



**CALIFORNIA ASSOCIATION OF  
CLERKS AND ELECTION OFFICIALS**

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July 18, 2018

**Via Email**

Diane L. Harkey, Chairwoman  
State Board of Equalization  
450 N Street  
Sacramento, CA 95814

**July 24, 2018 Board of Equalization Meeting – Item L1**

Dear Ms. Harkey:

Attached please find proposals to amend the Property Tax Rules and Assessment Appeal Manual, submitted by members of the BOE Rules Work Group of the California Association of Clerks and Election Officials (CACEO). We are submitting these proposals for Item L1 on the July 24, 2018 Board of Equalization meeting.

We would like to take this opportunity to object to Item L1, in which it appears that the California Alliance of Taxpayer Advocates (CATA) is attempting to short-circuit the currently ongoing Interested Parties Process (IPP) with regard to CATA's earlier complaints about certain Assessor practices and aspects of the county assessment appeal process. The Interested Parties Process is functioning well, and the second meeting of the parties is scheduled for August 16, 2018. We urge your Board to instruct your staff and the interested parties to continue working on the issues involved in accordance with proper procedure.

However, should your Board decide to interrupt the existing IPP, we would like to ensure that our attached proposed changes to the Property Tax Rules and the Assessment Appeals Manual, which were originally submitted for discussion at the April 25, 2018 Interested Parties Meeting, be considered, as well as those now submitted by CATA. Certainly, Assessors should also be given the opportunity to submit their own set of proposals.

We believe our attached proposals address some of the concerns raised by CATA, while preserving the county board's proper authority under the law, and avoiding unnecessary delays and postponements in the assessment appeal process.

Below is a summary of our underlying reasons for these proposals:

- **Amendments to Property Tax Rule 305**

We agree with CATA that appeal applications cannot be denied simply on the basis that an agent's authorization is not signed by a taxpayer in the same calendar year in which the application was filed. Our proposal attempts to clarify what the law and Rule permit with regard to agency authorization.

We understand the confusion about filing agency authorization with the county board when an agent files an application on behalf of the taxpayer electronically. Some counties are simply unable to provide a means to file the agent's authorization electronically, due largely to lack of funding, as well as for technological reasons. Our proposal attempts to at least clarify for taxpayers and agents what they need to do to file their authorization form when filing an application electronically. The amendment is also worded in such a way as to recognize different methods of electronically filing an appeal, depending upon the type of system used by the Clerk.

- **Amendments to Assessment Appeals Manual pages 24-25**

(See above comments for Tax Rule 305 with regard to the Manual's pages dealing with applications filed by agents.)

- **Amendment to Property Tax Rule 323(c)**

We agree with CATA that a county board should not routinely continue a hearing, either indefinitely or even to a future date, upon the party with the burden of proof putting on its case-in-chief. We believe that the hearing should proceed immediately, unless there is good cause to do otherwise. Our proposal makes clear to a board or hearing officer that every reasonable effort must be made to avoid delay. However, our proposal also would appropriately preserve the board's legal authority to use its discretion in considering a request for continuance.

- **Amendments to Assessment Appeals Manual pages 97-98**

(Our proposal makes relevant changes to the Manual that are consistent with our proposed amendment to Rule 323(c). See comments above.)

- **Amendments to the Assessment Appeals Manual pages 39-40 (Regarding Property Tax Rule 305.1)**

We agree with CATA that Revenue and Taxation Code Section 441(d) requests should be made in writing whenever possible. The same should hold true for taxpayer requests for information from the Assessor under Section 408. However, we strongly object to setting a date certain in advance of the hearing for such requests to be presented, primarily for the reason that a firm date inevitably would cause additional, sometimes unnecessary, postponements and delays, which many counties simply cannot afford. Further, it preserves the board's discretion to grant a party a postponement where appropriate.

We appreciate the opportunity to provide you and your staff with our proposed changes to the Property Tax Rules and Assessment Appeals Manual. Should you or your staff have any questions, please call me at 415.554.6777 or John McKibben at 213.200.9610. Thank you.

Sincerely,



Dawn P. Duran, Member  
CACEO Board of Equalization Rules Work Group

**California Association of Clerks and Election Officials**

**Proposed Amendment to Rule 305(a)**

**RULE 305. APPLICATION.**

(a) ELIGIBLE PERSONS.

(1) An application is filed by a person affected or the person's agent, or a relative mentioned in regulation 317 of this division. If the application is made by an agent, other than an authorized attorney licensed to practice in this state who has been retained and authorized by the applicant to file the application, written authorization to so act must be filed with the application. For purposes of signing an application on behalf of an applicant, an agent shall be deemed to have been duly authorized if the applicant's written agent authorization is on the application or attached to each application at the time it is filed with the board. The attached authorization shall include the following:

(A) The date the authorization statement is executed;

(B) A statement to the effect that the agent is authorized to sign and file applications in the specific calendar year in which the application is filed **or years indicated in the agent's authorization; an agent's authorization may not cover more than four calendar years in the future, beginning with the year in which the authorization was signed.**

(C) The specific parcel(s) or assessment(s) covered by the authorization, or a statement that the agent is authorized to represent the applicant on all parcels and assessments located in the specific county;

(D) The name, address, and telephone number of the specific agent who is authorized to represent the applicant;

(E) The applicant's signature and title; and

(F) A statement that the agent will provide the applicant with a copy of the application.

