

## Memorandum

**To:** Mr. David Yeung  
Chief  
County-Assessed Properties Division (MIC:61)

**Date:** November 17, 2016

**From:** Amanda Jacobs  
Tax Counsel  
Tax and Fee Programs Division (MIC:82)

**Subject:** *Assessment Appeals – Exchange of Information*  
**Assignment No. 16-396**

This is in response to your request for our opinion regarding Revenue and Taxation Code<sup>1</sup> sections 1606 and 441, subdivision (d)(1) (hereafter section 441(d)), provisions governing the obtaining of information for assessment appeals hearings. Specifically, you ask whether an assessee is required to submit evidence of his or her opinion of value, including the assessee's independent research on market data regarding sales of comparable property, to the assessor prior to a hearing on an assessment appeals application if the assessor has not initiated a request for exchange of information pursuant to section 1606 (1606 request). Furthermore, you ask whether the assessor is entitled to a continuance if such a request is not met prior to the assessment appeals hearing.

As explained below, it is our opinion that assessors may request evidence of the assessee's opinion of value pursuant to section 441(d) (441(d) request), and that the assessor is entitled to a continuance if an assessee does not comply with the 441(d) request and introduces the requested information at the hearing.

### **Background**

#### *Revenue and Taxation Code*

All property in this state is taxable unless it is otherwise exempt. (Cal. Const., art. XIII, §§ 1 and 2.) Under section 401.3, the assessor shall assess all property subject to general property taxation on the lien date as provided in the California Constitution, Articles XIII and XIII A. For any lien date, the taxable value of any real property shall be the lesser of the property's base year value or its full cash value. (Rev. & Tax. Code, § 51, subd. (a).) A reduction in an assessment may be requested if an assessee files an application for reduction in the assessment with the local assessment appeals board (AAB). (Rev. & Tax. Code, § 1603, subd. (a).)

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<sup>1</sup> All further statutory references are to the Revenue and Taxation Code unless otherwise indicated.

The assessee's application is then heard by the AAB, whose task it is to make a determination of value. (See Rev. & Tax. Code, § 1604.) Prior to the hearing, the parties are responsible for obtaining relevant evidence for presentation to the AAB. (See State Bd. of Equalization, *Assessment Appeals Manual* (May 2003) p. 36.) This process involves discovery, which may include exchanges of information between the assessee and the assessor. (See *Bank of America v. County of Fresno* (1981) 127 Cal.App.3d 295, 305.) These exchanges of information were intended by the Legislature to "promote a fair and effective equalization process and to take the 'game' and element of surprise out of the proceedings." (*Ibid.*)

While taxpayers have a recognizable privacy interest in his or her records, the court has determined that this interest must be weighed against the assessor's need to obtain information in order to fulfill his or her constitutional and statutory duty to properly assess property at its full taxable value. (*Roberts v. Gulf Oil Corp.* (1983) 147 Cal.App.3d 770, 800 (*Roberts*)). When weighing the taxpayer's privacy interest against the assessor's interest in reviewing taxpayer records, an assessor need demonstrate: (1) the demand is not too indefinite, (2) the information sought is reasonably relevant, (3) the action is not taken to seek some collateral advantage, and (4) the action is subject to court review. (*Id.* at pp. 797-798.) So long as an assessor's request meets this test, the assessor has a right to demand information. (*Id.* at pp. 800-801.)

Section 441, subdivision (a) requires that every real property owner "shall, upon request of the assessor, file a signed property statement." The property statement must list all taxable property owned, state the county and city where the property is located, and provide a detailed description of the property. (See Rev. & Tax. Code, §§ 442, 443, 445.) The property statement forms which assessors use to request this information must "not include any question which is not germane to the assessment function." (See Rev. & Tax. Code, § 452, subd. (a).)

Section 441(d) permits the assessor to request information from the assessee in addition to the property statement, and provides, in part:

At any time, as required by the assessor for assessment purposes, every person shall make available for examination information or records regarding his or her property or any other personal property located on premises he or she owns or controls. In this connection details of property acquisition transactions, construction and development costs, rental income, and other data relevant to the determination of an estimate of value are to be considered as information essential to the proper discharge of the assessor's duties.

(Rev. & Tax. Code, § 441, subd. (d)(1).)

Section 441, subdivision (h) proscribes a specific remedy for a taxpayer's failure to provide information, namely, the opportunity for the assessor to request and be granted a continuance for a reasonable period of time.

After an application for a change in assessment has been filed, section 1606 and Property Tax Rule<sup>2</sup> (Rule) 305.1 permit either party to, in specific circumstances, initiate an exchange of information with the other party by submitting certain information at least 30 days before the AAB hearing. (See Rev. & Tax. Code, § 1606, subd. (a)(2); see Rule 305.1, subd. (a).) The 1606

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<sup>2</sup> "Property Tax Rule" is a reference to regulations promulgated under title 18 of the California Code of Regulations.

request includes an exchange of information regarding both party's basis for their opinion of value, including "evidence of comparable sales. . ." (Rev. & Tax. Code, § 1606, subd. (a)(1)-(2); Rule 305.1, subd. (a)(1).) Section 1606, subdivision (d) proscribes, according to various circumstances, either a continuance or preclusion of evidence if the exchange of information procedures are not followed. (See Rev. & Tax. Code, § 1606, subd. (d); see also Rule 305.1, subd. (c).)

