE L. HARKEY
Fourth District, Orange County

BETTY T. YEE
State Controller

DEAN R. KINNEE
Executive Director

STATE BOARD OF EQUALIZATION MEETING
450 N Street, Room 121, Sacramento
NOTICE AND AGENDA
Meeting Agenda (as of 7/24/2018, 1:00 PM)

Tuesday, July 24, 2018

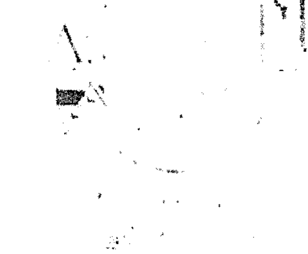
Agenda Changes

Date of Change	***Item Number***	***Description of Item***	***Description of Change***
07/24/2018	L2	BOE Legal Opinion on Assessment Appeals – Exchange of Information, Revenue and Taxation Code section 1606; whether an assessor's office must provide opinion of value to taxpayer before an assessment appeals board hearing	Postponed
07/20/2018	K3.2	Overview of the Private Railroad Car Tax	Material Added
07/18/2018	L2	BOE Legal Opinion on Assessment Appeals – Exchange of Information, Revenue and Taxation Code section 1606; whether an assessor's office must provide opinion of value to taxpayer before an assessment appeals board hearing	Material Added
07/17/2018	K3.1	Report on Training and Certification Programs	Material Added
07/17/2018	K3.5	Overview of Unitary and Nonunitary Property	Material Added

Back to Top of this Agenda

EXHIBIT 5

JEFFREY PRANG
ASSESSOR
COUNTY OF LOS ANGELES
500 WEST TEMPLE STREET, ROOM 320
LOS ANGELES, CALIFORNIA 90012-2770
assessor.lacounty.gov
(213) 974-3101



July 23, 2018

The Honorable George Runner, Chair
State Board of Equalization
240 N Street
Sacramento, CA 94814

Dear Chairman Runner:

JULY 24, 2018 HEARING, BOE AGENDA ITEM L1

As the Assessor of the County of Los Angeles, I am registering my strong objection to the proposed changes to the Property Tax Rules outlined in Item L1 on the State Board of Equalization Agenda of July 24, 2018. The proposed changes will undermine the efficient operation of my office and interfere with the broad discovery tools granted to assessors by the California Legislature to identify and assess all taxable property in this state. Most importantly, the proposed rule changes will significantly interfere with and dangerously impede the ability of my office to carry out its duties as prescribed under the State Constitution and California law.

As such, we request that your Board remove Agenda Item L1 and let the Interested Parties (IP) process continue as scheduled on August 16, 2018, for the following reasons:

1. The Board of Equalization (BOE) staff have already begun holding meetings and discussions in furtherance of the IP process that address the issues presented in Agenda Item L1. Comments from the California Taxpayers Association (CalTax), California Alliance of Taxpayer Advocates (CATA), the California Assessors' Association (CAA), and the California Association of Clerks and Election Officials (CACEO) were memorialized and transmitted by BOE staff in a Discussion Document dated March 23, 2018. The first IP meeting was held on April 25, 2018, and a second meeting is scheduled for August 16, 2018.

2. Most notably, the BOE staff have NOT agreed to CalTax or CATA's recommended changes, but in fact have countermanded many of their complaints and agreed with a majority of CAA and CACEO's responses.

3. Approving changes to rules and regulations now while the IP process is ongoing disrupts and undermines the long established process promulgated by your Board to discuss and collaboratively resolve issues of this importance. Additionally, such short notice to review and evaluate the misguided and statutorily inconsistent changes fail to provide assessors or the public adequate time to comprehend their significance or disruptive impact.

4. The rule changes, if enacted, will increase costs for California taxpayers. Assessors already struggle to obtain actual and factual information from taxpayers and tax advocates/agents in contested assessment appeals. These rule changes will result in more frequent use of an assessor's subpoena power to obtain the necessary information, resulting in added costs, process delays, and inefficiencies both to assessors, courts, applicants, and taxpayers in general, and particularly to tax advocates/agents.

5. The rule changes will result in loss of legitimate tax revenue due to loss of accuracy in conducting valuation assessments by assessor staff.

If the BOE approves the rule changes outlined in Agenda Item L1, the CAA members and my office, in particular, will have no choice but to file a Section 538 legal action to prohibit this overreach of authority that directly interferes and diminishes the statutory duty the assessors uphold to assess all taxable property at its full cash value.

Sincerely,

JEFFREY PRANG
Assessor

JP:SHK:EY:ac

cc: Members, California State Board of Equalization
Dean R. Kinnee, Executive Director, California State Board of Equalization
Joann Richmond-Smith, California State Board of Equalization Proceedings
Charles Leonhardt, CAA President, Plumas County Assessor
Acting Executive Officer of the Board (Celia Zavala)
County Counsel (Mary Wickham)

EXHIBIT 6

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
PROPERTY TAX DEPARTMENT
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0064
1-916-274-3350 • FAX 1-916-285-0134
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SEN. GEORGE RUNNER (RET.)
First District, Lancaster

FIONA MA, CPA
Second District, San Francisco

JEROME E. HORTON
Third District, Los Angeles County

DIANE L. HARKEY
Fourth District, Orange County

BETTY T. YEE
State Controller

DEAN R. KINNEE
Executive Director

STATE BOARD OF EQUALIZATION
INTERESTED PARTIES MEETING
Assessment Appeals Process
450 N Street, Room 122, Sacramento
August 16, 2018 9:30 a.m. – 4:00 p.m.

NOTICE
Thursday, August 16, 2018

Staff of the State Board of Equalization (BOE) will hold a second interested parties meeting to discuss issues related to requests for taxpayer information by county assessors, the assessment appeals process, and other items submitted for discussion. This meeting is intended as a continuation of the interested parties meeting held on April 25, 2018.

Background

The issues and the parties' positions were previously outlined in a discussion document prepared by staff and posted to the project website at:

http://www.boe.ca.gov/proptaxes/asmappealprocess.htm

The discussion document was based on written input provided by the parties in advance of the April 25, 2018 meeting.

Parties at the meeting on April 25, 2018 included individual assessors, including the president of the California Assessors' Association (CAA); representatives of the California Association of Clerks and Elected Officials (CACEO); representatives of the California Alliance of Taxpayer Advocates (CATA); a representative of the California Taxpayers' Association (CalTax); and BOE staff.

This second meeting will continue the discussion beginning with item number 12 in the discussion document. Due to the complex legal matter of confidentiality of taxpayer information, discussed in item numbers 10 and 11, these items will be the subject of a separate interested parties process which will be held at a later date.

Contact Person

If you expect to attend this meeting, please contact Ms. Angie Berry at angie.berry@boe.ca.gov or 1-916-274-3376. If you would like to participate by teleconference, dial **1-888-822-7517**. The participant pass code is 8467007.[1]

[1] Please contact Ms. Berry even if you attended the April 25, 2018 meeting.

The meeting location is accessible to people with disabilities. Please contact Ms. Berry if you require special assistance.

