



CALIFORNIA ASSOCIATION OF CLERKS AND ELECTION OFFICIALS

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August 16, 2018

Via Email

The Honorable George Runner, Chairman:
State Board of Equalization
450 N Street
P.O. box 942879
Sacramento, CA 94279-007

**Subject: Item G.1. of the Agenda for the Meeting
of August 21, 2018**

Dear Chairman Runner:

The Clerk of the Board of Supervisors members of the California Association of Clerks and Election Officials (CACEO) were disappointed to see that staff has placed Item G.1. on the agenda for your Board's August 21, 2018 meeting. We wish to register our strong objection to this latest request – now a petition -- by the California Alliance of Taxpayer Advocates (CATA) that your Board abandon the ongoing Interested Parties Process dealing with CATA's proposed changes to the Property Tax Rules to address their complaints with respect to assessor and county board of equalization practices.

Further, we strongly urge your Board to wait for your legal counsel to complete his analysis of the CATA proposals before taking any further action on those proposals. In our view -- and, we think, any reasonable person's view -- this would be the only appropriate thing to do under the present circumstances at this time.

As you know, interested stakeholders in the county property tax assessment and related assessment appeal processes have been actively engaged in the State Board of Equalization's own publicized Property Tax Rule change procedures for some months now. We have had two meetings already and were positioned to meet again, we had hoped, to complete the discussion agenda for the process.

However, CATA submitted a similar request prior to their latest one in July, which was discussed by your Board at the July 24 meeting. At that meeting, your Board directed the Executive Director to instruct the Chief Counsel to prepare a preliminary analysis of CATA's proposed changes to Property Tax Rules 302, 305, 305.1, 305.2, and 323.

The Honorable George Runner, Chairman

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But, apparently, CATA is not yet satisfied, so once again, its membership is attempting to short-circuit your Board's orderly and proper standard procedure for Rule making and, further, is attempting to frustrate your Board's directions which you gave to your staff both last year and as recently as last month. While we understand CATA's frustration in the amount of time it is taking to resolve these issues, we ask that you reject CATA's proposals, and let the proper rule making process proceed, during which the parties will continue to attempt, in good faith, to arrive at solutions to the practices that the CATA members object to.

We realize that it may be that not all disputed issues will be resolved during the Interested Parties Process. But we also know that your staff will then prepare an issue paper and your Board will make a final decision on the matter at an open and public meeting at which the stakeholders can present their views and recommendations.

We feel compelled to also state clearly that CACEO member have some specific objections to CATA's proposals, as set forth below:

1. **Proposed Rule 305 Application.** The proposal would add at the end of (a)(1) in Rule 305 to require a county board to provide a mechanism for an agency authorization form to be attached to the on-line filing of an *Application for Assessment Appeal* form. While Clerks agree that that should be the goal for counties that implement online filing of appeals, in most counties that currently offer online filing, their systems do not make simultaneously filing of the agent authorization form possible.

Further, the high cost of programing or implementation of a new system that would allow it, simply requires more resources than Clerks offices have available. This, in turn, would limit the access to online filing. Our proposed amendment to Rule 305 and amendment to the *Assessment Appeals Manual* would permit online filing of the application but, where a county system does not allow online filing of the authorization, the agent would be required to file the paper form as soon as possible. We anticipate that counties will, over time, implement online filing of the agent authorization form as funds become available to do so.

While we agree with CATA that no application should be rejected simply because the agency authorization is signed by a taxpayer in a different calendar year than the application was filed, we believe that the language of the Rule should be clearer than CATA's language and that use of such authorizations should not be valid indefinitely. Our proposed Rule 305 provides more specific guidance and places a reasonable four-year time limit for multi-year authorizations.

2. **Proposed Rule 305.1 Exchange of Information and Request for Information.** We strongly disagree with a portion of CATA's subdivision (e) regarding requests for information under Revenue and Taxation Code 441(d). The proposed language would place a hard-and-fast deadline for 441(d) requests of no less than 20 days prior to a scheduled hearing before the county board. While we agree that such requests be made in writing, a firm deadline would only create more game-playing by the parties, resulting in many more hearing postponements. In fact, such requests should be made far earlier than the CATA proposal provides for, particularly in large counties with over-loaded, dockets.

CACEO's proposed amendment to the *Assessment Appeals Manual* states that requests under R & T Code Sections 408 and 441 should be made in writing and should be delivered to the other party as far ahead of a scheduled hearing as possible. This language addresses the issue of timeliness, while permitting the board to make the decision as to whether a postponement is actually necessary.

3. **Proposed Rule 323 Postponements and Continuances.** If the assessor asks for a continuance at a hearing, CATA's proposed language would prohibit the continuance to no more than 90 days, unless the assessor demonstrates undue hardship to the satisfaction of the board, or if the assessor and taxpayer agree to a longer period of time. While 90 days may work for most counties, it certainly would not work from some very large counties that have very heavy hearing schedules, including Los Angeles County. Moreover, legislation and state regulations truly must be written with the "bad years" in mind, such as the recent Great Recession and the disastrous years in the 1990s when appeal rates went through the roof.

The proposed language goes on to prohibit a board from granting the assessor a continuance after the applicant has presented his or her case. CACEO is very sympathetic to the practice of permitting postponements and continuances only when absolutely necessary. However, we don't believe that Rule 323 should infringe upon the board's authority to grant a continuance after a party presents his or her case when such an action by the board may be the most appropriate option. The decision must be left to the discretion of the board.

CACEO's proposed amendments to Rule 323 and the *Assessment Appeals Manual* would appropriately preserve the board's discretion, but would provide clear direction to a board or hearing officer that every reasonable effort should be made to maintain continuous hearings, but given the reasonable needs of the county board or hearing officer and of the parties appearing before them. Our language would require the board or hearing officer to make sure that there is good cause sufficient to justify the continuance.

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For the above-stated reasons, we again urge you to delay any action on CATA's petition with regard to the Property Tax Rules and at least wait until you have received and digested your own counsel's analysis of CATA's proposals. We also urge you that, after you have the analysis, you restore the Interested Parties Process that has been interrupted in mid-course.

I look forward to discussing this matter with you and your staff, both prior to and during your Board's meeting on August 21, 2018.

If you should need to reach me, please call (213) 200-9610.

Very truly yours,

John McKibben, Chairman
BOE Rules Work Group
California Association of Clerks
and Election Officials

Attachments (6)

- c: The Honorable Fiona Ma, Member (with Attachments)
- The Honorable Diane Harkey, Member (with Attachments)
- The Honorable Jerome Horton, Member (with Attachments)
- The Honorable Betty T. Yee, State Controller (with Attachments)
- Dean Kinnee, Executive Director (with Attachments)
- Henry D. Nanjo, Chief Counsel (with Attachments)
- Joann Richmond-Smith, Chief, Board Proceedings Division (with Attachments)
- Joseph E. Holland, President, California Association of Clerks and Election Officials

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

CACEO Amendment to Rule 305(a) (Agenda Items 14 and 15) – cont.

~~(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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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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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.

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

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 assessor may obtain details of property acquisition transactions, construction and

CACEO Amendment to *Manual* pp. 39 & 40 (Agenda Items 3 and 9) – cont.

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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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 continue 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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