



October 5, 2021

**VIA ELECTRONIC MAIL**

The Honorable Antonio Vazquez  
Chairman, State 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 request from the State Board of Equalization (“BOE”) that CATA provide suggested revisions to LTA 2021/002 as well as a response to the suggested revisions submitted by the California Association of Clerks and Election Officials (“CACEO”) in their letter to the BOE dated September 2, 2021.

**CATA’S GENERAL REMARKS ON REMOTE HEARINGS & SUGGESTED GENERAL REVISIONS TO LTA 2021/002**

CATA’s membership has largely found that remote hearings have great benefits when utilized for non-evidentiary matters and for evidentiary hearings that involve less complex issues and/or a relatively small number of exhibits. When used appropriately and administered effectively, remote hearings allow assessment appeals to be heard timely and efficiently, while providing all taxpayers with greater access to the assessment appeals process.

As we look forward to transitioning into a post-COVID world, CATA strongly encourages the continued use of remote hearings for appropriate cases. As such, CATA recommends that the BOE reframe the LTA to contemplate the long-term, post-COVID use of remote hearings alongside in-person hearings.

To improve upon all parties’ remote hearing experiences and to encourage the long-term, widespread use of remote hearings by counties of all sizes, CATA respectfully suggests that the BOE research whether it is feasible to provide counties access to a universal remote hearing

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platform and case/document submission portal by licensing, on behalf of the counties, technology similar to that currently used by Los Angeles County. We are not suggesting that the BOE should require counties to use these technologies or force counties to adopt remote hearings, but instead are suggesting that counties could choose to utilize these remote hearing technologies at their discretion. Easing the burden of identifying, researching, licensing, and customizing a remote hearing platform and complementary portal would reduce the barriers to entry for counties that are interested in offering remote hearings but are unable to do so given the requisite time and resources to launch a remote hearing program from scratch. In essence, the BOE would be assisting counties in leveraging technology to better serve the counties' needs and the needs of all parties to the assessment appeals process.

Additionally, while we recognize that the counties require a certain level of autonomy in the operation of their assessment appeals boards, this should be carefully balanced against the need for uniformity. Use of wholly different remote hearing platforms, procedures, and requirements across counties is difficult on taxpayers. To the extent practicable, we ask that the BOE continue to develop additional guidance outlining the basic rules and parameters to be applied to all remote hearings. For example, we request that the BOE add the following language shown in track changes to the "Scheduling Efficiencies and Notices" section of the LTA:

*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.<sup>1</sup>

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.

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<sup>1</sup> 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.

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Additionally, while unrelated to the specifics of remote hearings, we believe the “Information Requests” section of the LTA should be revised as shown in the following track changes to provide a more balanced and complete description of taxpayers’ rights under Revenue & Taxation Code (“RTC”) section 408 and the assessors’ rights under RTC section 441.

*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.

**Commented [RBE1]:** RTC section 408, subsections (d) and (e) allow for broader information requests than information “relevant to a determination of value.”

The remainder of this letter is dedicated to CATA’s suggested revisions to the “Rights of Hearing Participants” and “Document Submission” sections of the LTA, which are made primarily in response to CACEO’s suggested revisions to the LTA.

**CATA'S RESPONSE TO CACEO'S SUGGESTED REVISIONS TO LTA 2021/002**

CACEO suggested revisions to two sections of the LTA: (1) the "Rights of Hearing Participants" and (2) the "Document Submission". For each section, below we provide:

- the existing LTA language;
- CACEO's suggested revisions (reformatted into track changes);
- CATA's suggested revisions (shown without track changes); and
- finally for ease of comparison, a combination of CACEO's and CATA's suggested revisions where (1) CACEO's suggested revisions previously shown as track changes have been adopted and are now highlighted in yellow and (2) CATA's suggested revisions and comments have been layered on as new track changes.

***Rights of Hearing Participants***

**Existing LTA Language.**

In the conduct of remote hearings, 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." As an initial matter, this includes a taxpayer's right to meet either remotely or in-person. Participants may reject a remote hearing and receive a postponement until an in-person hearing is available, or may reject an in-person hearing and receive a postponement until a remote hearing is scheduled. Therefore, if an appeals board does not schedule a remote or in-person hearing as desired, the participant may avail themselves of postponement of the hearing in accordance with Rule 323. In this regard, public health impacts resulting from the pandemic constitute reasonable cause for a postponement under Rule 323.