This notice and related information are available on the BOE website at:

http://www.boe.ca.gov/proptaxes/asmappealprocess.htm

Sincerely,

/s/ David Yeung

David Yeung, Chief
County-Assessed Properties Division
Property Tax Department

DY:mn

Posted June 28, 2018

EXHIBIT 7

March 2, 2017

The Honorable Rich Benson
Marin County Assessor-Recorder-County Clerk
President, California Assessors' Association
3501 Civic Center Drive, Suite 208
San Rafael, CA 94903

Re: Assessment Appeals Process - Intercounty uniformity

Dear President Benson:

The California Alliance of Taxpayer Advocates ("CATA") is a non-profit trade association made up of tax consultants representing taxpayers before County Assessors, The Franchise Tax Board and The State Board of Equalization ("Board"). CATA's purpose is to protect the rights of state and local taxpayers by advancing the professional practice of state and local tax consulting through education, advocacy and high ethical standards. I am writing to you in your capacity as the President of the California Assessors' Association (CAA).

The CATA board has some important concerns regarding the assessment appeals board ("AAB") processes in the various counties and we have had informal conversations with you and other assessors since October 2016. The practices our members have observed we believe are both unfair and inconsistent between counties. Therefore, I am writing to you to formally report these concerns to you and respectfully request that you bring this matter before the California Assessors' Association. In addition, I am requesting that a representative of CATA be provided an opportunity to address your Board at the CAA April meeting. Our objective is to develop a Letter to Assessors that will provide for uniform processes in counties statewide.

Our concerns fall into three categories: (1) Information exchanges; (2) Improper rejection of appeal applications; and (3) Continuous hearing dates.

In addition, you will please find attached to this letter details of the problems described herein.

1. Information Exchanges

We are concerned about the manner in which various counties apply the information exchange procedures between taxpayers and assessors in local property tax assessment appeals. The basic

framework for this administrative "discovery" is set forth in Revenue and Taxation Code Section 441. Subdivision (d) requires taxpayers to "make available for examination information or records regarding his or her property." And subdivision (h) states that failure to provide this information while introducing it during an appeal hearing is grounds for a continuance.

Based on input from our members, our objections are summarized as follows:

- Requests should be in writing—no verbal Section 441(d) requests should be allowed or considered by the AAB.

- Overly broad requests that are not limited to information regarding the property in question.

- Assessors should not threaten to resort to the AABs to force taxpayer compliance.

- Failure by some Assessors to comply with providing taxpayers or their representatives information requested under Revenue & Taxation Code Section 408(e) ("relating to the appraisal and the assessment of the assessee's property").

- Assessors should not demand a statement under penalty of perjury as to whether the taxpayer has or does not have the information, or whether the taxpayer has adequately responded to the information request.

- Assessors should make Section 441(d) requests at least two weeks prior to hearing.

- AABs should not be able to dismiss an assessment appeal application at a pre-hearing conference, or otherwise, because the taxpayer has not responded to a Section 441(d) request. AABs cannot legally limit taxpayers' administrative rights and remedies and cannot dismiss applications for any perceived 441(d) violation.

- Assessors should not issue Section 441(d) requests that also threaten the taxpayer with criminal or administrative penalties for non-compliance within a particular time or if the response is deemed insufficient by the assessor.

2. **Improper Rejection of Assessment Appeal Applications**

We believe several counties have been unlawfully rejecting appeal applications based on incorrect interpretation of property tax statutes and regulations. Our objections are summarized as follows:

- County clerks cannot reject applications because of the false belief that agency authorizations must be signed by taxpayers in the same calendar year as the application was filed. While it is true that the agency authorizations must be signed and dated before the appeal applications are filed, California law does not require that they be signed in the same calendar year in which the applications are filed. In fact, agency authorizations can be signed in earlier years as long as they state that the agent is authorized to sign and file

applications for the relevant roll years.

- The agency authorization rules should be clarified for processing on-line filings. For in-person filings, current rules require applicants to attach agency authorizations to their appeal applications. But these rules do not work for on-line filings, since there is no way to attach agency authorizations. The attempted application of this obsolete rule has been mixed, at best, and the results have hurt taxpayers.

3. <u>Continuous hearing dates.</u>

In some counties, the Assessor asks for indefinite postponement after the taxpayer presents its case-in-chief. This compromises taxpayers' due process rights. AABs should be required to make every reasonable effort to maintain continuous hearing dates. Delays longer than a week should require a showing of undue hardship on the part of the Assessor.

We look forward to the opportunity of presenting our concerns to the CAA Board and developing with you a Letter to Assessors that will provide for uniform processes in counties statewide. Thank you in advance for your time and consideration.

Sincerely,

Mardiros H. Dakessian
President
California Alliance of Taxpayer Advocates

cc: Members, State Board of Equalization
California Assessors' Association

September 26, 2016

Honorable Jerome E. Horton
Member, State Board of Equalization
Chairman, Property Tax Committee
2361 Rosecrans Ave., #450
El Segundo, CA 90245

Re: Assessment appeals process
<u>Intercounty uniformity</u>

Dear Chairman Horton:

The California Alliance of Taxpayer Advocates ("CATA") is a non-profit trade association made up of tax consultants representing taxpayers before County Assessors, The Franchise Tax Board and The State Board of Equalization ("Board"). CATA's purpose is to protect the rights of state and local taxpayers by advancing the professional practice of state and local tax consulting through education, advocacy and high ethical standards.

To this end, the CATA board has some important concerns regarding the assessment appeals board ("AAB") processes in the various counties. The practices our members have observed are both unfair and inconsistent between counties. So we are writing to report these concerns to you and respectfully request that you exercise your authority to provide counties and taxpayers guidance and oversight under Government Code Section 15606, subdivision (c). Our concerns fall into three categories: (1) Information exchanges; (2) Improper rejection of appeal applications; and (3) Continuous hearing dates.

1. Information Exchanges

We are concerned about the manner in which various counties apply the information exchange procedures between taxpayers and assessors in local property tax assessment appeals. The basic framework for this administrative "discovery" is set forth in Revenue and Taxation Code Section 441. Subdivision (d) requires taxpayers to "make available for examination information or records regarding his or her property." And subdivision (h) states that failure to provide this information while introducing it during an appeal hearing is grounds for a continuance.

Based on input from our members, our objections are summarized as follows:

- Requests should be in writing—no verbal or oral Section 441(d) requests should be allowed or considered by the AAB.

- Overly broad requests that are not limited to information regarding the property in question.

- Assessors must not threaten to resort to the AABs to coerce taxpayer compliance.

- Failure by the Assessors to comply with providing taxpayers or their representatives information requested under Revenue & Taxation Code Section 408(e) ("relating to the appraisal and the assessment of the assessee's property").

- Assessors cannot demand a statement under penalty of perjury as to whether the taxpayer has or does not have the information, or whether the taxpayer has adequately responded to the information request.

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- The agency authorization rules must be clarified for processing on-line filings. For in-person filings, current rules require applicants to attach agency authorizations to their appeal applications. But these rules don't work for on-line filings, since there is no way to attach agency authorizations. The attempted application of this obsolete rule has been

mixed, at best, and the results have hurt taxpayers.

3. **Continuous hearing dates.**

In some counties, the Assessor asks for indefinite postponement after the taxpayer presents its case-in-chief. This is obviously done to buy time to prepare for cross-examination, thus compromising taxpayers' due process rights. AABs should be required to make every reasonable effort to maintain continuous hearing dates. Delays longer than a week should require a showing of undue hardship on the part of the Assessor.

We appreciate the opportunity to voice the above concerns. Please note that we are open to working with the counties during this process—and with your help and guidance—to building consensus. Thanks in advance for your time and consideration.

