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Lawrence E. Stone, Assessor

April 23, 2018

Sent via email to Mr. David Yeung @ david.yeung@boe.ca.gov

Mr. David Yeung, Chief, Property Tax Department
State Board of Equalization
450 N Street
Sacramento, CA 94279-0064

RE: BOE Findings on CATA Claims

Dear Mr. Yeung,

In my capacity as Santa Clara County Assessor, I write to provide feedback to the “Discussion Topics” statement of March 23. In addition, I want to thank the Board of Equalization (BOE) staff for their informative comments, covering 17 topics already under discussion, and the additional 11 topics submitted after the December 18, 2017 meeting.

In general, I am pleased with the legal analysis of the issues. Santa Clara County is in agreement with most of the findings. Some of the issues are related and we have combined them under separate headings.

While we have met with, listened, accepted, and changed several of the claims made by CATA, none of their remaining complaints rise to the level which necessitate a new rule.

Process to Insure Assessment Appeals Boards (AABs) have Requested Information Prior to Hearing from Applicant:

1. *The law requires only that taxpayers make records available to Assessors—nothing more.*
2. *Assessors cannot deny a taxpayer's right to a hearing or impose other consequences on taxpayers that are not set forth in statute.*
12. *AABs should not be able to dismiss an assessment appeal application at a pre-hearing conference, or otherwise, because the taxpayer has not responded to a Section 441(d) request. AABs cannot legally limit taxpayers' administrative rights and remedies, and cannot dismiss applications for any perceived 441(d) violation.*

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CATA incorrectly asserts that the provisions of Sections 441(d) and 470 are cited by assessors to deny a taxpayer's right to a hearing, or impose other consequences on taxpayers that are not set forth in statute. However, the language clearly delineates the authority of assessors to request information for assessment and subsequent equalization before Assessment Appeals Boards (AABs).

In addition, CATA mistakenly claims that AABs have summarily dismissed assessment appeals applications because the taxpayer has not responded to a Section 441(d) request. In Santa Clara County, no AAB has rejected a valid application prior to a hearing because a taxpayer failed to provide information requested by the assessor. AABs can and legitimately utilize pre-hearing conferences to determine whether or not documentation provided is sufficiently responsive to requests from both the taxpayer and the assessor in accordance with 441(d).

The California Association of Clerks and Election Officials, BOE staff, CAA, and Cal-Tax all agree that "evidentiary" hearings are a common and legitimate tool to determine if a taxpayer has adequately complied with a 441(d) request for information. For example, Cal-Tax states, "... due process requires that taxpayers be afforded an opportunity before the AAB. If the AAB determines that there is insufficient information or the presented facts do not support the taxpayer's position, then the AAB will decide against the taxpayer. To ensure due process, we suggest that regulations affirm that AABs are authorized to postpone a hearing for a reasonable period (i.e., two weeks or some other period), but not to dismiss an appeal application on the grounds that the taxpayer has not responded or has been unable to provide information requested." This scenario properly describes the process employed in Santa Clara County, referred to as a "441(d) non-compliance hearing." AABs have legal authority to hold pre-hearing conferences.

The purpose of these hearings is to discuss and address the status of outstanding R&T Code 441(d) requests, and to determine a reasonable compliance schedule. An appeals board can then set the full hearing for a mutually agreeable date.

If an applicant or their agent fails to appear at the prehearing conference, the AAB has the authority to dismiss the application for lack of appearance. Such dismissal results from failure to appear at the hearing, not from failure to comply.

Based upon concurrence of assessors, Cal-Tax, and BOE staff, we respectfully request that the BOE dismiss CATA's claim that Sections 441(d) and 470 are inappropriately applied by appeals boards. No further discussion of this issue is merited.

Requests for Information, 441(d) Correspondence:

3. *Require all Section 441(d) requests to be in writing.*
5. *Limiting scope of Section 441(d) requests to the property under appeal.*
6. *Coercive or threatening language in Section 441(d) requests.*
9. *Statutory minimum time before hearing for responding to Section 441(d) requests.*

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

I concur with the CAA and BOE staff's comment that 441(d) requests be in writing, are limited to pertinent assessment issues, and refrain from coercive language. Two years ago, CATA identified a few assessors in which the language in 441(d) requests merited changes. The CAA took CATA's comments seriously, and 441(d) letters in these counties were modified to conform with the formal guidelines established by the CAA. Problems were identified and changes were implemented. We do not oppose adding language to the Appeals Manual that states "wherever feasible, allow assessee reasonable time periods for responding to requests for information." We do not object to adding language to the Appeals Manual underscoring that 441(d) requests be in writing. We oppose strongly, however, the creation of a rule to address issues 3, 5, 6, 9, and 13. A new rule is simply unnecessary.