(2) **For online filing where a county's electronic application system does not permit filing or uploading an agent's authorization form with an image of a signature, or other electronic method acceptable to the county board as adopted**

**CACEO Amendment to Rule 305(a) – cont.**

**in its local rules, the paper form shall be submitted to the board as soon as possible in order to perfect the application.**

~~(2)~~ **(3)** If a photocopy of the original authorization is attached to the application, the agent shall be prepared to submit an original signed authorization if requested by the board. The application form shall show that the agent's authorization was attached to the application. An agent must have authorization to file an application at the time the application is filed; retroactive authorizations are not permitted.

~~(3)~~ **(4)** If the applicant is a corporation, limited partnership, or a limited liability company, the agent authorization must be signed by an officer or authorized employee of the business entity.

~~(4)~~ **(5)** No application shall be rejected as a duplicate application by the clerk unless it qualifies as a duplicate application within the meaning specified in section 1603.5 of the Revenue and Taxation Code.

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## California Association of Clerks and Election Officials

### Proposed Amendment to *Assessment Appeals Manual*, Pages 24-25

#### APPLICATION BY AGENT

If an assessment appeal application is filed by an agent -- other than a California-licensed attorney authorized by the applicant to file the application -- written authorization of agency, signed by the person affected, must be included on or with the application form (see also section Exclusions to Who May File following in this chapter). [?]

The ~~Application for Changed Assessment~~ **Application for Assessment Appeal** form prescribed by the State Board of Equalization has an area designated for the agent's authorization. If an agent (other than a California-licensed attorney) is filing an application on behalf of an eligible applicant, this section of the form must be completed and signed by the applicant, or an agent authorization may be attached to the application, before the application may be accepted as complete and valid by the clerk of the board. If the applicant elects to attach an agent authorization to the application, the attached authorization will include the following:

- The date the authorization statement is executed;
- A statement to the effect that the agent is authorized to sign and file applications in the specific calendar year in which the application is filed **or in the years indicated in the agent's authorization; an agent's authorization may not cover more than four calendar years in the future, beginning with the year in which the authorization is signed;**
- The specific parcel(s) or assessment(s) covered by the authorization, or a statement that the agent is authorized to represent the applicant on all parcels and assessments located in the specific county;
- The name, address, and telephone number of the specific agent who is authorized to represent the applicant; the agent may be either a named individual or a firm or agency representing the applicant;
- The applicant's signature and title;
- The statement that the agent will provide the applicant with a copy of the application.

**For online filing where a county's electronic application system does not permit filing or uploading an agent's authorization form with an image of a signature, or other electronic method acceptable to the county board as adopted in its local rules, the paper form shall be submitted to the board as soon as possible in order to perfect the application.**

If a photocopy of the original authorization is attached to the application, the appeals board may require the agent to submit an original signed authorization. An agent must have authorization to file an application at the time the application is filed; retroactive authorizations are not permitted.

The applicant should promptly notify the clerk of the board in writing when a new agent has been substituted for the current agent.

4/19/18

## California Association of Clerks and Election Officials

### Proposed Amendment to Rule 323(c)

#### Rule 323. POSTPONEMENTS AND CONTINUANCES

(c) At the hearing, the board or a hearing officer may continue a hearing to a later date. **The board or hearing officer must make every reasonable effort to maintain continuous hearings given the reasonable needs of the county board of equalization or assessment appeals board or county hearing officer and the parties to the proceedings. Before granting such a request, the board or hearing officer must make sure that there is good cause sufficient to justify the continuance.** If the applicant requests a continuance within 90 days of the expiration of the two-year period specified in section 1604 of the Revenue and Taxation Code, the board may require a written extension signed by the applicant extending and tolling the two-year period indefinitely subject to termination of the agreement by 120 days written notice by the applicant. The clerk shall inform the applicant or the applicant's agent and the assessor in writing of the time and place of the continued hearing not less than 10 days prior to the new hearing date, unless the parties agree in writing or on the record to waive written notice.

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## California Association of Clerks and Election Officials

### Proposed Amendments to *Assessment Appeals Manual* Pages 97-98

#### CONTINUANCE

The board may continue a hearing to a later date. If the hearing is continued, the clerk will inform the applicant (or agent) and the assessor in writing of the time and place of the continued hearing not less than 10 days prior to the new hearing date, unless the parties agree in writing or on the records to waive written notice.

There are two primary reasons for continuing a hearing:

- New information introduced at the hearing -- If new material relating to the information received from the other party during an exchange of information is introduced, the other party may request a continuance for a reasonable period of time.
- Amendment of an application – If the appeals board grants a request to amend an application, upon request of the assessor, the hearing on the matter will be continued by the board for no less than 45 days, unless the parties mutually agree to a different period of time.