Sincerely,

Mardiros H. Dakessian
President
California Alliance of Taxpayer Advocates

cc: Hon. Fiona Ma, Chair, State Board of Equalization
Hon. Diane Harkey, Vice Chair, State Board of Equalization
Hon. George Runner, Member, State Board of Equalization
Hon. Betty T. Yee, State Controller
Hon. Kirsten Spears, Placer County Assessor
President, California Assessors' Association

CALIFORNIA ASSESSORS' ASSOCIATION

PRESIDENT'S LETTER

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San Diego County

Conference
Ernest Dronenburg
San Diego County

***Past President**

August 24, 2017

Mardiros H. Dakessian
President
California Alliance of Taxpayer Advocates
455 Capitol Mall, Suite 600
Sacramento, CA 95814

Re: Assessment Appeal Practices

Dear President Dakessian:

This letter is in reference to your correspondence of: September 26, 2016 to Hon. Board of Equalization Member Jerome E. Horton and other Members of that Board; November 18, 2016 to Hon. Board of Equalization Member Jerome E. Horton and other Members of that Board; January 18, 2017 to Hon. Board of Equalization Member Jerome E. Horton and other Members of that Board; March 2, 2017 to myself as President of the California Assessors' Association (CAA) and all Members of the Board of Equalization; and July 7, 2017 to Hon. Board of Equalization Member Jerome E. Horton and other Members of that Board.

As I understand the correspondence of the California Alliance of Taxpayer Advocates (CATA) and the conversations I have had with Marc Aprea, CATA's lobbyist, CATA is pursuing numerous goals regarding the assessment appeals process, specifically regarding information exchanges, rejection of appeal applications, and "continuous hearing dates." Some of the CATA goals appear to have some reasonable basis for "best-practices" on the part of Assessors and Tax Agents (or taxpayers) and some appear to interfere with the Assessors' sovereign authority to administer the taxation process in a fair and efficient manner. Nevertheless, it is my observation that there are frustrations both from Assessors and from CATA members. And, while each party can submit egregious examples of something perhaps less than flattering, I am not inclined to do so here.

Despite different perspectives, it appears to me that the CAA and CATA have an opportunity to pursue objectives where there may be little disagreement and then identify those areas that reveal disagreement. Indeed, the ability to stipulate to points of agreement is something in which both parties have much experience. And, on those areas of disagreement there is an opportunity to mutually bring forward supporting materials for analysis.

As I have mentioned in my telephone conversations with Mr. Aprea, CAA is coalescing the views of a large organization to address CATA's points. The subject of developing restrictive rules on 58 County Assessors' offices together and their appeals support staff is not an easy sell. CATA has made it clear to me that CATA wishes the process to be interactive, binding on Assessors, and without complimentary "rules of the game" for tax agent conformity or practice.

With respect to CATA's urgency, the Assessors have developed an Ad-Hoc Committee to review assessment appeal best practices on behalf of Assessors and to consider the legal aspects associated with those practices. The CAA is long recognized as an Association important to the public policies development for assessment practices. On this issue, Assessors have addressed this subject matter at three of their recent conferences. Before their next meeting in October, the Ad-Hoc Committee is expected to convene again to move their work ahead. Responsible Assessors are devoting time to this project and I hope there is an opportunity for collaboration in the very near future. In the meantime, I continue to encourage patience.

Respectfully,

Richard N. Benson
Marin County Assessor-Recorder-County Clerk

cc: Hon. Diane Harkey, Chair, State Board of Equalization
Hon. George Runner, Vice-Chair, State Board of Equalization
Hon. Jerome Horton, State Board of Equalization
Hon. Fiona Ma, Chair, State Board of Equalization
Hon. Betty T. Yee, State Controller
Marc A. Aprea, Aprea & Micheli
Rob Grossglauser, Pinnacle Advocacy LLC
California Assessors' Association

CALIFORNIA ASSESSORS ASSOCIATION
STANDARDS COMMITTEE
APPEALS AD-HOC COMMITTEE

REFERENCE GUIDE TO THE CALIFORNIA REVENUE & TAXATION CODE FOR PRODUCTION OF INFORMATION AND RECORDS

October 2017

REFERENCE GUIDE TO THE
CALIFORNIA REVENUE & TAXATION CODE
FOR PRODUCTION OF INFORMATION AND RECORDS

This Reference Guide presented by the California Assessors Association (CAA) provides assistance in navigating the primary legal authorities that govern the production of records and other information pertaining to the taxable property within a county. The production of such records and documents is necessary to provide information to the assessor so that he or she may properly identify and appraise taxable property and all interests therein.

This Reference Guide should not be interpreted or relied upon as legal opinion or advice. Staff should consult county counsel when in need of legal advice in the discharge of their duties. The law changes with some frequency, so be advised that seeking additional resources and reviewing legal authorities in detail is strongly recommended.

This Reference Guide was adopted by the Executive Committee of the CAA on Thursday, October 19, 2017. It is recommended for the use by all California Assessors' Association members to promote accuracy and uniformity in assessment practices.

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1) REQUIRED TAXPAYER DISCLOSURES

a) Introduction

This section provides an outline of authorities and a general summary of statutory authorities that require taxpayers to report information to the assessor.

b) Authority

(1) California Revenue and Taxation Code sections 441-471

§ 441: Property statement, other information
§ 441.1: Property statement, life insurance company
§ 441.5: Property statement, attachments
§ 442: Contents of statement
§ 443: Situs
§ 443.1: Filing duplicate statement
§ 445: Property statements; contents
§ 448: Tax day
§ 451: Information held secret
§ 452: Property statement forms
§ 453: Affidavits
§ 454: Examinations
§ 456: Demand for description
§ 457: Citation
§ 458: Survey on court order
§ 459: Expense of survey
§ 459.5: Applicability of Sections 457,458,459
§ 460: Unknown owners
§ 461: False statement
§ 462: Refusal to give information
§ 463: Penalty for failure to file statement
§ 465: Destroying documents
§ 467: Taxing agencies to file statements
§ 468: Failure to furnish information
§ 469: Audit of profession, trade, or business
§ 470: Business records

c) Sources of Information – Taxpayer Reporting

(1) Change In Ownership

(i) *Change in Ownership Reporting (Cal. Rev. & Tax Code §§480, 480.1, 480.2, 480.3, 480.4)*

For real property transfers, a "Preliminary Change of Ownership Report," (PCOR) or change in ownership statement must be filed at the time of recording or within other specified time periods. Whenever there is a change in control or change in ownership of any corporation, partnership, limited liability company, or other legal entity a signed change in ownership statement must be filed by the person or legal entity acquiring ownership control of the parcel or entity with the State board in Sacramento within a specified time period.

