



November 16, 2020

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

STATE BOARD OF EQUALIZATION
Breann E. Robowski _____ Item # AA1



Item Name: AAB Remote Hearings

Meeting Date: 11/18/20 Minutes Exhibit # 11.6

PUBLIC COMMENT

RE: Agenda Item AA – COVID-19 County Boards of Equalization / Assessment Appeals
Boards Collaborative Workgroup: Consensus Guidance / Letters to Assessor

Dear Chairman Vazquez:

This letter is written on behalf of California Alliance of Taxpayer Advocates (“CATA”) to respond to Chairman Vazquez’s November 3, 2020 memorandum regarding Agenda Item AA for the November 18, 2020 BOE meeting. In an effort to facilitate discussion and potential consensus among the workgroup, below we have set forth CATA’s position on each item listed in Chairman Vazquez’s memorandum. At the end of this letter, we have also provided a short list of items that we request the BOE consider adding to the agenda for its December meeting.

SUGGESTIONS FOR NON-CONSENSUS ITEMS BY ISSUE AND SUB-ISSUE.

Issue b. Appropriate Methods for Dealing with Document Submission.

Sub-issue 1. Requirements and protocols for entering all evidence electronically at or before a hearing.

- “Counties may require the electronic submission of evidence up to 72 hours before the commencement of a remote hearing but are encouraged to require only 48 hours. Counties may require evidence submitted by hard copy (U.S. mail) to be submitted up to 7 days before the commencement of a remote hearing but are encouraged to allow exceptions as appropriate.”
 - [CATA Position: We agree but strongly encourage counties to require no more than 48 hours as we believe the goal of remote hearings should be to adopt rules and procedures that are consistent with those applicable to in-person hearings to the extent practicable.]

- “In compliance with Rule 313 and as required for in-person hearings, evidence submitted by a party prior to the commencement of a remote hearing must not be made accessible to the other party until the hearing commences and the party introducing its case in chief enters it into the record.”
 - [CATA Position: We agree but believe the above language should be modified as shown in the track changes below to recognize that this requirement applies to all evidence, not just case-in-chief evidence.

“In compliance with Rule 313 and as required for in-person hearings, evidence submitted by a party prior to the commencement of a remote hearing must not be made accessible to the other party until the hearing commences and the subject evidence has been introduced the party introducing its case in chief enters it into the record.”]

Sub-issue 2. Timing for electronic submissions – day-of-the-hearing submissions; protocols on presenting documents for witness impeachment.

- “In compliance with Rule 313, counties shall allow day-of-the-hearing electronic submissions in remote hearings for all rebuttal evidence and documents for witness impeachment, and for correcting errors as appropriate. At the hearing, either party may introduce new evidence relating to information received from the other party; but the other party, upon request, shall be granted a continuance for a reasonable time.”
 - [CATA Position: We agree but encourage continuances to be used judiciously.]

Sub-issue 3. Required platform for document submission and required format for documents. (Word, PDF, Excel, etc.)

- “PDF documents are preferred in order to protect document integrity, but other forms may be accepted by the AAB Clerks as appropriate.”
 - [CATA Position: We agree.]

Sub-issue 4. Ensuring parties and AAB members can view all documents during hearings; necessity for simultaneous viewing.

- “All parties must be able to present evidence (written and oral) as well as direct cross examination of witnesses and documents in real time at remote hearings, per Rules 302(a)(1) and 313(e) and RTC Sections 1609 and 1610.2. The board must also be able to view all documents and hear all parties in real time in order to render its decision only on the basis of proper evidence presented at the hearing, in compliance with Rule 302. Additionally, the public must be able to hear and observe the remote hearing as required by RTC Section 1605.4.”
 - **[CATA Position:** We agree but believe the above language should be modified and clarified as shown in the track changes below. Additionally, we believe participants’ ability to simultaneously view the testifying witness, all board members, and the evidence is critical to the protection of all participants’ due process rights and for that reason, we request this issue be added to the agenda for the BOE’s December meeting. While the workgroup was previously unable to reach consensus on the issue of simultaneous viewing, if the parties were permitted to waive this requirement, we think this added flexibility may allow the workgroup to reach consensus on this vital issue.

“All parties must be able to present evidence (written and oral) as well as direct and cross examination of witnesses and documents in real time at remote hearings, per Rules 302(a)(1) and 313(e) and RTC Sections 1609 and 1610.2. Unless freely agreed otherwise by the parties, The-all board members and the parties, -must also be able to view all documents that have been introduced into evidence and hear all parties in real time in order to render its decision only on the basis of proper evidence presented at the hearing, in compliance with Rule 302. Once introduced, the board members and parties must have the ability to view and download the full exhibit at their discretion independent from the controlled screen display shown during the remote hearing. Additionally, the public must be able to hear and observe the remote hearing as required by RTC Section 1605.4.”]

- “Technological platforms for remote hearings should have the ability for evidence to be viewed in real-time; and the ability to prevent confidential documents from being viewed by the public. In the event of a connectivity problem, the absence of an available IT resource, or other challenge, the AAB has legal authority to grant a continuance as it deems it appropriate.”
 - [CATA Position: We agree.]

