

PLUMAS COUNTY ASSESSOR

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CHARLES W. LEONHARDT
ASSESSOR

April 26, 2019

David Yeung, Chief
County-Assessed Properties Division
Property Tax Department, Board of Equalization

Dear Mr. Yeung,

I write in my capacity as the Plumas County Assessor and in my capacity as Chairman of the CAA Assessment Appeals Ad-Hoc Committee. Thank you for the opportunity to comment on the proposed Board prescribed form for Revenue and Taxation Code Section 441 (d) requests for information as well as the proposed revisions to the Assessment Appeals Manual concerning Postponements and Continuances and De-Identifying Confidential Data. I would like to compliment you and your staff for a job well done. The input I provide today is based upon my own observations as well as input from the committee and other members of the California Assessors' Association. This is a consolidated response which conveys all input received to date.

Request for Information Form

- The current draft of the form is not formatted to accommodate having the document prefilled and compatible with mailing in a #10 window envelope. If reformatting were to take place it would eliminate the need for a cover letter to fulfill that function, thus making the form much more efficient for assessors' to implement.
- The form should provide verbiage that acknowledges the Assessor is attaching a list of the requested and suggested items to be submitted.
- On Line 25 of Page 1 after the comma, the form should replace he with either they or he/she.
- A copy of Los Angeles County suggested edits are attached with strikeouts and additions printed in red. (Exhibit 1)

Postponements and Continuances

- See comments from Kern County Council, which are attached. (Exhibit 2)
- See comments from Los Angeles County, which are attached including an email from Edward T. Yen Esq. and suggested edits identified in red. (Exhibit 3)

De-Identifying Confidential Information

- Board staff did an admirable job in addressing this topic. No recommended changes are made.

Please feel free to contact me in the event you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Charles W. Leonhardt".

Charles W. Leonhardt, Plumas County Assessor
Chairman, CAA Assessment Appeals Ad-Hoc Committee

Enclosures: Attachments 1-3

**ASSESSOR REQUEST FOR INFORMATION
PURSUANT TO REVENUE & TAXATION CODE
SECTION 441(d)**

For Assessor's Use Only:	Property Location: _____ Assessor's Parcel Number(s): _____ Due Date for Requested Information: _____ <input type="checkbox"/> This request is being made in conjunction with an assessment appeals hearing: Assessment Appeal Application Number(s) (if assigned): _____ Applicant: _____ Hearing Date (if assigned): _____ Event Type: _____
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Various provisions in the Revenue and Taxation Code grant assessors the authority to obtain information to fulfill their assessment duties. This request for information is made pursuant to the authority granted by Revenue and Taxation Code section 441, subdivision (d), which states:

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.

~~Therefore, you are required by law~~ The provisions of the R&T code require that you to comply with this request. The information specifically being requested is listed on the enclosure. If you are uncertain as to what information is being requested or need more time to comply with the request, please contact the assessor's office employee whose name and contact information appear on the enclosure.

While Revenue and Taxation Code section 441(d) requires you to comply with this request for information, it does not authorize the assessor to require you to submit to depositions, formal interrogatories, or requests for admissions. If the assessor wishes to use those more formal discovery techniques, he will do so based on different statutes. Additionally, section 441(d) does not allow an assessor to require you to provide information under penalty of perjury. However, please be advised that you may be subject to criminal penalties if you do not provide the requested information or provide false information *even if you do not sign a penalty of perjury statement*. (See Revenue and Taxation Code, §§ 461, 462, and 468.)

If the Assessor has checked the box above indicating that this request is being made in conjunction with an assessment appeals hearing, based on the information you provided, the Assessor may arrive at a value

1 conclusion that is satisfactory to you. If this occurs, the Assessor will make a recommendation to the Assessment
2 Appeals Board that your assessed value be changed to that value. However, if you still do not agree with the
3 recommended value, a hearing will proceed. If you do not comply with this request, **or provide only a portion of
the information requested**, your hearing may be delayed. If

4 you appear at the hearing and introduce the information ~~that had been~~ requested, **but not provided by you to the
assessor**; the assessor is entitled to a

5 continuance of the hearing to examine the new information. If you do not bring the requested information, you will
6 have an opportunity to explain to the board members or hearing officer why you have not complied with the request
7 for information, and they will decide whether to hold the hearing without the information, whether to continue the hearing
8 in order to give you time to comply with the request, whether to continue the hearing so that a subpoena can be
9 issued, or whether other action should be taken by the assessor or by the board.

