



October 18, 2021

BY ELECTRONIC MAIL

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

Re: Suggested Revisions to LTA 2021/002 (Assessment Appeals Boards Remote Hearings During the COVID-19 Pandemic)

Dear Chairman Vazquez:

I am writing on behalf of the California Alliance of Taxpayer Advocates (“CATA”) in response to the October 8, 2021 letter submitted by the California Association of Clerks and Election Officials (“CACEO”) to the State Board of Equalization (“BOE”) providing suggested revisions to LTA 2021/002 and responding to the suggested revisions CATA submitted on October 5, 2021.

For your convenience, attached please find CATA’s specific responses as track changes to the language CACEO submitted on October 8. While the parties’ cross letters¹ demonstrate various points of disagreement, there are two main issues of concern.

- 1. Right to In-Person Hearings.** Due process requires that taxpayers be given the opportunity to present their cases in person. Not all cases can be adequately adjudicated remotely.
- 2. Document Submission Rules.** Document submission rules must be reasonable and should mirror the rules applicable to in-person hearings to the extent possible. Submission of evidence after the local appeals board’s deadline does not warrant the rejection of such evidence. Rejecting evidence merely due to submission past the local deadline would violate the submitting parties’ due process rights.

Each of these points are discussed more fully below.

¹ CACEO submitted preliminary suggested revisions to the LTA on September 2, 2021 to which CATA responded on October 5, 2021. CACEO then submitted a response to CATA’s letter on October 8, 2021. Herein, CATA now responds to the CACEO’s October 8 letter.

TAXPAYER’S FUNDAMENTAL DUE PROCESS RIGHTS

Due process is a fundamental taxpayer right designed to protect citizens against the powers of government. *E.g.*, 14th Amendment of the United States Constitution. The power to tax citizens is one of government’s greatest powers. This power must be moderated by due process of law.

In the context of California’s property tax system, due process requires “a timely and **meaningful** hearing.” Property Tax Rule (“Rule”) 302(a)(1) (emphasis added). It requires a “full and fair hearing” with a “reasonable opportunity for the **presentation of evidence**, for cross-examination of all witnesses and materials proffered as evidence, for argument and for rebuttal.” Rule 313(e). Failure to afford taxpayers these basic hearing rights renders the assessment appeals process unconstitutional. Assessment Appeals Manual (“AAM”) at 18.

Assessment appeals boards are obligated “to ensure that all applicants are afforded due process.” Rule 302(a)(1). An appeals board’s duty to equalize assessed values and administer assessment appeal hearings as a quasi-judicial governmental body can never be placed before the taxpayer’s due process protections.

Yet, this is precisely what the CACEO’s suggested LTA revisions seek to do. Their revisions to the LTA’s “Rights of Hearing Participants” section would deny taxpayers the right to a “**meaningful**” hearing by allowing the appeals board to refuse the use of in-person hearings. Similarly, their revisions to the LTA’s “Document Submission” section would violate taxpayers’ right to the “**presentation of evidence**” by ultimately giving the appeals board and their clerks the power to deny taxpayer evidence.

These due process violations are proposed by the CACEO in the name of the appeals boards’ and clerks’ convenience and their need to provide timely hearings. Convenience is not a justification to impinge upon fundamental rights, and “**meaningful**” hearings must not be sacrificed in the name of timely hearings. In the same way, the appeals boards’ ability to adopt local rules and procedures may not be used as a means to deny taxpayer rights. Indeed, “[l]ocal rules are [only] valid if they are not expressly prohibited by section 16 [of article XIII of the California Constitution], are not preempted by or in conflict with statutes or regulations, and comport with due process.” AAM at 20, citing *Williamson v. Payne* (1938) 25 Cal.App.2d 497.

The BOE cannot sanction such efforts to systematically strip taxpayers of their due process rights.

Right to In-Person Hearings.

Remote hearings do not afford taxpayer due process in all cases. Therefore, the LTA should recognize taxpayers' right to in-person hearings, while encouraging the use of remote hearings where appropriate.

