

Ginsborg, David

From: David Stottlemire <dstottlemire@inyocounty.us>
Sent: Monday, July 23, 2018 2:05 PM
To: George.Runner@boe.ca.gov
Cc: Ginsborg, David
Subject: BOE Agenda Items L1 & L2
Attachments: 7-20-18 ltr to SBE re Rule 305-1.docx; BOE LTA 81_20 re subpoena.pdf

Senator Runner,

First, I hope you are in good health and are planning to stay busy after you retire from the BOE. Your service to our great state has been appreciated by many of us.

Second, I am writing to ask you to vote NO on the agenda items L1 & L2 set to be discussed at the July 24, 2018 board meeting. Please see the attached documents for my reasons to vote no.

Cordially,

Dave

Dave Stottlemire
Assessor
County of Inyo
760-878-0309





STATE BOARD OF EQUALIZATION

020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 1799, SACRAMENTO, CALIFORNIA 95808)

(916) 445-4982

GEORGE R. REILLY
First District, San Francisco

ERNEST J. DRONENBURG, JR.
Second District, San Diego

WILLIAM M. BENNETT
Third District, San Rafael

RICHARD NEVINS
Fourth District, Pasadena

KENNETH CORY
Controller, Sacramento

DOUGLAS D. BELL
Executive Secretary

No. 81/20

January 30, 1980

TO COUNTY ASSESSORS:

ASSESSOR'S SUBPOENA POWER PURSUANT TO
SECTIONS 441 AND 454, REVENUE AND TAXATION
CODE UPHeld IN SAN LUIS OBISPO COUNTY
SUPERIOR COURT

On December 12, 1980, the Superior Court of the State of California in and for the county of San Luis Obispo ordered that the motion to quash subpoena duces tectum be and is denied; thus upholding the assessor's subpoena power pursuant to Sections 441 and 454, Revenue and Taxation Code.

The parties to this action are the assessor, requesting permission to inspect the books and records of a company holding a leasehold estate in a sand and gravel quarry located in San Luis Obispo County. Porter Enterprises is the owner (lessor) of the Land, and Alamo Rock Company is the operator (lessee) of the sand and gravel quarry.

In accordance with Revenue and Taxation Code, Section 441, the assessor requested that a state-prescribed "Mining and Quarrying Production Report" be filed with his office by the lessor and lessee.

The lessor responded with a partially completed statement and a note directing that further information would have to come from Alamo Rock Company.

The agent for Alamo Rock Company responded by returning a bank statement and a letter which stated, in relevant part:

"We will make available the requested information at
our principal place of business"

Subsequently, the assessor made repeated requests to inspect the books and records.

The company however, refused to produce, or permit the inspection of, any company books and records except for weighbills relating to material removed from subject quarry and depreciation schedules relating to equipment in use at subject quarry. The assessor believed that said company had in their possession records consisting of:

1. Income statements
2. Expense
3. Records of royalty payments
4. Lease
5. Production records, and
6. Inventory records

In so far as these records are material to determining whether the subject quarry property has been correctly valued for property tax purposes, and the proper appraisal method to value mining and quarrying properties is the income approach value, the information contained in the records described above is essential to the application of this method of valuation.

For reasons relating to the examination of the records cited above, the assessor, on November 26, 1980, issued his subpoena for the production of the records noted above. Said subpoena duces tectum was served on the agent for Alamo Rock on December 3, 1980. On December 5, 1980, said agent for Alamo Rock Company filed a motion to quash the subpoena duces tectum issued by the assessor. In his motion to quash the subpoena duces tectum, the agent cites the following points:

- A. He has given to the assessor the figures of the royalty payments on the subject property and the average production figures and the terms of the lease on the subject property.
- B. They do not have production or inventory records on the subject property.
- C. The income and expense records of Alamo Rock Co. reflect the business activity of said company and do not reflect information as to the value of the Porter property except for the royalty payments to property which have heretofore been furnished by the undersigned to said assessor.
- D. The company records of income and expenses are voluminous and contain confidential information.

The assessor therein filed his memorandum in opposition to Alamo Rock Company's motion to quash subpoena duces tectum citing the following points - (summarized).

The statutory scheme for the assessment of property gives the assessor the right to information and records regarding taxable property and authorizes the assessor to subpoena and examine business records relating to such taxable property. (Revenue and Taxation Code Sections 454, 441, 442 and 470.)

- I. Under the laws of the State of California, an assessor may issue a subpoena for the production of records and other information regarding taxable property.

- II. A court order is not prerequisite to the issuance of an assessor's subpoena.

