



**ANTONIO VAZQUEZ**  
CHAIRMAN  
CALIFORNIA STATE BOARD OF EQUALIZATION

**MEMORANDUM**

**Date:** November 17, 2021

**To:** Mike Schaefer, Board Vice Chair, District 4  
Ted Gaines, Board Member, District 1  
Betty T. Yee, State Controller

**From:** Antonio Vazquez, Chairman, District 3  
Malia M. Cohen, Board Member, District 2

**Re:** **November 18, 2021 Board Meeting, Agenda Item M.2. Public Policy Hearing. AAB Remote Hearings: Draft Proposals Submitted as of October 18, 2021 for Revising Letter To Assessors No. 2021/002, AAB Remote Hearings During the COVID-19 Pandemic.**

In preparation for the third meeting of the *Statewide Continuity of AAB Operations Workgroup*, the Board agreed to schedule time in November for Workgroup participants to proceed "line-by-line" on the wording of the 4 key issues as proposed by CATA and the CACEO, with the goal of reaching a consensus for the Board to forward to the Executive Director for technical/legal review and placement in a new LTA updating the current LTA No. 2021/002. The paragraphs below set forth the current LTA language on each of the 4 issues – followed by the revised language proposed by the participants on each of the 4 issues as of October 18; which proposed language which will constitute the starting point for the Workgroup's discussion. Ms. Regina Evans, Deputy for Board Member Cohen, will serve as the Facilitator to ensure that the Workgroup discussion on November 18, 2021 is focused and to clarify for all parties and the Board where there is consensus.

**ISSUE 1. RIGHTS OF HEARING PARTICIPANTS, TYPE OF HEARING.**

**Current LTA Language, pg. 2.**

**Rights of Hearing Participants.**

1<sup>st</sup> Sentence.

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."

2<sup>nd</sup> Sentence.

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.

3<sup>rd</sup> Sentence.

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.

**Proposed draft CACEO language as of 10/08 is underlined, and proposed CATA language as of 10/18 is shown in yellow highlight. There is possible agreement on language that is both underlined and highlighted; and possible disagreement on highlighted strike-thru language in red.**

**Rights of Hearing Participants. (LTA pg. 2)**

1<sup>st</sup> Sentence.

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 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.

2<sup>nd</sup> Sentence. [Due Process]

As an initial matter, this Due process includes affords taxpayers 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.

3<sup>rd</sup> Sentence. [Postponement Requests, Time Waivers & Justification]

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 provided that 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 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, unless 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 of continuance because of the type of scheduled hearing. 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 or other declared public emergency situation impacts from the pandemic may shall constitute reasonable good cause for a postponement pursuant to the provisions of 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. [Accepted, moved.] 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.~~

~~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.~~

~~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.~~

## **ISSUE 2. DOCUMENT SUBMISSION.**

**Current LTA Language, pg. 2.**

### **Document Submission.**

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.

**Proposed draft CACEO language as of 10/08 is underlined, and proposed CATA language as of 10/18 is shown in yellow highlight. There is possible agreement on language that is both underlined and highlighted; and possible disagreement on highlighted strike-thru language in red.**

**Document Submission. (LTA, Pg. 2, first paragraph only.)**

**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 appeals boards possess constitutional administrative authority and discretion through California Constitution Article XIII, Section 16, to enforce local appeals board procedures and rules regarding submission of document deadlines utilized in their remote hearing appeals process in their jurisdictions.~~

[Alternative proposed.] 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 under Rule 323(c).

**ISSUE 3. SCHEDULING EFFICIENCIES AND NOTICES.**  
**Current LTA Language, Pg. 3.**

**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>

**Proposed draft language from CATA and CACEO to add the following paragraph to the above:**

**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.**

**ISSUE 4. INFORMATION REQUESTS.**  
**Current LTA Language, Pg. 4.**

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<sup>1</sup> In the case of a continuance, in accordance with Rule 323(d), 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.

**Proposed draft language from CATA and CACEO to add the following sentences to the last paragraph:**

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.



ANTONIO VAZQUEZ, Chairman  
Board of Equalization, 3<sup>rd</sup> District



Board of Equalization, 2<sup>nd</sup> District

- cc: Hon. Ernest J. Dronenburg, Jr., President, CAA and San Diego County Assessor-Recorder Clerk
- Mr. John McKibben, Committee Chair, CACEO
- Mr. Thomas R. Parker, Deputy County Counsel, Los Angeles County
- Ms. Marcy Berkman, Retired Deputy County Counsel, Santa Clara County
- Mr. Marc Aprea, Principal, Aprea & Micheli, Inc.
- Mr. Kevin J. Moore, Principal Shareholder, Kevin J. Moore & Associates, PLC
- Mr. Bradley R. Marsh, Shareholder, Greenberg Traurig
- Ms. Alina Kasparian, Acting Chief, Assessment Appeals Division, Executive Office of the Los Angeles County Board of Supervisors
- Ms. Ann Moore, Chief Deputy Clerk, San Diego County Board of Supervisors
- Ms. Kyreen Gonzalez, Deputy Clerk of the Board of Supervisors, Sonoma County
- Ms. Kathy McClellan, Assistant Clerk of the Board of Supervisors, Sacramento County
- Ms. Brenda Fleming, Executive Director, California State Board of Equalization