(ii) *Tax Exempt Parcel Reporting (§480.5)*

Every owner of tax-exempt real property shall report to the local assessor the creation, renewal, sublease, or assignment of any lease, sublease, license, use permit, or other document which conveys the right to use that real property within 60 days of the transaction. Note, this code section is only applicable in counties in which the board of supervisors, by ordinance or resolution, specifically elects to have this section applicable in the county. (*see code section for specifics*)

(iii) *Possessory Interest Reporting (§480.6)*

A holder of a possessory interest in real property that is owned by a state or local governmental entity is not required to file a preliminary change in ownership report or change in ownership statement with respect to any renewal of that possessory interest. Instead, every state or local governmental entity that is the fee owner of real property in which one or more taxable possessory interests have been created shall either file any preliminary change in ownership report or change in ownership statement otherwise required to be filed with respect to any renewal of a possessory interest, or annually file with the county assessor, no later than the 15th day of the first month in which the lien date occurs, a real property usage report. (See code section for specifics)

(iv) *Residential Co-operative Housing Projects (§480.8)*

Upon a written request of the county assessor, the owners of a cooperative housing corporation, community apartment project, condominium, planned unit development, or other residential subdivision complex with common areas or facilities in which units or lots are transferred without the use of recorded deeds, shall file an ownership report with the assessor. *(see code section for specifics)*

(v) *Confidentiality of Ownership Reporting (§481)*

All information requested by the assessor or the board furnished in the change in ownership statement shall be held secret by the assessor and the board. All information furnished in either the preliminary change in ownership statement or the change in ownership statement shall be held secret by those authorized by law to receive or have access to the information.

(2) Business Personal Property

(i) §441(a): Report all taxable property owned, claimed, possessed, controlled, or managed by the person required to report. Required to file annually if personal property in excess of $100,000.

(ii) §452: The State Board of Equalization prescribes the contents of the reporting forms.

(3) Information from Taxpayer (Request for Information or Records)

(i) *Property Statement; other information §441(d))*

At any time, as required by the assessor for assessment purposes, every person shall make available for examination information or records regarding his or her property or any other personal property located on premises he or she owns or controls. In this connection details of property acquisition transitions, construction and development costs, rental income, and other data relevant to the determination of an estimate of value are to be considered as information essential to the proper discharge of the assessor's duties. Documents may include regular business records, information regarding property acquisition transactions, construction and development costs, rental income, and other data relevant to determining value.

(ii) *Property Information and Records (§442)*

Every person owning, claiming, possessing, controlling or managing property shall furnish any required information or records to the assessor for examination at any time.

a. The scope of an assessor's inquiry authority under §441 was discussed in *S.W. Straus & Co. v. Los Angeles County* (1932) 128 Cal.App. 386 and *Roberts v. Gulf Oil Corp.* (1983) 147 CalApp.3d 770.

(iii) *Records Reviewed at Place of Business or Mutually Agreeable Location (§470)*

Upon request of an assessor, a person owning, claiming, possessing or controlling property subject to local assessment shall make available at his or her principal place of business, location or at a mutually agreeable location a true copy of business records relevant to the amount, cost, and value of all property that he or she owns, claims, possesses, or controls within the county.

(iv) *Demand for Description (§456)*

If the assessor has not received from the owner of a tract of land a legal description or a description which geographically locates the property, he may require such a description from the owner or his agent, or, in case they cannot be found or are unknown, the person in possession. Such legal description may be by reference to the assessor's map and parcel number.

2) CONSEQUENCES OF FAILURE TO REPORT

a) Introduction

This section outlines the consequences for taxpayers that fail to report information or provide records as required by law.

b) Assessor Authority to Estimate Value (Cal. Rev. & Tax. Code §§ 485 and 501)

If after written request by the assessor, any person fails to comply with any provision of law for furnishing information required by §§ 441 and 470, and 480 the assessor, based upon information in his possession, shall estimate the value of the property and, based upon this estimate, promptly assess the property.

c) Applicable Tax Rate & Interest (§506)

The tax rate applicable to any assessment shall be applied to the property if it appeared upon the roll in the year when it should have been lawfully assessed. To the tax there shall be added interests at the rate of three-fourths of 1% per month from the date or dates the taxes would have become delinquent.

d) Change in Ownership Statements

(1) Failure to File Statement – Real Property Change in Ownership (§482(a))

If a person or legal entity required to file a statement described in §480 fails to do so within 45 days from the date of a written request by the assessor, a penalty of either: (1) one hundred dollars ($100), or (2) 10 percent of the taxes applicable to the new base year value reflecting the change in ownership of the real property or manufactured home, whichever is greater, but not to exceed two thousand five hundred dollars ($2,500) if the failure to file was not willful, shall, except as otherwise provided in this section, be added to the assessment made on the roll. The penalty shall apply for failure to file a complete change in ownership statement notwithstanding the fact that the assessor determines that no change in ownership has occurred as defined in Chapter 2 (commencing with Section 60) of Part 0.5. The penalty may also be applied if after a request the transferee files an incomplete statement and does not supply the missing information upon a second request.

(2) Failure to File Statement – Legal Entity Change in Ownership (§482(b))

If a person or legal entity required to file a statement described in §480.1 or §480.2 fails to do so within specified time periods days from the earlier of (1) the date of the change in control or the change in ownership of the corporation, partnership, limited liability company, or other legal entity, or (2) the date of a written request by the State Board of Equalization, a penalty of 10 percent of the taxes applicable to the new base year value reflecting the change in control or change in ownership of the real property owned by the corporation, partnership, or legal entity, or 10 percent of the current year's taxes on that property if no change in control or change in ownership occurred, shall be added to the assessment made on the roll. The penalty shall apply for failure to file a complete statement notwithstanding the fact that the board determines that no change in control or change in ownership has occurred as defined in subdivision (c) or (d) of §64. The penalty may also be applied if after a request the person or legal entity files an incomplete statement and does not supply the missing information upon a second request. That penalty shall be in lieu of the penalty provisions of subdivision

(3) Failure to File –by Successor to Decedent's Property (§482.1)

If there is a failure to file a change in ownership statement within the time required by

§480(b), the successor in interest to the decedent's property shall be subject to the penalty provided in §482.

e) **Other Reporting**

(1) Penalty for Failure to File Statement (§463)
If any person who is required by law or is requested by the assessor to make an annual property statement fails to file an annual property statement within the time limit specified by §441 or make and subscribe the affidavit respecting his or her name and place of residence, a penalty of 10 percent of the assessed value of the unreported taxable tangible property of that person placed on the current roll shall be added to the assessment made on the current roll.

(2) Refuse to Accept Property Statement (§441(g))
The assessor may refuse to accept any property statement he or she determines to be in error.

(3) Fraudulent Report or Misreport -- 75% Penalty (§503)
If any taxpayer or the taxpayer's agent through a fraudulent act or omission causes, or if any fraudulent collusion between the taxpayer or the taxpayer's agent and the assessor or any of the assessor's deputies causes, any taxable tangible property to escape assessment in whole or in part, or to be underassessed, the assessor shall assess the property in the lawful amount and add a penalty of 75 percent of the additional assessed value so assessed.

(4) Concealment of Tangible Personal Property (§502)
If any person willfully conceals, fails to disclose, removes, transfers or misrepresents tangible personal property to evade taxation which results in an assessment lower than that which would otherwise be required by law, the assessor on discovery shall assess the property in the lawful amount and impose the penalty provided for in §504.

(5) Additional Assessed Value - 25% Penalty (§504)
There shall be added to any assessment made pursuant to §502, except those assessments as are placed on the current roll prior to the time it is originally completed and published, a penalty of 25 percent of the additional assessed value so assessed.

(6) Description of Land (§457)
If the owner, agent, or person in possession neglects to furnish the assessor with the description demanded under § 456 within the specified time period, the assessor shall cite that person to appear before the superior court of the county where the land is situated within five days after service of the citation. On the day named in the citation, to the exclusion of all other business, the court shall proceed to hear that person's return and answer to the citation.

(7) Property Escaping Assessment (§531)
Failure to file a property statement resulting in no assessment or an assessment at a lower valuation had the proper documents been obtained - penalties outlined in §463 and §506 apply.

