

1 **Assessment Appeals Process**
2 **Agenda and Discussion Document for April 25, 2018 Meeting**

3
4 ***Issue 1: Requests for Taxpayer Information from County Assessors***

- 5
6 1. The law requires only that taxpayers make records available to Assessors—nothing more.
7 **(CATA)**

8
9 COMMENTS:

10
11 **CATA**

12 Section 441(d) states in pertinent part as follows:

13
14 "At any time as required by the Assessor for assessment
15 purposes, every person shall make available for examination
16 information or records regarding his or her property or any other
17 property located on premises he or she owns or controls. In this
18 connection details of property acquisition transactions,
19 construction costs, rental income and other data relevant to the
20 determination of an estimate of value are to be considered as
21 information essential to the proper discharge of the assessor's
22 duties."

23
24 It is clear from the text of Section 441(d) that the taxpayers are not required to
25 submit or mail copies of records. It requires only that the information or records
26 be made available for examination. This is confirmed by Section 470 which states
27 in relevant part:

28
29 "Business Records. (a) Upon request of an assessor, a person
30 owning, claiming, possessing or controlling property subject to
31 local assessment shall make available at his or her principal place
32 of business, principal location or principal address in California .
33 . . a true copy of business records relevant to the amount, cost and
34 value of all property that he or she owns, claims, possesses or
35 controls within the county."

36
37 The plain language of this statute requires taxpayers to make records available at
38 his or her principal place of business, but there is no requirement or legal
39 obligation for the taxpayer to submit copies of this information by mail or
40 otherwise directly to the Assessor.

41
42 As there is no legal authority requiring the taxpayer to mail copies to the assessor
43 and therefore the taxpayer cannot be non-compliant for failure to respond to an
44 assessor's request to send copies of any requested information.
45

1 If, on the other hand, the Assessor requests a mutually agreeable time to meet for
2 the purpose of inspecting the information requested at the taxpayer's primary
3 place of business, then the taxpayer would have been required to comply with the
4 request. Accordingly, any request or demand for information letter from the
5 Assessor that cites Section 441(d) requesting that copies be mailed or otherwise
6 delivered to the Assessor is inconsistent with the statutory text. Any Board
7 regulation regarding Section 441(d) requests must also be in keeping with this
8 language.¹
9

10 **BOE Staff**

11 We believe that, so long as an assessor's request does not mislead the taxpayer
12 into believing that penalties or other consequences might apply if requested
13 copies of documents are not supplied, there is no reason to place legal restrictions
14 on the assessor's decision to *request* copies. In many if not most cases it is more
15 convenient and efficient for both taxpayer and assessor if the taxpayer provides
16 copies.
17

- 18 2. Assessors cannot deny a taxpayer's right to a hearing or impose other consequences on
19 taxpayers that are not set forth in statute. (CATA)
20

21 COMMENTS:
22

23 **CATA**

24 Although CATA respects the Assessor's preference that the taxpayer provide
25 copies of the information being sought, we find no legal support for some of the
26 proposed consequences in the event that a taxpayer fails to comply. Specifically,
27 there is no legal support authorizing the Assessment Appeals Board to compel the
28 applicant to comply with the assessor's request for information nor to deny the
29 appeal.
30

31 For example, CAA's Guidelines Consequences for example 2 recommends that
32 "unless you provide the following requested information by [insert date], the
33 Assessor will request a continuance or postponement of your hearing, and ask the
34 Assessment Appeals Board to require you to provide the requested information in
35 advance of the rescheduled hearing date."
36

37 These statements are based on the erroneous assumption that the Assessment
38 Appeals Board has the authority to compel taxpayer compliance with the
39 Assessor's interpretation of Sections 441(d) and 470. However, the authority to
40 compel compliance with these statutory discovery provisions is not now and
41 never has been vested in the Assessor or the Assessment Appeals Board. Instead
42 the authority to enforce compliance with Sections 441(d) and 470 is vested in the
43 Superior Courts. This is so because there are criminal penalties which can be
44 imposed under Section 462 for any taxpayer who actually refuses to make
45 information or records available for examination at his principal place of

¹ Letter from CATA to Board Chair Diane Harkey dated November 27, 2017.

1 business. These penalties include fines and imprisonment which can only be
2 imposed by the Superior Courts.
3

4 Therefore, the Assessment Appeals Board has no authority to order taxpayer
5 compliance nor does it have the authority to deny the taxpayer's application for
6 failure to comply with the Assessor's request for copies of information and
7 records. However, the Assessment Appeals Board does have some limited
8 authority with respect to the discovery provisions of 441(d). This authority can be
9 found under Section 441(h) which reads in part as follows:
10

11 "If a taxpayer fails to provide information to the assessor
12 pursuant to subdivision (d) and introduces any requested
13 materials or information at any assessment appeals board hearing,
14 the Assessor may request and shall be granted a continuance for a
15 reasonable period of time."
16

17 This continuance represents the only legal ramifications or consequences that may
18 apply to a taxpayer who fails to respond to a Section 441(d) request. There is no
19 legal provision that allows an assessment appeals board to deny the appeal or to
20 compel the taxpayer to provide the requested information. Accordingly, the sole
21 purpose of the continuance is not to compel additional compliance from the
22 taxpayer, but rather to provide the Assessor additional time to review the
23 materials or information that were requested but not received until the hearing. In
24 other words, this continuance can be granted only if a taxpayer introduces
25 information at a hearing which the assessor previously requested, that the
26 taxpayer failed to make available for inspection before the hearing at the
27 taxpayer's primary place of business.
28