In our October 5 letter, CATA suggested that remote hearings be encouraged "for non-evidentiary matters and evidentiary hearings that involve less complex issues requiring a relatively small number of exhibits." The CACEO pointed out that "[i]t is not clear what constitutes 'less complex issues' or a 'relatively small number of exhibits.'" To address this issue, CATA recommends remote hearings be encouraged for any appeals eligible to be heard by an assessment hearing officer under Revenue and Taxation Code ("R&TC") section 1637. This would include appeals where "the total assessed value of the property under consideration, as shown on the current assessment roll, does not exceed five hundred thousand dollars (\$500,000); or the property under consideration is a single-family dwelling, condominium or cooperative, or a multiple-family dwelling of four units or less regardless of value." R&TC section 1637(a)(2). It is our understanding that the large percentage of appeals would meet these criteria, allowing appeals boards to continue to work through the bulk of their appeals backlog using remote hearings at their discretion. Beyond appeals meeting the parameters of R&TC section 1637, in counties where remote hearings are offered, any taxpayer should be given the ability to opt into a remote hearing. As a practical matter, the BOE is encouraged to add a section to the standardized assessment appeal application form allowing taxpayers to indicate whether they consent to remote hearings.

CATA's October 5 letter also included the following language to recognize taxpayers' right to in-person hearings: "[d]ue process affords taxpayers the right to meet in person." This language is critical. In certain cases, especially those involving multiple days of hearing, complex issues, or a significant number of exhibits, remote hearings cannot provide the "full and fair hearing"/ "meaningful" hearing required to meet due process requirements. Below are just some of the reasons certain cases cannot be adequately adjudicated through a remote hearing.

- **Lack of Meaningful Presentation/Communication.** The AAM acknowledges that "a reasonable opportunity to be heard includes such basic considerations as effective communication between the parties and board members." AAM at 80.
 - **Ineffective Comparison of Exhibits.** An effective presentation often requires the witness to discuss multiple exhibits at once or to flip back and forth between pages in a lengthy exhibit. This process is seamless in in-person hearings where board members and parties simply refer to their printed copies of the exhibits and typically have ample space to spread out materials for easy review. This process is nearly impossible in remote hearings where virtual platforms cannot

accommodate the presentation of multiple documents and the hearing participants often do not have printed copies of the exhibits at their disposal.

- **Lack of Control Over Documents on the Screen.** The problems described above are exacerbated by the fact that, in most counties, the clerks control the evidence presented on the screen. This severely limits the hearing participants' ability to control the presentation of their cases and inevitably leads to disjointed case presentations.
- **Exhibits Not Available in Print.** In many counties, exhibits are not available in print to the board members or remote hearing participants.

This is especially the case for any evidence that is not submitted in advance of the hearing, which usually includes impeachment or rebuttal evidence or other materials responsive to the opposing party's presentation. It is not uncommon for this type of evidence to be voluminous. This evidence is often some of the most critical evidence in the case and is frequently central to the appeals board's ultimate decision. Without having this evidence in print, it is incredibly difficult for the parties to quickly analyze and react to this type of information.

Additionally, in in-person hearings where the exhibits are available in print, the board members and hearing participants are able to study the materials as the witness is testifying without being limited to the materials presented on the screen. This facilitates better understanding of the materials, provides an opportunity for the board members to ask questions on any part of the exhibit (as opposed to portions of the exhibit displayed on the screen), and allows hearing participants to take notes on the exhibits.

- **Limited Use of Demonstratives.** In in-person hearings, demonstratives or blow ups of key evidence can be quite effective and are used strategically by the parties to highlight certain portions of their case. These tools cannot be used effectively in remote hearings.
- **Delay in Objections to Evidence or Testimony.** A parties' ability to "protect the record" hinges on their ability to object to evidence and testimony in a timely manner. Even slight delays in internet transmissions or technological issues can rob parties of their ability to protect the record and to ensure the appeals board's decision is based on proper evidence.