(8) Failure to Report Cost Accurately; Willful or Fraudulent Omission (§531.3)
If the assessor requires an assessee to describe personal property in such detail as shows the cost thereof but the assessee omits to report the cost of the property accurately, notwithstanding that this information is available to the assessee, to the extent that this omission on the part of the assessee causes the assessor not to assess the property or to assess it at a lower valuation than he would enter upon the roll were the cost reported to him accurately, that portion of the property as to which the cost is unreported, in whole or in part, shall be assessed as required by law. If the omission is willful or fraudulent, the penalty and interest provided in §504 and §506 shall be added to the additional assessment; otherwise only the interest provided in §506 shall be so added.

(9) Inaccurate Statement or Report (§531.4)
Assesse files property statement or form for property held or used in a profession, trade or business and the statement fails to report any taxable tangible property accurately resulting in assessor not assessing property or doing so at a lower value, the portion of the property

not reported accurately shall be assessed as required by law. Failure to report accurately is willful or fraudulent with penalties outlined in §504 and §506 applying.

(10) Business Inventory Exemption (§531.5)

If a business inventories exemption has been incorrectly allowed due to erroneous or incorrect information submitted by taxpayer or his agent as defined in §129, an escape assessment in the amount of the exemption shall be made on discovery of the error.

(11) Homeowners' Exemption (§531.6)

If exemption was incorrectly allowed due to erroneous or incorrect information submitted by the claimant with knowledge that such information was erroneous or incomplete or failed to notify the assessor in a timely manner, the penalty provided in §504 shall be added to the assessment.

3) ENFORCING TAXPAYER DISCLOSURE OF DOCUMENTS

a) Introduction

This section outlines ways an assessor may request information and documents, and enforcement mechanisms that may apply in instances of noncompliance.

b) Enforcing Information Requests Under §441(d)

At any time, as required by the assessor for assessment purposes, every person shall make available for examination information or records regarding his or her property or any other personal property located on premises he or she controls. In this connection, details of property acquisition transactions, construction and development costs, rental income, and other data relevant to the determination of an estimate of value are to be considered as information essential to the proper discharge of the assessor's duties.

(1) The scope of an assessor's inquiry authority under §441 was discussed in Roberts v. Gulf Oil Company (1983) 147 Cal.App.3d 770.

c) Subpoenas

(1) Assessor

(i) *Cal. Rev. & Tax Code 454*

The assessor may subpoena and examine any person regarding (a) any statement furnished him, or (b) any statement disclosing property assessable in his county that may be stored with, possessed, or controlled by the person.

a. The scope of an assessor's inquiry authority under §441 was discussed in *State Board of Equalization v. Ceniceros* (1998) 63 Cal.App.4th 122

(2) Assessment Appeals Board

(i) *Books, Records, and Witnesses (§1609.4)*

The county board of equalization or AAB may subpoena witnesses and books, records, maps, and documents and take evidence in relation to the property in question.

(ii) *State Board of Equalization Employee (§1609.5)*

Whenever an employee of the State Board of Equalization is desired as a witness before a county board of equalization or AAB in a hearing on an application for reduction, a subpoena requesting their attendance may be served. Regardless of distance, the subpoena should include coverage for fees payable to the state board in the amount of $200 per day for each day the employee is required to attend.

(iii) *BOE Property Tax Rule 322*

a. At the request of the applicant or the assessor in advance of the hearing or at the time of the hearing the board or the clerk on authorization from the board may issue subpoenas for the attendance of witnesses at the hearing. The board may issue a subpoena on its own motion. A subpoena may be served on any resident of the State of California or any person or business

entity found within the state. All subpoenas shall be obtained from the board.

b. If a subpoena is issued at the request of the applicant, the applicant is responsible for serving it and for the payment of witness fees and mileage.
c. An application for a subpoena for the production of books, records, maps, and documents shall be supported by an affidavit such as is prescribed by Section 1985 of the Code of Civil Procedure.
d. In the event a State Board of Equalization employee is subpoenaed pursuant to section 1609.5 of the Revenue and Taxation Code at the request of the applicant and the county board grants a reduction in the assessment, the county board may reimburse the applicant in whole or in part for the actual witness fees paid pursuant to section 1609.5.
e. If a party desires the board to issue a subpoena, the party shall make the written request sufficiently in advance of the scheduled hearing date so that the subpoenaed party has an adequate opportunity to fully comply with the subpoena prior to the commencement of the hearing. Upon such request, the board may, whenever possible, issue subpoenas pursuant to sections 1609.4 and 1609.5 of the Revenue and Taxation Code. Subpoenas shall be restricted to compelling the appearance of a person or the production of things at the hearing and shall not be utilized for purposes of prehearing discovery. A subpoena issued near in time to or after commencement of the hearing should be as limited as possible, and a continuance of the hearing may be granted, if requested, for a reasonable period of time.
f. No subpoena to take a deposition shall be issued nor shall deposition be considered for any purpose by the board.

d) **Superior Court**

(1) Assessor's Remedy (§468)

In addition to any other remedies described in this article, if any person fails to furnish any information or records required by this article upon request by the assessor, the assessor may apply to the superior court of the county for an order requiring the person who failed to furnish such information or records to appear and answer concerning his property before such court at a time and place specified in the order. The court may so order in any county where the person may be found, but shall not require the person to appear before the court in any other county than that in which the subpoena is served.

(2) Assessor's Citation to Appear Before Superior Court (§457)

If the owner, agent, or person in possession neglects to furnish the assessor with the description within 10 days after the request, the assessor shall cite him to appear before the superior court of the county where the land is situated within five days after service of the citation. On the day named in the citation, to the exclusion of all other business, the court shall proceed to hear his return and answer to the citation.

e) **Criminal Penalties**

(1) Misdemeanor – False Statement (§461)

Every person who willfully states anything which he knows to be false in any oral or written statement, not under oath, required or authorized to be made as the basis of imposing any tax or assessment, is guilty of a misdemeanor and upon conviction thereof may be punished by imprisonment in the county jail for a period not exceeding six months or by a fine not exceeding one thousand dollars ($1,000), or by both. (§461)

(2) Misdemeanor – Refusal to Provide Information; False Name (§462)

Every person is guilty of a misdemeanor who, after written request by the assessor, does any of the following:

(a) Refuses to make available to the assessor any information which is

required by subdivision (d) of §441 of this code.

(b) Gives a false name.

(c) Willfully refuses to give his true name.

Upon conviction of any offense in this section, the defendant may be punished by imprisonment in the county jail for a period not exceeding six months or by a fine not exceeding one thousand dollars ($1,000), or by both. If the defendant is a corporation, it may be punished by an additional fine of two hundred dollars ($200) for each day it refuses to comply with the provisions of this section, up to a maximum of twenty thousand dollars ($20,000).

4) EXCHANGE OF INFORMATION DURING ASSESSMENT APPEALS

a) Introduction

This section summarizes authority on information disclosure and assessment appeals, including exchange of information between the parties.

b) Authority

An assessor may use §441 to obtain information for use in an assessment appeal. The scope of an assessor's inquiry authority under §441 was discussed in *State Board of Equalization v. Ceniceros* (1998) 63 Cal.App.4th 122

c) Exchange of Information (§1606)

(1) Initiating Party – Exchange of Information (§1606(a)(1))

Any applicant for a change of an assessment on the local roll where the value exceeds $100,000 may initiate an exchange of information with the other party by submitting specified data to the other party and the clerk in writing.

