



October 20, 2020

The Honorable Antonio Vazquez
Chairman, Board of Equalization
450 N Street, MIC: 72
Sacramento, CA 95814

RE: Agenda Item BB – COVID-19 County Boards of Equalization / Assessment Appeals
Boards Collaborative Workgroup: Consensus Guidance / Letters to Assessor

Dear Chairman Vazquez:

This letter is written on behalf of California Alliance of Taxpayer Advocates (“CATA”) to supplement our October 16, 2020 letter commenting on your October 9, 2020 letter in which you summarize the results of the September 23, 2020 workgroup meeting. In our previous letter, we raised various points of clarification and additional consensus items that we believe should be added to your October 9 summary. For your convenience, below is a redline incorporating our suggestions into your summary of consensus items. Please note that these redlines are limited to points upon which we believe a consensus was reached or no objections were raised. For a statement of CATA’s position and recommendations upon which no consensus was reached, please see our prior letters dated September 18, 2020 and October 16, 2020.

Consensus Items by Issue

Issue a. Clarification on the Rights of the Hearing Participants

1) Right to the type of hearing (physical in-person or remote) for both procedural and evidentiary matters

1. County boards of equalization and assessment appeals boards have the administrative authority and option to provide either in-person hearings or remote hearings, or both. Participants may reject a remote hearing and receive a postponement or continuance until an in-person hearing is available. If a participant wishes to reject a remote hearing and receive a postponement or continuance until an in-person hearing is available, it is within their sole discretion to do so and it need not be tied to concerns related to the COVID-19 pandemic. Participants may also reject an in-person hearing and receive a postponement or continuance. To ensure that applicants may exercise this right, BOE should take the

Commented [RBE1]: We believe the workgroup recognized that there are many reasons a participant may not wish to participate in a remote hearing; therefore, regardless of their reasoning, participants may not be forced to accept a remote hearing.

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necessary action to clarify that “COVID-19 pandemic related concerns” constitute “reasonable cause” under Property Tax Rule 323 for an AAB to grant such continuances. When the request for postponement is within 120 days of the expiration of the two-year statute of limitations, postponements or continuances beyond the two-year statute of limitations should require a waiver by the applicant.

2) Short term right for emergencies or long-term option

Although no consensus was reached on this issue, the Board’s guidance herein focuses on the short-term use of remote hearings with additional guidance to be provided in the future. Given the present focus on the short-term, members of the workgroup suggested that a similar workgroup should be reconvened in a year or so to evaluate the evolution and use of remote hearings and the BOE’s related guidance.

The BOE Legal Department declared that county boards and assessment appeals boards have broad authority to implement and carry out remote hearings, and there is no statute or rule prohibiting it. AB 107, effective 9/29/20, recently memorialized and clarified this conclusion:

http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1073)

Equal access in remote hearings; ensuring all parties and AAB members can view/hear each other during hearings

Consistent with Property Tax Rule 302(a), equal access must be provided to all participants in remote hearings.

*Please note: Subsequent discussions during the Workgroup meeting appeared to conflict with this consensus item. The Board may want to gain further clarification from the Workgroup participants.

4) In-person hearing safety standards, continuances, other options if a remote hearing is not possible or refused

All state and local public health safety standards should apply to both in-person and remote hearings.

Commented [RBE2]: We believe the workgroup recognized that the concerns around COVID-19 extend beyond health concerns to include things such as participant’s limited ability to travel especially between states. Therefore, the draft consensus item should be broadened as suggested in this redline.

Deleted: public health impacts resulting from the COVID-19 pandemic

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Commented [RBE3]: Based on our notes, the workgroup agreed that existing Property Tax Rule 323 adequately addresses the need for waivers. Therefore, this suggested language is intended to better define “where [waivers are] necessary” in a manner that is consistent with the timing provided in Property Tax Rule 323.

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Commented [RBE4]: Based on our notes, there was no opposition to this suggestion.

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Issue b. Appropriate Methods for Dealing with Document Submission

1) Requirements and protocols for entering all evidence electronically at or before a hearing

Evidence submitted to the clerk before the hearing should not be provided to the opposing party prior to the hearing. Boards should accommodate the need for additional evidence to be submitted in real time during the hearing. Additional evidence may be needed to correct an error, to impeach a witness, or at any time to rebut evidence presented during the hearing. At all times, confidential documents and testimony must be protected from public disclosure.

Commented [RBE5]: While there may not have been consensus on the specifics of Issue b.1., based on our notes, there was a general consensus on these points. Our suggested language is also consistent with the workgroup’s comments that remote hearings should mirror in-person hearings to the extent possible.

3) Required platform for document submission and required format for documents (Word, Pdf, Excel, etc.)