- **Limited Non-Auditory Ques and Gestures.** Non-auditory ques and gestures are limited and less effective in remote hearings where each participant appears as only a small square on the screen. This restricts parties' ability to effectively communicate with the board members.
- **Lack of Privacy to Communicate Between Parties.** In in-person hearings, parties and board members are able to privately communicate in real time amongst themselves. This ability is generally lost in remote hearings. This dampens participants' ability to control the presentation of their cases. It also causes unnecessary hearing delays as additional breaks are needed.
- **Masks Present a Problem.** In situations where the hearing participants are required to wear masks during a remote hearing (*e.g.*, board members conducting a remote hearing together from the same hearing room), it becomes nearly impossible (for the hearing participants and the court reporter) to decipher who is talking and what is being said. This is highly problematic, causing the remote hearing to be neither "full" nor "fair."
- **Some Participants Appearing Remotely with Others Appearing In-Person.** In some counties, the assessor has been permitted to appear in person with the board members while the applicant appears remotely, or vice versa. This scenario provides the hearing participants who appear in-person with an unfair advantage and should not be permitted unless expressly waived by the opposing party.
- **Inability to Truly Confront and Cross-Examine Witnesses.** Due process requires the opportunity for "[c]ross-examination of all witnesses and materials proffered as evidence." Rule 313(e).
 - **Ineffective Cross Examination.** Remote cross examinations may not provide an adequate opportunity to truly confront the witness(es). Effective cross examination has a certain cadence and momentum that is critical to the party's right to "confront" the witness(es); yet, this is very difficult to replicate in a remote setting. When faced with a difficult question or series of questions, witnesses are able to hide behind natural delays in internet transmissions or technological issues (real or feigned) to provide a distraction and allow themselves time to craft an answer. For this reason, candid, straightforward answers are much harder to come by in a remote setting and it becomes much less obvious when a witness lacks credibility or is being evasive.
 - **Witness Coaching.** Witness coaching is obvious in person but often inconspicuous in remote settings as witnesses can be easily coached off screen.

- **Discreet Consultation of Notes or Other Aides.** Like witness coaching, in person it is obvious when witnesses are consulting notes or using other aides to testify. This is not the case in remote hearings where witnesses can easily reference materials that are not seen on screen. Parties have a right to enter into evidence any materials a witness consults when testifying. This right is lost when remote hearing witnesses can conceal these materials.
- **Inability to Assess Witness Credibility.** As the trier of fact, the appeals board is entrusted with the assessment of witness credibility. The courts are required to defer to the appeals board's factual determinations, including their assessment of witnesses. The problems cited in the bullet points above render the appeals board incapable of truly assessing witness credibility and therefore, incapable of properly fulfilling their duties as the trier of fact.
- **Incomplete and Inaccurate Hearing Records.** "All hearings of the board shall be recorded or reported, or videotaped subject to the conditions set forth in Code of Civil Procedure section 2025.340." Rule 312(a).
 - **Identifying & Deciphering the Speaker.** Identifying the speaker and deciphering what is being said is much harder on virtual platforms than in person, making it very challenging, if not impossible, for a court reporter to accurately capture the hearing.
 - **Witness Coaching.** As explained above, witness coaching often occurs behind the scenes in remote hearings and therefore, would not be reflected in the recording of the hearing.
- **Multiple Speakers at Once.** Delays in internet transmissions mean people are much more likely to speak over one another in remote hearings.
- **Inability to Obtain Judicial Review.** In most cases, judicial review is limited to the record presented to the appeals board. If the transcript is incomplete or inaccurate, the court cannot properly review the case, which, in turn, requires remand to the appeals board to rehear the case, wasting the time and resources of all involved.
- **Trade Secret Concerns.** Trade secrets are not subject to public disclosure in the assessment appeals process. R&TC section 1605.4; Rule 313(g)(2).
 - **Cannot Protect Highly Sensitive Information.** Some cases require the use of highly sensitive information. When trade-secret information is presented, the

information must be protected and the hearing must be closed. This is easy enough to do in in-person hearings where the hearing room simply can be closed to the public. This is not the case in remote hearings where it is impossible to know with certainty who is able to observe the hearing (*e.g.*, a family member or others at home with a hearing participant, non-hearing participants or observers that do not appear on camera).

- **Inability to Monitor Participants' Behavior.** “Due process requires that taxpayers are given a meaningful hearing.” Rule 302(a)(1).
 - **General Lack of Transparency in the Process.** Remote hearings suffer from a general lack of transparency that naturally exists when hearings are conducted in person.
 - **Postage-Stamp Sized Images Are Inadequate.** They do not afford participants the ability, for example, to determine if they are communicating effectively, if the appeals board is following along or are otherwise distracted (*e.g.*, due to all too common “Zoom fatigue”, the distractions of working at home, or temptation to multi-task), if the witness is being coached or referencing off-screen information while testifying, and/or if the witness is credible.

Given the above, it is not surprising that many counties (including several with the means and resources to accommodate remote hearings) have refused to conduct complex cases remotely or have rejected remote hearings all together.

In summary, remote hearings are useful in resolving non-evidentiary matters and certain evidentiary cases but do not provide adequate due process in all cases.

Document Submission Rules.

