

CALIFORNIA ASSOCIATION OF CLERKS AND ELECTION OFFICIALS



JOSEPH E. HOLLAND, PRESIDENT
Santa Barbara County Clerk, Recorder and Assessor
Registrar of Voters
4440 A Calle Real, Santa Barbara, CA 93110
(805) 696-895-72716 - Fax (805) 568-2209
E-Mail: Holland@co.santa-barbara.ca.us
CACEO website: www.caceo58.org

OFFICERS 2018-2020

JOE HOLLAND
PRESIDENT
Santa Barbara County

BRANDI ORTH
VICE PRESIDENT
Fresno County

DONNA JOHNSTON
TREASURER
Sutter County

TOMMY GONG
SECRETARY
San Luis Obispo County

BOARD OF DIRECTORS

APPOINTED:

JOE CANCIAMILLA
Contra Costa County

RYAN RONCO
Placer County

MARK LUNN
Ventura County

KAREN RHEA
Kern County

MICHAEL VU
San Diego County

SUSAN M. RANOCCHAK
Mendocino County

Vacant
County

DAWN ABRAHAMSON*
Fremont City Clerk
* non-voting member

ADVISORY COUNCIL:

REBECCA MARTINEZ
Madera County

GAIL L. PELLERIN
Santa Cruz County

CATHY DARLING ALLEN
Shasta County

NEAL KELLEY
Orange County

DEAN LOGAN
Los Angeles County

ELECTED AREA CHAIRS:

KATRINA BARTOLOMIE
Northern Area
Mendocino County

REBECCA SPENCER
Southern Area
Riverside County

GREGORY J. DIAZ
Mother Lode Area
Nevada County

DONNA LINDER
Central Area
Stanislaus County

CLAUDIO VALENZUELA
Bay Area
Monterey County

LEGISLATIVE COMMITTEES

** voting member

CLERK OF THE BOARD:

JOHN MCKIBBEN
Los Angeles County

COUNTY CLERK:

VICTORIA RODRIGUEZ
Riverside County

DONNA ALLRED
Sacramento County

ELECTIONS:

RYAN RONCO
Placer County

TRICIA WEBBER
Santa Cruz County

August 30, 2018

Via Email

Mr. Henry Nanjo, Chief Counsel
State Board of Equalization
450 N Street
P.O. Box 942879
Sacramento, CA 94279-007

Subject: CATA-Proposed Property Tax Rules and Alternatives

Dear Mr. Nanjo:

Thank you for the invitation to meet with you regarding the concerns that the Clerk of the Board of Supervisors members of the California Association of Clerks and Election Officials (CACEO) have with respect to the petition filed by the California Alliance of Taxpayer Advocates (CATA) that was discussed at the August 21 Board of Equalization meeting. We look forward to meeting with you on September 4, 2018. We also look forward to seeing your analysis and recommendations that the Board has directed you to prepare. We believe that your report will go a long way toward resolving many of the disagreements between clerks and tax agents.

As we have stated in several of our earlier letters to the Board, and at the Board meetings and stakeholders meetings that we have attended over the last year, the aim of clerks of the county board of equalization or assessment appeals boards is to maintain a level playing field for the parties that come before our county boards. It is our common goal to make the county's assessment appeals process a smooth running, effective and efficient method of resolving property tax disputes between taxpayers and assessors.

I think we all would like to see those legitimate concerns and reasonable suggestions that CATA has made -- which were included in the large Interested Parties Agenda -- be appropriately addressed by the State Board of Equalization. But, as you know, there are some proposals that CATA has submitted in their package of five Property Tax Rules contained in their petition that clerks, assessors, and even the Board's own staff, have pointed out simply are unrealistic, unreasonable, and, in some cases, contrary to law. As we will explain, clerks are concerned that some of CATA's proposals would open the county appeal process to additional unnecessary postponements and delays, while also infringing upon the county boards' rightful and constitutional judicial discretion.

Henry Nanjo
August 30, 2018

Of the five CATA-proposed Rules, CACEO members have objections to four of those Rules. Please note that we have re-evaluated one or two of CATA's proposals and, after consideration, have realized that we must raise additional objections about CATA's proposals. Thus, we have made some additional changes to our proposals to amend the Rules and the *Assessment Appeal Manual* sections that we submitted to the Board earlier this month. Our proposals are attached to this letter. Underlined italics and lined-out language reflect proposed changes to existing Property Tax Rules and *Assessment Appeals Manual* sections.

Rule 305 Application.