**CACEO's Suggested Revisions.**

In the conduct of remote hearings, 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." As an initial matter, this includes a taxpayer's right to meet either remotely or in-person 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. Participants may, as a general matter, reject a remote hearing and receive a postponement until an in-person hearing is available, or may reject an in-person hearing and receive a postponement until a remote hearing is scheduled and where

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the local appeals board is capable of and offers remote hearings. Therefore, if an appeals board does not schedule a remote or an in-person hearing as desired, the participant may avail themselves of postponement of the hearing in accordance with Rule 323. Postponement requests that do not procedurally comply with Rule 323 need not be granted by the appeals board. In this regard, public health or other declared public emergency situation impacts resulting from the pandemic may constitute reasonable cause for a postponement pursuant to the provisions of ~~under~~ Rule 323, subject to the discretion of the appeals board on what is good cause in the circumstances of the appeal. Appeals boards have discretionary authority to offer only in-person hearings, based on that jurisdiction's resources and local circumstances.

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.

Assessment appeals boards possess constitutional administrative authority and discretion to enforce local appeals board procedures and rules regarding submission of document deadlines utilized in their remote hearing appeals process in their jurisdictions.

Assessment appeals boards possess the fundamental constitutional and statutory administrative authority to provide appeal hearings for the resolution of property tax appeals and ensuring that the participants receive fair and impartial hearings consistent with due process regardless of whether the jurisdiction is offering remote or in-person appeals hearing types.

#### **CATA's Response to CACEO's Suggested Revisions.**

##### *General Background on Taxpayers' Due Process Rights.*

The BOE's Assessment Appeals Manual (May 2003, Reprinted January 2015) ("AAM") contains several passages that recognize taxpayers' constitutional right to due process in the assessment appeals process. As the AAM states, "[t]he assessment appeals process, though a function of state law, derives from federal constitutional principles of due process. The 14th Amendment of the United States Constitution requires that no state 'shall ... deprive any person of life, liberty, or property, without due process of law.'" AAM at 18. Therefore, an assessment appeal hearing is "constitutionally adequate only if the basic requirements of notice and opportunity for hearing are met," AAM at 18 [internal citation omitted], where "due process requires that an appeals board must give each side a reasonable notice of hearing and an opportunity to present its case and to question the other side's evidence and witnesses." AAM at 2, citing RTC section 1610.2; Rules 307, 313, 316, 317.

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The AAM expounds upon these fundamental requirements as follows:

The proceeding must allow both the applicant and the assessor a reasonable opportunity to be heard. For that reason, hearings must be conducted according to procedures designed to guarantee each party's right to fundamental fairness and due process. (See section on Procedural Due Process in Chapter 9 [of the AAM].) **Due process requirements are not met unless the taxpayer is accorded a full and fair hearing both in substance as well as in form.**

Rule 313 prescribes the basic procedural requirements of hearings as follows:

- A full and fair hearing will be accorded each application.
- The appeals board may act only upon the basis of proper evidence admitted into the record. (See also section on Use of Personal Knowledge by the Board Members in Chapter 9 [of the AAM].)
- There will be reasonable opportunity for the presentation of evidence, for the cross-examination of all witnesses, for argument, and for rebuttal by each party.

**Furthermore, a reasonable opportunity to be heard includes such basic considerations as effective communication between the parties and the board members.** For example, when either the taxpayer or the assessor presents information in a manner that is not clear, an appeals board member should ask for clarification so that he or she understands the point or information that is being presented. If there is a language barrier, a reasonable attempt must be made by the appeals board to ascertain what is being said.

AAM at 80 (emphasis added).

The AAM explicitly cautions that failure to provide "fundamental fairness by denying due process constitutes grounds for judicial review," stating as follows:

Prior to and during the conduct of a hearing and in the process of reaching a decision, an appeals board must act to guarantee fundamental fairness to all parties by ensuring the requirements of procedural due process are met. In the administrative hearing context, due process requires that, at a minimum, each party receives adequate notice and opportunity for hearing. 7 Witkin, Summary of Cal. Law (9th ed. 1988) § 518, p.715; *International Medication Systems, Inc. v. Assessment Appeals Bd.*, [(1997) 57 Cal.App.4<sup>th</sup> 761]. Failure to afford all parties

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the right to fundamental fairness by denying due process constitutes grounds for judicial review. *Universal Construction Oil Co. v. Byram* (1944) 25 Cal.2d 353.

AAM at 101.

Thus, even the appeals boards' ability to establish local rules of notice and procedure are constrained by their obligation to comport with the requirements of due process. Specifically, "[l]ocal rules are [only] valid if they are not expressly prohibited by section 16, 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. Simply put, there is no case in which constitutional law will permit the local needs of an appeals board to be placed before the due process rights of the taxpayer.