Evidence must not be denied due to submission after the deadline arbitrarily set by the appeals board for remote hearing evidence. The Revenue and Taxation Code provides that the proper remedy is a postponement or continuance. R&TC section 408(f)(3), 441(h), and 1606(d). There is no justification for applying a harsher standard to remote hearing evidence than the Revenue and Taxation Code applies to information exchanges. Indeed, unlike information exchanges under sections 408, 441, or 1606 where the information is provided to the opposing party in advance of hearing, evidence submitted in advance of remote hearings is not exchanged between the parties and is required for the clerk's convenience only. Therefore, unlike information exchanges, there is no prejudice to either party when remote hearing evidence is submitted after the deadline.

Additionally, in in-person hearings, parties are not required to submit their evidence in advance. They simply bring their evidence with them and present it in real-time as they see fit. This provides important flexibility to the parties in determining what evidence to present. By not only requiring remote hearing evidence to be submitted in advance but to allow for the denial of such evidence if it is not provided by the local county deadline (which under the CACEO's proposal would be left completely to the discretion of the local appeals board and would inevitably be different from county to county), would create very different rules for in-person and remote hearings. Yet, throughout this process, the BOE COVID-19 County Boards of Equalization/Assessment Appeals Boards Collaborative Workgroup has agreed that remote hearings should mirror in-person hearings.

Moreover, it is not always clear what evidence must be submitted in advance of the hearing. Not all remote hearing evidence must be submitted in advance of hearing. The LTA recognizes, "[i]n further compliance with Rule 313, counties shall allow day-of-the-hearing electronic submissions in remote hearings for all rebuttal evidence and documents for witness impeachment, and for correcting errors as appropriate." LTA 2021/002 at 2. Parties may disagree as to what constitutes impeachment or rebuttal evidence, for example. It would be unfair and a violation of due process to allow evidence to be denied simply because of a misunderstanding or disagreement as to whether the evidence was required to be submitted in advance.

The inconvenience caused by submission of evidence after the local deadline does not justify the denial of such evidence and cannot be placed before taxpayers' due process rights to "present evidence" and "for argument and rebuttal." Rule 313(e). Taxpayers' right to "present evidence" is especially important in the context of assessment appeals because:

- prehearing discovery is prohibited outside of formal exchanges of information under R&TC section 1606, meaning parties must be given the flexibility to respond to the evidence submitted at the hearing;
- the taxpayer typically has the burden of proof (R&TC section 167; Rules 313(c) and 321);
- the assessor is given the presumption of correctness (Rule 321(a); Cal. Evi. Code section 664);
- the appeals board sits as the trier of fact and is given great deference on factual issues when subject to judicial review (*Plaza Hollister Ltd. Partnership v. County of San Benito* (1999) 72 Cal. App. 4th 1, 24); and
- no new evidence is permitted when an appeals board's decision is challenged on factual grounds (*id.*).

CACEO's suggested revisions to the LTA would provide local appeals boards with unlimited authority to create special rules for remote hearing evidence that do not comport with existing property tax law and do not comply with due process requirements. CATA's suggested revisions address the problem of the submission of remote hearing evidence after the deadline without offending existing property tax law or due process.

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The Honorable Antonio Vazquez
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We appreciate the BOE's continued commitment to this important topic and look forward to discussing the proposed revisions to LTA 2021/002 at the BOE's October meeting.

Sincerely,



Breann Robowski
Chair of California Alliance of Taxpayer Advocates' Ad Hoc Committee on Remote Hearings

Attachment (CATA's Track Changes to CACEO's October 8 Suggested Revisions to LTA 2021/002)

ec: 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
Brenda Fleming, Executive Director
David Young, Deputy Director, Property Tax Department
California Assessors' Association, c/o President Ernie Dronenburg
California Association of Clerks and Election Officials
CATA Board of Directors

**ATTACHMENT TO CATA’S OCTOBER 18, 2021 LETTER TO THE BOE
RESPONDING TO CACEO’S OCTOBER 8 SUGGESTED REVISIONS TO LTA 2021-002**

CACEO’s October 8 suggested revisions to LTA 2021-002 are underlined below.
CATA’s responses are added as track changes thereto.

