



CALIFORNIA ASSOCIATION OF CLERKS AND ELECTION OFFICIALS

May 12, 2020

The Honorable Antonio Vazquez, Chair
State Board of Equalization
450 N Street
Sacramento, CA 95814

STATE BOARD OF EQUALIZATION

John McKibben Item # M1

Item Name: Impact of Covid-19 on PT Admin

Meeting Date: 5/13/20 Minutes Exhibit # 5.5

PUBLIC COMMENT



VIA E-MAIL

Dear Chairman Vazquez:

Item M.1. Meeting of May 13, 2020 COVID-19 Property Tax Task Force Report

The members of the California Association of Clerks and Election Officials (CACEO) and their Assessment Appeals Board Counsels appreciate the opportunity to review and respond to your Board's COVID-19 Task Force Report, which we received Friday evening. We want to take this opportunity to critique the Options set forth in the report and to restate many of the points and suggestions we previously made at your Board's last meeting and at the Task Force and subgroup meetings, which seem to have been overlooked or rejected.

Working Group Team 2: Assessment Appeals Relief

Issue I: Extending and Tolling the 2-Year Deadline

First, I would like to point out some factual errors in the Team 2 Subgroup Report that are worth mentioning. In the Arguments in favor of extending the 2-year statute of limitations on County Boards, it was stated that in the six participating counties the counties were at risk of losing \$442.66 billion in property tax revenue if pending cases were not decided within the 2-year period. This is not correct. Our data reported that that figure was the amount of roll value at risk. Actual property tax revenue loss, then, would be roughly \$4.427 billion, still, a considerable sum. However, we do not want your Board or the public at large to think we were exaggerating the financial impact of the 2-year deadline running out in the second half of 2020.

The report either misconstrued or incorrectly attributed a statement by one of our AAB counsels as being in opposition to our proposal to temporarily extend and toll the 2-year period. I believe he will be submitting a letter to your Board correcting that error and reinforcing our collective recommendations for BOE action.

Other errors in interpretation of law will be addressed in separate letters from our County Counsel colleagues.

Members of our group were extremely disappointed that our primary recommendation for BOE action was not among the four Options for Board consideration in the section of the report dealing with the 2-year statute (Issue 1, Team 2). You will recall we strongly urged your Board to join with counties to obtain an Executive Order from the Governor to temporarily extend and toll the 2-year statute for the duration of the state or county emergency, whichever is longer, plus 120 days to fully resume operations and allow time to reschedule postponed and canceled hearings, which mirrors language in your own Property Tax Rule 323. With regard to the four Options laid out in the report, we have the following comments and recommendations:

Option 1: Issue an LTA extending (and tolling) 2-year deadline for AABs by 40 days under Section 155.

This one-time action accomplishes virtually nothing to address the problems County Boards will be facing. An extension and tolling period of 40 days does not begin to cover the full period during which County Boards will be closed for the emergency and it does not even cover the notice of hearing period of 45 days.

We make no recommendation beyond simply pointing that it accomplishes little or nothing.

Option 2: Issue an LTA encouraging AABs to request taxpayers to submit waivers due to COVID-19 with a time certain beyond 40 days for a hearing.

Many of us are already contacting some applicants asking for waivers, so there is no need for an LTA. However, we find the reference to a time-limited waiver particularly repugnant, as we indicated in our testimony and in our earlier letter to your Board. There is no need for establishing a jungle of time-limited waivers that would be virtually impossible to administer in many counties. Further, as we have pointed out before, taxpayers may revoke their waivers at any time, pursuant to your Board's own Rule 323.

We recommend against adopting Option 2.

Option 3: Request an Executive Order for AABs to selectively postpone taxpayer appeals beyond 2 years.

We do not understand the meaning of "selectively". We assume that "postpone" means "extend and toll", but that is not exactly clear either. Regardless of the meaning of "selectively", we object to some sort of limited extending and tolling of the statute. Temporary relief from the 2-year statute must be across the board to make it manageable for clerks and County boards to provide taxpayers and assessors with an orderly process.