Pdf is the preferred document format because it protects the integrity of the document and will likely be familiar and accessible to most participants. However, there may be unique situations in which an alternative document format will be needed.

Commented [RBE6]: This language is designed to provide guidance to the counties while affording them flexibility. We believe this captures the consensus of the workgroup.

Issue c. Technology Options

1) Visual or auditory interruptions (freezing or dropped links) during hearings; remedies to ensure all parties have access / alternative options

County board and AAB clerks should monitor and inform participants of any interruptions; the AAB chair should call a recess until the problem is resolved. If it cannot be resolved, the parties may stipulate to continuing the hearing or agree to continuing the hearing to the next available date. If an applicant fails to appear due to technological issues, their application should not be denied for lack of appearance.

Commented [RBE7]: Based on our notes, there was no objection to the recognition that applications should not be denied for lack of appearance if the failure to appear relates to technological issues.

2) Reliable platforms for remote hearings (Zoom, WebEx, etc.); addressing bandwidth; other solutions to consider

County boards and assessment appeals boards may select the best platform based on their needs, priorities, security, and ease for the user. The selected platform must adequately protect confidential documents and testimony.

Commented [RBE8]: This is required to comply with Property Tax Rule 313(g)(2).

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3) Notice requirements to parties – access instructions, coaching/training videos and accommodations for special needs

County board and AAB Clerks must provide notices to all parties informing them of remote hearing *access* instructions, coaching/training videos, staff availability and accommodations for special needs.

Issue d. BOE Role

1) Possible modifications needed to Property Tax Rules 301 through 326 to facilitate remote hearings

No immediate new Property Tax Rules or *rule* amendments are necessary in order to facilitate remote hearings. Guidance can be provided to counties *in the short term* through Letters to Assessors.

2) Details on guidance needed to ensure uniformity on resolved remote hearing issues via Letters to Assessors and Assessment Appeals Manual

The intent of BOE guidance to counties should be to ensure uniformity in addressing basic hearing issues reflected in the Property Tax Rules and statutes *and* should *simultaneously* allow flexibility for the adoption of local rules on notice requirements and other matters to allow for differences.

3) Provide training for AAB members and staff, Assessors and staff, taxpayers, and other participants including but not limited to the use of technology and equipment required for remote hearings

Training for AAB staff, AAB members and all participants *is essential and* should occur on a regular basis and be instituted as a core part of a county's remote hearing program.

4) Clearing house function, ensuring information and communications among all counties, assessors, taxpayers is received and shared

The BOE has an important clearing house role in facilitating communication *and training* regarding remote hearing procedures, practices, questions and protections among the counties and providing transparency for all participants.

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5) Publish *Letters to Assessors to County Board / AAB Clerks, County Counsels, Interested Parties providing guidance on resolved issues and remaining concerns*

BOE should provide guidance to counties through Letters to Assessors and additions to the *Assessment Appeals Manual* with regard to remote hearing issues *and training* as they are addressed, and should regularly inform counties of remaining items to be addressed as well as any new legislation or rule-making efforts that may occur in the future.

We look forward to discussing the above at tomorrow's BOE meeting. Thank you again for the opportunity to provide input on these important issues.

Sincerely,



Breann E. Robowski
Chair, CATA Ad Hoc Committee on Remote Hearings

cc: Honorable Malia Cohen, Member
Honorable Ted Gaines, Member
Honorable Michael Schaefer, Member
Honorable Betty T. Yee, State Controller
c/o Deputy Controller Yvette Stowers
Henry Nanjo, Acting Chief Board Proceedings
CATA Board of Directors



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RE: Agenda Item BB – COVID-19 County Boards of Equalization / Assessment Appeals
Boards Collaborative Workgroup: Consensus Guidance / Letters to Assessor

Dear Chairman Vazquez:

The California Alliance of Taxpayer Advocates (“CATA”) appreciates the opportunity to participate in the State Board of Equalization’s workgroup on remote hearings and to provide input regarding your October 9, 2020 letter summarizing the consensus items from the September 23, 2020 workgroup meeting. Below is a summary of CATA’s input on each section of your October 9, 2020 letter.

Consensus Items by Issue

We generally agree with the consensus items as described. However, we do have some concerns.

Presumably, additional text will be added in converting the summary into a Letter to Assessors. Our understanding is that the public will not have the ability to review and comment on the draft Letter to Assessors. As such, great care should be taken in drafting the Letter to Assessors, which should mirror the publicly-vetted summary language as closely as possible.

We also believe there are three important points of clarification needed on Issue a.1.

