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September 24, 2018

Honorable George Runner, Chair

State Board of Equalization

240 N Street

Sacramento, CA 95814

Dear Chairman Runner:

On behalf of the California Assessor's Association (CAA) I am writing in regards to item G1 under Rulemaking and the petition being considered to amend Property Tax Rules. The CAA asks the Board to consider approving the significant areas of agreement between CATA, CACFO, and the CAA. We also ask you send back the areas that need more discussion to the Interested Parties (IP) process for further work to vet and find agreement in ways that are in the best interest of taxpayers.

Since the August 21, 2018 meeting, at the request of Vice Chair Ma, CAA has engaged in two meetings with leadership from the California Alliance of Taxpayer Advocates (CATA) and the California Association of Clerks and Election Officials (CACFO). These meetings were moderated by staff from Vice Chair Ma and Chairman Runner's offices. We believe all parties participated in good faith to examine the petition put forth from CATA and to engage in meaningful conversation about where there may be agreement on areas of their requested Property Tax Rules.

We want to express our appreciation to Vice Chair Ma and to you Chair Runner for allowing your staff to participate and facilitate those discussions. It is CAA's position that the group made progress on several issues. We also want to express our appreciation to BOE Staff and the BOE legal team for their in-depth analysis of the proposed Rule changes, released on September 19, 2018.

As mentioned in CAA's August 21, 2018 comments before the Board, CAA believed there were several areas where we could find agreement and other areas where there were significant legal issues and a more in-depth discussion would be appropriate and in the best interest of taxpayers. We resolved and found common agreement on a number of items (highlighted below).



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After serious consideration and lengthy discussions, we have the following comments on those areas for which the group has found agreement and **attached is a chart** with more in-depth comments on the all the proposed rules.

Rule 302: The Board's Function and Jurisdiction

All parties are committed to ensuring and providing for the due process rights of taxpayers. CAA is well aware of the concerns CATA has expressed; however, we believe that the proposed change in 302(c), as written, is unnecessary and potentially misleading to the majority of taxpayers. We propose an alternative affirmative statement to be inserted into 302 as 302(a)(1) that reads:

To ensure that all applicants are afforded due process and given the opportunity for a timely and meaningful hearing.

This language has been discussed by CAA with CATA and CACEO. It is our understanding that all parties have agreed to the wording of the proposed new 302(a)(1).

Rule 305.2 PreHearing Conference

CAA has agreed to the first sentence proposed to be inserted into 305.2(b) and all parties agreed to the deletion of the second sentence of the proposed paragraph.

~~(b) At a prehearing conference, status hearing or non-compliance hearing, 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.~~

Please note: In addition, new wording was proposed this past Friday, September 21, 2018, that would also include in the new paragraph of 305.2(b): ...For properties with an annual assessment greater than \$10,000,000, the board may only hold one prehearing conference, status hearing or non-compliance hearing relating to requests for information, unless the applicant and assessor agree to additional hearings. Unless the applicant and assessor agree otherwise, the board may not hold a prehearing conference, status hearing or non-compliance hearing for properties at or under a \$10,000,000 annual assessed value.



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The additional wording proposed 305.2(b) was not transmitted until after close of business on Friday. CAA's membership has not had sufficient time to discuss with CAA members. Nonetheless, we will be prepared to discuss some of the unintended consequences of this proposal at your hearing.

Rule 305.4 [New] Request for Information

All parties agreed to development of a Cover Letter, drafted and prescribed by BOE, for requests for information pursuant to Revenue and Taxation Code Section 441(d). We also agreed that the form should go through the established forms process by BOE and not go through an Interested Parties process. Assessors would attach their specific request to the Cover Letter.

Rule 323: Postponements and Continuances

The proposal contained in 323(d) and the edit to 323(a) are acceptable to CAA.

Again, on behalf of the California Assessors' Association, I want to thank all the parties for working together to develop consensus where possible. CAA agrees wholeheartedly with the Staff Analysis that recommended continued discussions via the Interested Parties process. We believe that the taxpayers' best interests are met if these proposals are properly vetted.

CAA asks the Board to move approval of the amendments agreed upon by CAA, CATA, and CACEO to the California Code of Regulations, title 18, sections (Property Tax Rules) moving them forward in the regulatory action process and deny all other items of petition, remanding them back to the Interested Parties process (IP) for further work together.