Indeed, CACEO openly supported the recent 2018 amendment to Rule 302(a) that expressly recognizes as the appeals boards' first function "to ensure that all applicants are afforded due process and given the opportunity for a timely and meaningful hearing." Regardless of the added pressures brought about by the COVID-19 pandemic, the appeals boards' duty to uphold these constitutional assurances is no different today than it was just a few years ago.

Taxpayers' right to due process and a full and fair hearing cannot be fully served in all cases by remote hearings. This is especially true in complex assessment appeals that involve multiple issues or even a single complex issue, as well as appeals that require a high volume of exhibits, numerous witnesses, and/or lengthy case-in-chief or rebuttal presentations by either party. Without the ability to present such cases in person to the appeals board, taxpayers are denied their right to effectively present evidence, cross-examination, argument, and rebuttal. *See* Rule 313(e).

For example, the AAM expressly acknowledges that "a reasonable opportunity to be heard includes such basic considerations as effective communication between the parties and the board members." AAM at 80. In many complex cases, the meaningful presentation of evidence requires a witness to provide testimony to walk the appeals board through real-time comparisons of multiple exhibits. This requires not only that the exhibits be available in print but also that *all* hearing participants have the ability to compare several exhibits side-by-side as the testimony is presented.

A taxpayer's right to effectively present their case is especially important given that:

- the taxpayer has the burden of proof in most assessment appeal hearings, RTC section 167 and Rules 313(c) and 321, and

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- the appeals board acts as the trier of fact such that its factual determinations are final subject only to judicial review for lack of substantial evidence, *Bret Harte Inn, Inc. v. City and City of San Francisco* (1976) 16 Cal.3d 14.

In short, the United States and California Constitutions, the statutes and regulations, and case law have long provided that the taxpayers' due process rights are paramount. If a taxpayer believes their due process can be adequately met through a remote hearing, then it is their right to avail themselves of a remote hearing (to the extent the county offers remote hearings). If, however, a taxpayer does not believe that their due process rights can be adequately met through the use of a remote hearing such that an in-person hearing is required, the taxpayer has a constitutional right to an in-person hearing.

*CATA's Suggested Language.*

Below is a clean version of CATA's suggested language. For a comparison of CACEO's and CATA's suggested language, along with an explanation of CATA's suggested language, please see the next section of this letter immediately below.

In the conduct of remote hearings, 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 appeals boards have discretionary authority to offer only in-person hearings based on that jurisdiction's resources and local circumstances, they are encouraged to offer remote hearings for non-evidentiary matters and evidentiary hearings that involve less complex issues requiring a relatively small number of exhibits. Due process affords taxpayers the right to meet in person or, to the extent the appeals board offers remote hearings, to meet remotely. Participants may, as a general matter, reject a remote hearing and receive a postponement until an in-person hearing is available, or may reject an in-person hearing and receive a postponement until a remote hearing is scheduled provided that the local appeals board offers remote hearings. Therefore, if an appeals board does not or cannot schedule a remote or in-person hearing as desired, the participant may avail themselves of postponement of the hearing in accordance with Rule 323, provided that 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 that do not procedurally comply with Rule 323 need not be granted by the appeals board unless the hearing format (*i.e.*, remote hearing or in-person hearing) is changed or the applicant does not receive written notice of the hearing format at least three business days prior to the applicable postponement request deadline provided for in Rule 323. In this regard, health concerns stemming from the COVID-19 pandemic as well as any publicly-declared state of disaster or state of emergency shall constitute good cause for a postponement under Rule 323 provided that applicant signs a written agreement to extend and toll indefinitely the two-year limitation



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period provided in RTC section 1604 subject to termination of the agreement by 120 days written notice by the applicant.

*Comparison of CACEO's and CATA's Suggested Language.*

For ease of comparison, in the below, CACEO's suggested revisions have been accepted and highlighted. CATA's suggested revisions are then shown against CACEO's suggested LTA language.

In the conduct of remote hearings, 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 ~~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 that involve less complex issues or require a relatively small number of exhibits. 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 [RBE2]:** 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 [RBE3]:** 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 [RBE4]:** 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 taxpayer's due process rights, please see the section of this letter entitled "General Background on Taxpayers' Due Process Rights" immediately above.

**Commented [RBE5]:** This issue is best addressed by making any postponement due to choice of 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 board without impinging upon the applicant's due process rights.