Rights of Hearing Participants

In the conduct of remote hearings as recognized by RTC sections 1616(a) and 1752.4(a), it is of paramount importance that, as required by Property Tax Rule (Rule) 302, subdivision (a)(1), the appeals board “ensures that all applicants are afforded due process and given the opportunity for a timely and meaningful hearing.” While a Appeals boards have discretionary authority to offer only in-person hearings, based on that jurisdiction’s resources and local circumstances, but they are encouraged to offer remote hearings for non-evidentiary matters and evidentiary hearings eligible to be heard by an assessment hearing officer under RTC section 1637. As an initial matter, this includes a Due process affords taxpayer-s’ the right to meet either remotely or in-person or, to the extent the appeals board offers remote hearings, to meet remotely unless it is infeasible for the appeals board to hold a timely hearing under the particular circumstances using the taxpayer’s preferred type of hearing.

Commented [RBE1]: The first half of this sentence adopts the CACEO’s suggested language but moves it from the end of the first paragraph of the LTA’s “Rights of Hearing Participants” section to the beginning of the first paragraph.

Commented [RBE2]: Remote hearings have proven valuable in effectively and efficiently addressing administrative matters and certain less complex hearings. Continued long-term use of remote hearings for these purposes is highly encouraged.

Commented [RBE3]: These revisions recognize that appeals boards are not required to provide remote hearings and that taxpayers have the right to in-person hearings as has always been the case. This language is designed to balance the needs of the appeal boards and the taxpayers’ due process rights. For an additional explanation of taxpayers’ due process rights, please see the body of CATA’s October 18 letter as well as the “General Background on Taxpayers’ Due Process Rights” section of CATA’s October 5 letter.

Commented [RBE4]: This issue is best addressed by making any postponement related to the hearing format issues contingent upon the applicant’s agreement to indefinitely waive RTC section 1604’s two-year limitation. Accordingly, we have added language two sentences below to address this issue in a manner that protects appeals boards without impinging upon the applicants’ due process rights.

Participants may, as a general matter, request a remote hearing and receive a postponement until an in-person hearing is available, or may request an in-person hearing and receive a postponement until a remote hearing is scheduled provided that where the local appeals board is capable of and offers remote hearings. Therefore, if an appeals board does not or cannot schedule a remote or an in-person hearing as requested by the participant, the participant may avail themselves of postponement of the hearing in accordance with Rule 323 provided that the applicant signs a written agreement to extend and toll indefinitely the two-year limitation period provided in RTC section 1604 subject to termination of the agreement by 120 days written notice by the applicant. Postponement requests which do not procedurally comply with Rule 323 (both “of right” and discretionary) need not be granted by the appeals board. ~~Where provided that the appeals board, based on all of the circumstances, finds that the requesting party (i) could have complied with Rule 323, the requesting party (ii) had the required statutory and regulatory advance notice of the hearing, and (iii) cannot provide a reasonable factual basis for the non-compliant postponement or continuance request, the appeals board has the authority to deny the request. Reasonable basis grounds shall not include the mere inconvenience of the participant seeking the postponement or continuance because of the type of scheduled hearing.~~

Commented [RBE5]: These revisions are not intended to materially change the sentence but rather are suggested for clarity.

Commented [RBE6]: Added for clarity.

Commented [RBE7]: This language should adequately protect the appeals boards against any efforts by applicants to abuse their right to the type of hearing format in order to take advantage of the two-year limitation.

Commented [RBE8]: Sentence slightly revised from CACEO’s suggested language to add clarify as to when an appeals board can deny a request for postponement.

Commented [RBE9]: This is adequately covered in the sentence immediately above. As written, this adds confusion as to what constitutes “reasonable basis grounds” vs. “good cause” as Rule 323(a) requires for discretionary postponements/continuances.

~~In this regard, public health concerns stemming from the COVID-19 pandemic as well as any publicly-declared state of disaster or state of emergency shall or other declared emergency situation impacts from the pandemic may constitute reasonable good cause for a postponement under Rule 323, subject to the discretion of the appeals board, provided that the applicant signs a written agreement to extend and toll indefinitely the two-year limitation period provided in RTC section 1604 subject to termination of the agreement by 120 days written notice by the applicant. Appeals boards have discretionary authority to offer only in-person hearings, based on that jurisdiction's resources and local circumstances. Any applicant-disclosed medical information voluntarily provided to the appeals board must be treated and maintained appropriately as required by HIPPA and other relevant statutes and regulations.~~

~~Further, the appeals board may require the taxpayer to execute an indefinite time waiver of the Revenue and Taxation Code section 1604(c) hearing time as a condition of granting the requested postponement or continuance.~~

Commented [RBE10]: These revisions to the terminology are needed for clarity since the suggested terms (i.e., "public health..." and "declared public emergency situation impacts" are not defined or recognized terms.