Sincerely,

Leslie K. Davis
President-Elect, California Assessor's Association

c: Fiona Ma, Board Member
Jerome Horton, Board Member
Diane Harkey, Board Member
Betty Yec, State Controller
Dean Kinnee, Executive Director
Joann Richmond-Smith, Chief, Board Proceedings Division

Proposed Rule	Proposed Rule Language	Objections
302(a)(1)	<p>CAA/CATA/CACEO <u>agreed</u> language:</p> <p>To ensure that all applicants are afforded due process and given the opportunity for a timely and meaningful hearing.</p>	<p>CAA Comments:</p> <p>This language was proposed to resolve CATA's concern that taxpayers were not getting a timely hearing by highlighting it in this section. CAA drafted this language with the understanding CATA would remove the proposed 302(c).</p>
302(c)	<p>CAA does <u>not agree</u> with this language.</p> <p>(c) The board has no jurisdiction to 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.</p>	<p>CAA comments:</p> <p>CAA does not agree because the proposed rule addresses an issue related to applications denied at prehearing conferences when taxpayers do not respond to 441d requests and should not be placed in this section. CATA has already proposed language in rule 305.2 Prehearing Conference to address their concerns. Therefore, this would be duplicative and confusing.</p> <p>BOE legal analysis also opined on page 12, "it is conceivable there may be situations where a denial of a hearing for refusal to comply with Section 441(d) would not violate an applicant's due process rights, particularly since property tax information is self-reported, the appeals board and assessor must rely on that information to reach the proper value, and an assessee, itself, can relieve any violation of its own due process rights by its own actions if it produces the required information."</p>
305.2(b)	<p>CAA and CACEO <u>do not agree</u> with this language.</p> <p>(b) At a prehearing conference, status hearing or non-compliance hearing, 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. For properties</p>	<p>CAA comments: Attempts to limit the board of supervisors' sovereign authority to adopt local rules as granted by Calif. Constitution, Article XII, Section 16.</p> <p>CATA also included new language to reference, "status hearing or non-compliance hearing" which were not previously agreed to.</p>

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	<p>with an annual assessment greater than \$10,000,000, the board may only hold one prehearing conference, status hearing or non-compliance hearing relating to requests for information, unless the applicant and assessor agree to additional hearings. Unless the applicant and assessor agree otherwise, the board may not hold a prehearing conference, status hearing or non-compliance hearing for properties at or under a \$10,000,000 annual assessed value.</p> <p>CAA and CACEO <u>previously agreed</u> with CATA on this language:</p> <p>(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(d) of the Revenue and Taxation Code.</p>	<p>"Status hearing" and "non-compliance hearing" are hearings and are distinct from "prehearing conferences", therefore they should not be referenced similarly.</p> <p>The second and third sentences have not been vetted by CAA and therefore cannot be agreed to. It also further confuses prehearing conference, status hearings, and non-compliance hearings into one type of event. The last sentence requiring mutual agreement to hold a prehearing conference conflicts with 305.2(a) which states, "A county board of supervisors may establish prehearing conference." This proposed sentence would take away the board's discretion to create rules for its own jurisdiction.</p> <p>CACEO comments: Strongly disagrees with this subsection, as revised by CATA. While we previously agreed to language that prohibited an application from being denied at a prehearing conference, since that proceeding is not a hearing, we think this wording blurs this important distinction. We do agree that the second sentence that would have prohibited a board from continuing a prehearing conference on a Section 441(d) matter should be deleted because doing so would appropriately preserve the county board's discretion. However, the remaining proposed language is unacceptable, since it would infringe on the county board's judicial discretion. This includes the provisions regarding thresholds. We agree with Chief Counsel Nanjo's conclusion that it is inconsistent with existing law.</p>
323(c)	<p>CAA and CACEO <u>do not agree</u> on this language.</p> <p>(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.</p>	<p>CAA Comments:</p> <p>Concurs with CACEO in that the proposal would infringe on board's discretion to postpone a hearing based on information it has before them.</p> <p>Furthermore, a good example where a taxpayer is benefitted from a postponement occurs when a taxpayer fails to provide any information at their hearing and the AAB postpones the</p>

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		<p>hearing to allow the taxpayer to provide additional information to assist with their evaluation. This is helpful to the taxpayer because they may not know that the assessor's value is presumed correct and by providing no information it would be difficult to dispute the assessor's presumed value. Implementing this rule would eliminate the AAB's discretion to <u>assist</u> the taxpayer by educating them about their rights. This would cause much more problems than solve.</p> <p>CACEO comments: strongly disagrees with this provision. It would infringe on the county board's judicial discretion and we agree with Chief Counsel's opinion that it is inconsistent with existing law.</p>