Confidentiality of Taxpayer Information:

7. *Assessors' compliance with taxpayer requests under Section 408(e).*
8. *Assessors cannot demand a statement under penalty of perjury as to whether the taxpayer has or does not have the information, or whether the taxpayer has adequately responded to the information request.*
10. *Confidentiality of taxpayer information as provided in Section 451.*
11. *Assessor cannot use information obtained from one taxpayer under Section 441(d) and use the same information against a second or any other taxpayer in an assessment appeals board hearing without written authorization from the first taxpayer.*

We agree with BOE staff that requests made under Section 441(d) respect the confidentiality of information as provided for under Section 451. We do not oppose adding language to the Appeals Manual underscoring the confidentiality of taxpayer information. However, we do not support the creation of a rule concerning issues 7, 8, 10, and 11. Such a rule would be redundant of existing law.

One Size DOESN'T Fit All: Appeal Applications, 441(d) Letters:

4. *Standardized format for Section 441(d) requests.*
14. *County clerks cannot reject applications because of the false belief that agency authorizations must be signed by taxpayers in the same calendar year as the application was filed. While it is true that the agency authorizations must be signed and dated before the appeal applications are filed, California law does not require that they be signed in the same calendar year in which the applications are filed. Agency authorizations can be signed in earlier years as long as they state that the agent is authorized to sign and file applications for the relevant roll years.*
15. *The agency authorization rules must be clarified for processing on-line filings. For in-person filings, current rules require applicants to attach agency authorizations to their appeal applications. But these rules don't work for on-line filings, since there is no way to attach agency authorizations. The attempted application of this obsolete rule has been mixed, at best, and the results have hurt taxpayers.*

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16. *Standardized state-wide assessment appeal applications should be considered. Currently, each county develops their own forms based on state-wide guidelines, however, these forms vary county to county and result in accepted or rejected statuses depending upon the specific county.*
17. *In some counties the Assessor asks for indefinite postponements after the taxpayer presents its case-in-chief. This, CATA members believe, is done to buy time to prepare for cross-examination, thus compromising taxpayers' due process rights. AABs should be required to make every reasonable effort to maintain continuous hearing dates. Delays longer than a week should require a showing of undue hardship on the part of the Assessor.*

We agree with the CAA, CACEO, and BOE staff conclusions. As these issues principally concern CACEO, we look forward to their leadership resolving differences. We also support, as noted by Cal-Tax, the acceleration of the “transition to electronic communication and transmittal and are supporting legislation to that end.”

Our only major point of disagreement with the BOE staff analysis lies in CATA’s request for a standard of 441(d) format. BOE staff states that it stands ready to work with the parties to develop a standardized format. For reasons stated below, the CAA, as well as Santa Clara County, have emphasized that there must be flexibility in the demands made under 441(d) because properties vary in complexity, requiring a wide variety of information. As the Santa Clara County Assessor, I would support the creation of a one page insert to be included with the initial 441(d) request. That insert can, as noted by Cal-Tax: “(1) cite the appropriate statutes/provisions relative to taxpayers' and assessors' rights and responsibilities; (2) inform the taxpayer and the assessor that information obtained in a Section 441(d) request is confidential per Section 451; and, (3) provide a narrative portion for assessors to inform taxpayers of the information/records being requested.”

Other Issues:

The “other issues” which were raised on December 18, 2017 have not yet been discussed by CAA, nor have they been vetted.

Conclusion:

Except where noted, we urge the BOE to decline to recommend a lengthy and time consuming rule change in the absence of any broad, legitimate, or pervasive problem. Instead, we encourage taxpayers who feel an assessor has violated state law, or formal CAA guidelines, to simply contact the assessor, the CAA, or the BOE Tax Payer Right’s Advocate, with their specific complaint. Issues that remain unresolved can be addressed at the annual joint BOE-Assessor mandated meeting by statute and is open to the public. Finally, we encourage the BOE to include these best practices in their practices survey audit of Assessor offices. As noted above, we do not oppose adding language to the Appeals Manual or other handbooks. However, I believe embarking on a series of handbook changes, and rules, is a poor use of BOE and Assessor staff resources. In the last published BOE budget workload report, 48 counties reported less than 7 percent of all assessment appeals actually result in a formal hearing. In Santa Clara County, only 5% of all appeals actually go to an AAB hearing.

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In conclusion, CATA concerns are a solution looking for a problem.

If the BOE or taxpayers feel the law is not being followed, there is both an informal and formal legal process to redress their grievances. It should be noted that the informal process has been working very well.

Sincerely,



Lawrence E. Stone
Assessor, Santa Clara County

LES:lcc

cc: Hon. Diane Harkey, Member, State Board of Equalization
Hon. Jerome E. Horton, Member, State Board of Equalization
Hon. Fiona Ma, Member, State Board of Equalization
Hon. George Runner, Chair, State Board of Equalization
Hon. Betty T. Yee, State Controller
Yvette Stowers, Deputy Controller
John McKibben, California Association of Clerks and Election Officials
Dean R. Kinnee, Executive Director, State Board of Equalization
Angie Berry, Senior Specialist Property Appraiser, State Board of Equalization
Chuck Leonhardt, Assessor, Plumas County, CAA President
Rich Benson, Assessor, Marin County, Chair, CAA Assessment Appeals Ad Hoc Committee
Carmen Chu, Assessor, San Francisco County, Chair, CAA Standard's Committee