

Office of the Assessor
County of Santa Clara



County Government Center, East Wing
70 West Hedding Street, 5th Floor
San Jose, CA 95110-1771
(408) 299-5500 www.sccassessor.org
Assessor@asr.sccgov.org

Lawrence E. Stone, Assessor

July 23, 2018

*Sent via email to BOE Member George Runner,
george.runner@boe.ca.gov*

The Honorable George Runner, Chair
State Board of Equalization
240 N Street, Sacramento, CA 94814

**RE: July 24, 2018 Hearing, BOE Agenda Item L1 – Ms. Ma
OPPOSE**

Dear Chairman Runner:

In my capacity as Santa Clara County Assessor, I write in strong opposition to Item L1 on the Board of Equalization's July 24 agenda.

I was surprised and disappointed to discover Board Member Fiona Ma's imprudent decision to circumvent the existing Interested Parties Process (IPP) created by the BOE by proposing, on very short notice (7 days), new regulations challenging California Assessors unequivocal authority to request and receive information and data from taxpayers, essential to accurately assessing real and business property. It should be noted that the IPP was originally requested by the California Alliance of Taxpayer Advocates (CATA).

Two years ago, the California Assessors' Association created an Ad-Hoc committee to work with CATA to address concerns regarding certain practices of assessors and assessment appeals boards. While most of CATA's complaints were contrary with existing law or simply invalid, the CAA took CATA's concerns seriously and made changes to the discovery process. Today, CATA representatives continue to make the same claims, refusing to acknowledge the corrections the CAA has adopted. Ms. Ma's assertion that "Recent information has shown that several counties throughout the State are postponing, delaying, or in rare instances denying appeal applications," is, in a word, false!

During the IPP, CATA has repeatedly presented fabricated and misleading information to support their invalid claims, a blatant effort to deceive BOE staff administering the IPP meetings.

These are the same tactics a few CATA agents use at local assessment appeals board hearings. After dozens of meetings with CATA leaders, it has become patently obvious to assessors that CATA has no genuine interest in providing information that both assessors and ultimately AAB's are legally entitled to receive, and are essential to rendering accurate assessments of property held by CATA clients. Instead, their purpose is to convince the BOE to change the rules restricting assessors' ability to discover required information. It has become a "cat and mouse" game intended to tip the balance against what should be the desired outcome of all parties "equalization."

In an attempt to limit transparency and avoid timely disclosure, Ms. Ma's proposed regulations were agendized just seven days before Tuesday's scheduled meeting, without any contact or engagement with the CAA or individual assessors, thus ignoring long-standing BOE policy. The primary problem with CATA's proposed regulations are that most of the substantive components are inconsistent with existing law. The following are just a few examples of the obvious conflicts with state statutes:

Proposed Regulation:	Law:
305.1(e) An assessor's request for information pursuant to section 441 of the Revenue and Taxation Code shall be made in writing. <u>Limited to information relating to the property at issue and be issued no less than 20 days prior to a hearing before a county board of equalization or assessment appeals board.</u>	441(d) (1) <u>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.</u>
305.1(e) <u>Information supplied by one taxpayer shall not be used by the assessor in an assessment appeals board hearing of another taxpayer.</u>	1609.4 <u>The assessor may introduce new evidence of full cash value of a parcel of property at the hearing and may also introduce information obtained pursuant to Section 441.</u> 408 (e)(3) Except as provided in Section 408.1, an assessee, or his or her designated representative, may not be permitted to inspect or copy information and records that also relate to the property or business affairs of another, <u>unless that disclosure is ordered by a competent court in a proceeding initiated by a taxpayer seeking to challenge the legality of the assessment of his or her property.</u>