29 Therefore, it is our contention that the Assessment Appeals Boards do not have
30 the authority to compel the taxpayer to provide information to the assessor in a
31 manner that is not accordance with Sections 441(d) and 470 of the Revenue and
32 Taxation Code. We further suggest that the Assessment Appeals Boards do not
33 have the legal authority to deny the taxpayer's application by refusing to proceed
34 with the evidentiary hearing based on the Assessor's erroneous interpretation of
35 the property tax laws. This is particularly true when it becomes clear that the
36 authority to compel compliance with Sections 441(d) and 470 of the Code is
37 vested in the Superior Courts. The jurisdiction of the Assessment Appeals Board
38 is limited to granting a continuance under Section 441(h), which can only be
39 exercised after the taxpayer has presented evidence at a hearing which was
40 specifically requested in writing by the Assessor prior to the hearing and not made
41 available for inspection by the taxpayer at his/her principal location of business
42 prior to the hearing.
43

44 The most flagrant contravention of Sections 441(d) and 470 concerns one county
45 that maintains two hearing calendars consisting of both "compliant" and "non-
46 compliant" applicants. "Compliant" applicants become compliant only after the

1 assessor informs the Assessment Appeals Board that they have satisfactorily
2 complied with the Assessor's request for information. "Non-compliant"
3 applicants are those who have not done so. The hearing is then automatically
4 continued to a future date for the sole purpose of securing the taxpayer's full
5 compliance with whatever information request the assessor has propounded.
6 There is no legal support for this ongoing violation of taxpayer rights.
7

8 In conclusion, there is no legal authority requiring a taxpayer provide copies of
9 any information requested from the assessor in accordance with Section 441(d). In
10 addition, there is no legal support for any consequences against any taxpayer who
11 has failed to comply with an assessor's 441(d) request other than a possible
12 continuance being granted to the assessor in accordance with Section 441(h).²
13

14 **CAA**

15 [CAA is] pleased to report that significant progress has been achieved since
16 CATA publicly complained to the Board of Equalization (BOE) on September 26,
17 2016; many of the issues reiterated at the December 18 meeting have now been
18 resolved by changes in practices by local assessors. Marc Aprea, on behalf of
19 CATA agreed with this sentiment and noted in a recent correspondence to the
20 Chair of the Board of Equalization:
21

22 "We are encouraged that the CAA's October 12 letter reported
23 that several counties have modified their correspondence in
24 response to the feedback received from both assessors and
25 taxpayers. We are further encouraged that CAA welcomes the
26 opportunity to participate in the upcoming interested parties
27 process intended to improve best practices, and increase
28 cooperation and compliance by taxpayers.... most assessors have
29 fairly applied-and continue to fairly apply- Section 441(d) ."
30

31 Now that multi-lateral communication has been established by the interested
32 parties regarding the concerns tendered by CATA, we are optimistic that the
33 cooperation will continue as county assessor's tender concerns about the practices
34 of some in the tax advocacy profession. CAA looks forward to working with
35 CATA, BOE, County Counsels and CACEO to find additional changes in
36 practices that will further advance professionalism and ethical standards in the
37 assessment appeals process.³
38

39 **BOE Staff**

40 BOE staff is committed to working with parties to seek resolution on issues
41 raised.
42
43
44

² *Ibid.*

³ Letter from CAA to Board Chair Diane Harkey dated January 18, 2018.

1 3. Require all section 441(d) requests to be in writing (**CATA, CalTax**)

2 COMMENTS:

3
4 **CalTax**

5 To ensure that taxpayers are appropriately notified of the request, and because
6 information obtained therein will be presented as evidence in Assessment Appeals
7 Board (AAB) hearings, we suggest regulations be amended to require that all
8 Section 441(d) requests be in writing. Acknowledging that there may be need for
9 flexibility, we suggest that the regulations could allow the taxpayer and assessor,
10 by written mutual agreement, to waive the requirement for written communication
11 under reasonable circumstances (i.e., to avoid a hearing delay/continuance).⁴
12

13 **CAA**

14 Assessors generally agree; requests for information should be in writing. As there
15 is agreement, we recommend dropping this item from consideration during the
16 interested parties' process.⁵
17

18 **BOE Staff**

19 We agree that all requests for information under section 441(d) should, as a matter
20 of good practice, be in writing. We suggest adding language to the Assessment
21 Appeals Manual to emphasize the point.
22

23
24 4. Standardized format for section 441(d) requests (**CalTax**)

25 COMMENTS:

26
27
28 **CalTax**

29 So taxpayers and assessors are better informed of their rights and responsibilities,
30 we suggest regulations be amended to require a quasi-standardized Section 441(d)
31 request form that (1) cites the appropriate statutes/provisions relative to taxpayers'
32 and assessors' rights and responsibilities; (2) informs the taxpayer and the assessor
33 that information obtained in a Section 441(d) request is confidential per Section
34 451; and (3) provides a narrative portion for assessors to inform taxpayers of the
35 information/records being requested. A standardized format would help avoid
36 misleading/threatening request letters.⁶
37

38 We recommend that the requirements be stipulated in regulations, but that the
39 form itself be promulgated in the assessors' handbook to facilitate any necessary
40 updates.⁷
41
42

⁴ Letter from CalTax to David Yeung, Chief, County-Assessed Properties Division dated January 19, 2018.

