



STATE BOARD OF EQUALIZATION

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March 11, 2015

Ms.
 Senior Deputy Clerk
 County of
 Office of the Clerk of the Board of Supervisors

Re: *Property Tax Rule 305 – Agent Authorizations*
Assignment No.: 14-360

Dear Ms. :

This is in response to your letter to the Board of Equalization's Legal Department, wherein you requested guidance regarding agent authorization requirements pursuant to Property Tax Rule¹ (Rule) 305. You indicate that professional tax agents² who are contracted and compensated to represent applicants for assessment appeals filed in County routinely submit agent authorizations that fail to meet the requirements prescribed in Rule 305, and your office seeks an opinion regarding the intent of Rule 305, subdivisions (a), (c), and (e), and guidance on the best practices to ensure that the County Assessment Appeals Board (AAB) or the clerk of the board (COB) are correctly applying and enforcing Rule 305. Your letter poses several questions, set forth below, which are followed by our responses.

Rule 305 provides, "No change in assessment sought by a person affected shall be made unless the following application procedure is followed." Rule 305, subdivision (a) prescribes in detail who may file an 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;

¹ All references to Property Tax Rule or Rules are to sections of title 18 of the California Code of Regulations

² All references to "agent" or "agents" are to non-attorney agents, unless otherwise specified.

(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;

(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) 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.

Rule 305, subdivision (b) specifies who may sign the application. Subdivision (c)(1) sets forth the requirements for information that must be included in a valid application, including, among other things, the name and address of the applicant's agent, if any, and written authorization for the agent to act on the applicant's behalf.

Subdivision (c)(4) of Rule 305 states the following:

(4) An application that does not include the information required by subsection (c)(1) of this regulation is invalid and shall not be accepted by the board. Prompt notice that an application is invalid shall be given by the clerk to the applicant and, where applicable, the applicant's agent. An applicant or the applicant's agent who has received notice shall be given a reasonable opportunity to correct any errors and/or omissions. Disputes concerning the validity of an application shall be resolved by the board.

Rule 305, subdivision (e) details the requirements for amendments and corrections of assessment appeals applications:

(e) AMENDMENTS AND CORRECTIONS.

(1) An applicant or an applicant's agent may amend an application until 5:00 p.m. on the last day upon which the application might have been timely filed.

(2) After the filing period has expired:

(A) An invalid application may be corrected in accordance with subsection (c)(4) of this regulation.

(B) The applicant or the applicant's agent may amend an application provided that the effect of the amendment is not to request relief additional to or different in nature from that originally requested.

You state in page 2 of your letter that the AAB and COB's understanding of the intent of Rule 305, subdivision (a) is "to protect applicants by ensuring transparent representation when meeting authorization requirements and to regulate conduct by professional agents." This is consistent with the court's ruling in *Helene Curtis, Inc. v. Los Angeles County Assessment Appeals Board*,³ which held that the board's requirements to provide written proof of agent authority are to satisfy the board that a non-lawyer representative who acts for a taxpayer has been empowered to do so. Thus, by requiring proof that agents are empowered to act for applicants, Rule 305 protects applicants from unauthorized representation.

However, the enforcement of proper conduct by professional agents is not within the scope of Rule 305. Such conduct is governed by the Business and Professions Code (BPC), section 17537.9, subdivision (a), which provides that it is unlawful for any person to make any "untrue or misleading statements" in connection with offering or performing an assessment reduction filing service. As relevant here, "untrue or misleading statement" includes some of the concerns detailed in your letter, including agents mailing applications to taxpayers with promises of guaranteed property tax reductions or with the misleading impressions of County or government authority, and agents acting for applicants without the applicants' knowledge. These are considered violations of BPC section 17537.9.⁴ As provided by BPC section 17536, any person who violates BPC section 17537.9 shall be liable for civil penalties assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction. Therefore, your office's practice of referring matters to the district attorney's office regarding violations of BPC section 17537.9 is proper.

You also requested clarification and guidance on the following inquiries, and our responses follow below. We note that according to Rule 305, subdivision (c)(4), all disputes concerning the validity of an application are to be resolved by the board.

A. Can the AAB or COB reject timely filed applications with invalid attached agent authorizations and require a new application with a valid attached authorization be filed within the appropriate filing period?