10 For more information about the assessment appeals process, including how to obtain information from the assessor,
11 please see the State Board of Equalization's *Assessment Appeals Manual* at:

12 <http://www.boe.ca.gov/proptaxes/asmappeal.htm>

13

DRAFT

From: Jon Lifquist <lifquist@kerncounty.com>
Sent: Wednesday, April 24, 2019 7:46 AM
To: Leonhardt, Chuck
Subject: RE: Assessment Appeals Process Project----Please reply by April 30, 2019

Chuck,

The comments I received back were positive, but Kern's County Council had some issues with two of the provisions in "Postponements and Continuances." Below are her comments (slightly edited.)

Page 1 lines 13-16:

13 The board may postpone or continue a hearing to allow an applicant time to comply with a
14 request for information from the assessor or the board. However, serial continuances or
15 postponements may not be granted where the board determines the information requested is
16 unrelated to the issue or no responsive documents exist.

Recommend that this also state that the board may postpone or continue a hearing to allow the assessor time to review a response to a request for information that was not provided at least 15 days prior to the hearing. 15 days is our suggestion as a reasonable time, though this is not backed by law.

Page 1 line 20-26:

20 When an applicant's non-compliance with a request for information is at issue and a
21 postponement or continuance is unlikely to result in the production of responsive information,
22 the board, in most cases, should hold a hearing weighing the available evidence and the
23 credibility of the testimony. In these cases, the board may place the burden of proof on the
24 applicant for the failure to provide information required by law. The board may also continue or
25 postpone a hearing to allow time necessary for the assessor or the board to issue a subpoena for
26 the requested information, as well as any time necessary for related court proceedings.

Shifting burden of proof to the taxpayer is a misreading of the Statute. This section cites to R&T 167(a) and Rule 321(d). The Rule applies only to "hearing[s] involving the assessment of an owner-occupied single-family dwelling or an escape assessment." Which makes sense because the statute says it applies "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."

Neither the Rule nor the Statute indicate that failure to provide information will result in a shift of the burden of proof. Both say is that if an applicant has provided all the relevant information required by law AND it's an escape assessment or an assessment of a single-family dwelling, the presumption affecting the burden of proof shifts in favor of the Applicant and the Assessor then bears the burden of proof. The burden of proof doesn't "shift" back to the Applicant if the Applicant fails to meet the underlying requirement of providing all relevant information.

Here's the statutory language of R&T §167:

(a) Notwithstanding any other provision of law to the contrary, and except as provided in 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.

Thank you for your work on this, Chuck.

Jon Lifquist

From: Leonhardt, Chuck <CLEonhardt@countyofplumas.com>
Sent: Friday, April 12, 2019 1:45 PM
To: assessors@calassessor.org
Subject: FW: Assessment Appeals Process Project----Please reply by April 30, 2019

Good afternoon,

I am forwarding an email from Angie Berry of BOE concerning the three matters concerning assessment appeals. It has been requested that comments be submitted by April 30, 2019. Kindly forward to me any comments that you may have. You may have already received to email, but I wanted to be sure all assessors' had a chance to respond.

Thank you,

Chuck

From: Berry, Angie [<mailto:Angie.Berry@boe.ca.gov>]
Sent: Thursday, March 28, 2019 3:50 PM
Subject: Assessment Appeals Process Project----Please reply by April 30, 2019

Sent on behalf of David Yeung.

Staff of the State Board of Equalization (staff) met with interested parties on October 31, 2018 to continue discussions related to local assessment appeals. Specifically, this meeting covered the issue of confidentiality of taxpayer information, and the development of guidance about how assessors can best honor their duty to taxpayers who provide information with the promise that it be kept confidential. Staff requested comments by November 30, 2018. The attached Use of Confidential Assessor Information document incorporates comments received.

We have also attached the updated Request for Information for Application form and the Postponements and Continuances document.

The following three documents are attached for your review and comments. The documents take in to consideration comments received during October and November 2018.

1. Request for Information for Application
 - a. The document will be a newly created BOE prescribed form. It will be vetted through the Forms Subcommittee of the California Assessors Association.
2. Postponements and Continuances
 - a. The document will be an update to pages 97-98 of the Assessment Appeals Manual.