⁵ Letter from CAA to Board Chair Diane Harkey dated January 18, 2018.

⁶ Letter from CalTax to David Yeung, Chief, County-Assessed Properties Division dated January 19, 2018.

⁷ *Ibid.*

1 **CAA**

2 We disagree with any efforts to create a standard "one size fits all" for 441(d)
3 letters; it is not realistic, nor in the best interest of the appellant or the assessor.
4 The new Apple "Spaceship" headquarters in Santa Clara County is different than
5 a strip shopping center or a small office building in another county and properly
6 assessing each requires different information. At the December 18 meeting there
7 also appeared agreement by CATA and assessors that discovery correspondence
8 to a Fortune 500 company should be different from letters to residential property
9 owners and small businesses.⁸

10
11 **BOE Staff**

12 Staff stands ready to work with the parties to develop a standardized format. The
13 parties should bear in mind, however, that the assessor's authority to request
14 information under the statute is quite broad,⁹ and any standardized format must
15 inform the taxpayer about the consequences for failing to comply with an
16 assessor's lawful request.

17
18 5. Limiting scope of section 441(d) requests to the property under appeal (**CATA**)

19
20 COMMENTS:

21
22 **CAA**

23 This complaint is overly broad and subjective. Assessors strive to comply with
24 Attorney General opinion 84-1104, and do not intentionally make overly broad
25 requests. There is general agreement that assessors should follow the Attorney
26 General's opinion. Consequently, we recommend dropping this item from
27 consideration during the interested parties' process.¹⁰

28
29 **BOE Staff**

30 Section 441(d) was intended to be a broad grant of power to the assessor to obtain
31 the information deemed by the assessor as essential to performing his duties. In
32 *Roberts v. Gulf*, the court found that in section 441(d) "[t]he term "essential"
33 serves to prohibit harassment by the taxing authority," not to place upon the
34 assessor constraints in obtaining needed information.

35
36 At the same time, section 452 prohibits any question on the property statement
37 that is not germane to the assessment function. An assessor should, therefore, be
38 careful to avoid using requests for information under section 441(d) that might be
39 overly broad for the specific property being assessed.

40
41 6. Coercive or threatening language in section 441(d) requests (**CATA**)

42
43 COMMENTS:

⁸ Letter from CAA to Board Chair Diane Harkey dated January 18, 2018.
⁹ See, for example, *Roberts v. Gulf Oil Corp.* 147 Cal.App.3d 770.
¹⁰ Letter from CAA to Board Chair Diane Harkey dated January 18, 2018.

1 **CAA**

2 During the past year the CAA focused primarily on allegations about some
3 Assessors' letters requesting information. Since then, a number of counties have
4 changed their 441(d) correspondence. We have created specific guidelines that
5 have been adapted by the CAA, covering the process. As a result, the letters that
6 most concerned CATA have now been eliminated. We have provided these
7 guidelines to assessors, CATA and the BOE.

8
9 The guidelines make clear that there is a progression in tone between the first
10 R&T Code 441(d) letter, and the letters that follow when the taxpayer fails to
11 respond. For example, the guidelines suggest the initial R&T Code 441(d) letter
12 state:

13
14 "It may be possible to agree to reduce the values without a formal hearing if you
15 comply with this letter." or "The majority of appeals can be resolved without a
16 hearing if the necessary information is made available to our office."

17
18 If a taxpayer does not respond, the guidelines go on to suggest additional
19 language:

20 "In order for the Assessor to properly review the assessed value of the property
21 under appeal, you are required to provide the following information: ... "

22
23 When we do not receive a response from two written requests, assessors increase
24 the pressure and the CAA guidelines recommend the following language:

25
26 "The Assessor is entitled to receive from you, and is hereby requesting, the
27 following information pursuant to Section 441(d) of the California Revenue and
28 Taxation Code." or "This request is made in accordance with Section 441(d) of
29 the California Revenue & Taxation Code."

30
31 When the taxpayer chooses to be hostile toward the assessor's office (and a few
32 are hostile), assessors have no choice but to inform the taxpayer of one of the
33 consequences for failure to cooperate by citing language in R&T Code 441(h),
34 which states:

35
36 "If a taxpayer fails to provide information to the assessor pursuant to subdivision
37 (d) and introduces any requested materials or information at any assessment
38 appeals board hearing, the assessor may request and shall be granted a
39 continuance for a reasonable period of time."

40
41 The guidelines also suggest citing R&T Code Section 501 which reads:

42
43 "Failure to furnish information. If after written request by the assessor, any person
44 fails to comply with any provision of law for furnishing information required by
45 Sections 441 and 470, the assessor, based upon information in his (or her)

1 possession, shall estimate the value of the property and, based upon this estimate,
2 promptly assess the property."
3

4 Finally the CAA has urged assessors to limit language stating that the taxpayer
5 will be "subject to possible enforcement actions, subpoena or penalties, as
6 provided under California Law and Regulations."
7

8 Clearly, there is a progression. Recognizing that some of the letters could be
9 misinterpreted, assessors have now changed some of the letters that were cited in
10 CATA's original package of examples.
11

12 Yet assessors like any taxing authority, including the BOE, must be able to
13 impose an increasing level of demand on taxpayers, including a subpoena as a last
14 resort, to obtain information from taxpayers.
15