Online Agency Authorization

CATA's proposed Rule 305 would add at the end of (a)(1) a requirement that a county board provide a mechanism for an agency authorization form to be attached to the on-line filing of an *Application for Assessment Appeal*. While clerks believe that that should be the goal of the counties that have implemented online filing of appeals, we do know that it would cause all but one of the only six counties that currently offer online filing of an application to make a very expensive, major alteration to their online system. It would cause at least one of them to scrap their existing system and create an entirely new one. If this requirement were to go into effect immediately, it would mean that many or most of the affected counties likely would discontinue offering online filing to all but taxpayers who file appeals on their own behalf. Some counties would discontinue e-filing altogether if use of these systems by taxpayers were to significantly decline. Ventura County has already done so due to lack of utilization. The proposed rule may also discourage a number of the remaining fifty-two counties not currently providing on-line e-filing from developing such a system in the future.

Our proposed Rule 305(a)(2) would require tax agents to submit their hardcopy authorization form to the clerk as soon as possible in order to perfect the application. However, our proposal also would require, beginning January 1, 2022, any county offering online filing of applications to provide a mechanism for an agency authorization form to be submitted electronically with the application. Further, we propose that pages 24-25 of the *Assessment Appeals Manual* regarding Application by Agent be amended to contain similar language. This provision would allow counties the time needed to obtain the resources necessary to comply with this otherwise reasonable requirement.

Rejection of Applications Due to the Year in Which the Agency Authorization Is Signed

No application should be rejected merely because the agency authorization is signed by a taxpayer in a different calendar than that in which the application was filed. However, we believe Rule 305 and the Manual could be made clearer and more precise than CATA's language.

Our proposed Rule and Manual amendments would make clear that an agency authorization must state the specific years for which the authorization is valid. However, we firmly believe that use of such authorizations cannot be considered valid indefinitely. There must be a reasonable limit of time after which it is no longer recognized as a valid authorization. An indefinite time period for agent authorizations can lead to duplicate applications for the same property and tax year. In a worst case scenario, they could facilitate fraudulent applications.

We propose that Rule 305 require that an authorization indicate clearly the years covered by that authorization and that the authorization apply to no more than four calendar years into the future, beginning with the year in which the authorization is signed. This would end most or all of the arguments between clerks and tax agents as to whether an authorization is valid. And we believe that it would put an end to the long-time practice of some "appeals mills" of using stale or bogus authorizations.

Henry Nanjo
August 30, 2018

Rule 305.1 Exchange of Information.

We strongly disagree with a portion of CATA's subsection (e) of Rule 305.1 regarding the timing of an assessor's request for information under Revenue and Taxation Code 441(d). Although we recognize that this is a process involving a taxpayer and the assessor, it does have a definite spill-over effect on the appeal process that we manage. CATA's proposed language would place a hard-and-fast deadline of no less than 20 days prior to a scheduled hearing by which time an assessor must make his or her request. In fact, especially in counties with a large volume of appeals, such requests are generally made far earlier than 20 days. A firm deadline would bar cooperative information sharing by the parties during the period after the 20-day deadline and before the scheduled hearing. We see many parties sharing information in the lead-up to the hearing that this proposal would likely eliminate. We also believe that it would result in unnecessary postponements if an assessor were to request information of the taxpayer after the deadline, even when the taxpayer could comply with that request. We also question the legal consistency between the proposed CATA subsection (e) time period and the statutory language of Revenue and Taxation Code Section 441(d), not to mention the ruling of *State Board of Equalization v. Cenicerros* regarding the broad timing of requests under Section 441(d). Would this not be an attempt to use the Property Tax Rules governing equalization to do something that the statutes in the Revenue and Taxation Code do not permit?

Our proposals would add new subsection(e) to Rule 305.1 and new language on pages 39-40 of the *Assessment Appeals Manual* to provide guidance to the parties. Our language would ask them to make their requests under both Revenue and Taxation Code Section 408 and Section 441 to be in writing and that such requests should be made as far ahead of a scheduled assessment appeal hearing as possible in order to allow the assessor or taxpayer time to respond and avoid a postponement of the hearing. Further, our proposals would provide that a written request may include emailed requests and requests transmitted via facsimile.

Rule 305.2 Prehearing Conference.

CATA's proposed Rule 305.2 would prohibit a board from continuing a prehearing conference to a later date in order to compel an applicant to respond to a 441(d) request. However, we believe this would infringe upon the County board's proper judicial discretion. Depending upon circumstances, it may be very desirable to continue a prehearing conference for that very purpose in order to minimize the actual hearing time required to hear and decide the issues that were the subject of the prehearing conference. Indeed such a continuance, particularly in an otherwise amicable proceeding, may allow a taxpayer the time he or she needs in order to later have a productive prehearing conference.

Our proposed language in Rule 305.2 and on *Assessment Appeals Manual* page 38 regarding Prehearing Conferences would preserve the board's judicial discretion and clarify that, in addition to other reasons for continuing a prehearing conference, a board also may continue a prehearing conference in order to provide the parties sufficient time to comply with exchanges of information procedures under Revenue and Taxation Code Section 1606 as well as Sections 408 and 441. State Board Rules should reflect the longstanding State Board regulatory policy of encouraging the appropriate use of the "judicial" model by boards and hearing officers, that model being recognized by appellate court decisions that describe local boards as constitutional "quasi-judicial" hearing bodies.

