Assessment Appeals Process
Agenda and Discussion Document for April 25, 2018 Meeting

Issue 1: Requests for Taxpayer Information from County Assessors

1. The law requires only that taxpayers make records available to Assessors—nothing more. (CATA)

   COMMENTS:
   
   CATA
   Section 441(d) states in pertinent part as follows:

   "At any time as required by the Assessor for assessment purposes, every person shall make available for examination information or records regarding his or her property or any other property located on premises he or she owns or controls. In this connection details of property acquisition transactions, construction costs, rental income and other data relevant to the determination of an estimate of value are to be considered as information essential to the proper discharge of the assessor's duties."

   It is clear from the text of Section 441(d) that the taxpayers are not required to submit or mail copies of records. It requires only that the information or records be made available for examination. This is confirmed by Section 470 which states in relevant part:

   "Business Records. (a) Upon request of an assessor, a person owning, claiming, possessing or controlling property subject to local assessment shall make available at his or her principal place of business, principal location or principal address in California . . . a true copy of business records relevant to the amount, cost and value of all property that he or she owns, claims, possesses or controls within the county."

   The plain language of this statute requires taxpayers to make records available at his or her principal place of business, but there is no requirement or legal obligation for the taxpayer to submit copies of this information by mail or otherwise directly to the Assessor.

   As there is no legal authority requiring the taxpayer to mail copies to the assessor and therefore the taxpayer cannot be non-compliant for failure to respond to an assessor's request to send copies of any requested information.
If, on the other hand, the Assessor requests a mutually agreeable time to meet for the purpose of inspecting the information requested at the taxpayer's primary place of business, then the taxpayer would have been required to comply with the request. Accordingly, any request or demand for information letter from the Assessor that cites Section 441(d) requesting that copies be mailed or otherwise delivered to the Assessor is inconsistent with the statutory text. Any Board regulation regarding Section 441(d) requests must also be in keeping with this language.¹

**BOE Staff**

We believe that, so long as an assessor's request does not mislead the taxpayer into believing that penalties or other consequences might apply if requested copies of documents are not supplied, there is no reason to place legal restrictions on the assessor's decision to request copies. In many if not most cases it is more convenient and efficient for both taxpayer and assessor if the taxpayer provides copies.

2. Assessors cannot deny a taxpayer's right to a hearing or impose other consequences on taxpayers that are not set forth in statute. *(CATA)*

**COMMENTS:**

**CATA**

Although CATA respects the Assessor's preference that the taxpayer provide copies of the information being sought, we find no legal support for some of the proposed consequences in the event that a taxpayer fails to comply. Specifically, there is no legal support authorizing the Assessment Appeals Board to compel the applicant to comply with the assessor's request for information nor to deny the appeal.

For example, CAA's Guidelines Consequences for example 2 recommends that "unless you provide the following requested information by [insert date], the Assessor will request a continuance or postponement of your hearing, and ask the Assessment Appeals Board to require you to provide the requested information in advance of the rescheduled hearing date."

These statements are based on the erroneous assumption that the Assessment Appeals Board has the authority to compel taxpayer compliance with the Assessor's interpretation of Sections 441(d) and 470. However, the authority to compel compliance with these statutory discovery provisions is not now and never has been vested in the Assessor or the Assessment Appeals Board. Instead the authority to enforce compliance with Sections 441(d) and 470 is vested in the Superior Courts. This is so because there are criminal penalties which can be imposed under Section 462 for any taxpayer who actually refuses to make information or records available for examination at his principal place of

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¹ Letter from CATA to Board Chair Diane Harkey dated November 27, 2017.
These penalties include fines and imprisonment which can only be imposed by the Superior Courts.

Therefore, the Assessment Appeals Board has no authority to order taxpayer compliance nor does it have the authority to deny the taxpayer's application for failure to comply with the Assessor's request for copies of information and records. However, the Assessment Appeals Board does have some limited authority with respect to the discovery provisions of 441(d). This authority can be found under Section 441(h) which reads in part as follows:

"If a taxpayer fails to provide information to the assessor pursuant to subdivision (d) and introduces any requested materials or information at any assessment appeals board hearing, the Assessor may request and shall be granted a continuance for a reasonable period of time."

This continuance represents the only legal ramifications or consequences that may apply to a taxpayer who fails to respond to a Section 441(d) request. There is no legal provision that allows an assessment appeals board to deny the appeal or to compel the taxpayer to provide the requested information. Accordingly, the sole purpose of the continuance is not to compel additional compliance from the taxpayer, but rather to provide the Assessor additional time to review the materials or information that were requested but not received until the hearing. In other words, this continuance can be granted only if a taxpayer introduces information at a hearing which the assessor previously requested, that the taxpayer failed to make available for inspection before the hearing at the taxpayer's primary place of business.