Yes. As you know, Rule 305, subdivision (a) provides that "[i]f the application is made by an agent . . . written authorization to so act must be filed with the application." In addition, Rule 305, subdivision (b) states that "[t]he application shall be in writing and signed by the applicant or the applicant's agent with declaration under penalty of perjury that the statements made in the application are true and that the person signing the application is [appropriately authorized to do so]," and Rule 305, subdivision (c)(1)(C) requires that the applicant provide written authorization for an agent. Taken together, if an application is filed by an agent (rather than directly by the applicant), the agent must have authority to sign the application under penalty of perjury (that is, the agent must include with the application a written authorization that complies with Rule 305, subdivision (a)(1)). If these conditions are not met, the application is

³ (2004) 121 Cal.App.4th 29, 38.

⁴ For the full list of requirements that apply to assessment reduction filing service offerors, please see BPC section 17537.9.

invalid. (Rule 305, subd. (c)(4).) Therefore, if an application is filed on behalf of an applicant without a valid authorization, the application may be rejected by the clerk. However, Rule 305, subdivision (c)(4) also provides that an applicant or applicant's agent must be notified that an application is invalid and given an opportunity to correct any errors or omissions.

B. Can an attached agent authorization or agent authorization on the application be corrected/amended after being filed?

Yes. As noted above, if the application is made by an agent, then a valid agent authorization must be filed with application. (Rule 305, subd. (a).) Therefore, if an error or omission is discovered on the agent authorization after the application is filed which invalidates such authorization, then the application itself is invalid. An applicant or agent may amend and/or correct the agent authorization in accordance with Rule 305, subdivisions (c)(4) and (e).

C. If correcting/amending an attached invalid agent authorization is allowed, please provide guidance on best practices in obtaining the necessary information in order for the agent to be legally authorized and clarification:

1. Is an attached agent authorization on the agent's personal letterhead considered a BOE prescribed form?

An agent's personal letterhead is not a Board-prescribed form. (See Rule 171.) However, Rule 305, subdivision (a) does not require that an agent's written authorization be submitted on a Board-prescribed form. Thus, as long as the requirements listed in Rule 305, subdivision (a)(1) are included in an attached authorization, the agent shall be deemed duly authorized to sign an application on behalf of an applicant.

2. Are retroactive authorizations accepted under any circumstances? If so, what does the BOE consider retroactive and what is not?

Pursuant to Rule 305, subdivision (a)(2), retroactive authorizations are not permitted. Although "retroactive" is neither defined in the Revenue and Taxation Code nor in property tax regulations specifically for purposes of Rule 305, its general definition is to "extend[] in scope or effect to matters that have occurred in the past." (Black's Law Dict. (3rd ed. 2006), p. 622, col. 1.) Thus, as used in Rule 305, subdivision (a)(2), we believe this means that agent authorizations may not be used to authorize an agent to act on behalf of an applicant prior to the time the authorization became effective. For example, an agent cannot file an application on behalf of an applicant without an authorization but with a promise to file the authorization at a later date.

3. Can a submitted invalid agent authorization attached to an Application for Changed Assessment be corrected or amended by the agent or the applicant?

Yes. As noted above, Rule 305, subdivision (a), allows an agent to file an application if written authorization to do so is also filed with the application. Rule 305, subdivisions (c)(4) and (e) allow the agent or applicant to correct errors on an application. Because the agent authorization is effectively part of the application as a requirement of Rule 305, subdivision (a), the authorization may be corrected in accordance with subdivisions (c)(4) and (e).

4. Who should provide the corrected or omitted information to the COB, the agent or applicant?

An application may be filed by an agent if a written authorization to act is filed with the application. (Rule 305, subdivision (a).) Thus, if the correction or amendment is required to satisfy the requirements of Rule 305, subdivision (a), then such corrections or amendments may be submitted by the agent, so long as the requirements of Rule 305, subdivisions (a) are met in the amended authorization.

5. What submittal process is the AAB and COB to consider sufficient when the agent submits corrected or omitted agent authorization information, by phone, email or writing? And would an original signature be required?

As noted above, if the correction or amendment is required to satisfy Rule 305, subdivision (a), then such corrections and/or amendments may be submitted by the agent, so long as the requirements of Rule 305, subdivisions (a) are met in the amended authorization. Because Rule 305, subdivision (a) specifically requires that the authorization be in writing, amendments and/or corrections required to satisfy Rule 305, subdivision (a) must also be submitted in writing.