(See code section for specific information request.)

(2) Responding Party– Exchange of Information (§1606(b)(1))

Notwithstanding any limitation on assessed value contained in subdivision (a), if the initiating party has submitted the data required by subdivision (a) within the specified time, the other party shall submit specified data to the initiating party and clerk.

(See §1606(b)(1) for specified data.)

(3) Introduction of New Materials – Exchange of Information §1606(d)

Whenever information has been exchanged pursuant to this section the parties may not introduce evidence on matters not so exchanged unless the other party consents to such introduction. However, at the hearing, each party may introduce new materials relating to the information received from the other party. If a party introduces new material at the hearing, the other party, upon his or her request, shall be granted a continuance for a reasonable amount of time.

(4) Timing of §1606 Request

(i) *Initiating Party -- Submit data 30 days before hearing (§1606(a)(2))*

In relation to 1606(a)(1), to initiate an exchange of information, the initiating party shall submit the data at least 30 days before the commencement of the hearing on the application.

(ii) *Other Party -- Submit data 15 days before hearing (§1606(b)(2))*

In relation to 1606(b)(1), the other party shall submit the data required by this subdivision at least 15 days prior to the hearing.

(iii) *Notice for Hearing Date (§1606(c)(1))*

The person assigning a hearing date shall provide adequate notice to the parties of the date, so that the exchange of information permitted by this section can be made without requiring a continuance of the hearing.

(5) BOE Property Tax Rule 305.1

(i) *Request for 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. 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. (See code section for additional details)

(ii) *Transmittal of 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.

(iii) *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.

(iv) *Nonresponse to Request for 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.

d) **Limitations on Disclosure During an Assessment Appeal**

(1) Disclosure of Trade Secrets – Nature of Hearings (§1605.4)
Equalization hearings shall be open and public except that, upon conclusion of the taking of evidence, the county board may deliberate in private in reaching a decision. An applicant may request the board to close to the public a portion of the hearing by filing a declaration under penalty of perjury that evidence is to be presented which relates to trade secrets the disclosure of which will be detrimental to the business interests of the owner of the trade secrets. If the board grants the request, only evidence relating to the trade secrets may be presented during the time the hearing is closed.

(2) Limitations on Disclosure (§441, §408)

The scope of the limitations on an assessor's ability to disclose information obtained under §441 was discussed in *Chanslor-Western Oil and Development Co. v. Cook* (1980) 101 Cal.App.3d 407.

5) COURT CASES

a) *People v. National Bank of D.O. Mills* (1898) 123 Cal. 53
b) *S.W. Straus & Co. v. Los Angeles County* (1932) 128 Cal.App. 386
c) *Bank of America Nat. Trust & Savings Ass'n. v. Mundo* (1951) 37 Cal.2d 1
d) *Hunt-Wesson Foods, Inc. v. Stanislaus County* (1969) 273 Cal.App.2d 92
e) *Domenghini v. San Luis Obispo County* (1974) 40 Cal.App.3d 689
f) *Henderson v. Bettis* (1975) 53 Cal.App.3d 486
g) *Chanslor-Western Oil and Development Co. v. Cook* (1980) 101 Cal.App.3d 407
h) *Bank of America v. County of Fresno* (1981) 127 Cal.App.3d 295
i) *Roberts v. Gulf Oil Corp.* (1983) 147 Cal.App.3d 770
j) *Union Pacific R.R., Co. v. State Board of Equalization* (1989) 49 Cal.3d 138
k) *Simms v. Pope* (1990) 218 Cal.App.3d 472
l) *State Board Of Equalization v. Ceniceros* (1998) 63 Cal.App.4th 122

EXHIBIT 8

Proposed Regulation	*Cal. Statutes Directly Conflicted, Voided or Diminished*	*Legal Conflict*
305.1(e) 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.	**California Revenue and Taxation Code § 441(d)** which provides: "At any time, as required by the assessor for assessment purposes, every person shall make available for examination information or records regarding his or her property or any other personal property located on premises he or she owns or controls. In this connection details of property acquisition transactions, construction and development costs, rental income, and other data relevant to the determination of an estimate of value are to be considered as information essential to the proper discharge of the assessor's duties." **California Revenue and Taxation Code § 442** which provides in part: "Every person owning, claiming, possessing, controlling or managing property shall furnish any required information or records to the assessor for examination at any time."	Proposed changes to Rule 305.1(e) **directly conflict with R & T Code § 441(d)** which states "At any time, as required by the assessor for assessment purposes, every person shall make available for examination information or records regarding his or her property or any other personal property located on premises he or she owns or controls." This proposed change will drastically limit when and how an Assessor can request information or records that are essential to the proper discharge of the assessor's statutory duties by preventing all requests 20 days prior to a hearing and requiring numerous other restrictions that **directly conflict with or void R & T Code § 442.**
305.1(e) 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.	**California Revenue and Taxation Code § 454** provides: "The assessor may subpoena and examine any person in relation to: (a) any statement furnished him, or (b) any statement disclosing property assessable in his county that may be stored with, possessed, or controlled by the person. He may do this in any county where the person may be found, but shall not require the person to appear before him in any other county than that in which the subpoena is served." This is known as an Assessor Examination. **California Revenue & Taxation Code § 468** provides: "In addition to any other remedies	Proposed changes to Rule 305.1(e) which attempt to limit an Assessor's ability to examine and use property related information **directly conflict with or void R & T Code § 454 and 468.** Proposed changes to Rule 305.1(e) **conflict with and create ambiguity** regarding the Assessor's ability to seek enforcement of R & T 441(d) requests and R & T 454 in Superior Court as now permitted under **R & T Code § 468.**

	described in this article, if any person fails to furnish any information or records required by this article upon request by the assessor, the assessor may apply to the superior court of the county for an order requiring the person who failed to furnish such information or records to appear and answer concerning his property before such court at a time and place specified in the order. The court may so order in any county where the person may be found, but shall not require the person to appear before the court in any other county than that in which the subpoena is served."	
305.1(e). 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.	**California Revenue & Taxation Code § 451** provides: "Information held secret. All information requested by the assessor or furnished in the property statement shall be held secret by the assessor. The statement is not a public document and is not open to inspection, except as provided in Section 408." **California Revenue & Taxation Code § 481** provides "Information held secret. All information requested by the assessor or the board pursuant to this article or furnished in the change in ownership statement shall be held secret by the assessor and the board. All information furnished in either the preliminary change in ownership statement or the change in ownership statement shall be held secret by those authorized by law to receive or have access to this information. These statements are not public documents and are not open to inspection, except as provided in Section 408."	Proposed changes to Rule 305.1(e) that reference **R & T Code §§ 451 & 481** creates ambiguity in the law. **Adding portions of R & T Code §§ 451 & 481 to this Rule is misleading, out of context and unnecessary.**

305.1(e) 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.	**California Revenue and Taxation Code § 461** provides: "Every person who willfully states anything which he knows to be false in any oral or written statement, not under oath, required or authorized to be made as the basis of imposing any tax or assessment, is guilty of a misdemeanor and upon conviction thereof may be punished by imprisonment in the county jail for a period not exceeding six months or by a fine not exceeding one thousand dollars ($1,000), or by both." **California Revenue and Taxation Code § 462(a)** provides: "Every person is guilty of a misdemeanor who, after written request by the assessor, does any of the following: (a) Refuses to make available to the assessor any information which is required by subdivision (d) of Section 441 of this code."	Proposed changes to Rule 305.1(e) which attempt to eliminate a Taxpayer's obligation to provide truthful responses to an Assessor's questions or a sworn statement regarding taxable property **directly conflict with or void R & T Code § 461.** Proposed changes to Rule 305.1(e) which limit when and how an Assessor can request information or records **directly conflict with or void R & T Code § 462(a).**

