

Benson's Appeals Concerns; 12/28/17

1.	RTC 1624.1 Requires amendment to prevent the double standard that an assessor employee is disqualified from serving on a board for three years while not applying the same standard to a practicing tax agent for three years. In fact, the existing statute allows a practicing tax agent to serve as a Board member while simultaneously practicing in the field against assessors.
2.	RTC 1624.2 This 1967 section regarding conflict of interest is sorely out of date. Given the frequency, legal implications, and substantial fiscal issues before Boards, consider adopting the same standard of Code of Ethics by OTA Reg 30825.
3.	To prevent abuse of Property Tax Rule 305(e), it's ambiguity needs to be corrected to ensure that (B) and (C) reconcile, and to prevent the effect of the amendment is not to request relief additional to or different in nature from that originally requested.
4.	Property Tax Rules should state that Assessment Appeals Board members must comply with the ethics training requirement of Government Code section 53234.
5.	Assessment Appeals Board members should have minimum 6 hours annual continuing education requirement specific to assessment appeals, new legislation, assessment law, and assessment procedures. Exceptions may be granted to recognize 2 hours in a related field like for California Certified appraisers, Appraisal Institute or like.
6.	<p>Property Tax Rule 323(a); "Good cause" should be better described to prevent less the appropriate excuses to postpone or continue a hearing. Consider recent OTA Reg. 30823 Among the factors OTA may consider in determining whether there is reasonable cause for a postponement or deferral include:</p> <ul style="list-style-type: none"> <li>(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;</li> <li>(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;</li> <li>(3) A party has obtained a new representative who requires additional time to become familiar with the case;</li> <li>(4) All parties desire a postponement;</li> <li>(5) A stay has been imposed in the taxpayer's bankruptcy action; or</li> <li>(6) Pending court litigation or pending regulatory action by CDTFA may be relevant to the resolution of the issues on appeal.</li> </ul>
7.	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.
8.	<p>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).</p> <p>167. Presumption affecting burden of proof.</p> <p>(a) Notwithstanding any other provision of law to the contrary, and except as provided in subdivision (b) <u>and section 110 subdivision (b)</u>, 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.</p>

	<p>(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 <a href="#">supply all information as required by law to the assessor</a> file with the assessor <a href="#">including, but not limited to</a>, a change in ownership statement or a business property statement, or to obtain a permit for new construction.</p>
9.	<p>RTC 674(a) Has created an unfair hardship for assessors, not equally applied to other parties, in qualifying competent appraisal consultants. Not only does this reveal and risk impeachment of an assessor's witness, it compromises due process and fair play in an administrative hearing environment. It is possible to qualify a competent assessor consultant by other reasonable means without imposing a competitive bidding process upon the assessor.</p>
10.	<p>As a consumer protection measure, specific and standards should be adopted to inform consumers about entering into contracts that may bind them to tax agent payments when assessors have affected or continued an assessment reduction independent of any actions by the tax agent. Further, consumers should be informed about contracts binding for multiple years unless constructively revoked by the consumer. In addressing these matters additionally consider the contents of OTA Reg 30703.</p>