We recommend revising this Option to include, exactly, the language we have earlier proposed to your Board and which is repeated on the last page of this letter.

Option 4: Do nothing; maintain the status quo.

Given that the other Options presented in your Board's report, and absent revising Option 3 as we recommend, this would be the best option, which will allow county folk go back to the Governor, as well as the Legislature, to obtain meaningful relief.

Issue II: Extend the Deadline for Filing Appeals of Supplemental and Escape Assessments under RTC 1605

Option 1: Issue an LTA extending the 60-day deadline for taxpayers to file appeals by 40 days per Section 155.

This and other Options under this subject are solutions in search of a problem. Such relief is unnecessary. As has been explained before, in counties where the filing period for appeals of supplemental and escape assessments is triggered by the mailing of the notice of reassessment, taxpayers who are, for whatever reason, unable to get their mail and do not timely receive the notice of reassessment may file an appeal within 60 days after mailing of the resulting tax bill some months later, along with an affidavit, signed under penalty of perjury, that they did not timely receive the notice. To change the filing period would mainly cause nothing more than confusion and create costs for counties, especially for those counties where the notice of reassessment forms have already been printed with now out of date filing information.

We recommend that your Board reject this Option.

Option 2: Issue an LTA encouraging AABs to notify taxpayers unable to file in 60 days that they may file late with an affidavit declaring that the notice of assessment was not received timely.

There is no need for such an LTA, since clerks and AABs will send a taxpayer a notice that their appeal is not timely. We can, and I think most or all of us do, include information informing late filers how they can remedy the problem. That is, we notify them that if they were untimely in filing an appeal of an escape or supplemental assessment, they may file the necessary affidavit, signed under penalty of perjury, provided that the application is perfected within 60 days of the mailing of the resultant tax bill.

Option 3: Issue an LTA encouraging AABs to allow a “safe harbor” period for taxpayers to late file appeals and provide an affidavit for them to attach.

Adequate relief already exists, as noted above. Upon notifying the late-filing taxpayer, we can include an affidavit form.

We recommend that your Board reject this recommendation, with the exception of the creation of an affidavit form, if you believe it would be useful to do so.

Option 4: Do nothing, maintain the status quo.

We agree that this could be the best option, although also creating a standard affidavit form might help some taxpayers.

Other CACEO Recommendations

We yet again strongly urge your Board to act without delay and join together with us to ask Governor Newsom to either grant the temporary relief, as written below, or at minimum, to ask the Governor to delegate the necessary authority to your Board to issue the same relief. We request the following relief:

Notwithstanding Revenue and Taxation Code Section 1604, the two-year deadline by which a County Board must render a decision in an assessment appeal shall be

extended and tolled for the duration of the COVID-19 emergency, as defined by state or county declarations of emergency, whichever is of longer duration, plus 120 days after the termination of the emergency to allow County Boards to resume normal operations, provide taxpayers and assessors time to prepare for resumed hearing schedules, and to reduce the backlog of appeals to a manageable level.

We must also again point out that we are not asking for an indefinite, open-ended relief from RTC 1604(c), as it was implied by our CATA colleagues. We are asking that the deadline be extended and tolled for a finite period of time. We very strongly recommend that your Board NOT take any action to create time-limited waivers. The waiver is, and has always been, within the taxpayer's ability to control by simply revoking the waiver upon written notice within the timeframes outlined in Property Tax Rule 323.

We also strongly recommend that, before you act, your Board further consult with your Chief Counsel and staff and staff of the Property Tax Department to provide you with additional input with respect to the options discussed in your report.