Therefore, it is our contention that the Assessment Appeals Boards do not have the authority to compel the taxpayer to provide information to the assessor in a manner that is not accordance with Sections 441(d) and 470 of the Revenue and Taxation Code. We further suggest that the Assessment Appeals Boards do not have the legal authority to deny the taxpayer's application by refusing to proceed with the evidentiary hearing based on the Assessor's erroneous interpretation of the property tax laws. This is particularly true when it becomes clear that the authority to compel compliance with Sections 441(d) and 470 of the Code is vested in the Superior Courts. The jurisdiction of the Assessment Appeals Board is limited to granting a continuance under Section 441(h), which can only be exercised after the taxpayer has presented evidence at a hearing which was specifically requested in writing by the Assessor prior to the hearing and not made available for inspection by the taxpayer at his/her principal location of business prior to the hearing.

The most flagrant contravention of Sections 441(d) and 470 concerns one county that maintains two hearing calendars consisting of both "compliant" and "non-compliant" applicants. "Compliant" applicants become compliant only after the
assessor informs the Assessment Appeals Board that they have satisfactorily complied with the Assessor's request for information. "Non-compliant" applicants are those who have not done so. The hearing is then automatically continued to a future date for the sole purpose of securing the taxpayer's full compliance with whatever information request the assessor has propounded. There is no legal support for this ongoing violation of taxpayer rights.

In conclusion, there is no legal authority requiring a taxpayer provide copies of any information requested from the assessor in accordance with Section 441(d). In addition, there is no legal support for any consequences against any taxpayer who has failed to comply with an assessor's 441(d) request other than a possible continuance being granted to the assessor in accordance with Section 441(h).²

CAA

[CAA is] pleased to report that significant progress has been achieved since CATA publicly complained to the Board of Equalization (BOE) on September 26, 2016; many of the issues reiterated at the December 18 meeting have now been resolved by changes in practices by local assessors. Marc Aprea, on behalf of CATA agreed with this sentiment and noted in a recent correspondence to the Chair of the Board of Equalization:

"We are encouraged that the CAA's October 12 letter reported that several counties have modified their correspondence in response to the feedback received from both assessors and taxpayers. We are further encouraged that CAA welcomes the opportunity to participate in the upcoming interested parties process intended to improve best practices, and increase cooperation and compliance by taxpayers.... most assessors have fairly applied-and continue to fairly apply- Section 441(d)."

Now that multi-lateral communication has been established by the interested parties regarding the concerns tendered by CATA, we are optimistic that the cooperation will continue as county assessor's tender concerns about the practices of some in the tax advocacy profession. CAA looks forward to working with CATA, BOE, County Counsels and CACEO to find additional changes in practices that will further advance professionalism and ethical standards in the assessment appeals process.³

BOE Staff

BOE staff is committed to working with parties to seek resolution on issues raised.

² Ibid.
³ Letter from CAA to Board Chair Diane Harkey dated January 18, 2018.
3. Require all section 441(d) requests to be in writing (CATA, CalTax)

**COMMENTS:**

**CalTax**
To ensure that taxpayers are appropriately notified of the request, and because information obtained therein will be presented as evidence in Assessment Appeals Board (AAB) hearings, we suggest regulations be amended to require that all Section 441(d) requests be in writing. Acknowledging that there may be need for flexibility, we suggest that the regulations could allow the taxpayer and assessor, by written mutual agreement, to waive the requirement for written communication under reasonable circumstances (i.e., to avoid a hearing delay/continuance).4

**CAA**
Assessors generally agree; requests for information should be in writing. As there is agreement, we recommend dropping this item from consideration during the interested parties' process.5

**BOE Staff**
We agree that all requests for information under section 441(d) should, as a matter of good practice, be in writing. We suggest adding language to the Assessment Appeals Manual to emphasize the point.

