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Sent Via E-mail Only

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RE: Assessor - Proposed Tax Rule Changes; California State Board of Equalization, July 24, 2018 Agenda item L1.

To the Honorable Members of the State Board of Equalization, the Hon. Betty T. Yee, State Contoller, and Executive Director Kinee:

I have been asked to provide this letter expressing serious concerns about the proposed Tax Rule changes at issue before the Board of Equalization as Agenda Item L1 on your July 24, 2018 Agenda. The proposed changes to Tax Rules 302, 305, 305.1, 305.2 and 323 will have a serious negative impact on the ability of Assessors to fairly assess complex commercial real and personal property. We have concerns that certain of the proposed rule revisions violate existing state statutes. In addition, from my experience, the rules appear addressed to problems which are largely non-existent and tip the balance unfairly in the favor of a taxpayer appellant particularly when complex commercial propery is involved in the appeal.

Over the past 15 years, I have represented Assessor's offfices in San Joaquin, Yolo and now Fresno Counties. Assessor staff must provide an assessment of every type of property that exists within the County borders which in the case of commercial assessment can include buildings, assembly lines, specialized racks and machinery, freezers, coolers, forges, oil wells, vehicles and aircraft. Many of these types of property are specific to certain industries and require a great deal of specialized expertise to value properly. Often the real estate transactions involved in these commercial appeals are very complex, with with the details of the transactions being critical to the proper description of the appraisal unit or other factors related to the accurate and lawful appraisal of the property.

In first making an appraisal, an Assessor's appraisal staff has only available to it public information, certain limited information provided by the taxpayer and market data which the Assessor's office has collected. All the specific details on a particular taxpayer's transaction, industry practices and condition of property are within the control of the taxpayer. When a taxpayer decides to appeal an assessment, particularly with respect to a very complex industry or real estate transaction, the Assessor is at a distinct disadvantage at the beginning of this process since the applicant is in possession of the most relevant and recent data. In many if not most cases, a taxpayer with a legitimate claim to a lower assessment will voluntarily share as much of this data with the Assessor in advance of the formal Assessment Appeals Board hearing process in an effort to reach a compromise resolution. But in other cases, taxpayers resist disclosing information pertinent to the specifics of their appeal, which information is only available from the taxpayer due to the complexity of the industry or the particularities of the business or transaction. The general impact of the proposed rule revisions will be to degrade the ability of the Assessor staff to obtain relevant information regarding the appeal issues raised by the taxpayer.

Besides the increasing the general difficulty of obtaining relevant and necessary information for Assessor staff and for an Assessment Appeals Board, we have the following specific concerns regarding the proposed rule revisions:

1. The proposed rule changes have not come through the appropriate rulemaking protocol. See http://www.boe.ca.gov/regs/rulemaking.htm.

2. Limiting section 441(d) requests within 20 days of hearing conflicts with state statute. Revenue and Taxation Code section 441, subdivision (d), provides that the assessor may request information or records "at any time."

3. Confidentiality of information produced in response to a section 441(d) request is required by Revenue and Taxation Code section 408, not sections 451 (relating to business property statements) or 481 (relating to change in ownership reporting), and assessors already follow that rule. Therefore additional rule changes are unnecessary.

4. Limiting the ability of assessors to inform taxpayers regarding the potential consequences for failing to comply with a section 441(d) request actualy results in less information being provided to the taxpayer.

5. Limiting the ability of assessment appeals boards to postpone or continue hearings due to the applicant's failure to comply with a section 441(d) request improperly restricts the board's discretion to continue the hearing on a matter and gives applicants an incentive to withhold relevant information from assessors. Revenue and Taxation Code section 1604, subdivision (c), provides that the time limit for holding a hearing "shall not apply to applications for reductions in assessments of property where the applicant has failed to provide full and complete information as required by law," which includes section 441(d) requests by the assessor. The proposed revisions would appear to conflict with the statute in this regard.

6. An assessor's request for information under section 441(d) is often unilaterally construed by tax agents as allowing the assessor to take a deposition, issue interrogatories, or seek requests for admissions. In my experience I have never seen any of these tactics utilized in the counties in which I have represented the Assessor. The proposed rule revision also conflicts with the statutory power of the assessor to issue a subpena under Revenue and Taxation Code section 454.

7. Limiting continuances requested by the assessor to no more than 10 days imposes a burden on assessment appeals boards that otherwise would not meet within that timeframe. Also, there is no clear standard for what constitutes "undue hardship" on the assessor to justify a longer continuance.

8. These proposed changes are inconsistent with the holding of Roberts v. Gulf Oil Corp. (1983) 147 Cal.App.3d 770, at 783–784, that "the language contained in section 441, subdivision (d) [of the Revenue and Taxation Code], is at least as broad as that contained in 26 United States Code section 7602(a)(1)," which "Provides that Treasury Department employees may, for the purpose of, among other things, determining the liability of any person for any internal revenue tax, 'examine any books, papers, records, or other data which may be relevant or material to such inquiry.'"

9. Finally, if the Board is disposed to include language clarifying that the mere failure to comply with a section 441(d) request may not be the **sole** grounds for a denial of an appeal, the Board should include language that makes it clear that the failure to produce adequate or requested evidence at an assessment hearing may be taken into account by an AAB.

If you have any questions regarding the above, please feel free to contact me.

Very truly yours,

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By Daniel C. Cederborg,
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