The assessor is not required to first make application to the court before his issuance of a subpoena. (Revenue and Taxation Code Section 454.) If the person subpoenaed fails to provide the information requested in the subpoena, the assessor may:

- A. Based upon the information in the assessors' possession, estimate the value of the property and, based upon this estimate, promptly assess the property. (Section 501, Revenue and Taxation Code.)
 - B. Seek the assistance of the district attorney in the issuance of a misdemeanor complaint against the person refusing to provide the information. (Revenue and Taxation Code Section 462)
 - C. Make application to the superior court for an order compelling the disclosure of the information. (Revenue and Taxation Code Section 468.)
- III. The assessor has a right to obtain confidential information relevant to the assessment of taxable property.

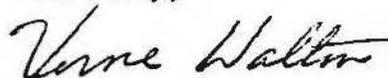
The assessment process requires the collection by the assessor of a great deal of information regarding all taxable property in the County. Of necessity, the main sources of such information are the business records of those who have interest in the taxable property.

For this reason, the law affords the assessor the right to examine records which, in other contexts, may be considered confidential and privileged.

Conclusion

The assessor is authorized under the provisions of the Revenue and Taxation Code to issue a subpoena to compel the production of records and other information pertaining to taxable property within the county of San Luis Obispo. The production of the records and documents described in the subpoena is necessary to provide information to the assessor so that he may properly appraise the subject property, including all interests therein.

Sincerely,



Verne Walton, Chief
Assessment Standards Division

AD:b,jb

AL-01-0358A



Marie A. LaSala, Esq.
Law Office of Marie A. LaSala
615 La Buena Tierra
Santa Barbara, CA 93111
LaSalaLawSB@gmail.com
(805) 259-8245

July 20, 2018

George Runner, SBE 1st District
Sacramento Office
500 Capitol Mall, Suite 1750
Sacramento, CA 95814
george.runner@boe.ca.gov

Fiona Ma, SBE 2nd District
Sacramento Office
1201 K Street, Suite 710
Sacramento CA 95814
fiona.ma@boe.ca.gov

Jerome Horton, SBE 3rd District
Sacramento Office
450 N Street, MIC: 72
Sacramento, CA 95814
jerome.horton@boe.ca.gov

Diane L. Harkey, SBE 4th District
Sacramento Office
400 Capitol Mall, Suite 2580
Sacramento CA 95814
diane.harkley@boe.ca.gov

Betty T. Yee, California State Controller
Sacramento Office
300 Capitol Mall, Suite 1850
Sacramento, California 95814
bettytyee@sco.ca.gov

Dean Kinnee, SBE Deputy Director
450 N Street, MIC: 73
Sacramento, CA 95814
dean.kinnee@boe.ca.gov

Re: Concerns Regarding Items L1 & L2 on SBE Agenda for July 24, 2018

Dear State Board of Equalization Board Members, Ms. Yee and Mr. Kinnee:

This letter addresses serious concerns regarding proposed changes to property tax regulations that recently appeared as Items L1 & L2 on the State Board of Equalization Agenda for July 24, 2018 (<http://www.boe.ca.gov/meetings/pubmeet18.htm>). Agenda items L1 & L2 are of great concern to California County Assessors, attorneys who represent Assessors and the public because the proposed regulations undermine the efficient operation of government and

interfere with the essential discovery tools granted to Assessors by the California Legislature over 100 years ago to properly identify and assess all taxable property in this state. The proposed regulations, apparently drafted by the group known as “CATA,” California Alliance of Taxpayer Advocates, will not only undermine an Assessor’s ability to collect information essential to the proper discharge of the Assessor’s statutory duties but may also facilitate the falsification and under-reporting of taxable property.

The proposed changes to Property Tax Rule 305.1 directly conflict with, void or significantly diminish very important provisions of the Revenue & Taxation Code enacted by the California Legislature that Assessors need to collect relevant information regarding taxable property as summarized below:

Cal. Statutes Directly Conflicted, Voided or Diminished	by Proposed Rule 305.1(e)
<p>California Revenue and Taxation Code § 441(d) which provides: “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 personal property located on premises he or she owns or controls. In this connection details of property acquisition transactions, construction and development 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.”</p>	<p>Proposed changes to Rule 305.1(e) directly conflict with R & T Code § 441(d) and drastically limit when and how an Assessor can request information or records that are essential to the proper discharge of the assessor’s statutory duties by preventing all requests 20 days prior to a hearing and requiring numerous other restrictions that conflict w/ the R & T Code.</p>
<p>California Revenue and Taxation Code § 442 which provides in part: “Every person owning, claiming, possessing, controlling or managing property shall furnish any required information or records to the assessor for examination at any time.”</p>	<p>Proposed changes to Rule 305.1(e) which attempt to limit an Assessor’s ability to examine and use property related information directly conflict with or void R & T Code § 442.</p>
<p>California Revenue and Taxation Code § 470(a) which provides: “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 or at a place mutually agreeable to the assessor and the person, 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.”</p>	<p>Proposed changes to Rule 305.1(e) which attempt to limit an Assessor’s ability to examine business records directly conflict with or void R & T Code § 470.</p>

