STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082
1-949-224-4804 ● FAX 1-916-324-2586
www.boe.ca.gov

July 17, 2018

Mr. Garth Harrington
[redacted]

Re: Assessment Appeals-Exchange of Information
Assignment No.: 17-184

Dear Mr. Harrington:

This is in response to your request for our opinion regarding whether an exchange of information pursuant to Revenue and Taxation Code[1] section 1606 requires the county assessor to provide her opinion of value. As explained below, in our view, if the assessor's opinion of value is different from the original tax assessment being appealed, then she is required to state the opinion of value she is supporting.

Facts

You explain that in your experience representing taxpayers filing appeals with their county assessment appeals board, upon an exchange of information request under section 1606, some counties, such as Los Angeles County, will respond by providing a list of parcels and addresses as comparable sales, but with no expressly stated opinion of value, nor with any information about adjustments or relative weight given to the comparables. You further explained[2] that the assessed value of the property at the time of the appeal is often different from the opinion of value that the assessor subsequently presents at the hearing.

You provided the following example by phone call. A taxpayer receives a tax bill based on property assessed at $500,000, and the taxpayer believes the property's assessed value should be $300,000. Therefore, the taxpayer files an assessment appeal and provides her opinion of value at $300,000. Prior to the hearing, the taxpayer initiates an exchange of information under section 1606, and provides the assessor with her evidence to support an assessed value of $300,000 such as a list of comparable sales. In response to the exchange of information request, the assessor sends her own list of comparable sales, but does not expressly provide an opinion of value. Although the assessed value of the property is $500,000, at the assessment appeals hearing, the assessor uses the comparable sales that she sent to the taxpayer under section 1606 to support a value of $400,000. The assessment appeals board determines the base year value to be $400,000.

[1] All section references are to the Revenue and Taxation Code unless otherwise noted.
[2] You relayed this information by phone call to former Board of Equalization attorney Leslie Ang.

In the above example, you state that because the assessor did not provide her opinion of value to be defended at the hearing ($400,000), the taxpayer was disadvantaged because "it is challenging even to make the most cursory review of the information presented [such as pages of condensed data in small font with dozens of columns and rows], let alone refute it, in the brief time span of a hearing." In other words, the taxpayer was unable to prepare counterarguments to show why the comparable sales provided by the assessor do not support a value of $400,000. Without knowing that the assessor's opinion of value was $400,000, you state that it is "of little use" to the taxpayer to receive a list of parcels and addresses as "comparable sales." You state that you have attempted to contact assessors' offices prior to the hearings to obtain an opinion of value, and were at times told that they could tell you the actual recommended value. Thus, you are asking our opinion as to whether section 1606 requires that both parties state their opinion of value.

Law and Analysis

Section 1606 provides that where the assessed value of property exceeds $100,000, any applicant for a change of an assessment on the local roll or the assessor may initiate an exchange of information with the other party by submitting the following data to the other party and the clerk in writing:

(A) Information stating the basis of the party's opinion of value.

(B) When the opinion of value is to be supported with evidence of comparable sales, information identifying the properties with sufficient certainty such as by assessor parcel number, street address or legal description of the property, the approximate date of sale, the applicable zoning, the price paid, and the terms of the sale, if known.

(C) When the opinion of value is to be supported with evidence based on an income study, information relating to income, expenses and the capitalization method.

(D) When the opinion of value if to be supported with evidence of replacement costs, information relating to date of construction, type of construction, replacement cost of construction, obsolescence, allowance for extraordinary use of machinery and equipment, and depreciation allowances.

(Rev. & Tax. Code, § 1606, subd (a)(1).)

Subdivision (b)(1) of section 1606 provides that if the initiating party submits the data required by subdivision (a), the other party shall submit to the initiating party and clerk the same information and evidence.