Pursuant to Rule 305, subdivision (a)(2), an original signed authorization is only required if requested by the board.

6. What time line does the BOE consider "reasonable amount of time" after the filing period closes in which to permit any correction? Can the AAB and/or COB then reject the application if the agent or applicant fail to provide the requested information by the stated due date?

Rule 305, subdivision (c)(4) provides that an applicant or applicant's agent who has received notice that an application is invalid shall be given a "reasonable opportunity" to correct any errors and/or omissions, but as you know, Rule 305 does not specify what "reasonable opportunity" means. Therefore, whether an applicant has been given a reasonable opportunity to correct errors is an issue to be determined by the AAB on a case-by-case basis. Thus, if the AAB sets a due date after the close of the filing period which they believe provides the applicant or agent with a reasonable opportunity, then the AAB, in its discretion, may deny an invalid application that was not corrected by such date.

7. When requested, how can the AAB validate the authenticity of the correction or omission since the revised agent authorization will differ from the originally signed authorization? Does the signor need to be the same person? Is an original signature required?

Rule 305, subdivision (a) only requires that the corrected authorization meet the requirements listed under subdivision (a)(1). The "corrected" signor does not need to be the same person as the original signor, as long as the new authorization meets the requirements of Rule 305, subdivision (a)(1). Pursuant to Rule 305, subdivision (a)(2), an original signed authorization is not necessarily required but must be made available if requested by the board.

8. *Is there an obligation by the agent to notify the applicant when submitting corrected or omitted agent authorization information to the AAB and/or COB?*

As noted above, a valid application that is being filed by an agent requires a valid agent authorization. Thus, because Rule 305, subdivision (a)(1)(F) requires that the agent provide the applicant with a copy of the application, this includes the agent providing the applicant with a copy of the corrected agent authorization.

9. *If an application is submitted with no agent information in the Agent Authorization Box 2, and no agent authorization is attached at the time of filing, and the signature is marked to be of an agent, can the agent authorization be submitted at a later date? Or is it considered retroactive and the application is rejected?*

As noted above, Rule 305, subdivision (a)(2), prohibits retroactive authorizations. Thus, if no valid agent authorization is attached with the application at the time of filing, and the signature is marked to be of an agent, the application should not be accepted. A subsequently filed agent authorization may not be used to validate an earlier-submitted application. If an agent inadvertently fails to attach (but possesses) a valid agent authorization, the clerk should not accept the application without the authorization because Rule 305, subdivision (a)(1) states that a valid authorization *must* be attached to any application filed by an agent. However, Rule 305, subdivision (c)(4) requires the applicant or applicant's agent be given a reasonable opportunity to correct any errors or omissions.

10. *If a corrected/amended attached agent authorization has been submitted to the COB with a date of execution after the application filing date, [is] it considered retroactive and the AAB/COB can reject the application?*

Rule 305, subdivision (a)(2) specifies that an agent must have authorization to file an application *at the time the application is filed*, and that retroactive authorizations are not permitted. Thus, as noted above, if the error or omission being corrected was required for a valid authorization under Rule 305, subdivision (a), then the application was invalid at the time it was filed and should have been rejected by the clerk. However, if the application was accepted and the clerk later notifies the applicant of the error and provides them a reasonable opportunity to correct the authorization, the amended authorization may be executed after the original filing date. (Rule 305, subd. (c)(4).)

11. *Can Applications for Changed Assessment filed without original signatures are [sic] allowed to be corrected by providing an original signature after filing? If so, how would the COB obtain the signature without releasing the application back for signature?*

Rule 305, subdivision (b) does not require that the signature on the Application for Changed Assessment be an original signature. If the board requests an original signed authorization attached to the application, the agent must submit the original signature pursuant to Rule 305, subdivision (a)(2), without the clerk having to release the prior-submitted application.

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,

/s/ Leslie Ang

Leslie Ang
Tax Counsel

LA:yg

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cc: Honorable Marc C. Tonnesen
President, California Assessors' Association
Solano County Assessor

Mr. Dean Kinnee MIC:64

Mr. Benjamin Tang MIC:64

Mr. Todd Gilman MIC:70