Commented [RBE11]: The revision from "reasonable cause" to "good cause" is needed to align with the terminology of Rule 323(a).

Commented [RBE12]: This addition is intended to protect the assessment appeals board from any efforts by an applicant to abuse this "good cause" recognition in order to take advantage of the two-year limitation, without impinging upon the applicant's due process rights.

Commented [RBE13]: This topic is better addressed as part of the first paragraph of the Rights of Hearing Participants section of the LTA. Accordingly, similar language to the suggested CACEO language has been added as the first part of the second sentence of the first paragraph of the Rights of Hearing Participants section of the LTA.

Commented [RBE14]: This is now addressed further above.

~~Revenue and Taxation Code section 1616 further clarifies and establishes the authority of assessment boards to hold either remote or in-person appeal hearings to satisfy statutory and constitutionally required appeal application decisions. Participants receive due process in both remote and in-person hearings and cannot choose one type of hearing to the exclusion of the other type of hearing. Assessment boards possess the fundamental constitutional and statutory administrative authority to provide appeal hearings for the resolution of property tax appeals, insuring that the participants receive fair and impartial hearings consistent with recognized due process, whether the hearing type is remote or in-person and regardless of the type of hearing type available in any particular jurisdiction. Assessment boards are encouraged to grant participants the type of hearing requested by the participant as long as such a request is reasonably feasible as well as available in the jurisdiction. Should the participant's requested hearing type cause a delay in the hearing of the taxpayer's appeal, the assessment board has authority to require execution of an indefinite time waiver on the taxpayer's part.~~

Commented [RBE15]: This inappropriately editorializes RTC section 1616.

It is also better addressed in the first paragraph of the Rights of Hearing Participants section of the LTA. Appropriate language referencing both sections 1616 and 1752.3 has been added to the beginning of the first sentence of the first paragraph of the Rights of Hearing Participants section of the LTA.

Commented [RBE16]: Taxpayers have the right to in person hearings. Remote hearings do not provide due process in all cases as explained in the body of CATA's October 18, 2021 letter.

Commented [RBE17]: This language is unclear and unnecessary.

Commented [RBE18]: This is addressed in the first paragraph of this section.

Commented [RBE19]: This is covered in the second and third paragraphs of this section.

Document Submission

~~Counties Appeals boards~~ may require the electronic submission of evidence up to three business days before the commencement of a remote hearing but are encouraged to require only two business days. ~~Counties Appeals boards~~ may require evidence submitted by hard copy to be submitted up to seven days before the commencement of a remote hearing but are encouraged to allow exceptions, as appropriate. ~~Assessment boards possess the constitutional administrative authority and discretion through California Constitution Article XIII, Section 16, to enforce local appeals board procedures and rules, including rules regarding the submission of document deadlines utilized in their remote hearing process in their jurisdictions. To the extent that the parties fail to comply with the appeals boards' written deadlines for the submission of evidence that must be submitted in advance of the hearing (i.e., evidence other than rebuttal evidence, impeachment documents, or documents needed to correct errors as appropriate), the clerk shall make every effort to accept and prepare the evidence as needed for the hearing as scheduled. If the submission of this evidence requires the hearing to be delayed by more than forty-five minutes, then the appeals board, at its discretion, may postpone or continue the hearing as provided for under Rule 323(c).~~

In compliance with Rule 313 and as required for in-person hearings, evidence submitted by a party prior to the commencement of a remote hearing must not be made accessible to the other party until the hearing commences and the subject evidence has been introduced.

In further compliance with Rule 313, counties shall allow day-of-the-hearing electronic submissions in remote hearings for all rebuttal evidence and documents for witness impeachment, and for correcting errors as appropriate.

PDF documents are preferred in order to protect document integrity, but other forms may be accepted by the appeals board clerks, as appropriate.

All parties must be able to present evidence (written and oral), as well as direct and cross examination of witnesses and documents in real time at remote hearings per Rules 302(a)(1) and 313(e), and Revenue and Taxation Code (RTC) sections 1609 and 1610.2. Unless freely agreed otherwise by the parties, all appeals board members and the parties must also be able to view all documents that have been introduced into evidence and hear all parties in real time in order for the board to render its decision only on the basis of proper evidence presented at the hearing in compliance with Rule 302. Once introduced, the appeals board members and the parties must have the ability to view and download the full exhibit at their discretion independent from the controlled screen display shown during the remote hearing. Additionally, the public must be able to hear the remote hearing, as required by RTC section 1605.4.