16 As noted above, assessors have removed from their R&T Code 441(d) letters any
17 language CATA perceived as threatening or coercive. In the interest of informing
18 taxpayers, many who have never filed an appeal, assessors will continue to advise
19 taxpayers of the legal consequences for failure to cooperate with reasonable
20 requests for information. Assessors have addressed CATA's concerns and we
21 recommend dropping this item from consideration during the interested parties'
22 process.¹¹
23

24 **BOE Staff**

25 We agree with CAA. In the absence of compliance with initial requests, the taxing
26 authority must have the ability, in subsequent requests, to progressively inform
27 the assessee of the lawful consequences of failing to comply. At the same time,
28 assessors should take care that initial requests treat assessees under the
29 assumption that they will freely comply, as most assessees do.
30

31 7. Assessors' compliance with taxpayer requests under section 408(e) (**CATA, CalTax**)
32

33 COMMENTS:
34

35 **CalTax**

36 Currently, some counties refuse to provide taxpayers with information used to
37 derive the appraisal and assessment of the taxpayer's property. It is critical that the
38 taxpayer be provided this information in order to validate, or invalidate an
39 assessor's valuation. Withholding of this information places the taxpayer at an
40 unfair disadvantage. We suggest that regulations be amended to provide a process
41 and timeline for assessors to provide the taxpayer, upon request, information
42 relating to the appraisal and assessment of the taxpayer's property.¹²
43
44

¹¹ Letter from CAA to Board Chair Diane Harkey dated January 18, 2018.

¹² Letter from CalTax to David Yeung, Chief, County-Assessed Properties Division dated January 19, 2018.

1 **CAA**

2 The law is clear, R&T Code 408(e) specifies what information assessors must
3 provide to taxpayers. The examples provided by CATA of failure to adhere to
4 R&T Code 408(e) have been addressed, and the letters have been modified to
5 reflect changes in practices. It is unnecessary to create a rule that merely restates
6 the law. Therefore, we recommend dropping this item from consideration during
7 the interested parties' process.¹³

8
9 **BOE Staff**

10 Subdivision (f)(3) of section 408 already provides that if the assessor fails to
11 comply with an assessee's request under either subdivision (d) or (e), and the
12 assessor introduces any of the requested information at an assessment appeals
13 hearing, then the assessee, upon request, shall be granted a continuance for a
14 reasonable period of time.

15
16 Note, however, that nothing in section 408 mandates a specific time frame within
17 which requests under subdivisions (d) or (e) must be granted. Instead, subdivision
18 (f), paragraph (1) requires that permission for the assessee's inspection or copying
19 requested information "shall be granted as soon as reasonably possible...."

20
21 We agree with CAA that there is no need to create a rule that merely restates
22 existing law.

- 23
24 8. Assessors cannot demand a statement under penalty of perjury as to whether the taxpayer
25 has or does not have the information, or whether the taxpayer has adequately responded
26 to the information request. **(CATA)**

27
28 COMMENTS:

29
30 **CAA**

31 Agreed. R&T Code 441(d) does not state that the assessor can require the taxpayer
32 to provide a compliance statement under penalty of perjury. However, if the
33 assessor determines that information is incomplete or not forthcoming, the
34 assessor can bring the R&T Code 441(d) non-compliance to the attention of the
35 Assessment Appeals Board at a prehearing conference. In some counties, the
36 Assessment Appeals Board holds a non-compliance hearing to discuss the
37 assessor's request for information, the status of the applicant's response, discuss
38 any compliance issues with the parties in an effort to resolve them, obtain
39 agreement about when compliance will take place, and schedule a hearing on the
40 merits of the application for a mutually agreeable date thereafter. In appropriate
41 circumstances, the AAB may discuss with the parties resolving the dispute
42 regarding R&T Code 441(d) compliance by allowing the applicant to submit a
43 sworn statement under penalty of perjury that the applicant does not have
44 responsive documents.¹⁴

¹³ Letter from CAA to Board Chair Diane Harkey dated January 18, 2018.

¹⁴ Letter from CAA to Board Chair Diane Harkey dated January 18, 2018.

1 **BOE Staff**

2 We agree with CATA and CAA.

3
4
5 9. Statutory minimum time before hearing for responding to section 441(d) requests
6 **(CATA, CalTax)**

7
8 COMMENTS:

9
10 **CalTax**

11 Taxpayers sometimes receive 441(d) right before the scheduled appeals hearing or
12 pre-hearing conference, without sufficient time to respond. This can result in
13 hearing delays/continuances. To ensure sufficient time for the parties to provide
14 and review new facts, we suggest that regulations require all Section 441 (d)
15 requests to be transmitted by a time period (i.e., two weeks or some other date)
16 prior to a hearing. Furthermore, to provide flexibility, the regulations could allow
17 the taxpayer and the assessor, by written mutual agreement, to agree to some
18 other date or waive the requirement entirely.¹⁵

19
20
21 **CAA**

22 Disagree. R&T Code 441(d)(1) begins with "At any time, as required by the
23 assessor for assessment purposes..." Nevertheless, we agree with CACEO "some
24 county boards have so many appeals to handle that they simply can't afford to
25 vacate hearing days due to the parties' failure to comply with a rigid time
26 requirement." In the interest of an efficient assessment appeals process, assessors
27 oppose an inflexible and arbitrary deadline. Any rule would disproportionately
28 harm the majority of applicants who are principally homeowners and small
29 business owners.¹⁶