Sincerely,

John McKibben, Committee Chair
California Association of Clerks and Election Officials

cc: The Honorable Ted Gaines
The Honorable Malia Cohen
The Honorable Mike Schaefer
The Honorable Betty T. Yee, State Controller
Yvette Stowers, Deputy Controller
Brenda Fleming, Executive Director
Henry Nanjo, Chief Counsel
David Yeung, Deputy Director, Property Tax Dept.
Dave Titus, First District
Regina Evans, Second District
Kari Hammond, Third District
Gary Gartner, Fourth District



CALIFORNIA ASSOCIATION OF CLERKS AND ELECTION OFFICIALS

May 7, 2020

The Honorable Antonio Vazquez, Chair
State Board of Equalization
450 N Street
Sacramento, CA 95814

VIA E-MAIL

Dear Chairman Vazquez:

Item M.1. Meeting of May 13, 2020 Impact of COVID-19 on Property Tax Administration – Working Group Report

The California Association of Clerks and Election Officials (CACEO) and our assessment appeals board counsel appreciate the opportunity to participate in your Board's COVID-19 Task Force. In anticipation of your Board's action on the reports generated during that process, we want to provide you with additional information regarding our recommendations for action by your Board.

As you know, County Boards and their clerks are responsible for providing a fair and equitable appeal process that provides a level playing field for taxpayers and assessors, alike. County Boards are the constitutional, quasi-judicial *neutrals* in the county assessment appeal process. Simply put, we are the trial court for property tax valuation disputes as a matter of law.

We are obligated to make the appeal process a fair one and to ensure that the process runs quickly, smoothly, efficiently, and effectively, even in times of emergencies and spikes in the number of appeals filed with the County Boards. However, we can only do this if state law, Board of Equalization rules, and emergency-related measures facilitate that effort. The appeal process must be kept free of additional unnecessary or even inappropriate administrative impediments that slow and complicate that process.

Relief from the Two-Year Deadline for County Boards to Render a Decision on Assessment Appeals

We think it is clear to everyone that the impacts of COVID-19 on the economy and on real estate values, particularly the value of business real estate, will result in an extremely large increase in the number of assessment appeals filed with County Boards. Given that this impending huge increase in appeals and given the fact that

County Boards already have been shut down for almost two months with no end in sight, there is a very real chance that County Boards will be unable to meet their statutory responsibility to render decisions on a great number of appeals by the deadline in Section 1604. Moreover, even when County Boards are allowed to resume hearings it is likely that social distancing orders and requirements will continue to negatively impact the ability of County Boards to work their way expeditiously through the pending assessment appeal applications.

As your Board is aware, when County Boards are unable to make a reasoned decision on the correct value of a property based on evidence presented at a hearing, the applicant's opinion of value is then placed on the roll and is the basis upon which property taxes are calculated for the year or years covered by the application. This, in turn, will result in a great deal larger loss of property tax revenue that funds vital government services, including schools, healthcare, law enforcement, fire and rescue operations, and much more. It is apparent that temporary relief from the two-year deadline is of vital importance to all Californians.

Recommendation

As the quickest and most effective way to provide County Boards with the means to avoid defaulting on the deadline and to ensure that they are able to perform their constitutional duty of determining the correct tax roll value of properties under appeal, we strongly recommend that your Board join with clerks and, without further delay, go to the Governor to request an Executive Order granting temporary and effective relief with respect to the two-year deadline. That Order should read as follows:

Notwithstanding Revenue and Taxation Code Section 1604, the two-year deadline by which a County Board must render a decision in an assessment appeal shall be extended and tolled for the duration of the COVID-19 emergency, as defined by state or county declarations of emergency, whichever is of longer duration, plus 120 days after the termination of the emergency to allow County Boards to resume normal operations, provide taxpayers and assessors time to prepare for resumed hearing schedules, and to reduce the backlog of appeals to a manageable level.

It should be noted that the extra 120 days beyond the duration of the emergency will be an important factor in enabling County Boards to restart and catch up. We have not selected 120 days arbitrarily. That language mirrors your Board's own language in Property Tax Rule 323 with regard to rescissions of taxpayer signed waivers of the two-year deadline. Even with such administrative relief, continuing social distancing requirements may still render this extra time inadequate to fully deal with the backlog in a timely manner.