<p><u>305.1(e) The issuance of an assessor's request for information shall not entitle the assessor to take a deposition,</u></p>	<p>468. If any person fails to furnish any information or records required by this article upon request by the assessor, <u>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</u> at a time and place specified in the order.</p>
<p><u>305 2(b) At a prehearing conference, the board shall not deny an application solely on the ground that the applicant has not responded to a request for information made under section 441 of the Revenue and Taxation Code. The board shall not continue a prehearing conference to a later date in order to compel an applicant to respond to a request for information under section 441.</u></p>	<p>1604(C)(2) (2) Further, <u>this subdivision shall not apply to applications for reductions in assessments of property where the applicant has failed to provide full and complete information</u> as required by law or where litigation is pending directly relating to the issues involved in the application.</p>
<p><u>323(c) The Board shall not postpone the hearing on an application solely on the ground that the applicant has not responded to a request for information made under section 441 of the Revenue and Taxation Code.</u></p>	<p>See above 1604(C)(2)</p>

The attached, separate Memorandums from Marcy Berkman and Robert Nakamae with the Santa Clara County Counsel address the most egregious legal deficiencies and incongruities with CATA's arguments.

Given the serious nature of this conflict, if the BOE proceeds with issuing regulations proposed by CATA and promulgated by Ms. Ma, I am compelled to advise you that the CAA will file a Section 538 legal action. I am confident we will prevail. This type of conduct and behavior is precisely the reason the State Legislature and the Governor stripped the BOE of most of its authority.

Sincerely,



Lawrence E. Stone
 Assessor

LES:lcc

To: Honorable Runner
RE: OPPOSE July 24, 2018 BOE Meeting, Item L1
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cc: Members, California State Board of Equalization
Dean R. Kinnee, Executive Director, California State Board of Equalization
Joann Richmond-Smith, California State Board of Equalization Proceedings
Henry D. Nanjo, SBE Chief Counsel
Chuck Leonhardt, CAA President, Assessor, Plumas County

OFFICE OF THE COUNTY COUNSEL
COUNTY OF SANTA CLARA

James R. Williams
COUNTY COUNSEL

County Government Center
70 West Hedding Street
East Wing, 9th Floor
San José, California 95110-1770



Greta S. Hansen
CHIEF ASSISTANT COUNTY COUNSEL


Winifred Botha
Robert M. Coelho
Steve Mitra
Douglas M. Press

ASSISTANT COUNTY COUNSEL

(408) 299-5900
(408) 292-7240 (FAX)

**CONFIDENTIAL MEMORANDUM
ATTORNEY-CLIENT PRIVILEGED COMMUNICATION**

TO: Hon. Larry Stone, Assessor

FROM: Robert A. Nakamae, Deputy County Counsel 

RE: July 24, 2018 State Board of Equalization Meeting, Agenda #L1

DATE: July 20, 2018

At your request, I reviewed agenda item L1 on the State Board of Equalization (“BOE”) meeting agenda for July 24, 2018. You asked me to identify areas where the proposed amendments potentially contradict existing state law. In the interest of time, I will provide you with a brief outline of my opinions.

1. Rule 305.1(e)
 - a. *“limited to the property at issue”*. Revenue and Taxation Code section 441(d) allows the assessor to request information from an assessee “regarding his or her property”. It does not limit requests to property subject to assessment appeals hearings.
 - b. *“no less than 20 days prior to a hearing”*. Revenue and Taxation Code section 441(d) allows the assessor to request information from an assessee “At any time...” It does not limit requests to assessment appeals hearings.
 - c. *“recite R&T code section or sections authorizing”*. Revenue and Taxation Code section 441(d) is the authorizing section and it does not require the assessor to cite it in requests.
 - d. *“not state...criminal penalties”*. Revenue and Taxation Code section 441(d) does not prohibit assessors from mentioning the possibility of criminal penalties, which are authorized by Revenue and Taxation Code section 462(a).
 - e. *“must be held secret”*. Revenue and Taxation Code section 408(b) and (c) permit sharing of information with certain other agencies. Furthermore, information presented at public assessment appeals hearings are public records.
 - f. *“Information supplied by one taxpayer...”* Revenue and Taxation Code section 408(e)(3) allows third parties to seek a court order disclosing records.

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2. Rule 305.2(b) and Rule 323(c)
 - a. Please contact our Assessment Appeals Board and counsel.

