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October 8, 2021

VIA E-MAIL

The Honorable Antonio Vazquez, Chair
State Board of Equalization
450 N. Street, MIC 72
Sacramento, CA 95814

Dear Chairperson Vazquez:

CACEO RESPONSES TO CATA'S PROPOSED CHANGES TO LTA 2021-002

As we indicated in our September 2, 2021 letter, CACEO members are concerned that existing LTA 2021-002 is creating needless postponements in hearings which, in turn, result in even more vacated hearing calendars than assessment appeals board normally experience. The net result of this circumstance is that county boards are unable to control their own hearing calendars, one of the core functions of any quasi-judicial or judicial hearing system. Experience with the LTA since the summer of 2020 has caused concerns that county boards of supervisors, which under the state's Constitution are responsible to the assessment appeals programs, are no longer even able to determine what format or formats they are permitted to offer the parties in such appeals.

We appreciate the thoughtful proposals for different language for a new LTA relating to county remote assessment appeals hearings that the California Alliance of Taxpayer Advocates (CATA) submitted to your Board on October 5, 2021. Although the Assessment Appeals Work Group members of the California Association of Clerks and Election Officials (CACEO) do find some of their proposals to be both positive and useful, we must also reject some of their proposals and renew our request for different language that more appropriately addresses the problems posed by the language in LTA 2021-002. We have, therefore, revised our earlier proposed language submitted to your Board on September 2, 2021 in our letter concerning the recent survey of county assessment appeals clerks. That revised proposal appears as an attachment to this letter.

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We would like to respond to the items proposed by CATA individually to better facilitate the development of the matrix of issues that will be presented to your Board for deliberation in November 2021.

On **page 2** of CATA's October letter, they propose adding the following language under the existing LTA heading of *Scheduling Efficiencies and Notices*:

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.

CACEO members agree with this provision and we have added it to our revised proposals.

On **page 3**, CATA proposes some additional language under the LTA heading *Information Requests* with respect to granting a continuance if an assessor fails to respond timely to a RTC section 408 request. We would accept that language but would recommend that language be inserted at the end of CATA's proposed language in that proposal to extend the two-year deadline under RTC 1604(c) by a length of time equal to the continuance. (See our revised proposal in the attachment.) This is necessary to allow boards sufficient time to hold a hearing and render a timely decision. CACEO also proposes adding to the end of the CATA language the following:

"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." (This is direct language from RTC section 408(f)(3).)

At **pages 5-8**, CATA presents its legal analysis for their position on due process and remote hearings. The CACEO continues to disagree respectfully with their analysis and conclusions as to what is required of a county's hearing format in order to provide taxpayers – and assessors who are not mentioned in the letter– with due process. The ultimate effect of CATA's position will be one of SBE endorsement of a legally unsupportable due process requirement and remove or hinder the critical administrative management authority of assessment appeals boards, acting on behalf of the county boards of supervisors.

At **page 8** of CATA's letter they present their proposed LTA language. While their proposal does incorporate some of our proposed language (the language regarding applicants providing an indefinite time waiver if they do not like a particular hearing format), the paragraph would ultimately result in no change as to the LTA's negative effect on the county appeals process. It is not clear what constitutes "less complex issues" or a "relatively small number of exhibits", for instance, and the general effect of CATA's language is to limit the use of remote hearings to administrative, non-evidentiary and "less complex" hearings, a position CATA has presented in past State Board meetings and correspondence. The CACEO reiterates that assessment appeals board clerks have and will continue to work with applicants in providing their choice of hearing format whenever possible under that

jurisdiction's workload circumstances. We must be able to, nonetheless, get appeals heard in a timely fashion as necessary. This perspective is to the advantage of applicants as well as assessment appeals boards because applicants have as much interest in getting their appeals heard and resolved for their personal and business affairs as do the assessment appeals boards in meeting their constitutional and statutory hearing obligations. We must respectfully reject that proposal, as currently written. We propose that our new language be adopted by your agency, instead.

At **page 9**, CATA's language under the LTA heading *Rights of Hearing Participants* recognizes the authority of county boards to offer only in-person hearings based on each jurisdiction's resources and local circumstances. In-person hearings were the norm prior to March 2020. This recognition does not address the issue before the State Board because the issue concerns remote hearings and the importance of using remote hearings to process appeals as shown by Revenue and Taxation Code section 1616 and the Governor's COVID-19 emergency orders issued since 2020. Counties are encouraged to utilize remote hearings only "for non-evidentiary matters and evidentiary hearings that involve less complex issues or require a relative small number of exhibits" in CATA's view. This language leaves the decision as to what those terms mean and who is to decide what is or is not appropriate. These are matters that county boards must decide themselves based on board of supervisors' policies, which in turn are, indeed, based on local resources and circumstances. Some counties have found that remote evidentiary hearings work well. Where counties offer both hearing formats, clerks should and do try to accommodate the parties and provide them with the format they prefer. But ultimately, it must be a county decision as to what format will be offered.

Thus, we respectfully reject CATA's proposals on this point, as it undermines our purposes in providing an effective and efficient appeal process for the parties.