Issue c. Technology Options.

Sub-issue 4. Investment in remote hearing capability – efficiencies realized long term.

- “Counties already conducting remote AAB hearings are encouraged to continue to protect their investment, perfect their system, troubleshoot issues, and train staff. Counties not yet conducting remote AAB hearings have flexibility to continue to conduct in-person hearings, subject to their respective health and safety protocols, and may develop future long-term contingency plans for efficiently utilizing technology to conduct remote hearings as appropriate.
 - Contingency plans suggested for enhancing efficiencies in counties utilizing remote hearings may include, but are not limited to:
 - Establish recessing procedures to troubleshoot issues.
 - Provide IT assistance prior to and during the hearings.
 - Provide contact information (phone numbers) to contact parties and AAB members in the event of technical difficulties.
 - Establish continuance procedures in the event that a technological problem cannot be resolved.
 - Additionally, AABs should be sensitive to failures to appear at a scheduled hearing due to a party’s technical difficulties.
 - The greatest efficiencies of long-term utilization may be realized for procedural matters (postponement requests, reading in stipulations/recommendations, pre-hearing conferences, etc.) and for low-value property hearings with few documents.”

- **[CATA Position:** We agree but believe minor modifications to the language are needed as shown in the track changes below.

“Counties already conducting remote AAB hearings are encouraged to continue to protect their investment, perfect their system, troubleshoot issues, and train staff. Counties not yet conducting remote AAB hearings have flexibility to continue to conduct in-person hearings, subject to their respective health and safety protocols, and may develop future long-term contingency plans for efficiently utilizing technology to conduct remote hearings as appropriate.

- Contingency plans suggested for enhancing efficiencies in counties utilizing remote hearings may include, but are not limited to:
 - Establish recessing procedures to troubleshoot issues.
 - Provide IT assistance prior to and during the hearings.
 - Provide contact information (phone numbers) to contact parties and AAB members in the event of technical difficulties.
 - Establish continuance procedures in the event that a technological problem cannot be resolved.

- Additionally, AABs should not deny assessment appeal applications if a party's be sensitive to failures to appear at a scheduled hearing is due to a party's technical difficulties.

- The greatest efficiencies of long-term utilization may be realized for procedural matters (postponement requests, reading in stipulations/recommendations, pre-hearing conferences, etc.) and for low-value property hearings with few documents.”

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SUGGESTION REGARDING NEW SUB-ISSUES TO ADDRESS.

“The AAB Remote Hearings Workgroup or a component of it should separately work on the new Sub-issues: 1) developing efficiencies around scheduling and scheduling mechanisms; 2) establishing a meet and confer process and 3) offering pre-hearing conferences. These are important long-term solutions that may help to address the current backlog of appeals as well as the increase in Proposition 8 assessment appeals expected for tax year 2020-21. the increased volume resulting from the passage of Proposition 15.”

1) Develop efficiencies around scheduling and scheduling mechanisms.

Current Board guidance on “Scheduling Hearings” in Assessment Appeals Board Manual, p. 36; and Rule 323 states:

“All applications will be filed with the clerk of the board who, in accordance with specific guidelines established by the board of supervisors and/or the BOE, is responsible for validating the timeliness and completeness of all applications. If the clerk determines that an application is incomplete, the applicant must be promptly notified, and the applicant should be allowed a reasonable period of time in which to submit the required information. If an application is denied as untimely, or the board denies jurisdiction for any other reason, the applicant should be sent notice stating the reasons for the denial and informing the applicant of the right to request that the board schedule a hearing to review the denial.

When a timely valid application has been formally filed, the clerk must set the application for hearing. Coordination with the assessor's staff is essential because they can usually facilitate scheduling by categorizing and grouping applications by those that involve relatively straightforward assessments requiring little preparation time; those that are more complicated and require more preparation time; and those that will require an audit of the taxpayer's records prior to the hearing. In addition, staffing and workload levels within the assessor's office will also impact preparation times and may be a scheduling consideration. Although it may be administratively infeasible to coordinate with all applicants prior to scheduling hearings, the clerk should try to coordinate with applicants when scheduling the more complex appeals.

Occasionally, the applicant or the assessor will request that a hearing be rescheduled within a few weeks, or even days, of the hearing date. Usually this will occur when an unforeseen occurrence arises, such as illness affecting the assessor

or applicant, the agent, or a material witness. The board should allow either the applicant or the assessor to make such requests in writing, explaining the need for rescheduling the hearing.

Rule 323 contains the provisions for hearing postponements. Rule 323, subsection (a), states 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 as a matter of right within 120 days of the expiration of the two-year limitation period provided in section 1604 of the Revenue and Taxation Code, the postponement shall be contingent upon the applicant's written agreement to extend and toll indefinitely the two-year period subject to termination of the agreement by 120 days written notice by the applicant. The assessor is not entitled to a postponement as a matter of right if the request is made within 120 days of the expiration of the two-year period, but the board, in its discretion, may grant such a request. Any subsequent requests for a postponement must be made in writing, and good cause must be shown for the proposed postponement. A stipulation by an applicant and the assessor shall be deemed to constitute good cause, but shall result in extending and tolling indefinitely the two-year limitation period subject to termination of the agreement by 120 days written notice by the applicant....