If the applicant requests a continuance within 90 days of the expiration of the two-year limitation period provided in section 1604, the board may require a written extension signed by the applicant extending and tolling the two-year period indefinitely. The applicant has the right to terminate the extension agreement upon 120 days written notice.

**The board or hearing officer must make every reasonable effort to maintain continuous hearings given the reasonable needs of the county board of equalization or assessment appeals board or county hearing officer and the parties to the proceedings. Before granting such a request, the board or hearing officer must make sure that there is good cause sufficient to justify the continuance.**

#### POSTPONEMENTS

Rule 323, subsection (a), provides in part:

The applicant and/or the assessor shall be allowed one postponement as a matter of right, the request for which must be made not later than 21 days before the hearing is scheduled to commence

**CACEO Amendment to *Manual* pp. 97 and 98 (Agenda Item 17) – cont.**

If the applicant requests a postponement of a scheduled hearing within 120 days of the expiration of the two-year limitation period provided in section 1604, the postponement will be contingent upon the applicant agreeing to extend and toll indefinitely the two-year period. The applicant has the right to terminate the extension agreement with 120 days written notice.

The assessor is not entitled to a postponement as a matter of right within 120 days of the expiration of the two-year limitation period. However, at the discretion of the board, such a request may be granted.

In addition, if the applicant or the applicant's agent **are is** unavailable to attend a properly noticed hearing, the applicant or the applicant's agent may request, prior to the hearing date, a postponement of the hearing with a showing of good cause to the board. **A board or hearing officer must use good judgement in considering requests for postponement beyond those that are a matter of right, in order to ensure that unnecessary postponements are not granted given the reasonable needs of the county board of equalization or assessment appeals board or county hearing officer and the parties to the proceedings.**

Any information exchange dates established pursuant to Rule 305.1 remain in effect based on the originally scheduled hearing date, notwithstanding the hearing postponement, except when a hearing is postponed due to the failure of a party to respond to an exchange of information.

A board of supervisors may delegate decisions concerning postponement to the clerk in accordance with locally adopted rules.

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## California Association of Clerks and Election Officials

### Proposed Amendments to *Assessment Appeals Manual* Pages 39 and 40

#### (Regarding Property Tax Rule 305.1)

### **SECTION 408, INSPECTION OF ASSESSOR'S RECORDS**

Section 408 allows an assessee, or a representative of the assessee, to inspect records at the assessor's office regarding the assessment of his or her property, as well as market information regarding any comparable properties that the assessor used in the valuation of the assessee's property. The assessee or representative may inspect or copy all information, documents, and records, including auditors' narrations and work papers, whether or not required to be kept or prepared by the assessor, relating to the appraisal and the assessment of the assessee's property, and any applicable penalties and interest. The assessor is prohibited by law from disclosing market information that relates to the business affairs of another taxpayer unless the assessor is provided with a written waiver from that taxpayer allowing the assessor to disclose the information.

Information obtainable under section 408 is relevant to a determination of value and may be introduced at an appeals hearing. Assessors are expected to comply with an assessee's reasonable request pursuant to that provision. **If an application for assessment appeal has been filed on the property in question, the taxpayer, as applicant, should make the request to the assessor in writing and the written request should be delivered to the assessor as far ahead of a scheduled assessment appeal hearing as possible in order to allow the assessor sufficient time to respond and avoid a postponement of the hearing. A written request may include emailed requests and requests transmitted via facsimile.**

If an assessor fails to permit the inspection or copying of materials or information pursuant to a section 408 request, and the assessor introduces any requested materials or information at an appeals hearing, the applicant or representative may request and shall be granted a continuance for a reasonable period of time. The continuance shall extend the two-year period specified in section 1604 for a period of time equal to the period of continuance.

A taxpayer has a right to inspect records under section 408 whether or not an appeal has been formally filed.

### **SECTION 441, INFORMATION FROM TAXPAYER'S RECORDS**

Section 441, subdivision (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

**CACEO Amendment to *Manual* pp. 39 & 40 (Regarding Tax Rule 305.1) – cont.**

assessor may obtain details of property acquisition transactions, construction and development costs, rental income, and other data relevant to the determination of an estimate of value.

***Requests for information under this code section should be made in writing and the written request should be delivered to the taxpayer as far ahead of a scheduled assessment appeal hearing as possible in order to allow the taxpayer sufficient time to respond and avoid a postponement of the hearing. A written request may include emailed requests and requests transmitted via facsimile.***

Information obtainable under subdivision (d) of section 441 is relevant to a determination of value and may be introduced at an appeals board hearing. Taxpayers are expected to comply with an assessor's reasonable requests pursuant to that provision; thus, both the assessor and the taxpayer should be able to make use of and present the same information at hearings. In the event that a taxpayer withholds requested information, subdivision (h) of section 441 provides:

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 continuance shall extend the two-year period specified in subdivision (c) of Section 1604 for a period of time equal to the period of the continuance.

Section 441, subdivision (d), applies regardless of whether or not an appeal has been filed.

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