4. Standardized format for section 441(d) requests (CalTax)

**COMMENTS:**

**CalTax**
So taxpayers and assessors are better informed of their rights and responsibilities, we suggest regulations be amended to require a quasi-standardized Section 441(d) request form that (1) cites the appropriate statutes/provisions relative to taxpayers' and assessors' rights and responsibilities; (2) informs the taxpayer and the assessor that information obtained in a Section 441(d) request is confidential per Section 451; and (3) provides a narrative portion for assessors to inform taxpayers of the information/records being requested. A standardized format would help avoid misleading/threatening request letters.6

We recommend that the requirements be stipulated in regulations, but that the form itself be promulgated in the assessors' handbook to facilitate any necessary updates.7

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5 Letter from CAA to Board Chair Diane Harkey dated January 18, 2018.
7 Ibid.
We disagree with any efforts to create a standard "one size fits all" for 441(d) letters; it is not realistic, nor in the best interest of the appellant or the assessor. The new Apple "Spaceship" headquarters in Santa Clara County is different than a strip shopping center or a small office building in another county and properly assessing each requires different information. At the December 18 meeting there also appeared agreement by CATA and assessors that discovery correspondence to a Fortune 500 company should be different from letters to residential property owners and small businesses. 8

BoE Staff
Staff stands ready to work with the parties to develop a standardized format. The parties should bear in mind, however, that the assessor's authority to request information under the statute is quite broad, 9 and any standardized format must inform the taxpayer about the consequences for failing to comply with an assessor's lawful request.

5. Limiting scope of section 441(d) requests to the property under appeal (CATA)

Comments:

CAA
This complaint is overly broad and subjective. Assessors strive to comply with Attorney General opinion 84-1104, and do not intentionally make overly broad requests. There is general agreement that assessors should follow the Attorney General's opinion. Consequently, we recommend dropping this item from consideration during the interested parties' process. 10

BoE Staff
Section 441(d) was intended to be a broad grant of power to the assessor to obtain the information deemed by the assessor as essential to performing his duties. In Roberts v. Gulf, the court found that in section 441(d) "[t]he term "essential" serves to prohibit harassment by the taxing authority," not to place upon the assessor constraints in obtaining needed information.

At the same time, section 452 prohibits any question on the property statement that is not germane to the assessment function. An assessor should, therefore, be careful to avoid using requests for information under section 441(d) that might be overly broad for the specific property being assessed.

6. Coercive or threatening language in section 441(d) requests (CATA)

Comments:

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8 Letter from CAA to Board Chair Diane Harkey dated January 18, 2018.
9 See, for example, Roberts v. Gulf Oil Corp. 147 Cal.App.3d 770.
10 Letter from CAA to Board Chair Diane Harkey dated January 18, 2018.
CAA

During the past year the CAA focused primarily on allegations about some Assessors' letters requesting information. Since then, a number of counties have changed their 441(d) correspondence. We have created specific guidelines that have been adapted by the CAA, covering the process. As a result, the letters that most concerned CATA have now been eliminated. We have provided these guidelines to assessors, CATA and the BOE.

The guidelines make clear that there is a progression in tone between the first R&T Code 441(d) letter, and the letters that follow when the taxpayer fails to respond. For example, the guidelines suggest the initial R&T Code 441(d) letter state:

"It may be possible to agree to reduce the values without a formal hearing if you comply with this letter." or "The majority of appeals can be resolved without a hearing if the necessary information is made available to our office."

If a taxpayer does not respond, the guidelines go on to suggest additional language:

"In order for the Assessor to properly review the assessed value of the property under appeal, you are required to provide the following information: ..."

When we do not receive a response from two written requests, assessors increase the pressure and the CAA guidelines recommend the following language:

"The Assessor is entitled to receive from you, and is hereby requesting, the following information pursuant to Section 441(d) of the California Revenue and Taxation Code." or "This request is made in accordance with Section 441(d) of the California Revenue & Taxation Code."

When the taxpayer chooses to be hostile toward the assessor's office (and a few are hostile), assessors have no choice but to inform the taxpayer of one of the consequences for failure to cooperate by citing language in R&T Code 441(h), which states:

"If a taxpayer fails to provide information to the assessor pursuant to subdivision (d) and introduces any requested materials or information at any assessment appeals board hearing, the assessor may request and shall be granted a continuance for a reasonable period of time."

The guidelines also suggest citing R&T Code Section 501 which reads:

"Failure to furnish information. If after written request by the assessor, any person fails to comply with any provision of law for furnishing information required by Sections 441 and 470, the assessor, based upon information in his (or her)
possession, shall estimate the value of the property and, based upon this estimate, promptly assess the property."

Finally the CAA has urged assessors to limit language stating that the taxpayer will be "subject to possible enforcement actions, subpoena or penalties, as provided under California Law and Regulations."

Clearly, there is a progression. Recognizing that some of the letters could be misinterpreted, assessors have now changed some of the letters that were cited in CATA's original package of examples.

Yet assessors like any taxing authority, including the BOE, must be able to impose an increasing level of demand on taxpayers, including a subpoena as a last resort, to obtain information from taxpayers.