<p>California Revenue and Taxation Code § 454 provides: "The assessor may subpoena and examine any person in relation to: (a) any statement furnished him, or (b) any statement disclosing property assessable in his county that may be stored with, possessed, or controlled by the person. He may do this in any county where the person may be found, but shall not require the person to appear before him in any other county than that in which the subpoena is served."</p>	<p>Proposed changes to Rule 305.1(e) which attempt to eliminate an Assessor's right to subpoena and examine persons regarding assessable property directly conflict with or void R & T Code § 454.</p>
<p>California Revenue and Taxation Code § 461 provides: "Every person who willfully states anything which he knows to be false in any oral or written statement, not under oath, required or authorized to be made as the basis of imposing any tax or assessment, is guilty of a misdemeanor and upon conviction thereof may be punished by imprisonment in the county jail for a period not exceeding six months or by a fine not exceeding one thousand dollars (\$1,000), or by both."</p>	<p>Proposed changes to Rule 305.1(e) which attempt to eliminate a Taxpayer's obligation to provide truthful responses to an Assessor's questions or a sworn statement regarding taxable property directly conflict with or void R & T Code § 461.</p>
<p>California Revenue and Taxation Code § 462(a) provides: "Every person is guilty of a misdemeanor who, after written request by the assessor, does any of the following: (a) Refuses to make available to the assessor any information which is required by subdivision (d) of Section 441 of this code."</p>	<p>Proposed changes to Rule 305.1(e) which limit when and how an Assessor can request information or records directly conflict with or void R & T Code § 462(a).</p>
<p>California Revenue & Taxation Code § 468 provides: "In addition to any other remedies described in this article, if any person fails to furnish any information or records required by this article upon request by the assessor, the assessor may apply to the superior court of the county for an order requiring the person who failed to furnish such information or records to appear and answer concerning his property before such court at a time and place specified in the order. The court may so order in any county where the person may be found, but shall not require the person to appear before the court in any other county than that in which the subpoena is served."</p>	<p>Proposed changes to Rule 305.1(e) conflict with and create ambiguity regarding the ability to seek enforcement of R & T 441(d) requests and R & T 454 Assessor in Superior Court as now permitted under R & T Code § 468.</p>
<p>California Revenue & Taxation Code § 451 provides: "Information held secret. All information requested by the assessor or furnished in the property statement shall be held secret by the assessor. The statement is not a public document and is not open to inspection, except as provided in Section 408." California Revenue & Taxation Code § 481 provides "Information held secret. All information requested by the assessor or the board pursuant to this article or furnished in the change in ownership statement shall be held secret by the assessor and the board. All information furnished in either the preliminary change in ownership statement or the change in ownership statement shall be held secret by those authorized by law to receive or have access to this information. These statements are not public documents and are not open to inspection, except as provided in Section 408."</p>	<p>Proposed changes to Rule 305.1(e) that reference R & T Code §§ 451 & 481 creates ambiguity in the law. Adding portions of R & T Code §§ 451 & 481 to this Rule is misleading, out of context and unnecessary.</p>

I. Proposed Changes to Rule 305.1 Are Improper Because They Directly Conflict with Revenue & Taxation Code Provisions that Grant Broad Powers to Assessors to Demand Property Information Necessary for the Proper Assessment of Taxable Property.

An assessor has the right to request and examine all property information held by or accessible to a property owner which he deems relevant and necessary for the proper assessment of taxable property. As explained in the leading case of *Roberts v. Gulf Oil*, the legislative intent behind Revenue & Taxation (R & T) Code §§ 441, 442 and 470 was to provide "local assessors with better tools for detecting falsification and under-reporting on property statements." (*Roberts v. Gulf Oil* (1983) 147 Cal.App.3d 770, 783-784.) R & T Code §§ 441, 442 and 470 give "broad grants of power to the Assessor to demand information."