Courts generally apply a reasonable and common sense interpretation consistent with the apparent purpose of the law, which will result in wise policy rather than "mischief of absurdity, including literal meanings which would lead to a result no intended by the Legislature." (*Board of Retirement v. Santa Barbara County Grand Jury* (1997) 58 Cal.App.4th 1185, 1189.) While

section 1606 does not expressly state that the parties are required to provide each other with the opinion of value supported by the evidence they provide under section 1606, in our view, a common sense reading of the statute and the result intended by the Legislature require both parties to state their opinion of value along with supporting evidence. This results in a fair exchange of information. To read the statute to say that either party may provide the basis for and evidence supporting the property value without being required to state what value the evidence is supporting would not be reasonable, and result in unwise policy promoting gamesmanship and evasiveness, and render the statute absurd or meaningless. For example, if one party provides information but not its opinion of value using either the comparable sales method or income method of valuation,[3] the opposing party could reach a different value using the same inputs, but would be unable to evaluate the valuation method because it would not have a conclusion against which to compare it. Thus, we believe section 1606 requires that all parties state their opinion of property value along with supporting information.

This is confirmed by the purpose of section 1606 as stated in the case of *Bank of America v. County of Fresno* (1981) 127 Cal.App.3d 295. The court stated that section 1606 "is a *discovery* device created by the Legislature to promote a fair and effective [adversarial] equalization process and to take the 'game' and element of surprise out of the proceedings." (*Id.* at p. 305, emphasis in original.) The court emphasized that the statute is to be given a reasonable and common sense interpretation, and stated that if the exchange of information provides reasonable notice to the opposition concerning the subject matter to be presented at the equalization hearing, the section has been complied with (*Id.* at p. 307.) The core of the "subject matter to be presented at the equalization hearing" and the purpose of having a hearing at all is to determine the opinion of property value. Therefore, to read section 1606 to mean that the parties need not provide their opinion of value would not only evade the entire basis for holding the equalization hearing, but also affirmatively instill the "game and element of surprise" into the proceedings and result in at least one party lacking sufficient information to rebut the other party's valuation. This would contradict the fairness of discovery procedures that constitute the purpose of section 1606 and deteriorate the effectiveness of the adversarial equalization process. Thus, in our view, and exchange of information under section 1606 requires both parties to state their opinion of value and provide evidence and information supporting such opinion of value.

Furthermore, in construing statutes, we aim "to ascertain the intent of the enacting legislative body so that we may adopt the construction that best effectuates the purpose of the law." (*Mt. Hawley Ins. Co. v. Lopez* (2013) 215 Cal.App.4th 1385, 1396-1397.) Here, a review of the legislative history of section 1606 is instructive and verifies our opinion above. In 1973, Assembly Bill No. 609 (AB 609) amended section 1606 (formerly section 1608.7) to allow both the assessor and the applicant, rather than just the applicant, to initiate an exchange of

[3] Section 1606, subdivision (a)(l)(C) states that when the opinion of value is to be supported with evidence based on an income study, the party should provide information relating to income, expenses, and the capitalization method. For more information regarding the income method of valuation, please see the Income Approach section of *Assessor's Handbook Section 501, Basic Appraisal* (January 2002), commencing at p. 95.

information.[4] The Legislative Analysis of AB 609, dated May 10, 1973, describes section 1606 as follows:

> Present law [] authorizes the taxpayer to cause an exchange between himself and the assessor of the information each party will use at the equalization hearing. *The information consists of each party's opinion of the value of the property and the evidence supporting that opinion.*

(Emphasis added.)[5]

Thus, the legislature expressly understood the information exchange to include each party's opinion of value. In other words, the legislative history of section 1606 indicates that the legislature intended the exchange of information between taxpayers and assessors to include an exchange of each party's opinion of value as well as evidence supporting such opinion.

Finally, we note that subdivision (d) of section 1606 states that "If a party introduces new material at the hearing, the other party, upon his or her request, shall be granted a continuance for a reasonable period of time." Therefore, if the opinion of value is not stated until the hearing, that is grounds for the assessment appeals board to grant a continuance of the hearing under section 1606, subdivision (d).

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely,

Sonya Yim
Tax Counsel III (Specialist)

SY
[redacted]

cc: Honorable Charles Leonhardt
President, California Assessors' Association
Plumas County Assessor
1 Crescent Street
Quincy, CA 95971

Mr. Dean Kinee (MIC:73)
Mr. David Yeung (MIC:64)
Mr. Henry Nanjo (MIC:73)
Ms. Lisa Thompson (MIC:121)

[4] Assem. Bill. No. 609 (1973-1974 Reg. Sess.), §1.
[5] Legislative Analyst, Analysis of Assembly Bill No. 609 (1973-1974) Reg. Sess.) (Kapiloff), May 10, 1973.