As noted above, assessors have removed from their R&T Code 441(d) letters any language CATA perceived as threatening or coercive. In the interest of informing taxpayers, many who have never filed an appeal, assessors will continue to advise taxpayers of the legal consequences for failure to cooperate with reasonable requests for information. Assessors have addressed CATA's concerns and we recommend dropping this item from consideration during the interested parties' process.11

BOE Staff
We agree with CAA. In the absence of compliance with initial requests, the taxing authority must have the ability, in subsequent requests, to progressively inform the assessee of the lawful consequences of failing to comply. At the same time, assessors should take care that initial requests treat assessees under the assumption that they will freely comply, as most assessees do.

7. Assessors' compliance with taxpayer requests under section 408(e) (CATA, CalTax)

COMMENTS:

CalTax
Currently, some counties refuse to provide taxpayers with information used to derive the appraisal and assessment of the taxpayer's property. It is critical that the taxpayer be provided this information in order to validate, or invalidate an assessor's valuation. Withholding of this information places the taxpayer at an unfair disadvantage. We suggest that regulations be amended to provide a process and timeline for assessors to provide the taxpayer, upon request, information relating to the appraisal and assessment of the taxpayer's property.12

11 Letter from CAA to Board Chair Diane Harkey dated January 18, 2018.
CAA

The law is clear, R&T Code 408(e) specifies what information assessors must provide to taxpayers. The examples provided by CATA of failure to adhere to R&T Code 408(e) have been addressed, and the letters have been modified to reflect changes in practices. It is unnecessary to create a rule that merely restates the law. Therefore, we recommend dropping this item from consideration during the interested parties' process.13

BOE Staff

Subdivision (f)(3) of section 408 already provides that if the assessor fails to comply with an assessees request under either subdivision (d) or (e), and the assessor introduces any of the requested information at an assessment appeals hearing, then the assessees, upon request, shall be granted a continuance for a reasonable period of time.

Note, however, that nothing in section 408 mandates a specific time frame within which requests under subdivisions (d) or (e) must be granted. Instead, subdivision (f), paragraph (1) requires that permission for the assessees inspection or copying requested information "shall be granted as soon as reasonably possible...."

We agree with CAA that there is no need to create a rule that merely restates existing law.

8. Assessors cannot demand a statement under penalty of perjury as to whether the taxpayer has or does not have the information, or whether the taxpayer has adequately responded to the information request. (CATA)

COMMENTS:

CAA

Agreed. R&T Code 441(d) does not state that the assessor can require the taxpayer to provide a compliance statement under penalty of perjury. However, if the assessor determines that information is incomplete or not forthcoming, the assessor can bring the R&T Code 441(d) non-compliance to the attention of the Assessment Appeals Board at a prehearing conference. In some counties, the Assessment Appeals Board holds a non-compliance hearing to discuss the assessor's request for information, the status of the applicant's response, discuss any compliance issues with the parties in an effort to resolve them, obtain agreement about when compliance will take place, and schedule a hearing on the merits of the application for a mutually agreeable date thereafter. In appropriate circumstances, the AAB may discuss with the parties resolving the dispute regarding R&T Code 441(d) compliance by allowing the applicant to submit a sworn statement under penalty of perjury that the applicant does not have responsive documents.14

13 Letter from CAA to Board Chair Diane Harkey dated January 18, 2018.
14 Letter from CAA to Board Chair Diane Harkey dated January 18, 2018.
BOE Staff
We agree with CATA and CAA.

9. Statutory minimum time before hearing for responding to section 441(d) requests
   (CATA, CalTax)

   COMMENTS:

   CalTax
   Taxpayers sometimes receive 441(d) right before the scheduled appeals hearing or
   pre-hearing conference, without sufficient time to respond. This can result in
   hearing delays/continuances. To ensure sufficient time for the parties to provide
   and review new facts, we suggest that regulations require all Section 441 (d)
   requests to be transmitted by a time period (i.e., two weeks or some other date)
   prior to a hearing. Furthermore, to provide flexibility, the regulations could allow
   the taxpayer and the assessor, by written mutual agreement, to agree to some
   other date or waive the requirement entirely.15

   CAA
   Disagree. R&T Code 441(d)(l) begins with "At any time, as required by the
   assessor for assessment purposes... " Nevertheless, we agree with CACEO "some
   county boards have so many appeals to handle that they simply can't afford to
   vacate hearing days due to the parties' failure to comply with a rigid time
   requirement." In the interest of an efficient assessment appeals process, assessors
   oppose an inflexible and arbitrary deadline. Any rule would disproportionately
   harm the majority of applicants who are principally homeowners and small
   business owners.16