From: Edward Yen <EYen@assessor.lacounty.gov>
Sent: Wednesday, April 24, 2019 6:43 PM
To: Leonhardt, Chuck
Cc: George Renkei; Jeffrey Meyer; Ana M. Duenas
Subject: RE: Assessment Appeals Process Project----Please reply by April 30, 2019
Attachments: Request for Information for Application PDF revision.pdf; Postponements and Continuances PDF revision (00000002).pdf

Chuck

Here is LA's response to the proposed 441d letter. We don't have too many changes, but there is one change that may need a little more discussion.

I want to direct your attention to the Postponements and Continuances document page 1, line 23-26. Our staff recommended changing the wording to "may" to "shall," but after some discussions with other County Counsel attorneys there may be a conflict in the law regarding this suggestion. RTC 167(a) and (b) states as follows:

(a) Notwithstanding any other provision of law to the contrary, and except as provided in 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 the appeal of an escape assessment resulting from a taxpayer's failure either to file with the assessor a change in ownership statement or a business property statement, or to obtain a permit for new construction.

So, when determining burden of proof, depending on whether at issue is a owner-occupied single-family home or an appeal of an escape assessment may determine whether the burden of proof shifts to the applicant. I think the word "may" provides the AAB more flexibility depending on the facts of the case, as opposed to changing it to shall. It appears shifting the burden is dependent on the facts which can be argued at the board not dictated by rule.

My understanding is that Alameda and Kern County may also be presenting comments to this. Let me know if you do not receive any from them, and I'll contact their County Counsels to find out if they have submitted anything.

Eddie

Edward T. Yen, Esq.

General Counsel

Office of the Assessor

(213) 974-3101

eyen@assessor.lacounty.gov

1 **POSTPONEMENTS AND CONTINUANCES**

2

3 It is within the board's discretion to grant an extension of time before the commencement of a
4 hearing on an application ~~has commenced~~ (a postponement) or after the commencement of a
5 hearing on an application ~~has commenced~~ (a continuance). However, when such requests are not
6 granted as a matter of right or have not been agreed to between the parties, the board should
7 ensure that good cause exists to grant a postponement or continuance. In this regard, the
8 reasonable needs of the county board of equalization or assessment appeals board or county
9 hearing officer and the parties to the proceedings should be considered in determining whether
10 to grant a postponement or continuance. The board should make every reasonable effort, however,
11 to hold the hearing expeditiously.

12

13 The board may postpone or continue a hearing to allow an applicant time to comply with a
14 request for information from the assessor or the board. However, serial continuances or
15 postponements may not be granted where the board determines the information requested is
16 unrelated to the issue or no responsive documents exist. Granting serial continuances or
17 postponements in such instances would effectively deny an applicant a hearing on the merits of
18 the case.

19

20 When an applicant's non-compliance with a request for information is at issue and a
21 postponement or continuance is unlikely to result in the production of responsive information,
22 the board, in most cases, should hold a hearing weighing the available evidence and the
23 credibility of the testimony. In these cases, the board ~~may shall~~ place the burden of proof on the
24 applicant for the failure to provide information required by law.¹ The board may also continue or
25 postpone a hearing to allow time necessary for the assessor or the board to issue a subpoena for
26 the requested information, as well as any time necessary for related court proceedings.

27

28 **POSTPONEMENTS**

29

30 Postponements are extensions of time made before the hearing on an application has
31 commenced. Rule 323, subsection (a), provides in part:

32

33 The applicant and/or the assessor shall be allowed one postponement as a matter
34 of right, the request for which must be made not later than 21 days before the
35 hearing is scheduled to commence.

36

37 If the applicant requests a postponement of a scheduled hearing within 120 days of the expiration
38 of the two-year limitation period provided in section 1604, the postponement will be contingent
39 upon the applicant agreeing to extend and toll indefinitely the two-year period. The applicant has
40 the right to terminate the extension agreement with 120 days written notice.

41

42 The assessor is not entitled to a postponement as a matter of right if the request is made within
43 120 days of the expiration of the two-year limitation period. However, the board, in its
44 discretion, may grant such a request. The board may also grant a postponement for a reasonable

¹ Section 167(a). See also Rule 321 (a)&(d).