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Participants may, as a general matter, reject a remote hearing and receive a postponement until an in-person hearing is available, or may reject an in-person hearing and receive a postponement until a remote hearing is scheduled provided that and 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 in-person hearing as desired, the participant may avail themselves of postponement of the hearing in accordance with Rule 323 provided that 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 that do not procedurally comply with Rule 323 need not be granted by the appeals board unless the hearing format (i.e., remote hearing or in-person hearing) is changed or the applicant does not receive written notice of the hearing format at least three business days prior to the applicable postponement request deadline provided for in Rule 323.

**Commented [RBE6]:** These revisions are not intended to materially change the sentence but rather are suggested for clarity.

**Commented [RBE7]:** Added for clarity.

**Commented [RBE8]:** This language should adequately protect the appeals board against any efforts by the applicant to abuse their right to the choice of hearing format in order to take advantage of the two-year limitation.

**Commented [RBE9]:** These revisions are aimed at fairness in the event that the hearing format is changed at the last minute for any reason (e.g., changes in a county's COVID-19 health mandates) or the applicant is not properly notified of the hearing format.

In this regard, health concerns stemming from the COVID-19 pandemic as well as any publicly-declared state of disaster or state of emergency shall public health or other declared public emergency situation impacts may constitute good reasonable cause for a postponement pursuant to the provisions of under Rule 323, subject to the discretion of the appeals board on what is good cause in the circumstances of the appeal, provided that 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.

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

Assessment appeals boards possess constitutional administrative authority and discretion to enforce local appeals board procedures and rules regarding submission of document deadlines utilized in their remote hearing appeals process in their jurisdictions.

Assessment appeals boards possess the fundamental constitutional and statutory administrative authority to provide appeal hearings for the resolution of property tax appeals and ensuring that the participants receive fair and impartial hearings consistent with due process regardless of whether the jurisdiction is offering remote or in person appeals hearing types.

**Commented [RBE10]:** These revisions to the terminology are needed for clarity since the suggested terms (i.e., "public health...impacts" 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]:** Given that the revised language ties "good cause" directly to the COVID-19 pandemic and any publicly-declared state of disaster or state of emergency and requires an indefinite RTC section 1604 waiver, these causes should always be recognized as "good cause" for purposes of a postponement.

**Commented [RBE13]:** 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 [RBE14]:** This is now addressed further above.

**Commented [RBE15]:** This issue should be addressed in the LTA section on "Document Submission."

**Commented [RBE16]:** This language seems unnecessary and does not appear to add anything of substance.

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***Document Submission***

**Existing LTA Language.**

Counties 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 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.

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.

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#### **CACEO's Suggested Revisions.**

Counties 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 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. Counties may employ reasonable means that support a fair and orderly administrative remote hearing process to enforce any evidence time limits applicable to remote hearings in that jurisdiction. Such reasonable enforcement means may take into account the administrative needs and realities of the particular jurisdiction.

... [There are no suggested revisions from CACEO on the remainder of the "Document Submission" section of the LTA.]

#### **CATA's Response.**

##### *CATA's Suggested Language.*

Below is a clean version of CATA's suggested language. For a comparison of CACEO's and CATA's suggested language, along with an explanation of CATA's suggested language, please see the next section of this letter immediately below.

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. 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. 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 the late evidence requires the hearing to be delayed by more than forty-five minutes, then the appeals board, at its discretion, may continue the hearing as provided for under Rule 323(c).

... [Like CACEO, CATA does not have any suggested revisions to the remainder of the "Document Submission" section of the LTA.]

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*Comparison of CACEO's and CATA's Suggested Language.*

For ease of comparison, in the below, CACEO's suggested revisions have been accepted and highlighted. CATA's suggested revisions are then shown against CACEO's suggested LTA language.

~~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. ~~Counties may employ reasonable means that support a fair and orderly administrative remote hearing process to enforce any evidence time limits applicable to remote hearings in that jurisdiction. Such reasonable enforcement means may take into account the administrative needs and realities of the particular jurisdiction.~~ 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 the late evidence requires the hearing to be delayed by more than forty-five minutes, then the appeals board, at its discretion, may continue the hearing as provided for under Rule 323(c).

**Commented [RBE17]:** This language is vague and does not seem to clarify the parameters of the appeals boards' ability to enforce document submission deadlines.

... [Neither CACEO nor CATA have any suggested revisions to the remainder of the "Document Submission" section of the LTA.]

\* \* \* \* \*

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 2021 meeting.

Sincerely,



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

**Commented [RBE18]:** 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 late submission 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 late submission of evidence 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).

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