30
31 **CACEO**

32 Our concern here is that a rigid requirement might add unnecessary
33 postponements in our providing a timely hearing. We believe that 441(d) and
34 408(e) requests [should] be made more than two weeks in advance of the hearing.
35 However, we would oppose any inflexible timetable that would provide a party
36 with grounds to justify a postponement or continuance of the hearing where one is
37 not truly necessary. While a county board does have - and should have - the
38 authority to grant a disadvantaged party a postponement or continuance, some
39 county boards have so many appeals to handle that they simply can't afford to
40 vacate hearing days due to the parties' failure to comply with a rigid time
41 requirement. Again, we stress the need for the parties to act responsibly, but
42 some flexibility here is crucial.¹⁷

43

¹⁵ Letter from CalTax to David Yeung, Chief, County-Assessed Properties Division dated January 19, 2018.

¹⁶ Letter from CAA to Board Chair Diane Harkey dated January 18, 2018.

¹⁷ Letter from CACEO to Board Chair Diane Harkey dated November 16, 2017.

1 **BOE Staff**

2 We agree with CAA and CACEO. RTC 441(d) allows an assessor to request
3 information "at any time." Additionally, there is no statute prescribing a specific
4 minimum time period, and the Board cannot contradict existing law through the
5 rulemaking process. Instead, we suggest adding language to the Assessment
6 Appeals Manual emphasizing that assessors should, wherever feasible, allow
7 assessee reasonable time periods for responding to requests for information.
8

9 10. Confidentiality of taxpayer information as provided in section 451 (**CATA, CalTax**)

11 COMMENTS:

12 **CalTax**

13 Revenue and Taxation Code Section 451 provides confidential protection for
14 information provided in a Section 441(d). However it appears that some assessors
15 are citing information relating to one taxpayer as evidence against a different
16 taxpayer, without proper written authorization. So assessors are better informed,
17 we suggest that regulations reiterate the confidentiality provisions of Section 451
18 and that a standardized consent form be developed in the assessors' handbook.¹⁸
19

20 **CAA**

21 Assessors agree information provided by the taxpayer or the taxpayer's agent
22 should be held confidential as provided in Sections 408 and 451. Assessors will
23 continue to use information that is public, disclosed during a hearing and widely
24 available. Therefore, we recommend dropping this item from consideration during
25 the interested parties' process.¹⁹
26

27 **BOE Staff**

28 The confidentiality statutes have long been in effect, and have been interpreted by
29 the courts. We see no reason for additional clarifying language by way of
30 regulation, but we would support adding language to the Assessment Appeals
31 Manual to emphasize the relevant points.
32

33 11. Assessor cannot use information obtained from one taxpayer under 441(d) and use the
34 same information against a second or any other taxpayer in an assessment appeals board
35 hearing without written authorization from the first taxpayer. (**CATA**)
36

37 COMMENTS:

38 **CAA**

39 Assessors agree information provided by the taxpayer or the taxpayer's agent
40 should be held confidential as provided in Sections 408 and 451. Assessors will
41 continue to use information that is public, disclosed during a hearing and widely
42

¹⁸ Letter from CalTax to David Yeung, Chief, County-Assessed Properties Division dated January 19, 2018.

¹⁹ Letter from CAA to Board Chair Diane Harkey dated January 18, 2018.

1 available. Therefore, we recommend dropping this item from consideration during
2 the interested parties' process.²⁰
3

4 **BOE Staff**

5 In general, the assessor's use of "information" obtained pursuant to section 441 is
6 limited to either market data or information obtained from the taxpayer seeking
7 the reduction, and not relating to the business affairs of another taxpayer.
8 (*Chanslor-Western Oil & Dev. Co. v. Cook* (1980) 101 Cal.App.3d 407.) Of
9 course, the confidential information of third parties may not be disclosed even in a
10 closed hearing. (*Chanslor-Western Oil v. Cook* (1980) 101 Cal.App.3d 407;
11 *Trailer Train Co. v. State Bd. of Equalization* (1986) 180 Cal.App.3d 565
12

13 We agree with CAA, however, that information that has been disclosed during a
14 public hearing is thereafter available to anyone.
15

- 16 12. AABs should not be able to dismiss an assessment appeal application at a pre-hearing
17 conference, or otherwise, because the taxpayer has not responded to a Section 441(d)
18 request. AABs cannot legally limit taxpayers' administrative rights and remedies and
19 cannot dismiss applications for any perceived 441(d) violation. **(CATA, CalTax)**
20

21 **COMMENTS:**

22 **CalTax**

23 It appears that some appeal applications have been rejected based on the
24 perception that taxpayers are withholding information. Whether this is true or not,
25 due process requires that taxpayers be afforded an opportunity before the AAB. If
26 the AAB determines that there is insufficient information or the presented facts do
27 not support the taxpayer's position, then the AAB will decide against the taxpayer.
28 To ensure due process, we suggest that regulations reaffirm that AABs are
29 authorized to postpone a hearing for a reasonable period (i.e., two weeks or some
30 other period), but not to dismiss an appeal application on the grounds that the
31 taxpayer has not responded or has been unable to provide information requested.²¹
32
33

34 **CAA**

35 As discussed in the letter submitted by the Santa Clara County Counsel's office,
36 Assessment Appeals Boards have legal authority to hold a pre-hearing
37 conference, sometimes referred to as a "441(d) non-compliance hearing." The
38 purpose of these hearings is to discuss and address the status of outstanding R&T
39 Code 441(d) requests and the anticipated compliance schedule. The appeals board
40 can then set the hearing on the merits of the appeal for a mutually agreeable date
41 following R&T Code 441(d) compliance.
42

43 If an applicant or their agent fails to appear at the prehearing conference/R&T
44 Code 441(d) non-compliance hearing, the Assessment Appeals Board can dismiss

²⁰ Letter from CAA to Board Chair Diane Harkey dated January 18, 2018.