1 period of time if one party initiates an information exchange and the other party does not comply
2 within the time specified in section 1606 and Rule 305.1, subdivision (b).²

3
4 In addition, if the applicant or the applicant's agent is unable to attend a properly noticed hearing,
5 the applicant or the applicant's agent may request, prior to the hearing date, a postponement of
6 the hearing with a showing of good cause to the board.³

7
8 Requests for postponements beyond those that are a matter of right, whether by the applicant or
9 the assessor, must be made in writing, and good cause must be shown for the requested
10 postponement. A mutual agreement between an applicant and the assessor shall be deemed to
11 constitute good cause. Postponements granted because of a mutual agreement or other good
12 cause shall result in extending and tolling indefinitely the two-year limitation period, subject to
13 termination of the agreement upon 120 days written notice by the applicant.⁴

14
15 Any information exchange dates established pursuant to Rule 305.1 remain in effect based on the
16 originally scheduled hearing date, notwithstanding the hearing postponement, except when a
17 hearing is postponed due to the failure of a party to respond to an exchange of information.⁵

18
19 A board of supervisors may delegate decisions concerning postponement to the clerk in
20 accordance with locally adopted rules.

21 22 23 **CONTINUANCES**

24
25 Continuances are extensions of time made after the hearing on an application has commenced.
26 The board may, in its discretion, continue a hearing to a later date.⁶

27
28 If the hearing is continued, the clerk must notify both the applicant (or agent) and the assessor, in
29 writing, of the time and place of the continued hearing. This notification must be made not less
30 than 10 days prior to the date of the continued hearing, unless the parties agree in writing or on
31 the record to waive written notice.⁷

32
33 If the applicant requests a continuance within 90 days of the expiration of the two-year limitation
34 period provided in section 1604, the board may require a written extension signed by the
35 applicant extending and tolling the two-year period indefinitely. The applicant has the right to
36 terminate the extension agreement upon 120 days written notice.⁸

37
38 There are five primary reasons for continuing a hearing:
39

² Rule 305.1, subdivision (d).

³ Rule 313.

⁴ Rule 323, subdivision (a).

⁵ Rule 305.1, subdivision (d).

⁶ Rule 323, subdivision (d).

⁷ Rule 323, subdivision (c).

⁸ Rule 323, subdivision (a).

1 • **Amendment of an application.** If the board grants an applicant's request to
2 amend an application, upon request of the assessor, the hearing on the matter shall
3 be continued by the board for no less than 45 days, unless the parties mutually
4 agree to a different period of time.⁹

5
6 • **Applicant has failed to provide all information required by law.** If an
7 applicant has not yet provided all information required by law, the hearing may be
8 continued to a later date for a hearing on the merits of the application or for the
9 board to further inquire into the status of whether applicant has yet provided all
10 information required by law.

11
12 If an applicant fails to provide information to the assessor pursuant to section
13 441(d) and introduces any requested materials or information at any assessment
14 appeals board hearing, the assessor may request and shall be granted a
15 continuance for a reasonable period of time. The continuance shall extend the
16 two-year period specified in 1604(d) for a period of time equal to the length of the
17 continuance.¹⁰

18
19 • **New information introduced at the hearing.** If new material relating to
20 information received from the other party during an exchange of information
21 under section 1606 is introduced, the other party may request a continuance for a
22 reasonable period of time.¹¹

23
24 • **Inspection of assessor's records.** If the assessor fails to permit the inspection or
25 copying of materials or information, as requested by the applicant pursuant to
26 section 408 (d) or (e), and the assessor introduces any such requested materials or
27 information at any assessment appeals board hearing, the applicant may request a
28 continuance for a reasonable period of time. The continuance shall extend the
29 two-year period specified in section 1604(c) for a period of time equal to the
30 length of the continuance.¹²

31
32 • **Further information required by the board.** If, in the opinion of the board,
33 not enough evidence was provided during the course of the hearing for the board
34 to make a proper determination of value, the board may continue the hearing so
35 that information the board believes is pertinent may be assembled and brought
36 before them.

⁹ Rule 305, subdivision (e)(2)(C)(iv).

¹⁰ Section 441(h).

¹¹ Rule 305.1, subdivision (c).

¹² Section 408(f)(3).

¹² Section 408(f)(3).