305(2)(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.	**California Revenue and Taxation Code § 1604(c)(2)** which provides: "Further, this subdivision shall not apply to applications for reductions in assessments of property where the applicant has failed to provide full and complete information as required by law or where litigation is pending directly relating to the issues involved in the application."	Proposed changes to Rule 305.1(e) **directly conflicts with or void R & T Code § 1604(c)(2),** which governs the scheduling of AAB hearings in situations where the Applicant has not fully complied with the Assessor's 441(d) request for information.
323(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.	**California Revenue and Taxation Code § 1604(c)(2)** which provides: "Further, this subdivision shall not apply to applications for reductions in assessments of property where the applicant has failed to provide full and complete information as required by law or where litigation is pending directly relating to the issues involved in the application."	Proposed changes to Rule 305.1(e) **directly conflicts with or void R & T Code § 1604(c)(2),** which governs the scheduling of AAB hearings in situations where the Applicant has not fully complied with the Assessor's 441(d) request for information.

EXHIBIT 9

CALIFORNIA ASSOCIATION OF
CLERKS AND ELECTION OFFICIALS

DEAN C. LOGAN, PRESIDENT
Los Angeles County Registrar-Recorder/County Clerk
12400 Imperial Highway, Suite 7001, Norwalk, CA 90650
(562) 462-2716 – Fax (562) 929-4790
E-Mail: DLogan@rrcc.lacounty.gov
CACEO website: www.caceo58.org

July 18, 2018

Via Email

Diane L. Harkey, Chairwoman
State Board of Equalization
450 N Street
Sacramento, CA 95814

July 24, 2018 Board of Equalization Meeting – Item L1

Dear Ms. Harkey:

Attached please find proposals to amend the Property Tax Rules and Assessment Appeal Manual, submitted by members of the BOE Rules Work Group of the California Association of Clerks and Election Officials (CACEO). We are submitting these proposals for Item L1 on the July 24, 2018 Board of Equalization meeting.

We would like to take this opportunity to object to Item L1, in which it appears that the California Alliance of Taxpayer Advocates (CATA) is attempting to short-circuit the currently ongoing Interested Parties Process (IPP) with regard to CATA's earlier complaints about certain Assessor practices and aspects of the county assessment appeal process. The Interested Parties Process is functioning well, and the second meeting of the parties is scheduled for August 16, 2018. We urge your Board to instruct your staff and the interested parties to continue working on the issues involved in accordance with proper procedure.

However, should your Board decide to interrupt the existing IPP, we would like to ensure that our attached proposed changes to the Property Tax Rules and the Assessment Appeals Manual, which were originally submitted for discussion at the April 25, 2018 Interested Parties Meeting, be considered, as well as those now submitted by CATA. Certainly, Assessors should also be given the opportunity to submit their own set of proposals.

We believe our attached proposals address some of the concerns raised by CATA, while preserving the county board's proper authority under the law, and avoiding unnecessary delays and postponements in the assessment appeal process.

Below is a summary of our underlying reasons for these proposals:

- **Amendments to Property Tax Rule 305**
  We agree with CATA that appeal applications cannot be denied simply on the basis that an agent's authorization is not signed by a taxpayer in the same calendar year in which the application was filed. Our proposal attempts to clarify what the law and Rule permit with regard to agency authorization.

We understand the confusion about filing agency authorization with the county board when an agent files an application on behalf of the taxpayer electronically. Some counties are simply unable to provide a means to file the agent's authorization electronically, due largely to lack of funding, as well as for technological reasons. Our proposal attempts to at least clarify for taxpayers and agents what they need to do to file their authorization form when filing an application electronically. The amendment is also worded in such a way as to recognize different methods of electronically filing an appeal, depending upon the type of system used by the Clerk.

- **Amendments to *Assessment Appeals Manual* pages 24-25**
  (See above comments for Tax Rule 305 with regard to the Manual's pages dealing with applications filed by agents.)

- **Amendment to Property Tax Rule 323(c)**
  We agree with CATA that a county board should not routinely continue a hearing, either indefinitely or even to a future date, upon the party with the burden of proof putting on its case-in-chief. We believe that the hearing should proceed immediately, unless there is good cause to do otherwise. Our proposal makes clear to a board or hearing officer that every reasonable effort must be made to avoid delay. However, our proposal also would appropriately preserve the board's legal authority to use its discretion in considering a request for continuance.

- **Amendments to *Assessment Appeals Manual* pages 97-98**
  (Our proposal makes relevant changes to the Manual that are consistent with our proposed amendment to Rule 323(c). See comments above.)

- **Amendments to the *Assessment Appeals Manual* pages 39-40 (Regarding Property Tax Rule 305.1)**
  We agree with CATA that Revenue and Taxation Code Section 441(d) requests should be made in writing whenever possible. The same should hold true for taxpayer requests for information from the Assessor under Section 408. However, we strongly object to setting a date certain in advance of the hearing for such requests to be presented, primarily for the reason that a firm date inevitably would cause additional, sometimes unnecessary, postponements and delays, which many counties simply cannot afford. Further, it preserves the board's discretion to grant a party a postponement where appropriate.

We appreciate the opportunity to provide you and your staff with our proposed changes to the Property Tax Rules and Assessment Appeals Manual. Should you or your staff have any questions, please call me at 415.554.6777 or John McKibben at 213.200.9610. Thank you.

Sincerely,

Dawn P. Duran, Member
CACEO Board of Equalization Rules Work Group

dpd/
attachments

California Association of Clerks and Election Officials

Proposed Amendment to Rule 305(a)

RULE 305. APPLICATION.

(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. 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 ***or years indicated in the agent's authorization; an agent's authorization may not cover more than four calendar years in the future, beginning with the year in which the authorization was signed***;

(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) ***For online filing where a county's electronic application system does not permit filing or uploading an agent's authorization form with an image of a signature, or other electronic method acceptable to the county board as adopted***

in its local rules, the paper form shall be submitted to the board as soon as possible in order to perfect the application.

~~(2)~~ ***(3)*** 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)~~ ***(4)*** 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)~~ ***(5)*** 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.

4/19/18

S:Regulations\2017-18\CACEO draft Rule 305(a)

California Association of Clerks and Election Officials

Proposed Amendment to *Assessment Appeals Manual*, Pages 24-25

APPLICATION BY AGENT

If an assessment appeal application is filed by an agent -- other than a California-licensed attorney authorized by the applicant to file the application – written authorization of agency, signed by the person affected, must be included on or with the application form (see also section Exclusions to Who May File following in this chapter). **[?]**

The ~~*Application for Changed Assessment*~~ ***Application for Assessment Appeal*** form prescribed by the State Board of Equalization has an area designated for the agent's authorization. If an agent (other than a California-licensed attorney) is filing an application on behalf of an eligible applicant, this section of the form must be completed and signed by the applicant, or an agent authorization may be attached to the application, before the application may be accepted as complete and valid by the clerk of the board. If the applicant elects to attach an agent authorization to the application, the attached authorization will include the following:

- The date the authorization statement is executed;
- 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 ***or in the years indicated in the agent's authorization; an agent's authorization may not cover more than four calendar years in the future, beginning with the year in which the authorization is signed***;
- 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;
- The name, address, and telephone number of the specific agent who is authorized to represent the applicant; the agent may be either a named individual or a firm or agency representing the applicant;
- The applicant's signature and title;
- The statement that the agent will provide the applicant with a copy of the application.