Please note that my comments are limited to proposed changes that potentially contradict existing sections of the Revenue and Taxation Code. The proposed changes present other issues and are problematic for assessors and their ability to carry out their Constitutional duty to equalize the value of all property on the local assessment roll pursuant to Article XIII, section 16 of the California Constitution.

If you have questions, please contact me.

RAN:abe

**OFFICE OF THE COUNTY COUNSEL
COUNTY OF SANTA CLARA**

County Government Center
70 West Hedding Street
East Wing, 9th Floor
San José, California 95110-1770

(408) 299-5900
(408) 292-7240 (FAX)



James R. Williams
COUNTY COUNSEL

Greta S. Hansen
CHIEF ASSISTANT COUNTY COUNSEL

Winifred Botha
Robert M. Coelho
Steve Mitra
Douglas M. Press
ASSISTANT COUNTY COUNSEL

May 29, 2018

Via E-Mail Only

Larry Stone
Assessor
Office of the Assessor
70 West Hedding Street, 5th Floor, East Wing
San Jose, CA 95110

Re: SBE – Interested Parties Process re AAB Hearing Procedures
Hearing Schedules/441(d) – Compliance Status
Santa Clara County Assessment Appeals Board Local Rule 305.2 -1

Dear Mr. Stone:

I am the counsel for the Santa Clara County Assessment Appeal Board. I write regarding the State Board of Equalization Interested Parties process regarding Assessment Appeals Procedures.

More specifically, I write regarding a concern expressed by California Alliance of Taxpayer Advocates (CATA) regarding Santa Clara County Assessment Appeal Board (Santa Clara County AAB) Local Rule 305.2-1 and CATA's position (which is contrary to the express provisions of the Revenue and Taxation Code) that it is not necessary for Applicants to try to provide all information required by law in response to the Assessor's 441(d) requests before being scheduled for a value hearing.

As further detailed below, it has always been the intent of California's Legislature, and the Revenue and Taxation Code it enacted, that Applicants fully comply with their obligations to provide all information required by law, including information responsive to RTC 441(d) requests, to the Assessor before having their AAB Applications heard and decided on their merits.

Over the many years that I have served as counsel for the Santa Clara County AAB, it has been my experience that utilizing the AAB's prehearing conference procedures, including the procedures for cases where there are issues pertaining to 441(d) compliance, ensures a smooth process for determining when the Applicant anticipates being able to comply with the Assessor's 441(d) requests and scheduling a value hearing on the merits for a date thereafter that is mutually convenient for the parties.

If you wish to do so, please feel free to share this letter explaining the statutory framework and Santa Clara County AAB's Local Rule 305.2-1(b) with the interested parties participating in the State Board of Equalization interested parties process.

A. STATUTORY FRAMEWORK

1. California Constitution. Article XII Section 16 of the Constitution specifically directs county boards of supervisors to adopt rules of notice and procedure to facilitate the work of local assessment appeals boards and to ensure uniformity in the processing of applications before that local assessment appeal board.

2. Property Tax Rule 305.2 Expressly Authorizes Prehearing Conferences. Property Tax Rule 305.2(a) provides that the county board of supervisors may establish prehearing conferences and rules of procedure for such prehearing conferences. *Inter alia*, pursuant to Rule 305.2(a), prehearing conferences can be used to determine the status of information requests and to schedule a date for the assessment appeals board to consider evidence on the merits of the Application.

3. Revenue and Taxation Code Section 441(d). Revenue and Taxation Code section 441(d) requires taxpayers to provide the Assessor with information and records regarding their property. Typically, the Assessor sends a 441(d) letter requesting certain information regarding the property that is the subject of the assessment appeal application.

4. Revenue and Taxation Code Section 1604. Revenue and Taxation Code section 1604(c)(2) governs the scheduling of AAB hearings in situations where the Applicant has not fully complied with the Assessor's 441(d) request for information.

(a) Revenue and Taxation Code Section 1604(c)(2) – The Two-Year Statute Does Not Apply Where Applicant Has Not Provided Full and Complete Information as Required by Law.