*State Board of Equalization v. Cenicerros*

The California Court of Appeal has specifically addressed the relationship between sections 441 and 1606 in *State Bd. of Equalization v. Cenicerros* (1998) 63 Cal.App.4th 122 (*Cenicerros*). In *Cenicerros, supra*, the Court of Appeal affirmed the trial court's determination that a county's local rule (Rule 10) concerning the exchange of information prior to assessment appeals hearings was not preempted by state law. (*Id.* at p. 125.) Rule 10 was intended to reflect the discovery procedures authorized in section 441 by which an assessor may seek additional information from the taxpayer, and the rule required, in relevant part, that assessee disclose the basis or bases forming their opinion of value, including new market comparable events. (*Id.* at pp. 129, 130.) Rule 10 further stated that if the assessee did not comply with the request, but introduced any requested materials or information at the hearing, the assessor may be granted a continuance for a reasonable period of time, which would extend the section 1604, subdivision (c) period equal to the period of the continuance. (*Id.* at p. 128.)

The State Board of Equalization (Board) petitioned the trial court for a writ of mandate to prohibit enforcement of Rule 10, contending that the county had adopted a rule contrary to and thus preempted by state law, specifically, section 1606. (*Cenicerros, supra*, 63 Cal.App.4th at p. 125.) The trial court denied the Board's petition, and the Board appealed. The Court of Appeal affirmed the trial court, finding that counties were expressly authorized by the California Constitution to adopt rules governing AAB hearings (see Cal. Const. Art. XIII, § 16), and because Rule 10 was "consistent with section 441," it was not preempted by state law. (*Cenicerros, supra*, 63 Cal.App.4th at p. 133.)

The Court of Appeal determined that the Legislature's inclusion of section 441, subdivision (h), which grants continuances of AAB hearings for failure to respond to 441(d) requests, clearly shows that "the Legislature anticipated assessors would use [441(d)] requests as a means of prehearing discovery." (*Cenicerros, supra*, 63 Cal.App.4th at p. 132, italics omitted.) The Board argued that if the assessor can propound a 441(d) request in preparation for an assessment appeal hearing there would be no need for 1606 requests. (*Id.* at p. 132.) The Court of Appeal looked to the legislative history of section 1606 to determine whether the Legislature "intended to establish the exclusive or merely an alternative means by which assessors could demand information."<sup>3</sup> (*Id.* at p. 132-133.) In finding the legislative history devoid of any evidence of the interrelationship between sections 441 and 1606, the court cited to the precedent that section 441(d) is "a 'broad grant[] of power to the assessor to demand information.'" (See *Roberts, supra*, 147 Cal.App.3d at p. 783; *Cenicerros, supra*, 63 Cal.App.4th at p. 133.) The Court concluded that:

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<sup>3</sup> Earlier in its opinion, the Court of Appeal set forth the question: "Does section 441 give assessors a right to demand information from taxpayers in preparation for hearings of assessment appeals which is independent of the rights defined by section 1606?" (*Id.* at p. 130.)

In the absence of any evidence of a legislative intent to preclude the exercise of that power when preparing for assessment appeal hearings, and given the clear indication to the contrary in subdivision (h) of section 441... after a taxpayer has applied for a reduction in its assessment, assessors may prepare for the hearing on that assessment appeal by demanding information from the taxpayer pursuant to subdivision (d) of section 441.

(*Ceniceros, supra*, 63 Cal.App.4th at p. 133.)

Furthermore, the Court of Appeal found that granting a continuance to “allow the assessor time in which to evaluate and attempt to rebut... previously undisclosed evidence introduced at [an AAB] hearing by the taxpayer” did not deprive assesseees of their due process rights. (*Id.* at p. 134.)

### **Conclusion**

Based upon the court’s analysis above, it is our opinion that section 1606 is not the exclusive means by which assessors may request information in preparation for an AAB hearing. Assessors may also issue 441(d) requests after assesseees have submitted their applications for changed assessment, and prior to the equalization hearing. Furthermore, we believe that the phrase “information or records regarding his or her property,” found in section 441(d), cannot be read to exclude comparable sales. If that were the case, there would be no way to read Rule 10’s requirement to disclose comparable sales as consistent with that phrase. In other words, in our view, the Court implicitly read the phrase “information or records regarding his or her property,” found in section 441(d), to encompass sales data of property comparable to the subject property.

Finally, under section 441, subdivision (h), the assessor is entitled to a postponement if an assessee does not comply with a 441(d) request and introduces the requested information at an AAB hearing. Thus, an assessor may issue 441(d) requests for evidence supporting an assessee’s opinion of value, and noncompliance may result in a continuance. Such noncompliance would include the introduction of comparable sales data at the hearing which had not been previously submitted in response to the assessor’s request.

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cc: Mr. Dean Kinnee (MIC:63)