Rule 323 Postponements and Continuances.

We object to CATA's proposed amendments to Rule 323, virtually in their entirety.

In its proposed new subsection (c), CATA would prohibit a board from postponing a hearing on an application solely on the ground that the applicant has not responded to a request for information made

Henry Nanjo
August 30, 2018

under Section 441. Again, this is yet another infringement on the board's judicial discretion to grant continuances when the board deems it advisable.

If an assessor asks for a continuance at a hearing, CATA's proposed language in subsection (d) of Rule 323 would prohibit such a 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. Further, CATA's proposal would prohibit a board from granting the assessor a continuance after the applicant has presented his or her case, except when an applicant has introduced information at the hearing which had previously been requested of the applicant but the applicant had not provided to assessor.

Even if one were to ignore the fact that CATA's proposal would usurp the board's authority, the 90-day limitation would not work for some very large counties, including Los Angeles and San Bernardino Counties, which have raised strong objections to this proposed Rule amendment due to very heavy hearing caseload and the need to routinely schedule hearings far into the future in order to keep pace with caseload demands.

CATA desires statewide uniformity in the Property Tax Rules. However, that simply is not reasonable in every case nor is it realistic in all counties, given the dramatically different circumstances in terms of workload and other factors pertaining in any given county. Nor does it serve either of the parties well. It is important that we all recognize that legislation and state regulations must be written with the "bad years" in mind, such as the recent Great Recession and, most particularly, the disastrous years in the 1990s when appeal rates were extraordinarily high and many counties were barely able to keep from defaulting on the two-year deadline contained in section 1604. For example, in 1996 alone, Los Angeles County received appeal applications covering very nearly 110,000 parcels and assessments, having risen from about 12,000 in 1989-90. The Board's Rules must be written so that all counties can meet their obligations under those Rules in years of extraordinary challenges. From a practical standpoint, the Rules must recognize differences between and among counties, at least with respect to their ability to comply with those Rules.

Although clerks try to discourage boards from granting continuances unless absolutely necessary, at the same time clerks firmly believe that such decisions must be left to the board's judicial discretion. There are many reasons why a continuance of longer or shorter duration may be necessary or desirable, but that decision must be left to the board to decide, based on a number of factors, including "undue hardship", but also *simple operational necessity*. The board must be able to manage its own calendar.

CACEQ's proposed amendments to Rule 323 and the *Assessment Appeals Manual* on pages 97-98 regarding continuances and postponements 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, 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.

In addition, CATA's proposed language in Rule 323(d) is directed solely at assessors. Delays and continuances often occur because of applicant requests and needs as well as assessors' requests and needs. Rule 323 should be an evenhanded procedural rule in its application, again, while permitting a board to exercise its judicial discretion.

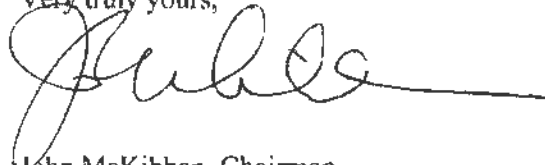
Henry Nanjo
August 30, 2018

We further believe that the State Board of Equalization may contribute to addressing all of these issues by including our Rule and Manual amendments in its mandatory assessment appeals board member training curriculum.

We look forward to meeting with you and your staff to discuss our views with regard to CATA's proposed Rules and our own proposals.

If you need to reach me, please call (213) 200-9610 or my email address jmckibben@bos.lacounty.gov.

Very truly yours,



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

Attachments (8)

c: The Honorable George Runner, Chair
The Honorable Diane Harkey
The Honorable Jerome Horton
c/o Kari Hammond
The Honorable Fiona Ma
The Honorable Betty T. Yee, State Controller
c/o Yvette Stowers, Deputy Controller
Dean Kinnee, Executive Director
David Yeung, Chief, Property Tax Division
Joann Richmond-Smith, Chief, Board Proceedings Division
Joseph E. Holland, President, California Association of Clerks and Election Officials

ATTACHEMENT 1

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. Beginning January 1, 2022, any county offering online filing of an application shall provide a mechanism for an agency authorization form to be submitted electronically with the application.**

ATTACHMENT 1 -- CACEO Amendment to Rule 305(a) – 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.

ATTACHMENT 2

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. Beginning January 1, 2022, any county offering online filing of an application shall provide a mechanism for an agency authorization form to be submitted electronically with 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.

