



January 25, 2022

By E-mail

The Honorable Malia Cohen
Chair, State Board of Equalization
450 N Street, MIC: 72
Sacramento, CA 95814

Re: CACEO's Recommended Changes to LTA 2021-002

Dear Chair Cohen:

The California Alliance of Taxpayer Advocates (CATA) has reviewed the "Statement of Recommendations" relating to changes to LTA 2021/002 that was submitted to the Board by the California Association of Clerks and Election Officials (CACEO) on January 21, 2022. The CACEO's Statement focuses mainly on the "Rights of Hearing Participants" section in the Draft LTA that was issued by the Board earlier this month and intended to supersede LTA 2021/002.

CATA's Concerns with CACEO's January 21, 2022 Statement of Recommendations

CATA has the following concerns relating to the CACEO's proposed revisions to the "Rights of Hearing Participants" section in the Draft LTA:

Concern #1. The CACEO's Statement implies that County Assessment Appeals Boards (AABs) are authorized to continue holding remote hearings exclusively until there is a "safe environment" for conducting in-person hearings.

Concern #2. The CACEO's Statement implies that AABs are authorized to continue holding remote hearings exclusively until backlogs of pending appeals have been reduced.

Concern #3. The CACEO's Statement implies that remote hearings should be the "default option" for AAB hearings, and that in-person hearings should only be held if specifically requested by a taxpayer, the taxpayer signs a waiver, and "safe environment" requirements and reduced backlog standards have been met (see Concern #1 and Concern #2 above).

Due process requires taxpayers must be afforded a full and fair hearing before County AABs. The concerns set forth above will deprive taxpayers of their due process rights by making “safe environment” standards, backlog reduction, and the remote hearing as default option paramount, and relegating due process to secondary status.

CATA acknowledges that remote AAB hearings are effective for handling simpler appeals with only a few witnesses and a limited number of documents. CATA also acknowledges that remote hearings also permit AABs to handle administrative matters quickly and efficiently. However, as CATA explained in its October 18, 2021 letter to the Board (copy attached), the idea that remote hearings are suitable for all taxpayers – that “one-size-fits-all” – will deprive some taxpayers of their due process right to a “meaningful” (i.e., full and fair) hearing under Property Tax Rule 302(a)(1). This will occur, for example, when a taxpayer is not familiar with or comfortable working in a remote hearing environment. It will also occur in more complex, multi-day hearings with several witnesses and large numbers of documents which tend to overwhelm the capabilities of remote hearing platforms. Consequently, CATA *strongly disagrees* with the CACEO’s inclusion of this sentence in its proposed language for the Draft LTA: “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.” (CACEO Statement, January 21, 2022, Page 4, 1st paragraph, 2nd sentence.) While AABs may aspire to provide remote hearings that are “fair and impartial” and “consistent with recognized due process,” remote hearings will not always do so. (CACEO Statement, January 21, 2022, Page 4, 1st paragraph, 3rd sentence.)

CATA has been actively monitoring county AABs throughout the state to determine which AABs have returned to in-person hearings. AABs in most metropolitan counties have resumed in-person hearings with the exceptions of Los Angeles County and the City and County of San Francisco, which still only offer remote hearings. For the most part, it appears that the number of AABs returning to in-person hearings has increased as the impact of the COVID-19 pandemic subsides.

CATA’s Recommendations Relating to CACEO’s January 21, 2022 Statement

CATA believes county AABs which only offer remote hearings are motivated by three issues: (1) safe environment or public health concerns; (2) backlog reduction; and (3) remote hearing as the default option. These issues, while legitimate, can also be used to deprive taxpayers of their due process right to a hearing of the taxpayer’s choice, particularly in-person hearings.

To prevent this from happening, the Draft LTA must incorporate provisions which “trigger” when AABs must cease offering remote hearings only and begin offering in-person

hearings to taxpayers. Along those lines, CATA recommends the following be included in the Draft LTA:

Recommendation #1 (Safe Environment/Public Health Concerns). The CACEO's concern here boils down to when it will be safe to hold in-person hearings. Currently, most organizations and the general public look to county health officials to provide direction as to when it is safe for persons to congregate indoors in offices, etc. CATA recommends that the Draft LTA include language to the effect that in-person AAB hearings resume when county health officials declare it is safe for persons to congregate in public buildings.