   CACEO
   Our concern here is that a rigid requirement might add unnecessary
   postponements in our providing a timely hearing. We believe that 441(d) and
   408(e) requests [should] be made more than two weeks in advance of the hearing.
   However, we would oppose any inflexible timetable that would provide a party
   with grounds to justify a postponement or continuance of the hearing where one is
   not truly necessary. While a county board does have - and should have - the
   authority to grant a disadvantaged party a postponement or continuance, some
   county boards have so many appeals to handle that they simply can't afford to
   vacate hearing days due to the parties' failure to comply with a rigid time
   requirement. Again, we stress the need for the parties to act responsibly, but
   some flexibility here is crucial.17

16 Letter from CAA to Board Chair Diane Harkey dated January 18, 2018.
17 Letter from CACEO to Board Chair Diane Harkey dated November 16, 2017.
BOE Staff

We agree with CAA and CACEO. RTC 441(d) allows an assessor to request information "at any time." Additionally, there is no statute prescribing a specific minimum time period, and the Board cannot contradict existing law through the rulemaking process. Instead, we suggest adding language to the Assessment Appeals Manual emphasizing that assessors should, wherever feasible, allow assessees reasonable time periods for responding to requests for information.

10. Confidentiality of taxpayer information as provided in section 451 (CATA, CalTax)

COMMENTS:

CalTax

Revenue and Taxation Code Section 451 provides confidential protection for information provided in a Section 441(d). However it appears that some assessors are citing information relating to one taxpayer as evidence against a different taxpayer, without proper written authorization. So assessors are better informed, we suggest that regulations reiterate the confidentiality provisions of Section 451 and that a standardized consent form be developed in the assessors' handbook. 18

CAA

Assessors agree information provided by the taxpayer or the taxpayer's agent should be held confidential as provided in Sections 408 and 451. Assessors will continue to use information that is public, disclosed during a hearing and widely available. Therefore, we recommend dropping this item from consideration during the interested parties' process. 19

BOE Staff

The confidentiality statutes have long been in effect, and have been interpreted by the courts. We see no reason for additional clarifying language by way of regulation, but we would support adding language to the Assessment Appeals Manual to emphasize the relevant points.

11. Assessor cannot use information obtained from one taxpayer under 441(d) and use the same information against a second or any other taxpayer in an assessment appeals board hearing without written authorization from the first taxpayer. (CATA)

COMMENTS:

CAA

Assessors agree information provided by the taxpayer or the taxpayer's agent should be held confidential as provided in Sections 408 and 451. Assessors will continue to use information that is public, disclosed during a hearing and widely

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19 Letter from CAA to Board Chair Diane Harkey dated January 18, 2018.
available. Therefore, we recommend dropping this item from consideration during the interested parties' process.\textsuperscript{20}

\textbf{BOE Staff}

In general, the assessor's use of "information" obtained pursuant to section 441 is limited to either market data or information obtained from the taxpayer seeking the reduction, and not relating to the business affairs of another taxpayer. (\textit{Chanslor-Western Oil & Dev. Co. v. Cook} (1980) 101 Cal.App.3d 407.) Of course, the confidential information of third parties may not be disclosed even in a closed hearing. (\textit{Chanslor-Western Oil v. Cook} (1980) 101 Cal.App.3d 407; \textit{Trailer Train Co. v. State Bd. of Equalization} (1986) 180 Cal.App.3d 565)

We agree with CAA, however, that information that has been disclosed during a public hearing is thereafter available to anyone.

12. AABs should not be able to dismiss an assessment appeal application at a pre-hearing conference, or otherwise, because the taxpayer has not responded to a Section 441(d) request. AABs cannot legally limit taxpayers' administrative rights and remedies and cannot dismiss applications for any perceived 441(d) violation. (\textit{CATA, CalTax})

\textbf{COMMENTS:}

\textbf{CalTax}

It appears that some appeal applications have been rejected based on the perception that taxpayers are withholding information. Whether this is true or not, due process requires that taxpayers be afforded an opportunity before the AAB. If the AAB determines that there is insufficient information or the presented facts do not support the taxpayer's position, then the AAB will decide against the taxpayer. To ensure due process, we suggest that regulations reaffirm that AABs are authorized to postpone a hearing for a reasonable period (i.e., two weeks or some other period), but not to dismiss an appeal application on the grounds that the taxpayer has not responded or has been unable to provide information requested.\textsuperscript{21}

\textbf{CAA}

As discussed in the letter submitted by the Santa Clara County Counsel's office, Assessment Appeals Boards have legal authority to hold a pre-hearing conference, sometimes referred to as a "441(d) non-compliance hearing." The purpose of these hearings is to discuss and address the status of outstanding R&T Code 441(d) requests and the anticipated compliance schedule. The appeals board can then set the hearing on the merits of the appeal for a mutually agreeable date following R&T Code 441(d) compliance.