Revenue and Taxation Code section 1604(c)(2) expressly mandates that the provisions of the 2-year statute "shall not apply to applications for reduction in assessments of property where the applicant has failed to provide full and complete information as required by law..." (Emphasis added.)

Section 1604(e), regarding notifying an Applicant that its opinion of value will be entered where the AAB has decided not to hold a hearing on the Application within two years, contains express language stating that Section 1604(e) does not apply where 1604(c)(2) applies.

b. Legislative History of RTC 1604(c)(2).

On March 5, 1981, prospective language providing a deadline for hearing AAB applications was first introduced via an Assembly Bill.

On May 5, 1981, that Assembly Bill was amended to provide that, with limited exceptions, if the AAB fails to hear evidence within two years of the timely filing of an application, then the Applicant's opinion of value as reflected on the application would be the basis upon which taxes were levied. That same amendment added language mandating that "this subdivision shall not apply to applications for reduction in assessments of property where the taxpayer has failed to provide full and complete information as required by law."

The Senate Committee analysis explained that the Assembly Bill, as amended, provides that if the AAB fails to hear evidence on an application within two years of filing, the Applicant's opinion of market value shall prevail unless the taxpayer has failed to provide full and complete information as required by law. The same understanding of that language is reflected in the Senate Democratic Caucus Summary of the Assembly Bill and in the September 4, 1981 Concurrence in Senate Amendments – Legislative Counsel's Digest. The Senate then amended the bill to add an additional exception to the two-year statute for controlling pending litigation. And the same understanding is reflected in the Legislative Implementation Report.

c. State Board of Equalization LTA re RTC 1604(c)

On March 17, 1982, the State Board of Equalization issued LTA 82/84 explaining that the Legislature had added RTC Section 1604(c) to provide that the taxpayer's opinion of value shall prevail if the appeal is not heard within two years, with certain exceptions: (1) where the taxpayer and AAB mutually agreed in writing to extend the time; (2) where the taxpayer failed to provide full and complete information as required by law; and (3) where litigation is pending that directly relates to the issues involved in the application.

5. Property Tax Rule 309. Like Revenue and Taxation Code Section 1604(c)(2), Property Tax Rule 309(c)(3) expressly provides that where an Applicant is not fully compliant with Section 441(d), the two-year rule that would otherwise require the Applicant's opinion of value to be determined to be the basis for the property taxes does not apply. Property Tax Rule 309(e) adds, *inter alia*, that if a hearing will not be held within two years because of the Applicant's 441(d) non-compliance, the Applicant shall be so notified.

6. Revenue and Taxation Code Section 462 – Criminal Misdemeanor.

Not only does the Revenue and Taxation Code anticipate that an assessment appeal application will not be set for hearing within two years if the Applicant has not fully complied with Section 441(d), but it also provides criminal penalties for Applicants who do not comply with the Assessor's 441(d) requests. Revenue and Taxation Code 462 provides that every person is guilty of a misdemeanor who, after written request by the Assessor, refuses to make available any information that is required by Section 441(d). Section 462 imposes, upon conviction of such an offense, up to six months in the County jail or a fine or both. It further imposes additional fines on non-compliant corporations.

While Section 462 provides a means for the Assessor to resort to criminal law and criminal penalties to enforce compliance with Section 441(d), I have observed that the Santa Clara County AAB has been reticent to urge the Assessor to resort to using criminal law as a cudgel to enforce Section 441(d) compliance. This is especially true since the use of Local Rule 305.2-1(b) has proven to provide a smooth, efficient, and amicable means to schedule a timeline for the Applicant to provide the information requested by the Assessor and for the parties and the Santa Clara AAB to schedule the value hearing for a mutually agreeable date thereafter.

Moreover, regular resort to the criminal court via Section 462 in every case of 441(d) non-compliance by an Applicant (rather than using Local Rule 305.2-1(b)) would not be in the interests of judicial efficiency and judicial economy, either for the Superior Court or the Assessment Appeals Board.

