



August 17, 2020

The Honorable Antonio Vazquez
Chairman, Board of Equalization
450 N Street, MIC: 72
Sacramento, CA 95814

Subject: Agenda Item M - Impact of COVID-19 on Property Tax Administration -
County Boards of Equalization / Assessment Appeals Boards Remote Hearings

Dear Chairman Vazquez,

The California Alliance of Taxpayer Advocates ("CATA") appreciates the opportunity to provide input on the above referenced agenda item. Below is a summary of the items we will discuss in our presentation on August 18 and 19, 2020.

a. Current Status of Remote Procedural and Evidentiary Hearings in CA:
Challenges, Opportunities, Lessons Learned, and Perspectives

Speaker: Cris O'Neill

1. Recent experiences of CATA Members with remote hearings

a. Positive aspects

b. Difficult / problematic aspects

2. CATA Members experience with in-person hearings during Covid-19

b. Examination of Business Continuity Plans:
Challenges, Opportunities, Lessons Learned, and Perspectives

Speaker: Paul Waldman

1. Several issues need to be addressed when considering remote hearings

- a. Manner of rescheduling cases that were postponed during the Covid-19 shutdown
 - i. What order will they be heard
 - ii. Use of 2-year waivers under R&TC 1604(c)
- b. Less than 45 days' notice
 - i. If only 10 days' notice given (current minimum on rescheduled hearing), there could be many issues to being ready for the hearing
 - 1. Gathering material and witnesses while we are still under various levels of quarantine
 - 2. Will both the board and taxpayer have time to decide whether they can do a remote hearing or will need an in-person hearing
 - 3. If remote hearing, will there be time to coordinate all materials with the clerk of the Board
- c. Will need a uniform standard considering whether remote hearings can be done telephonically, or will need video
 - i. If video, what will the quality standards be (This will be discussed in further detail in the next section)
- d. Will need to create a uniform standard as to when remote hearings can be done (either telephonically or via video).
 - i. We believe remote hearings can be considered for administrative hearings such as:
 - 1. Pre-Hearing Conferences / Status Hearings
 - 2. Acceptable Value recommendations
 - 3. Validity Hearings (depending on the complexity)
 - ii. Discussion on what will need to be considered if and when a remote hearing would be considered will be covered in the next section

c. County Boards of Equalization/Assessment Appeals Boards Remote Hearings: Guidance and Determining if Additional Authorities, Rules, or Actions are Required

Speaker: Peter Kotschedoff

1. Several issues need to be addressed in order to hold remote hearings

- a. Due Process - Assessment Appeals Boards are “quasi-judicial” courts, and the “trial” is at the Board because of the bifurcated appeal standard (substantial evidence on factual issues; de novo independent judgment review on legal issues); therefore, Valuation Hearings must guarantee due process and fairness. Property Tax Rule 301)(a) – The functions of the board are: (1) To ensure that all applicants are afforded due process and given the opportunity for a timely and meaningful hearing.
- b. Rule Amendment to accommodate remote hearings - Use of virtual hearings would require an addition to Rule 301. *Definitions and General Provisions* to define “Hearing” to include in-person, telephonic and video appearance.
- c. Rule(s) to standardize the application of remote hearings across all counties – This process should consider the following items:
 - i. Could value hearings be held remotely while still ensuring due process?
 - A telephonic hearing on value would not afford due process to the taxpayer
 - A video hearing on value *may possibly* provide due process but would require major audio-visual technology upgrades and new Rules to do so
 - ii. If remote value hearings were conducted, the Board must establish procedural Rules to address the below considerations:
 - Participation in a remote value hearing should be optional because all taxpayers may not possess the technological hardware, internet access or ability to operate the technology required for the hearing

- Quality control standards for multi-camera and microphone audio-visual systems on which all AAB Members, witnesses, taxpayer and assessor representatives are clearly visible at all times by everyone in the hearing and can be heard
- Compliance with Rule 313(g) of making hearings open and accessible to the public
- The hearing notice should provide the parties detailed instructions for remote access as well as for public access of the agenda
- Separate audio-visual system for participating public so that they cannot see evidence presented during the hearing that may not officially be accepted into the record until the end of the day or hearing
- There is provision for hearings to be closed to the public due to trade secrets. The technology would need accommodate removing the public or other parties from the hearing that can no longer be present (Rule 313(g)(2))
- The audio-visual system must possess sufficient security to protect from unauthorized by "hackers"
- Having technical staff present to immediately address the inevitable issues with audio-visual technology that will occur during the hearing
- Process for accommodating the Rule 312(a) requirement of recording all hearings
- Submittal of pre-hearing briefs and hearing exhibits where the AAB does not have access until entered into evidence
- Entering of submitted exhibits into evidence during the hearing
- Entering of exhibits into evidence that were not part of the pre-hearing submittal (i.e. rebuttal)
- Process of returning/destroying exhibits submitted before the hearing that were not ultimately entered into evidence

- Remotely requesting and paying for findings of fact fees
 - Process for accommodating a remote stenographer
- iii. What type of hearings are more easily held on a remote basis?
- Pre-hearing conferences / status hearings
 - Acceptable value recommendations
 - Possibly validity hearings depending upon complexity

Practically speaking these functions could be held telephonically without violating due process or requiring costly audio/visual technology upgrades to appeals boardrooms throughout the state

d. Additional points to consider

- i. Are the counties prepared to dedicate the personnel, technical training and financial resource to create state-of-the-art audio-visual systems necessary to provide fair hearings to all parties involved?
- ii. Are the counties prepared to dedicate the resource to operate two systems for value hearings – remote and in-person?

Sincerely,



Cris O'Neall
Chair, CATA Board of Directors

cc: Honorable Malia Cohen, Member
Honorable Ted Gaines, Member
Honorable Michael Schaefer, Member
Honorable Betty T. Yee, State Controller
c/o Deputy Controller Yvette Stowers
Henry D. Nanjo, Acting Chief Board Proceedings
CATA Board of Directors