If an applicant or their agent fails to appear at the prehearing conference/R&T Code 441(d) non-compliance hearing, the Assessment Appeals Board can dismiss

\textsuperscript{20} Letter from CAA to Board Chair Diane Harkey dated January 18, 2018.

\textsuperscript{21} Letter from CalTax to David Yeung, Chief, County-Assessed Properties Division dated January 19, 2018.
the application for lack of appearance at the hearing. Such dismissal results from
the failure to appear at the hearing, not from the R&T Code 441(d) non-
compliance itself. In Santa Clara County, for example, if an applicant or their
agent fails to appear at the R&T Code 441(d) non-compliance hearing, the
application is dismissed for lack of appearance. However if the applicant/agent
inadvertently missed the hearing for example, they can then file a request for
reinstatement of the appeal. 22

**BOE Staff**
We agree with CAA.

13. Assessors should not issue Section 441(d) requests that also threaten the taxpayer with
criminal or administrative penalties for non-compliance within a particular time or if the
response is deemed insufficient by the assessor. *(CATA)*

**COMMENTS:**

**CAA**
Agreed. The CAA, as noted above, supports the use of multiple letters that
progress in tone and enumeration of consequences. Correspondence should
educate taxpayers as to the administrative and criminal penalties for
noncompliance long before seeking these remedies. Therefore, we recommend
dropping this item from consideration during the interested parties' process. 23

**BOE Staff**
We agree. Other than property statements, section 441(d) does not impose
penalties for failure to comply with requests for information. Instead, the
consequence of an assessee's failure to provide other information to the assessor is
that if the taxpayer introduces such requested information at an assessment
appeals board hearing the assessor may request, and shall be granted, a
continuance for a reasonable period of time.

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22 Letter from CAA to Board Chair Diane Harkey dated January 18, 2018.
14. County clerks cannot reject applications because of the false belief that agency authorizations must be signed by taxpayers in the same calendar year as the application was filed. While it is true that the agency authorizations must be signed and dated before the appeal applications are filed, California law does not require that they be signed in the same calendar year in which the applications are filed. Agency authorizations can be signed in earlier years as long as they state that the agent is authorized to sign and file applications for the relevant roll years. (CATA)

**COMMENTS:**

**CACEO**
We agree. However, we would like to point out that some clerks and appeals boards have been very strict about agent authorizations because of a history of abuse by a few tax agents. Over the years there have been many incidents of agents filing old authorization forms or photocopies of old authorization forms that were no longer valid and where, in fact, the taxpayer never authorized the agent to file for the year in question. Some taxpayers never even knew an appeal had been filed on their behalf. This is largely, but not exclusively, a problem with appeal mills.

We note that Rule 305 prohibits retroactive authorizations and permits an agent to sign and file applications in the specific calendar year in which the application is filed. However, neither statute nor regulation is entirely clear about whether the authorization must be signed in the same calendar year as the appeal. Perhaps some additional clarification in Rule 305 would be useful. We are willing to work with the BOE and the parties in that regard.24

**CAA**
We concur with CACEO and support additional clarification in Rule 305.25

**BOE Staff**
We agree with CACEO.

15. The agency authorization rules must be clarified for processing on-line filings. For in-person filings, current rules require applicants to attach agency authorizations to their appeal applications. But these rules don't work for on-line filings, since there is no way to attach agency authorizations. The attempted application of this obsolete rule has been mixed, at best, and the results have hurt taxpayers. (CATA, CalTax)

**COMMENTS:**

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24 Letter from CACEO to Board Chair Diane Harkey dated November 16, 2017.
25 Letter from CAA to Board Chair Diane Harkey dated January 18, 2018.
CalTax
Some of the provisions related to in-person filings need to be updated to reflect procedures better suited to online filings (i.e., email communication/transmittal, electronic signatures, agency authorizations, etc.). We suggest that taxpayers and assessors look to the Franchise Tax Board and other tax agencies as guides to identify methods by which assessors may be able to accelerate a transition to electronic communication and transmittal.26

CACEO
We agree that it would be desirable for any county using an on-line filing system to have a mechanism that permits submission of agency authorization on-line. However, some counties simply do not have the necessary funding to do so, at least in the near-term. Although neither law nor rule requires on-line filing, including on-line filing of agent authorization, we are willing to work with the BOE and interested parties to develop an appropriate amendment to Rule 305 to provide some permissive guidance to counties, since the current version of the Rule was issued in 2004, before on-line filing was authorized by law.27

CAA
We concur with CACEO and support additional clarification in Rule 305.28

BOE Staff
We agree with CACEO and CAA, and stand ready to work with the parties to clarify Rule 305.