In contrast, use of the Local Rule 305.2-1(b) procedure has proven to be an effective and efficient method of amicably determining whether there are any difficulties preventing 441(d) compliance, ascertaining when compliance can be achieved, and promptly scheduling a value hearing on the merits for a date thereafter that is mutually convenient for the parties.

B. SANTA CLARA COUNTY AAB LOCAL RULE 305.2-1

The Santa Clara County Assessment Appeals Board has used its 441(d) hearing procedure for many years, and has found the procedure to be an effective, efficient, and cooperative way to smoothly move the assessment appeal process along towards a value hearing on the merits. This process is expressly authorized by Santa Clara County Local Rule 305.2-1, which is part of the Santa Clara County AAB Local Rules that were established and adopted by the Santa Clara County Board of Supervisors.

Pursuant to Local Rule 305.2-1, where an assessment appeal application has been scheduled for hearing, but the Assessor feels the Applicant has not been fully compliant in responding to a 441(d) request from the Assessor's office, the matter is placed on the 441(d) portion of the Santa Clara County AAB's Agenda. [Local Rule 305.2-1(b)(1).]

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For items placed on this 441(d) portion of the AAB agenda, at the time of the hearing, the Assessor's office provides a copy of the 441(d) letter and explains the status of compliance with the Assessor's 441(d) request. [Local Rule 305.2-1(b)(2)(A).] In virtually all such instances, the Applicant/Applicant's agent readily concurs that the Applicant has not yet provided fully compliant responses to the Assessor's 441(d) request, advises when they anticipate Applicant's compliance with the Assessor's 441(d) request will be completed, and explains the reasons for any anticipated compliance issues, if any. [Local Rule 305.2-1(b)(2)(B).]

The parties then advise the board regarding what date they anticipate being ready to go to hearing. [Local Rule 305-1(b)(2)(C).] Typically, the Santa Clara County AAB then works with the parties to select a mutually agreeable date for the value hearing. In some cases, the parties and AAB decide that the next scheduled hearing date should be a broader pre-hearing conference pursuant to Local Rule 305.2-1(a).

It has been my experience that the Local Rule 305.2-1(b) procedure functions smoothly, efficiently, and cooperatively – both where Applicants are represented by agents and where Applicants are self-represented.

In the case of self-represented Applicants, I have observed the process frequently helps Applicants better understand what information the Assessor is seeking and better understand whether they have information in their possession that is responsive to the Assessor's 441(d) requests.

In cases where the Applicants are represented by agents, I have observed that most agents utilize the process smoothly and find it useful in setting a timeline for compliance and a mutually convenient value hearing date. In fact, I have observed a number of occasions wherein the Applicant (or perhaps the Applicant's prior agent) has not provided the Applicant's current agent with an outstanding 441(d) request that pre-dated the current agent, and thus the pre-hearing process has helped the current agent to facilitate moving their client's assessment appeal along.

I have also observed that Applicants – whether self-represented or represented by agents – tend to appreciate the opportunity to work amicably in scheduling a 441(d) compliance timeline and in scheduling a value hearing for a mutually convenient date thereafter.

Similarly, if an Applicant believes it has fully complied with the Assessor's 441(d) request but feels that the Assessor improperly disagrees with that status, or if the Applicant has any other concerns regarding the Assessor's 441d request, the Applicant can contact the AAB clerk and have their appeal scheduled for a prehearing conference/status hearing so that any such issues can be resolved and the AAB can schedule a mutually convenient date for a hearing on the merits of the appeal. Local Rule 305.2-1(a)(3) expressly provides that a prehearing conference/status hearing may be set by the Clerk at the request of the Applicant or the

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Applicant's agent, and Local Rule 305.2-1(a)(6) specifically provides that such hearings may be used to apprise the AAB of issues pertaining to the status of requests for information pursuant to RTC section 441 and to discuss scheduling a hearing on the Application.

I appreciate the opportunity to provide input regarding Santa Clara County AAB's Local Rule 305.2-1. I can be reached at 408-299-5928 if you have any questions.

Very truly yours,

JAMES R. WILLIAMS
County Counsel



MARCY L. BERKMAN
Deputy County Counsel

MLB:mlb

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