²¹ Letter from CalTax to David Yeung, Chief, County-Assessed Properties Division dated January 19, 2018.

1 the application for lack of appearance at the hearing. Such dismissal results from
2 the failure to appear at the hearing, not from the R&T Code 441(d) non-
3 compliance itself. In Santa Clara County, for example, if an applicant or their
4 agent fails to appear at the R&T Code 441(d) non-compliance hearing, the
5 application is dismissed for lack of appearance. However if the applicant/agent
6 inadvertently missed the hearing for example, they can then file a request for
7 reinstatement of the appeal.²²
8

9 **BOE Staff**

10 We agree with CAA.

- 11
12 13. Assessors should not issue Section 441(d) requests that also threaten the taxpayer with
13 criminal or administrative penalties for non-compliance within a particular time or if the
14 response is deemed insufficient by the assessor. **(CATA)**
15

16 COMMENTS:

17
18 **CAA**

19 Agreed. The CAA, as noted above, supports the use of multiple letters that
20 progress in tone and enumeration of consequences. Correspondence should
21 educate taxpayers as to the administrative and criminal penalties for
22 noncompliance long before seeking these remedies. Therefore, we recommend
23 dropping this item from consideration during the interested parties' process.²³
24

25 **BOE Staff**

26 We agree. Other than property statements, section 441(d) does not impose
27 penalties for failure to comply with requests for information. Instead, the
28 consequence of an assessee's failure to provide other information to the assessor is
29 that if the taxpayer introduces such requested information at an assessment
30 appeals board hearing the assessor may request, and shall be granted, a
31 continuance for a reasonable period of time.
32

²² Letter from CAA to Board Chair Diane Harkey dated January 18, 2018.

²³ *Ibid.*

1 **Issue 2: Conditions under which an Assessment Appeals Board may Reject an**
2 **Application for Assessment Appeal**
3

- 4 14. County clerks cannot reject applications because of the false belief that agency
5 authorizations must be signed by taxpayers in the same calendar year as the application
6 was filed. While it is true that the agency authorizations must be signed and dated before
7 the appeal applications are filed, California law does not require that they be signed in the
8 same calendar year in which the applications are filed. Agency authorizations can be
9 signed in earlier years as long as they state that the agent is authorized to sign and file
10 applications for the relevant roll years. **(CATA)**
11

12 COMMENTS:
13

14 **CACEO**

15 We agree. However, we would like to point out that some clerks and appeals
16 boards have been very strict about agent authorizations because of a history of
17 abuse by a few tax agents. Over the years there have been many incidents of
18 agents filing old authorization forms or photocopies of old authorization forms
19 that were no longer valid and where, in fact, the taxpayer never authorized the
20 agent to file for the year in question. Some taxpayers never even knew an appeal
21 had been filed on their behalf. This is largely, but not exclusively, a problem with
22 appeal mills.
23

24 We note that Rule 305 prohibits retroactive authorizations and permits an agent to
25 sign and file applications in the specific calendar year in which the application is
26 filed. However, neither statute nor regulation is entirely clear about whether the
27 authorization must be signed in the same calendar year as the appeal. Perhaps
28 some additional clarification in Rule 305 would be useful. We are willing to work
29 with the BOE and the parties in that regard.²⁴
30

31 **CAA**

32 We concur with CACEO and support additional clarification in Rule 305.²⁵
33

34 **BOE Staff**

35 We agree with CACEO.
36

- 37 15. The agency authorization rules must be clarified for processing on-line filings. For in-
38 person filings, current rules require applicants to attach agency authorizations to their
39 appeal applications. But these rules don't work for on-line filings, since there is no way to
40 attach agency authorizations. The attempted application of this obsolete rule has been
41 mixed, at best, and the results have hurt taxpayers. **(CATA, CalTax)**
42

43 COMMENTS:
44

²⁴ Letter from CACEO to Board Chair Diane Harkey dated November 16, 2017.

²⁵ Letter from CAA to Board Chair Diane Harkey dated January 18, 2018.

1 **CalTax**

2 Some of the provisions related to in-person filings need to be updated to reflect
3 procedures better suited to online filings (i.e., email communication/transmittal,
4 electronic signatures, agency authorizations, etc.). We suggest that taxpayers and
5 assessors look to the Franchise Tax Board and other tax agencies as guides to
6 identify methods by which assessors may be able to accelerate a transition to
7 electronic communication and transmittal.²⁶

8
9 **CACEO**

10 We agree that it would be desirable for any county using an on-line filing system
11 to have a mechanism that permits submission of agency authorization on-line.
12 However, some counties simply do not have the necessary funding to do so, at
13 least in the near-term. Although neither law nor rule requires on-line filing,
14 including on-line filing of agent authorization, we are willing to work with the
15 BOE and interested parties to develop an appropriate amendment to Rule 305 to
16 provide some permissive guidance to counties, since the current version of the
17 Rule was issued in 2004, before on-line filing was authorized by law.²⁷