As *Roberts* explains at page 784, these powers are very similar to those granted to the Treasury Department under section 7602(a)(1) of the Internal Revenue Code of 1954. (Id.) The similar language and purpose of R & T Code § 441(d) and 26 U.S.C. § 7602 is quite clear when the two statutes are compared side by side. This is why the *Robert's* court concluded that "[b]ecause the language contained in section 441, subdivision (d), is at least as broad as that contained in 26 United States Code section 7602(a)(1), the holdings in the federal cases are helpful." (*Roberts* at p. 784.)

Revenue & Taxation Code § 441	26 U. S. C § 7602
"(d) (1) 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 personal property located on premises he or she owns or controls. In this connection details of property acquisition transactions, construction and development 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."	"(a) Authority to Summon -- For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary or his delegate is authorized ... "(1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry."

Thus, in California, a taxpayer's obligation to make information and records relevant to the determination of value available for examination by the Assessor has always been viewed "in an expansive, not contractive, sense" because the full examination of such records is considered essential to the proper discharge of the assessor's duties. (*Roberts* at p. 786.) The obligation to provide information does not stop when a taxpayer files an Application for Changed Assessment. As explained in *State Bd. of Equalization v. Cenicerros* (1998) 63 Cal. App.4th 122, 132 "the Legislature anticipated assessors would use [R & T Code §] 441, subdivision (d), requests as a means of prehearing discovery.... we conclude that, after a taxpayer has applied for a reduction in its assessment, assessors may prepare for the hearing on that assessment appeal by demanding information from the taxpayer pursuant to subdivision (d) of section 441."

The proposed changes to Rule 305.1 directly conflict with an assessor's use of R & T Code § 441(d) requests to gather relevant information needed to prepare for hearings on assessment appeals, conflict with the Legislative intent for R & T Code § 441 and conflict with well established case law interpreting this important statute.

II. California Courts Have Consistently Upheld an Assessor's Right to Gather Information Relevant to the Assessment of Taxable Property

A request for property information may only be refused when the requested information concerns tax exempt property or there is no possibility that the requested information will lead to the disclosure of information relevant to the taxable value of property. (*Union Pacific RR v. State Board of Equalization* (1989) 49 Cal.3d 138 at 145).

When a taxpayer fails to comply with a 441(d) request, an assessor may compel a taxpayer's appearance and examination under oath pursuant to R & T Code § 454. This right was first codified over 100 years ago in 1873 in former Political Code § 3632. The power to subpoena was restated as R & T Code § 454 when the R & T Code was first enacted in 1939. As explained in *Weyse v. Crawford* (1890) 85 Cal. 196, 200:

"[T]he assessor ... has a right, under section 3632 [now R & T Code § 454], to subpoena the party making the statement, and also any other person whom he may suppose to have knowledge upon the subject, and examine him or them on oath, as witnesses are examined, touching any property which is assessable in his county; or in the absence of a statement, or an insufficient description of real property, he may cite the party to appear in the superior court for such examination, under section 3634 [now R & T Code § 468] where a summary hearing is guaranteed to him, and all proceedings will be had at the expense

of the taxpayer **necessary to secure the requisite information for making a proper assessment.**" [Emphasis added.]

Revenue and Taxation Code § 454 now provides:

"The assessor may subpoena and examine any person in relation to:

- (a) any statement furnished him, or
- (b) **any statement disclosing property assessable in his county** that may be stored with, possessed, or controlled by the person. He may do this in any county where the person may be found, but shall not require the person to appear before him in any other county than that in which the subpoena is served."
[Emphasis added.]

As summarized above, the proposed changes to Rule 305.1(e) interfere with an Assessor's right to issue subpoenas and collect essential information pursuant to R & T Code § 454 and directly conflict with, void or diminish almost every other tool Assessors have for detecting falsification or under-reporting of taxable property. Using a Property Tax Rule to frustrate the information gathering powers granted to Assessors by the California Legislature over 100 years ago is simply improper. Assessors cannot carry out their statutory duty to assess all taxable property at its full cash value if they are not able to efficiently gather relevant information.

We trust the State Board of Equalization will not approve changes to property tax regulations that conflict with numerous provisions of the Revenue & Taxation Code, the intent of the Legislature and well settled California case law.

Respectfully Submitted,
LAW OFFICE of MARIE A. LASALA



Marie A. LaSala, Esq.¹

cc: Henry D. Nanjo, SBE Chief Counsel
henry.nanjo.boe.ca.gov

¹ Marie A. LaSala is a retired Senior Deputy County Counsel who now serves as outside counsel to local government agencies specializing in the areas of property tax and environmental litigation.