ATTACHMENT 3

California Association of Clerks and Election Officials

Proposed Amendment to Rule 305.1

Rule 305.1 Exchange of Information

(e) If an application for assessment appeal has been filed with respect to a property, the parties should make requests under Section 408 or 441, as applicable, in writing and the written request should be delivered to the other party as far ahead of a scheduled assessment appeal hearing as possible in order to allow the party sufficient time to respond and avoid a postponement of the hearing. Written requests may include electronically transmitted requests.

ATTACHMENT 4

California Association of Clerks and Election Officials

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 electronically transmitted requests.***

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

ATTACHMENT 4 -- CACEO Amendment to *Manual* pp. 39 & 40 – 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 electronically transmitted requests.

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.

ATTACHMENT 5

California Association of Clerks and Election Officials

Proposed Amendment to Rule 305.2

Rule 305.2 Prehearing Conference

(a) A county board of supervisors may establish prehearing conferences. If prehearing conferences are established, the county board of supervisors shall adopt rules of procedure for prehearing conferences. A prehearing conference may be sent by the clerk at the request of the applicant or the applicant's agent, the assessor, or at the direction of the appeals board. The purpose of a prehearing conference is to resolve issues such as, but not limited to, clarifying and defining the issues, determining the status of exchange of information ***under section 1606 and requests for information under sections 408 and 441***, stipulating to matters on which agreement has been reached, combining applications into a single hearing, bifurcating the hearing issues, and scheduling a date for a hearing officer or the board to consider evidence on the merits of the application.

(b) The board may, in its judicial discretion, continue a prehearing conference to a later date in order to provide the parties sufficient time to comply with exchanges of information procedures under section 1606 and requests for information under sections 408 and 441.

(c) The clerk of the board shall set the matter for a prehearing conference and notify the applicant or the applicant's agent and the assessor of the time and date of the conference. Notice of the time, date, and place of the conference shall be given not less than 30 days prior to the conference, unless the assessor and the applicant stipulate orally or in writing to the shorter notice period.

ATTACHMENT 6

California Association of Clerks and Election Officials

Proposed Amendment to *Assessment Appeals Manual*, Page 38

PRE-HEARING CONFERENCES

A county board of supervisors may establish procedures for holding prehearing conferences which can be a valuable tool in the orderly scheduling and conduct of hearings. Such conferences are usually appropriate for hearings that will consume more than one day of appeals board time and may be set by the clerk at a time convenient to the taxpayer and assessor. The conference may deal with a variety of subjects, including but not limited to, application validity, bifurcation of hearings, time estimates, resolution on noncontroversial factual or valuation issues, outline basic legal and/or valuation issues to the appeals board, stipulations, status of **request requests** for information **under Sections 1606, 408, and 441**, and calendaring of the full hearing on the issues.

Pre-hearing conferences have been shown to save considerable time and expense for the appeals board as well as the parties. They are most helpful in minimizing the need for the parties to request continuances of hearings that are unilaterally set by the clerk.

ATTACHMENT 7

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 exercise their judicial discretion by continuing a hearing to a later date. The board or hearing officer must make every reasonable effort to maintain continuous hearings. If either party requests a continuance, and the board grants it, the continuance, the continuance should not exceed 90 days, unless the parties at the hearing stipulate to a longer continuance. However, a longer continuance may be granted by the board or hearing officer where good cause for the continuance is established to the satisfaction of the board or hearing officer by the requesting party or where the reasonable needs of the county board of equalization or assessment appeals board or county hearing officer dictate the necessity of a longer continuance. The reasons justifying the continuance shall be stated on the record. The assessor may also be granted a continuance pursuant to the terms of subdivision (d) of section 441 of the Revenue and Taxation Code. 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.

ATTACHMENT 8

California Association of Clerks and Election Officials

Proposed Amendments to Assessment Appeals Manual Pages 97-98

CONTINUANCE

(a) The board ~~may at its judicial discretion~~, continue a hearing to a later ~~date~~, ~~date, but the board or hearing officer must make every reasonable effort to maintain continuous hearings. If either party requests and the board grants a continuance the continuance should not exceed 90 days, unless the parties stipulate to a longer continuance. However, a longer continuance may be granted by the board or hearing officer when good cause for the continuance is established to the satisfaction of the board or hearing officer by the requesting party or when the reasonable needs of the county board of equalization or assessment appeals board or county hearing officer dictate the necessity of a longer continuance.~~

(b) 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.

(c) There are ~~two~~ **three** primary reasons for continuing a ~~hearing; other than those noted above in subdivision (a):~~

(1) 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.

(2) 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.

(3) **A continuance granted to the assessor pursuant to the terms of subdivision (d) of section 441 of the Revenue and Taxation Code.**

(d) 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.

(e) **The reason for justifying the continuance shall be stated on the record.**

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

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. ***It is within the board's judicial discretion to grant a request for postponement of a hearing. However, the 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.