18
19 **CAA**

20 We concur with CACEO and support additional clarification in Rule 305.²⁸

21
22 **BOE Staff**

23 We agree with CACEO and CAA, and stand ready to work with the parties to
24 clarify Rule 305.

- 25
26 16. Standardized state-wide assessment appeal applications should be considered. Currently,
27 each county develops their own forms based on state-wide guidelines, however, these
28 forms vary county to county and result in accepted or rejected statuses depending upon
29 the specific county. **(CATA)**

30
31 **CACEO**

32 We don't see the problem here. The BOE standardized the Application for
33 Assessment Appeal in 2015. Although a few appropriate variations are permitted
34 by the BOE (counties with a hearing officer program, being one), BOE staff is
35 very strict in making sure a county's form complies with BOE requirements for
36 standardization.²⁹

37
38
39 **CAA**

40 We agree with CACEO that this is not an issue as "the BOE standardized the
41 Application for Assessment Appeal in 2015. Although a few appropriate
42 variations are permitted by the BOE (counties with a hearing officer program, for

²⁶ Letter from CalTax to David Yeung, Chief, County-Assessed Properties Division dated January 19, 2018.

²⁷ Letter from CACEO to Board Chair Diane Harkey dated November 16, 2017.

²⁸ Letter from CalTax to David Yeung, Chief, County-Assessed Properties Division dated January 19, 2018.

²⁹ Letter from CACEO to Board Chair Diane Harkey dated November 16, 2017.

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example), BOE staff is very strict in making sure a county's form complies with BOE requirements for standardization."³⁰

BOE Staff
We agree with CACEO and CAA.

³⁰ Letter from CAA to Board Chair Diane Harkey dated January 18, 2018.

1 ***Issue 3: Conditions under which Already-Scheduled Appeals Hearings may be Postponed***
2

3 17. In some counties the Assessor asks for indefinite postponements after the taxpayer
4 presents its case-in-chief. This, CATA members believe, is done to buy time to prepare
5 for cross-examination, thus compromising taxpayers' due process rights. AABs should
6 be required to make every reasonable effort to maintain continuous hearing dates. Delays
7 longer than a week should require a showing of undue hardship on the part of the
8 Assessor. **(CATA)**
9

10 COMMENTS:

11 **CACEO**

12 While we agree that AABs should make every reasonable effort to keep the
13 hearing moving, rather than continue it to some future date, it would not be
14 useful, nor even proper in our view, for the BOE to impose restrictions on the
15 AAB with regard to whether a continuance should be granted or what the
16 appropriate length of continuance should be. This must be left up to the county
17 board to decide, based on arguments presented at the hearing.³¹
18
19

20 We are willing to work with the BOE and the parties to develop a sentence for
21 inclusion in the Assessment Appeals Manual urging the county board to make
22 every reasonable effort to maintain continuous hearing dates, given the reasonable
23 needs of the county board and of the parties to the proceeding.³²
24

25 **CAA**

26 We concur with CACEO and "are willing to work with the BOE and the parties to
27 develop a sentence for inclusion in the Assessment Appeals Manual urging the
28 county board to make every reasonable effort to maintain continuous hearing
29 dates, given the reasonable needs of the county board and of the parties to the
30 proceeding."
31

32 **BOE Staff**

33 We agree with CACEO and CAA, and stand ready to work with the parties to
34 develop language for inclusion in the Assessment Appeals Manual.
35
36

³¹ Letter from CACEO to Board Chair Diane Harkey dated November 16, 2017.

³² *Ibid.*

1 *Other Issues*

2
3 **Note:** Items 18-28 were submitted after the meeting on December 18, 2017, and are presented
4 here for comment at the interested parties meeting.

5
6 18. Disclosure of redacted identifying information about properties from which market data
7 is derived (**Peter Michaels**)

8
9 COMMENTS:

10
11 **Peter Michaels**

12 I represent a group of taxpayers that has filed assessment appeals with a local
13 board. The assessor apparently used the same source information in valuing all
14 taxpayers in our group. We have asked the assessor to provide data underlying the
15 contested assessments. In response, the assessor's counsel has declined to produce
16 the requested information and data, citing Revenue and Taxation Code Section
17 408(e)(3). Instead, the assessor has provided our group with a one-page "Discount
18 Rate Derivation Summary", listing (unidentified) sales, "Year Sold", and "Rate".

19
20 Of course, we agree that proprietary and confidential business trade secret
21 information and data must be safeguarded from disclosure. That interest must,
22 however, be harmonized with a taxpayer's legal right to know exactly how an
23 assessed value was determined and whether (or not) necessary adjustments were
24 made by the assessor. We urge the Board to work with assessors and taxpayers to
25 strike a balance between these competing interests.³³

26
27 19. Amend section 1624.1 to apply the same 3-year cooling off period to tax agents seeking
28 to serve on AABs as is applied to former assessor employees (**Rich Benson, Marin**
29 **County Assessor/Recorder/Clerk**)

30
31 COMMENTS:

32
33 **Benson**

34 RTC 1624.1. Requires amendment to prevent the double standard that an assessor
35 employee is disqualified from serving on a board for three years while not
36 applying the same standard to a practicing tax agent for three years. In fact, the
37 existing statute allows a practicing tax agent to serve as a Board member while
38 simultaneously practicing in the field against assessors.³⁴

39
40
41 20. Amend section 1642.2 conflict of interest statute to conform with OTA Reg. 30825 (**Rich**
42 **Benson**)

43
44 COMMENTS:

³³ Email from Peter Michaels to David Yeung, Chief, County-Assessed Properties Division, February 5, 2018.