Technological platforms for remote hearings should have the ability for evidence to be viewed in real-time and the ability to prevent trade secrets from being viewed by the public. In the event of a connectivity problem, the absence of an available IT resource, or other challenge, the appeals board has legal authority to grant a continuance as it deems appropriate.

Commented [RBE20]: Appeals boards' ability to establish local rules and procedure do not trump taxpayers' due process rights. Please see the explanation provided in the body of CATA's October 18 letter.

Commented [RBE21]: As agreed by the BOE COVID-19 County Boards of Equalization/Assessment Appeals Boards Collaborative Workgroup ("Collaborative Workgroup") during last year's BOE meetings and as stated in the existing the LTA, remote hearings, to the extent possible, should mirror in-person hearings. Outside of formal exchanges under RTC section 1606, the parties do not exchange evidence in advance of hearing. In in-person hearings, the parties simply bring their evidence with them and the clerks are required to receive and circulate the evidence in real time. Unlike in-person hearings, in remote hearings, the parties are required to submit their evidence in advance largely for convenience and to avoid any technical issues. Unless there is an RTC section 1606 exchange, in neither type of hearing—in-person nor remote—is the parties' evidence exchanged before it is introduced into evidence. Therefore, in a remote hearing, when a party submits evidence after the deadline, there is no prejudice to the other party as they would not have had advance access to such exhibit in any event. The submission of evidence after the local deadline may be inconvenient, but the only harm is the potential delay in the hearing. It is not uncommon for in-person hearings to be similarly delayed at various points to accommodate a party's need to assemble and submit exhibits. The revised language is intended to reasonably address the inconvenience caused by the submission of evidence past the deadline while ensuring that remote hearing participants are provided with the same due process rights to a "full and fair hearing" as in-person hearing participants. Rule 302(a)(1).

For a full explanation, please the body of CATA's October 18 letter.

Scheduling Efficiencies and Notices

Consistent with the Board’s recognition that remote hearing procedures should mirror in-person hearing procedures to the extent possible, if a remote hearing is scheduled, the clerk must provide notices to all parties that (1) inform them that the hearing will be conducted remotely, (2) include instructions for accessing the remote hearing, and (3) provide information about coaching or training videos, staff consultation, and special needs accommodations, where available. In accordance with Rule 307, the notices shall be given no less than 45 days prior to the hearing unless a shorter notice period has been stipulated to by the Assessor and the applicant or the applicant’s agent.¹

Counties are encouraged to develop written protocols and procedures to govern remote hearings. These protocols and procedures should mirror in-person hearings to the extent possible and must comply with all existing laws and regulations. Such written protocols and procedures should be made publicly available and to the extent possible, should be conspicuously posted on the appropriate webpage of the local clerk of the board, assessment appeals board, and/or board of supervisors.

Commented [RBE22]: CACEO’s October 8 letter states that they agree with this language.

¹ In the case of a continuance, in accordance with Rule 323(de), the notice must be given no less than 10 days prior to the continued hearing unless the parties agree in writing or on the record to waive written notice.

Information Requests

Clerks of the appeals boards should remind applicants that RTC section 441(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 an estimate of value, and it may be introduced at an appeals board hearing.

Taxpayers are expected to comply with an Assessor's reasonable requests, as both the Assessor and the taxpayer must be able to use and present the same information at hearings. If a taxpayer fails to provide requested information to the Assessor under RTC section 441(d) and introduces any of that information at a hearing, the Assessor may request and will be granted a continuance for a reasonable time. RTC section 441(d) applies regardless of whether or not an appeal has been filed.

Clerks of the appeals boards should also remind applicants that, under RTC section 408, Assessors are expected to comply with an applicant's reasonable request for information ~~relevant to a determination of value~~. If an Assessor fails to provide requested information to the taxpayer under RTC section 408 and introduces any of that information at a hearing, the taxpayer may request and will be granted a continuance for a reasonable time pursuant to RTC section 408(f)(3). RTC section 408 applies regardless of whether or not an appeal has been filed. 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 continuance.

Commented [RBE23]: CACEO's October 8 letter states that they agree with this language.

Commented [RBE24]: CATA agrees with this suggested addition.