At **page 10**, CATA adds some language to the paragraph under the LTA heading *Rights of Hearing Participants* that deals with a party's ability to reject the offered hearing format and receive a postponement until the desired format can be offered. Thus, if a board does not or cannot schedule the desired format, the party may avail themselves of a postponement under Rule 323. CATA adds language that would require an applicant to sign a written agreement to extend and toll indefinitely the two-year deadline under RTC 1604(c) subject to termination upon 120 days written notice by the applicant. CATA also proposed that language be added to our sentence that reads as follows (CATA language is in italics):

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 provide for in Rule 323.*

We agree with CATA's proposed changes on page 10 but have made an addition to our revised proposal language that would make clear to counties that the format of the hearing should be included in the regular notice of hearing required by law and regulation that is sent

to the parties. CACEO does not support an additional and separate notice to the parties stating what hearing format is scheduled for the upcoming appeals hearing.

At **page 11**, again under the LTA heading *Rights of Hearing Participants* beginning with the first sentence of that portion of the LTA, CATA would add language with regard to what constitutes good cause for a postponement under Rule 323 during a health emergency or other declared state of disaster for state of emergency and would delete paragraphs that clerks propose be added to the LTA. However, we respectfully recommend that our language of the remaining first paragraph under the heading and the additional three paragraphs be included in the revised LTA. The relevant part of the proposed CACEO revised LTA language states as follows:

"Postponement requests which do not procedurally comply with Rule 323 (both "of right" and discretionary) need not be granted by the appeals board. Where the appeals board, based on all of the circumstances, finds that the requesting party could have complied with Rule 323, the requesting party had the required statutory and regulatory advance notice of the hearing and 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. In this regard, public health or other declared emergency situation impacts from the pandemic may constitute reasonable cause for a postponement under Rule 323, subject to the discretion of the appeals board. 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." (New language underlined.)

Finally, at **page 14**, under the LTA heading *Document Submission*, CATA would delete our sentence that permits counties to employ reasonable means to support a remote hearing process to enforce evidence time deadlines applicable to the jurisdiction under existing LTA. CATA would add two sentences that would require the clerk to "make every effort to accept and prepare the evidence received for the hearing as scheduled," and would provide that, if the hearing is delayed more than 45 minutes, the appeals board could continue the hearing pursuant to Rule 323(c) for up to 90 days or more. We must reject this proposal, as it fails to hold a party accountable for their failure to timely submit the evidence and merely aggravates the problems we have talked about at your Board's hearings – delayed productivity and vacated hearing dates that cannot be backfilled. In counties with significant workloads, the limited remedy proposed by CATA only adds to the burden of unresolved appeals by continuing the life of the appeal. It also adds additional burdens on appeals board staff by requiring the "best efforts" to fix a document submission delay by one party and an arbitrary forty-five minute time period. County appeals boards have seen parties

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routinely fail to timely submit documents in multiple appeals. Such repeat violator parties are fully aware of the time to submit their exhibits electronically.

The proposed revised CACEO language changes to LTA 2021-002 (see attachment) are intended to better represent the ability of an applicant to request either an in-person or a remote hearing from the county board and the willingness of appeals boards to provide the hearing format when feasible. Where infeasible under the local circumstances, the SBE affirmation of the appeals board's constitutional authority to hold hearings as needed in any available format pursuant to Revenue and Taxation Code section 1616 is proposed. The language also reinforces the appeals board's authority to require indefinite time waivers when requesting parties receive postponements and continuances. Lastly, the CACEO's proposed language reaffirms the constitutional authority of appeals boards through Article XIII, Section 16 to create and enforce local rules and procedures regarding the submission of document process deadlines used in remote hearings. The local rules and procedures, if enacted at the local level, properly reflect the local jurisdiction resources and circumstances, which vary from county to county.

Once again, the CACEO and the Clerks strongly recommend that your Board issue a revised LTA on remote assessment appeals hearings containing the language our group proposes and including the CATA-proposed language that we have accepted, all of which is reflected in our attached LTA language. We look forward to discussing these issues at your upcoming meeting this month.

Very truly yours,

Handwritten signature of John McKibben in blue ink, followed by the initials "BB".

John McKibben, Chair
CACEO Assessment Appeals Work Group

Handwritten signature of Thomas R. Parker in blue ink, followed by the initials "TRP".

Thomas R. Parker, Deputy County Counsel, Los Angeles County
and CACEO Counsel

Attachment (1)

c: Hon. Ted Gaines, Member
Hon. Mallia Cohen, Member
Hon. Mike Shaefer, Member
Hon. Betty Yee, State Controller, c/o Deputy Controller Yvette Stowers
Brenda Fleming, Executive Director
Henry Nanjo, Acting Chief Board Proceedings
David Yeung, Deputy Director, Property Tax Department
Ernest Dronenberg, Jr., President, California Assessors' Association
Breann Robowski, California Alliance of Taxpayer Advocates

CACEO REVISED AND PROPOSED LTA LANGUAGE

At Pg. 2: Rights of Hearing Participants

[New language underlined] 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, 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 where 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 requested by the participant, the participant may avail themselves of postponement of the hearing in accordance with Rule 323. Postponement requests which do not procedurally comply with Rule 323 (both "of right" and discretionary) need not be granted by the appeals board. Where the appeals board, based on all of the circumstances, finds that the requesting party could have complied with Rule 323, the requesting party had the required statutory and regulatory advance notice of the hearing and 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. In this regard, public health or other declared emergency situation impacts from the pandemic may constitute reasonable cause for a postponement under Rule 323, subject to the discretion of the appeals board. 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 or continuance.

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.

At Page 2-3 - addition at end of first paragraph: Document Submission

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.