Recommendation #2 (Backlog Reduction). CATA disagrees that in order to reduce backlogs of pending appeals AABs must only hold remote hearings. The remote hearing is an option that can be used, but the option should not be mandatory. CATA would remind the Board that the significant backlogs of appeals experienced by Los Angeles County in the 1990s and the 2000s were eventually reduced through in-person hearings only. CATA recommends that the Draft LTA include language encouraging, but not mandating, that AABs use remote hearings to reduce backlogs of appeals.

Recommendation #3 (Remote Hearing as Default Option). CATA believes taxpayers should be afforded the option of either an in-person hearing or a remote hearing. The hearing format should not be determined by AAB clerks who are not familiar with the substance of a given appeal and cannot evaluate whether a format will afford the parties due process in a full and fair hearing. The parties are best positioned to make that evaluation. CATA recommends that the SBE modify the Assessment Appeal Application to allow taxpayers to select the type of hearing they want when they file their Application.

Use of Section 1604 Indefinite Time Waivers – Scheduling for In-Person Hearings

Page 4 of the CACEO's Statement makes multiple references to use of Revenue and Taxation Code Section 1604 waivers of the 2-year statute for timely hearings as a means of accommodating taxpayer requests for in-person hearings in counties where the AAB is only offering remote hearings. Section 1604 waivers provide an unlimited extension of time for AABs to hold a hearing on a taxpayer's application.

Many CATA members have used Section 1604 waivers, in counties such as Los Angeles, to opt-out of remote hearings and wait for in-person hearings to resume. Section 1604 waivers have been an effective stopgap during the pandemic when only remote hearings were available,

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allowing AABs to accommodate those taxpayers who want in-person hearings while preserving taxpayers' rights to an in-person hearing.

However, as the pandemic subsides, taxpayers who signed Section 1604 waivers while awaiting a return to in-person hearings should be given in-person hearings. It is not fair to make taxpayers who complied with AAB requests for Section 1604 waivers to have to wait many months or even years for their hearings once the pandemic is over and it is safe to return to public meetings.

Grounds for Postponement/Continuance of AAB Hearings – Choice of Hearing Format

The CACEO's Statement contains conflicting language regarding how taxpayers are to obtain AAB hearing postponements under Property Tax Rule 323. In one place, the CACEO says if an AAB "does not or cannot schedule a remote or in-person hearing as requested by the participant, the participant may avail themselves of a postponement of the hearing in accordance with Rule 323" by signing a Section 1604 waiver. (CACEO Statement, January 21, 2022, Page 4, 2nd paragraph, 4th sentence.) In another location, the CACEO writes that "reasonable basis grounds" for a postponement or continuance under Rule 323 "shall not include ... the type of hearing scheduled." (CACEO Statement, January 21, 2022, Page 4, 3rd paragraph, 2nd sentence.) This language needs to be reconciled by deleting the latter sentence. AABs must not be permitted to force taxpayers into a hearing format, whether remote or in-person, that they do not want if the taxpayers are willing to sign and have signed a Section 1604 waiver.

CATA's representatives look forward to discussing these issues with the Board and other participants during the Board's meeting on January 26, 2022.

Sincerely,



James DePasquale, Chair
California Alliance of Taxpayer Advocates

Enclosure (CATA, Oct. 18, 2021 Letter to Hon. Antonio Vazquez Re LTA 2021/002)

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cc: Honorable Antonio Vazquez, Member
Honorable Ted Gaines, Member
Honorable Mike Schaefer, Member
Honorable Betty T. 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
Honorable Leslie Morgan, President, California Assessor's Association
John McKibben, Chair, CACEO Assessment Appeals Work Group
Thomas R. Parker, CACEO Counsel
CATA Board of Directors