For online filing where a county's electronic application system does not permit filing or uploading an agent's authorization form with an image of a signature, or other electronic method acceptable to the county board as adopted in its local rules, the paper form shall be submitted to the board as soon as possible in order to perfect the application.

If a photocopy of the original authorization is attached to the application, the appeals board may require the agent to submit an original signed authorization. An agent must have authorization to file an application at the time the application is filed; retroactive authorizations are not permitted.

The applicant should promptly notify the clerk of the board in writing when a new agent has been substituted for the current agent.

4/19/18

S:Regulations\2017-18/CACEO draft AAM pages 24-25

California Association of Clerks and Election Officials

Proposed Amendment to Rule 323(c)

Rule 323. POSTPONEMENTS AND CONTINUANCES

(c) At the hearing, the board or a hearing officer may continue a hearing to a later date. ***The board or hearing officer must make every reasonable effort to maintain continuous hearings given the reasonable needs of the county board of equalization or assessment appeals board or county hearing officer and the parties to the proceedings. Before granting such a request, the board or hearing officer must make sure that there is good cause sufficient to justify the continuance.*** 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.

4/19/18

S:Regulations\2017-18\CACEO draft Rule 323(c)

California Association of Clerks and Election Officials

Proposed Amendments to *Assessment Appeals Manual* Pages 97-98

CONTINUANCE

The board may continue a hearing to a later date. If the hearing is continued, the clerk will inform the applicant (or 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 records to waive written notice.

There are two primary reasons for continuing a hearing:

- New information introduced at the hearing -- If new material relating to the information received fr4om the other party during an exchange of information is introduced, the other party may request a continuance for a reasonable period of time.

- Amendment of an application – If the appeals board grants a request to amend an application, upon request of the assessor, the hearing on the matter will be continue by the board for no less than 45 days, unless the parities mutually agree to a different period of time.

If the applicant requests a continuance within 90 days of the expiration of the two-year limitation period provided in section 1604, the board may require a written extension signed by the applicant extending and tolling the ty ow-year period indefinitely. The applicant has the right to terminate the extension agreement upon 120 days written notice.

The board or hearing officer must make every reasonable effort to maintain continuous hearings given the reasonable needs of the county board of equalization or assessment appeals board or county hearing officer and the parties to the proceedings. Before granting such a request, the board or hearing officer must make sure that there is good cause sufficient to justify the continuance.

POSTPONEMENTS

Rule 323, subsection (a), provides in part:

> 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 schooled to commence

If the applicant requests a postponement of a scheduled hearing within 120 days of the expiration of the two-year limitation period provided in section 1604, the postponement will be contingent upon the applicant agreeing to extend and toll indefinitely the two-year period. The applicant has the right to terminate the extension agreement with 120 days written notice.

The assessor is not entitled to a postponement as a matter of right within 120 days of the expiration of the two-year limitation period. However, at the discretion of the board, such a request may be granted.

In addition, if the applicant or the applicant's agent ~~are~~ ***is*** unavailable to attend a properly noticed hearing, the applicant or the applicant's agent may request, prior to the hearing date, a postponement of the hearing with a showing of good cause to the board. ***A board or hearing officer must use good judgement in considering requests for postponement beyond those that are a matter of right, in order to ensure that unnecessary postponements are not granted given the reasonable needs of the county board of equalization or assessment appeals board or county hearing officer and the parties to the proceedings.***

Any information exchange dates established pursuant to Rule 305.1 remain in effect based on the originally scheduled hearing date, notwithstanding the hearing postponement, except when a hearing is postponed due to the failure of a party to respond to an exchange of information.

A board of supervisors may delegate decisions concerning postponement to the clerk in accordance with locally adopted rules.

4/19/18

S:Regulations\2017-18\CACEO draft AAM pages 97-98

California Association of Clerks and Election Officials

Proposed Amendments to *Assessment Appeals Manual* Pages 39 and 40

(Regarding PropertyTax Rule 305.1)

SECTION 408, INSPECTION OF ASSESSOR'S RECORDS

Section 408 allows an assessee, or a representative of the assessee, to inspect records at the assessor's office regarding the assessment of his or her property, as well as market information regarding any comparable properties that the assessor used in the valuation of the assessee's property. The assessee or representative may inspect or copy all information, documents, and records, including auditors' narrations and work papers, whether or not required to be kept or prepared by the assessor, relating to the appraisal and the assessment of the assessee's property, and any applicable penalties and interest. The assessor is prohibited by law from disclosing market information that relates to the business affairs of another taxpayer unless the assessor is provided with a written waiver from that taxpayer allowing the assessor to disclose the information.

Information obtainable under section 408 is relevant to a determination of value and may be introduced at an appeals hearing. Assessors are expected to comply with an assessee's reasonable request pursuant to that provision. ***If an application for assessment appeal has been filed on the property in question, the taxpayer, as applicant, should make the request to the assessor in writing and the written request should be delivered to the assessor as far ahead of a scheduled assessment appeal hearing as possible in order to allow the assessor sufficient time to respond and avoid a postponement of the hearing. A written request may include emailed requests and requests transmitted via facsimile.***

If an assessor fails to permit the inspection or copying of materials or information pursuant to a section 408 request, and the assessor introduces any requested materials or information at an appeals hearing, the applicant or representative may request and shall be granted a continuance for a reasonable period of time. The continuance shall extend the two-year period specified in section 1604 for a period of time equal to the period of continuance.

A taxpayer has a right to inspect records under section 408 whether or not an appeal has been formally filed.

SECTION 441, INFORMATION FROM TAXPAYER'S RECORDS

Section 441, subdivision (d), requires a taxpayer to make available to the assessor, for assessment purposes, information or records regarding the taxpayer's property or any other personal property located on premises the taxpayer owns or controls. The

assessor may obtain details of property acquisition transactions, construction and development costs, rental income, and other data relevant to the determination of an estimate of value.

Requests for information under this code section should be made in writing and the written request should be delivered to the taxpayer as far ahead of a scheduled assessment appeal hearing as possible in order to allow the taxpayer sufficient time to respond and avoid a postponement of the hearing. A written request may include emailed requests and requests transmitted via facsimile.

Information obtainable under subdivision (d) of section 441 is relevant to a determination of value and may be introduced at an appeals board hearing. Taxpayers are expected to comply with an assessor's reasonable requests pursuant to that provision; thus, both the assessor and the taxpayer should be able to make use of and present the same information at hearings. In the event that a taxpayer withholds requested information, subdivision (h) of section 441 provides:

If a taxpayer fails to provide information to the assessor pursuant to subdivision (d) and introduces any requested materials or information at any assessment appeals board hearing, the assessor may request and shall be granted a continuance for a reasonable period of time. The continuance shall extend the two-year period specified in subdivision (c) of Section 1604 for a period of time equal to the period of the continuance.

Section 441, subdivision (d), applies regardless of whether or not an appeal has been filed.

4/19/18

S:Regulations\2017-18\CACEO draft AAM pages 39-40