While a clerk may, for the sake of administrative convenience and efficiency, consider the scheduling preferences of the assessor's office, it remains the clerk's responsibility to confirm validity of applications and to make final scheduling decisions.”

2) Establish a meet and confer process.

“For an appeals’ hearing to be most effective, taxpayers and assessors should provide the board members with comprehensive information regarding the subject property and the taxpayer's and the assessor's opinions of value for the subject property. There are various means for both the taxpayer and the assessor to obtain pertinent information for the hearing, and various methods,...” including pre-hearing conferences in some counties.”

3) Offer pre-hearing conferences.

Current Board guidance on Current Pre-Hearing Conferences in Assessment Appeals Board Manual, p. 38 and Rule 305.2 states:

“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 requests for information, 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.

[CATA Position on All Three New Sub-Issues: We strongly encourage the BOE to continue this workgroup or to convene a new workgroup to take up the issues identified above. In order to address the considerable backlogs suffered by many county boards, scheduling must be improved and the parties should be encouraged to work towards resolution where appropriate. To do so, we recommend that the BOE create a meet and confer procedure that mirrors the process used in civil litigation, as well as encourage the effective use of pre-hearing conferences.]

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CATA'S SUGGESTIONS FOR NON-CONSENSUS ITEMS BY ISSUE AND SUB-ISSUE TO BE ADDED TO THE BOE'S DECEMBER MEETING.

The below items were not included in Agenda Item AA for the November 18, 2020 BOE meeting. These items were discussed at length by the workgroup at the September and October BOE meetings. With additional discussion, we believe consensus can be reached on these items.

Issue a. Clarification on the Rights of the Hearing Participants

Sub-issue 1. Right to the type of hearing (physical in-person or remote) for both procedural and evidentiary matters.

- If a participant wishes to reject a remote hearing and receive a postponement until an in-person hearing is available, it is within their sole discretion to do so and it need not be tied to concerns related to the COVID-19 pandemic.
- Good cause under Property Tax Rule 323 encompasses all COVID-19 related concerns, rather than health concerns only. For example, the inability to travel to the hearing due to COVID-19 travel restrictions, although not directly related to health, should constitute good cause for a postponement. Therefore, with respect to in-person hearings, the BOE's recognition of good cause under Property Tax Rule 323 should be broadened from "public health impacts resulting from the COVID-19 pandemic" to all "COVID-19 pandemic related concerns." To ensure that applicants may exercise this right, BOE should take the necessary action to clarify that "COVID-19 pandemic related concerns" constitute "reasonable cause" under Property Tax Rule 323 for an AAB to grant such postponements.
- To ensure the protection of due process, clerks should begin each hearing with a statement that if at any time a party believes its due process rights are being violated, the party may request a continuance of the hearing until an in-person hearing is available or until such time as the issue may be adequately addressed.
- A waiver is only required when the request for postponement comes within 120 days of the expiration of the two-year statute of limitations. When the request for postponement is within 120 days of the expiration of the two-year statute of limitations, postponements or continuances beyond the two-year statute of limitations should require a waiver by the applicant. This timing is consistent with Property Tax Rule 323(a).

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Sub-issue 2. Short- term right for emergencies or long-term option.

- Given the present focus on the short-term, a similar workgroup should be reconvened in a year or so to evaluate the evolution and use of remote hearings and the BOE's related guidance.

Issue b. Appropriate Methods for Dealing with Document Submission

Sub-issue 4. Ensuring parties and AAB members can view all documents during hearings; necessity for simultaneous viewing.

- Unless freely agreed otherwise by the parties and the board members (e.g., for routine, non-evidentiary matters), it is essential that participants be able to simultaneously view the testifying witness, all board members, and the evidence being presented.

Issue c. Technology Options

Sub-issue 4. Notice requirements to parties – access instructions, coaching/training videos and accommodations for special needs.

- At its October 21, 2020 meeting, the BOE adopted the following consensus statement on Issue c.3.: "County board and AAB Clerks must provide notices to all parties informing them of remote hearing access instructions, coaching/training videos, staff availability and accommodations for special needs." Such notice should be provided as early as possible to the participants and no later than the notice required under Property Tax Rule 307.

Thank you again for the opportunity to provide input on these important issues. We look forward to discussing the above with the BOE and workgroup members at the November 18, 2020 meeting.

Sincerely,



Breann E. Robowski
Chair, CATA Ad Hoc Committee on Remote Hearings

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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 Nanjo, Acting Chief Board Proceedings
California Assessors' Association
 c/o President Dona Gaekle Stanislaus County Assessor
California Association of Clerks and Election Officials
 c/o Committee Chair John McKibben
CATA Board of Directors