

Assessor's Remedies for Non-Compliance with Section 441(d) Requests

RTC Sect. 501. Permits assessor to enroll value based on information available if the assessee has not provided information under Sect. 441(d) or Sect. 470. This is commonly referred to as an "assessor estimate." This usually results in the assessee having to file an appeal. The necessity of an appeal is motivation for the taxpayer to provide information so that the assessor doesn't have to resort to making an "assessor estimate" under Sect. 501.

RTC Sect. 454. This allows the assessor to issue an "assessor subpoena" which requires the taxpayer to appear in person before the assessor and provide the information requested under Sect. 441(d). Some counties couple the Sect. 454 subpoena with an RTC Sect. 469 audit.

RTC Sect. 468. Permits assessor to file a Superior Court proceeding for a court order to compel compliance with an assessor subpoena under Sect. 454. Court may use its power of contempt to force the assessee to appear and give a statement and also provide documents. This is a civil remedy proceeding.

RTC Sect. 462. For use in cases where assessee has refused to respond to any assessor requests, or has willfully lied or defrauded the assessor. Assessor reports violations to district attorney who brings an action in Superior Court. This is a criminal remedy proceeding.

RTC Sect. 441(h). For use once an assessment appeals board proceeding has commenced. Allows the assessor to ask the appeals board for a continuance if, during the board hearing, the assessee presents information that had previously been requested by the assessor under RTC Sect. 441(d).

Reasons for Prohibiting Taxpayer "Non-compliance" Hearings

1. There is no statute or regulation that permits assessment appeals boards to conduct taxpayer "compliance hearings" when a taxpayer does not respond to a Sect. 441(d) request to the satisfaction of an assessor.
2. There is no procedural guidance for assessment appeals boards as to how taxpayer "compliance hearings" are to be conducted. Nor are there any guidelines as to what "compliance" means.
3. Assessment appeals board members are not trained or qualified to adjudicate taxpayer compliance issues.
4. Assessment appeals board members are not motivated to and usually do not want to deal with taxpayer compliance issues. They usually make short-shrift of non-compliance issues (see Item 5. below).
5. Taxpayer "compliance hearings" are usually one-sided: the assessment appeals board assumes the assessor's allegations regarding non-compliance are true, and applicants are assumed to be non-compliant and admonished to comply. This almost always puts the taxpayer in a bad light before the board, and gives the assessor an unfair advantage in the appeal proceeding.

6. Assessment appeals boards have no authority to compel taxpayer compliance with Sect. 441(d) requests other than to browbeat the taxpayer or postpone (or deny) the taxpayer's valuation hearing until the assessor reports that the taxpayer has complied. This can result in multiple taxpayer "compliance hearings" and significant delays in obtaining a valuation hearing. Also, if there is a bona fide dispute as to whether the taxpayer has complied, with the assessor insisting on compliance and the taxpayer declining to comply for legitimate legal or practical reasons, the valuation hearing can be delayed forever.
7. There are no assessor "compliance hearings" when assessors fail to comply with RTC Sect. 408 requests from taxpayers.
8. This is an area that is broken and needs to be fixed. There are multiple places in the RTC and SBE Property Tax Rules which are triggered by taxpayer compliance/non-compliance with RTC Sect. 441(d) requests. Some examples are RTC 1604(c)(3) and Rule 309(c) [2-year statute for valuation hearing], RTC 167 and Rule 321(d) [burden of proof shifting in homeowner and escape assessment appeals], Rule 313(f) [assessor raise letter].