16. Standardized state-wide assessment appeal applications should be considered. Currently, each county develops their own forms based on state-wide guidelines, however, these forms vary county to county and result in accepted or rejected statuses depending upon the specific county. (CATA)

CACEO
We don't see the problem here. The BOE standardized the Application for Assessment Appeal in 2015. Although a few appropriate variations are permitted by the BOE (counties with a hearing officer program, being one), BOE staff is very strict in making sure a county's form complies with BOE requirements for standardization.29

CAA
We agree with CACEO that this is not an issue as "the BOE standardized the Application for Assessment Appeal in 2015. Although a few appropriate variations are permitted by the BOE (counties with a hearing officer program, for

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27 Letter from CACEO to Board Chair Diane Harkey dated November 16, 2017.
29 Letter from CACEO to Board Chair Diane Harkey dated November 16, 2017.
example), BOE staff is very strict in making sure a county's form complies with BOE requirements for standardization.”

BOE Staff

We agree with CACEO and CAA.

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30 Letter from CAA to Board Chair Diane Harkey dated January 18, 2018.
Issue 3: Conditions under which Already-Scheduled Appeals Hearings may be Postponed

17. In some counties the Assessor asks for indefinite postponements after the taxpayer presents its case-in-chief. This, CATA members believe, is done to buy time to prepare for cross-examination, thus compromising taxpayers' due process rights. AABs should be required to make every reasonable effort to maintain continuous hearing dates. Delays longer than a week should require a showing of undue hardship on the part of the Assessor. (CATA)

COMMENTS:

CACEO
While we agree that AABs should make every reasonable effort to keep the hearing moving, rather than continue it to some future date, it would not be useful, nor even proper in our view, for the BOE to impose restrictions on the AAB with regard to whether a continuance should be granted or what the appropriate length of continuance should be. This must be left up to the county board to decide, based on arguments presented at the hearing by the parties.\(^{31}\)

We are willing to work with the BOE and the parties to develop a sentence for inclusion in the Assessment Appeals Manual urging the county board to make every reasonable effort to maintain continuous hearing dates, given the reasonable needs of the county board and of the parties to the proceeding.\(^{32}\)

CAA
We concur with CACEO and "are willing to work with the BOE and the parties to develop a sentence for inclusion in the Assessment Appeals Manual urging the county board to make every reasonable effort to maintain continuous hearing dates, given the reasonable needs of the county board and of the parties to the proceeding."

BOE Staff
We agree with CACEO and CAA, and stand ready to work with the parties to develop language for inclusion in the Assessment Appeals Manual.

\(^{31}\) Letter from CACEO to Board Chair Diane Harkey dated November 16, 2017.
\(^{32}\) Ibid.
Other Issues

Note: Items 18-28 were submitted after the meeting on December 18, 2017, and are presented here for comment at the interested parties meeting.

18. Disclosure of redacted identifying information about properties from which market data is derived (Peter Michaels)

COMMENTS:

Peter Michaels
I represent a group of taxpayers that has filed assessment appeals with a local board. The assessor apparently used the same source information in valuing all taxpayers in our group. We have asked the assessor to provide data underlying the contested assessments. In response, the assessor's counsel has declined to produce the requested information and data, citing Revenue and Taxation Code Section 408(e)(3). Instead, the assessor has provided our group with a one-page "Discount Rate Derivation Summary", listing (unidentified) sales, "Year Sold", and "Rate".

Of course, we agree that proprietary and confidential business trade secret information and data must be safeguarded from disclosure. That interest must, however, be harmonized with a taxpayer's legal right to know exactly how an assessed value was determined and whether (or not) necessary adjustments were made by the assessor. We urge the Board to work with assessors and taxpayers to strike a balance between these competing interests.33

19. Amend section 1624.1 to apply the same 3-year cooling off period to tax agents seeking to serve on AABs as is applied to former assessor employees (Rich Benson, Marin County Assessor/Recorder/Clerk)

COMMENTS:

Benson
RTC 1624.1. Requires amendment to prevent the double standard that an assessor employee is disqualified from serving on a board for three years while not applying the same standard to a practicing tax agent for three years. In fact, the existing statute allows a practicing tax agent to serve as a Board member while simultaneously practicing in the field against assessors.34

20. Amend section 1642.2 conflict of interest statute to conform with OTA Reg. 30825 (Rich Benson)

COMMENTS:

33 Email from Peter Michaels to David Yeung, Chief, County-Assessed Properties Division, February 5, 2018.
Benson
RTC 1624.2. This 1967 section regarding conflict of interest is sorely out of date. Given the frequency, legal implications, and substantial fiscal issues before Boards, consider adopting the same standard of Code of Ethics by OTA Reg 30825.35

21. Clarify Rule 305(e) (Rich Benson)

Comments:
Benson
To prevent abuse of Property Tax Rule 305(e), its ambiguity needs to be corrected to ensure that (B) and (C) reconcile, and to prevent the effect of the amendment is not to request relief additional to or different in nature from that originally requested.36

22. Amend Property Tax Rules to require AAB members to receive ethics training as provided in Govt. Code section 53234 (Rich Benson)37

23. Require AAB members to annually receive 6 hours of continuing education (Rich Benson)

Comments:
Benson
Assessment Appeals Board members should have minimum 6 hours annual continuing education requirement specific to assessment appeals, new legislation, assessment law, and assessment procedures. Exceptions may be granted to recognize 2 hours in a related field like for California Certified appraisers, Appraisal Institute or like.38

24. Amend Rule 323(a) to make more specific the meaning of "good cause" for a postponement (Rich Benson)

Comments:
Benson
Property Tax Rule 323(a); "Good cause" should be better described to prevent less the appropriate excuses to postpone or continue a hearing. Consider recent OTA Reg. 30823 Among the factors OTA may consider in determining whether there is reasonable cause for a postponement or deferral include:

35 Ibid.
36 Ibid.
37 Ibid.
38 Ibid.

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1) A party or a representative of a party cannot appear at a hearing or meet a briefing deadline due to the illness of that person or a member of that person's immediate family;

2) A party or a representative of a party cannot appear at a hearing or meet a briefing deadline due to an unavoidable scheduling conflict;

3) A party has obtained a new representative who requires additional time to become familiar with the case;

4) All parties desire a postponement;

5) A stay has been imposed in the taxpayer's bankruptcy action; or

6) Pending court litigation or pending regulatory action by CDTFA may be relevant to the resolution of the issues on appeal.39

25. Clarify and simplify subpoena procedures under sections 454, 468, 1609.4, and Rule 322 (Rich Benson)

COMMENTS:

Benson

All subpoena procedures should be simply and clearly described for efficient implementation. This includes RTC 454, 468, 1609.4, Property Tax Rules 322, and any related information regarding expediency to the court's calendar.40

26. Amend section 167 to remove the value presumption for escape assessments resulting from failure to provide all information lawfully requested by the assessor (Rich Benson)

COMMENTS:

Benson

RTC 167. In a post Proposition 13 environment RTC 167 should be changed to prevent a simple opinion of value gaining the presumption over and above a bona-fide sales price qualifying pursuant to the terms of RTC 110(b).

167. Presumption affecting burden of proof. (a) Notwithstanding any other provision of law to the contrary, and except as provided in subdivision (b) and section 110 subdivision (b) there shall be a rebuttable presumption affecting the burden of proof in favor of the taxpayer or assessee who has supplied all information as required by law to the assessor in any administrative hearing involving the imposition of a tax on an owner-occupied single-family dwelling, the assessment of an owner-occupied single-family dwelling pursuant to this division, or the appeal of an escape assessment.

(b) Notwithstanding subdivision (a), the rebuttable presumption described in that subdivision shall not apply in the case of an administrative hearing with respect to

39 Ibid.
40 Ibid.
the appeal of an escape assessment resulting from a taxpayer’s failure either to file
with the assessor supply all information as required by law to the assessor,
including, but not limited to, a change in ownership statement or a business
property statement, or to obtain a permit for new construction.41

27. Section 674(a) (Rich Benson)

COMMENTS:

Benson
RTC 674(a) Has created an unfair hardship for assessors, not equally applied to
other parties, in qualifying competent appraisal consultants. Not only does this
reveal and risk impeachment of an assessor's witness, it compromises due process
and fair play in an administrative hearing environment. It is possible to qualify a
competent assessor consultant by other reasonable means without imposing a
competitive bidding process upon the assessor.42


COMMENTS:

Benson
As a consumer protection measure, specific and standards should be adopted
to inform consumers about entering into contracts that may bind them to tax
agent payments when assessors have affected or continued an assessment
reduction independent of any actions by the tax agent. Further, consumers
should be informed about contracts binding for multiple years unless
constructively revoked by the consumer. In addressing these matters
additionally consider the contents of OTA Reg 30703.43

41 Ibid.
42 Ibid.
43 Ibid.