³⁴ Submission from Rich Benson, Marin County Assessor, December 28, 2017.

1 **Benson**

2 RTC 1624.2. This 1967 section regarding conflict of interest is sorely out of date.
3 Given the frequency, legal implications, and substantial fiscal issues before
4 Boards, consider adopting the same standard of Code of Ethics by OTA Reg
5 30825.³⁵
6

7 21. Clarify Rule 305(e) (**Rich Benson**)

8
9 COMMENTS:

10
11 **Benson**

12 To prevent abuse of Property Tax Rule 305(e), its ambiguity needs to be corrected
13 to ensure that (B) and (C) reconcile, and to prevent the effect of the amendment is
14 not to request relief additional to or different in nature from that originally
15 requested.³⁶
16

17 22. Amend Property Tax Rules to require AAB members to receive ethics training as
18 provided in Govt. Code section 53234 (**Rich Benson**)³⁷

19
20 23. Require AAB members to annually receive 6 hours of continuing education (**Rich**
21 **Benson**)

22
23 COMMENTS:

24
25 **Benson**

26 Assessment Appeals Board members should have minimum 6 hours annual
27 continuing education requirement specific to assessment appeals, new legislation,
28 assessment law, and assessment procedures. Exceptions may be granted to
29 recognize 2 hours in a related field like for California Certified appraisers,
30 Appraisal Institute or like.³⁸
31

32 24. Amend Rule 323(a) to make more specific the meaning of "good cause" for a
33 postponement (**Rich Benson**)

34
35 COMMENTS:

36
37 **Benson**

38 Property Tax Rule 323(a); "Good cause" should be better described to prevent
39 less the appropriate excuses to postpone or continue a hearing. Consider recent
40 OTA Reg. 30823 Among the factors OTA may consider in determining whether
41 there is reasonable cause for a postponement or deferral include:

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

- 1) A party or a representative of a party cannot appear at a hearing or meet a briefing deadline due to the illness of that person or a member of that person's immediate family;
- 2) A party or a representative of a party cannot appear at a hearing or meet a briefing deadline due to an unavoidable scheduling conflict;
- 3) A party has obtained a new representative who requires additional time to become familiar with the case;
- 4) All parties desire a postponement;
- 5) A stay has been imposed in the taxpayer's bankruptcy action; or
- 6) Pending court litigation or pending regulatory action by CDTFA may be relevant to the resolution of the issues on appeal.³⁹

25. Clarify and simplify subpoena procedures under sections 454, 468, 1609.4, and Rule 322
(Rich Benson)

COMMENTS:

Benson

All subpoena procedures should be simply and clearly described for efficient implementation. This includes RTC 454, 468, 1609.4, Property Tax Rules 322, and any related information regarding expediency to the court's calendar.⁴⁰

26. Amend section 167 to remove the value presumption for escape assessments resulting from failure to provide all information lawfully requested by the assessor **(Rich Benson)**

COMMENTS:

Benson

RTC 167. In a post Proposition 13 environment RTC 167 should be changed to prevent a simple opinion of value gaining the presumption over and above a bona-fide sales price qualifying pursuant to the terms of RTC 110(b).

167. Presumption affecting burden of proof. (a) Notwithstanding any other provision of law to the contrary, and except as provided in subdivision (b) and section 110 subdivision (b) there shall be a rebuttable presumption affecting the burden of proof in favor of the taxpayer or assessee who has supplied all information as required by law to the assessor in any administrative hearing involving the imposition of a tax on an owner-occupied single-family dwelling, the assessment of an owner-occupied single-family dwelling pursuant to this division, or the appeal of an escape assessment.

(b) Notwithstanding subdivision (a), the rebuttable presumption described in that subdivision shall not apply in the case of an administrative hearing with respect to

³⁹ *Ibid.*

⁴⁰ *Ibid.*

1 the appeal of an escape assessment resulting from a taxpayer's failure ~~either to file~~
2 ~~with the assessor~~ supply all information as required by law to the assessor,
3 including, but not limited to, a change in ownership statement or a business
4 property statement, or to obtain a permit for new construction.⁴¹
5

6 27. Section 674(a) (**Rich Benson**)
7

8 COMMENTS:
9

10 **Benson**

11 RTC 674(a) Has created an unfair hardship for assessors, not equally applied to
12 other parties, in qualifying competent appraisal consultants. Not only does this
13 reveal and risk impeachment of an assessor's witness, it compromises due process
14 and fair play in an administrative hearing environment. It is possible to qualify a
15 competent assessor consultant by other reasonable means without imposing a
16 competitive bidding process upon the assessor.⁴²
17

18 28. Consumer protection measure. Consider OTA Reg. 30703 (**Rich Benson**)
19

20 COMMENTS:
21

22 **Benson**

23 As a consumer protection measure, specific and standards should be adopted
24 to inform consumers about entering into contracts that may bind them to tax
25 agent payments when assessors have affected or continued an assessment
26 reduction independent of any actions by the tax agent. Further, consumers
27 should be informed about contracts binding for multiple years unless
28 constructively revoked by the consumer. In addressing these matters
29 additionally consider the contents of OTA Reg 30703.⁴³

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Ibid.*