1. With respect to remote hearings, it should be clarified that if a participant wishes to reject a remote hearing and receive a postponement until an in-person hearing is available, it is within their sole discretion to do so and it need not be tied to concerns related to the COVID-19 pandemic.
2. With respect to in-person hearings, the BOE’s recognition of good cause under Property Tax Rule 323 should be broadened from “public health impacts resulting from the COVID-19 pandemic” to all “COVID-19 pandemic related concerns.”

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3. With respect to both remote and in-person hearings, it should be clarified that county boards are not permitted to require a waiver of the two-year statute of limitations unless the request for postponement is within 120 days of the expiration of the two-year limitation. This timing is consistent with Property Tax Rule 323(a).

On a few of the remaining consensus items, we believe there were additional points of consensus that should be added to the Letter to Assessors as follows:

1. On Issue a.2., while the workgroup disagreed as to whether the present guidelines should focus on short-term or long-term use of remote hearings, it was agreed that a similar workgroup should be reconvened in a year or so to evaluate the evolution and use of remote hearings and the BOE's related guidance.
2. On Issue c.1., the workgroup seemed to agree that an application should not be denied for lack of appearance if the non-appearance is related to technical issues.

Non-Consensus Items by Issue

We believe the workgroup also reached a consensus on the following points:

1. On Issue b.1., we recall three additional points of consensus.
 - a. Confidential documents must be protected from public disclosure.
 - b. Evidence submitted to the clerk before the hearing should not be provided to the opposing party prior to the hearing. (Consistent with in-person hearing procedures as well as participants' due process rights, it is CATA's recommendation that such evidence only be made available to the opposing party and the board members as the evidence is introduced, unless otherwise agreed to by the parties.)
 - c. The need to add additional evidence in real time during the hearing should be accommodated. Additional evidence may be required to correct an error, to impeach a witness, or at any time to rebut evidence presented during the hearing.
2. On Issue b.3., participants identified pdf as the preferred document format because it protects the integrity of the document and will likely be familiar and accessible to most participants. The workgroup acknowledged that there may be unique situations in which an alternative document format will be needed.

3. On Issue c.2., as reflected in Property Tax Rule 313(g)(2), the protection of confidential information is critical. Each county's selected platform must provide the clerk with the ability to shield confidential information from public disclosure.

On the remaining non-consensus items, we encourage the BOE to adopt the following CATA recommendations:

1. On Issue a.3. and Issue b.4., we would like to emphasize a few important points.
 - a. Unless freely agreed otherwise by the parties and the board members (*e.g.*, for routine, non-evidentiary matters), it is essential that participants be able to simultaneously view the witness, all board members, and the evidence being presented. Without this, it is impossible for participants to adequately protect their due process rights. While the workgroup initially disagreed on this issue, by the end of the meeting it appeared we had come to an agreement.
 - b. Once introduced, participants must have the ability to view and download the full exhibit at their leisure. This is critical to the parties' as well as the board members' ability to assess the evidence in full.
 - c. To ensure the protection of due process, clerks should begin each hearing with a statement that if at any time a party believes its due process rights are being violated, the party may request a continuance of the hearing until an in-person hearing is available or until such time as the issue may be adequately addressed.
2. On issue b.1., exhibits should not be required more than two days prior to the hearing. This will allow sufficient time for the clerks to process the parties' submissions while minimizing the extra burden placed on remote hearing participants. Any requirement that evidence be submitted earlier than two days prior to the hearing will place remote hearing participants at a disadvantage when compared to in-person hearing participants.
3. On Issue c.1., we agree that notice should be provided as stated in your summary of consensus on this issue. Further, we urge the BOE to specify that such notice should be provided as early as possible to the participants and no later than the notice required under Property Tax Rule 307.

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New Sub-Issues to Address

We greatly appreciate your willingness to entertain ideas to improve the assessment appeals hearing process. Even before the COVID-19 pandemic, many county boards suffered from considerable backlogs causing assessment appeal hearings in some counties to be delayed for years. This backlog is only expected to increase due to the continuing pandemic, the increased volume of assessment appeals anticipated to be filed for tax year 2021-22, and the potential impact of Proposition 15's split roll. We encourage the BOE to explore long-term solutions to these growing delays, beginning with the following sub-issues identified in your October 9 letter and mentioned at the September 23 workgroup meeting:

1. Develop efficiencies around scheduling and scheduling mechanics;
2. Establish a meet and confer process; and
3. Offer pre-hearing conferences.

Since these topics apply equally to remote and in-person hearings and so as not to delay the BOE's guidance on remote hearings, we suggest that the BOE convene either an informal separate workgroup or a formal interested parties process to address these sub-issues.

Thank you again for the opportunity to provide input on these critically important topics.

Sincerely,



Breann E. Robowski
Chair, CATA Ad Hoc Committee on Remote Hearings

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Honorable Betty T. Yee, State Controller
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