Priority for Applicants Whose Hearings Have Been Canceled Due to COVID-19

We also want to reassure you that clerks and County Boards will make every effort to see to it that applications whose hearings were postponed due to the COVID 19-shutdown are back on the County Boards' calendars as quickly as possible. To the extent we are able to do so, these applications will have priority. We will NOT put them "at the back of the line." We hope to be able to work with our CATA colleagues and assessors to schedule the postponed applications as efficiently as possible once hearings resume. However, we strongly urge taxpayers, especially those represented by attorneys and tax agents, to notify clerks as early as possible – and as far in advance of scheduled hearings as possible – when they decide to withdraw their appeals. Currently, we most often receive notice of withdrawals shortly before or often on the day of the scheduled hearing. We want to have sufficient time in order to backfill vacated hearing dates with other appeals, particularly appeal applications whose hearings were postponed due to the COVID-19 emergency. We will also request that both taxpayers and assessors exercise the flexibility already written into the governing provisions, by agreeing to allow clerks to provide them with shorter hearing notice periods so that the cases delayed by the COVID-19 pandemic can be scheduled and heard by County Boards as expeditiously as possible once hearings resume.

Recommendation

As discussed, we recommend that all parties work together to ensure that affected taxpayers are accommodated to the greatest extent possible.

Proposal to Make Two-Year Deadline Waivers Time-Limited

Without fear of exaggerating, this proposal would be disastrous, particularly in large and mid-size counties. It would be not only unnecessary, but it would certainly also be extremely difficult, costly, and very time-consuming to develop or overhaul our data systems to try to accommodate this requirement. And it would certainly cause even greater delay in the process and increase the County Boards' risk of failing to meet their two-year deadline.

It is important that we all realize that open-ended waivers are not part of the COVID-19 emergency problem. Time-limited waivers would serve no useful purpose, the opposite, in fact. County Boards currently have hundreds or even thousands of applications with waivers on file. They have no effective way to track when time-limited waivers would expire, and do not have the tools needed to ensure assessment appeals with time-limited waivers do not run statute. Also, clerks have no reliable way to distinguish between waivers received during the emergency that were linked to canceled or postponed hearings affected by COVID-19 and those that were routine waivers that were merely received during the emergency. Clerks would have to expend time and money in a time of radically declining revenue in order to engage in time-consuming and costly systems programming to try to address the impacts of this proposal.

Even more significant, however, is that taxpayers already have the right to revoke their waivers of the two-year statute by giving 120 days' notice to the County Board that they

are revoking their waiver. This is clear in your Board's own Rule 323. Existing rules and procedures, then, ensure that taxpayers' appeals do not languish unheard. And if the taxpayer revokes the waiver, the 120 days' notice allows the County Board sufficient time to schedule a hearing and allows both parties time to prepare for that hearing. Protection of the taxpayer from any potential abuse of the indefinite waiver is something that is already within the taxpayer's ability to control.

Recommendation

We urgently recommend that you reject the proposal to create time-limited waivers.

Proposed Requirement to Notify All Applicants as to the Status of Their Applications

This proposal from our CATA colleagues is unnecessary and would be extraordinarily burdensome in the appeal process, especially at this time. Applicants and assessors already receive written notice if their hearing has been canceled or postponed. When taxpayers have a question about their appeal, they can, and do, call us and we provide them with any information they need about their application.

Recommendation

We urge you to reject this proposal, as well.

Clerks and AAB counsels will be participating in your Board's meeting next week on May 13. We look forward to discussing these issues at that meeting. In the meantime, if you or your staff members have any questions, you can reach me at (213) 200-9610.

Sincerely,

John McKibben, Committee Chair
California Association of Clerks and Election Officials

- cc: The Honorable Ted Gaines
- The Honorable Malia Cohen
- The Honorable Mike Schaefer
- Yvette Stowers, Deputy Controller
- Brenda Fleming, Executive Director
- Henry Nanjo, Chief Counsel
- David Yeung, Deputy Director, Property Tax Dept.
- Dave Titus, First District
- Regina Evans, Second District
- Kari Hammond, Third District
- Gary Gartner, Fourth District
- Joe Holland, President, CACEO