STATE OF CALIFORNIA

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April 15, 2005

Re: Assessment Appeals Board Proceedings--Admissibility of Evidence

Dear Mr. :

This letter replies to yours dated February 16, 2005, addressed to Assistant Chief Counsel Kristine Cazadd, requesting a legal opinion concerning the presentation of evidence at an assessment appeals board (AAB) hearing. In your letter, you state that the assessor's office is represented at the hearing by an assessor's representative and an appraiser, but that neither of them prepared the appraisal which has been submitted as evidence in support of the assessor's value. You inquire whether the testimony presented by an appraiser who did not prepare the appraisal is hearsay evidence and, therefore, inadmissible before both the AAB and in court. For the reasons set forth below, we conclude that such testimony is admissible provided that it is relevant as defined by the Revenue and Taxation Code and Property Tax Rules.

Legal Analysis

In matters before an AAB, the assessor can designate a deputy who will present the assessor's case. Revenue and Taxation Code section 1610.2[1] provides that "the assessor in person *or through a deputy* shall attend all hearings of the county board and may make any statement or produce evidence on matters before the county board." (Emphasis added.) Similarly, for hearings conducted by Assessment Hearing Officers, section 1638 allows both the taxpayer and the assessor to have their representatives present their cases:

> The applicant may be represented in the hearing of the application and shall have the right to offer evidence. *The assessor may be represented in the hearing by* an attorney if the applicant is represented by an attorney and *one or more members of his staff, and the assessor and members of his staff shall have the right to offer evidence*. The hearing shall be conducted in accordance with Section 1609. The hearing and disposition of applications shall be conducted in an informal matter. (Emphasis added.)

For these reasons we conclude that the assessor has the authority to designate a different deputy assessor and appraiser than those who prepared your client's appraisal, and that they have the right to offer evidence. Regarding whether their testimony would be inadmissible hearsay,

[1] Section references are to the Revenue and Taxation Code, unless otherwise indicated.

an AAB is an administrative tribunal and its proceedings are not governed by the formal rules of evidence. Section 1609 states:

> The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. . .

Thus, the assessor's evidence will be admissible so long as it is relevant and the appeals board determines that it is reliable. Relevant evidence is "evidence tending to prove or disprove an alleged fact. Evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *Assessment Appeals Manual*, May 2003, p. 80. If you contemplate a civil action, however, you must enter timely objections to evidence, since your failure to do so constitutes a waiver of the objection. Property Tax Rule 313, subsection (e).

In the event that your client is not satisfied with the findings of the AAB, he or she must exhaust the available administrative remedies before resorting to the courts. The administrative remedies are:

--Filing an application for reduction in assessment with the local Appeals Board
--Filing a claim for refund of excess taxes paid with the local board of supervisors

However, an application to the local appeals board is not required in cases where the facts are undisputed and the protest alleges that the property assessed is tax exempt, outside the jurisdiction of the county, or nonexistent, or where the assessment is void for failure to follow statutory procedures. *Westinghouse Electric Corp. v. County of Los Angeles* (1974) 42 Cal.App.3d 32.

In cases in which the applicant and the assessor stipulate that the application involves only nonvaluation issues, subdivision (b) of section 5142 provides that the applicant and the assessor may file a stipulation to that effect which may be accepted or rejected by an appeals board. Such a stipulation, if accepted by an appeals board, will be deemed as compliance with the requirement that an application must be filed and prosecuted in order to exhaust administrative remedies. Although section 1605.5 specifically allows the appeals board to hear change in ownership, new construction and penalty issues, those are nonvaluation issues subject to stipulation within the meaning of section 5142.

In any event, the taxpayer must file a claim for refund with the board of supervisors as a prerequisite to filing for judicial review. If the application filed with the appeals board states that it also serves as a claim for refund, that statement constitutes exhaustion of the administrative requirement of filing a claim for refund with the county board of supervisors. Section 5141.

On appeal from an appeals board's decision, if an applicant or the assessor claim only that the appeals board erroneously applied a valid method of determining full value, the decision of the board is equivalent to the determination of a trial court, and the reviewing court may review only the record presented to the board. Judicial review is limited to a determination of whether

substantial evidence exists to support the board's findings. The court may overturn the board's decision only when no substantial evidence supports it, in which case the actions of the board are deemed so arbitrary as to constitute a deprivation of property without due process. *County of Orange v. Orange County Assessment Appeals Bd.* (1993) 13 Cal.App.4th 524.

An appellant has no right to a trial de novo to resolve conflicting issues of fact as to the value of a property. If a board has arrived at a determination based on the consideration of proper evidence, though it could have reached a contrary conclusion, it will be affirmed. *Rancho Santa Margarita v. County of San Diego* (1933) 135 Cal.App. 134.

If an appeal challenges the validity of the method of valuation used by the board, then the decision is subject to review by a court to determine whether the challenged method is arbitrary, in excess of discretion, or in violation of the standards prescribed by law. *Bret Harte Inn. Inc. v City and County of San Francisco* (1976) 16 Cal.3d 14; *De Luz Homes, Inc. v. County of San Diego* (1955) 45 Cal.2d 546. In addition, an appeal may be taken on the grounds that an applicant or assessor was denied due process.

Denial of due process may result from a conscious failure by the appeals board to exercise fair or impartial judgment, or an appeals board's decision made without substantial evidence to support it. *County of Orange v. Orange County Assessment Appeals Bd* (1993) 13 Cal.App.4th 524.

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. They are not binding on any person or entity.

Very truly yours,

/s/ Rafael Icaza

Rafael Icaza
Tax Counsel

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