



OFFICE OF
**ASSESSOR-COUNTY CLERK-
RECORDER & ELECTIONS**
COUNTY OF SAN MATEO

MARK CHURCH
ASSESSOR-COUNTY CLERK-
RECORDER & CHIEF ELECTIONS OFFICER

September 20, 2018

Hon. George Runner, Chairman
Hon. Fiona Ma, Vice-Chair
Hon. Jerome Horton, Third District
Hon. Diane L. Harkey, Fourth District
Hon. Betty T. Yee, State Controller
Board of Equalization
450 N Street
P.O. Box 942879
Sacramento, CA 94279-007

Re: September 25, 2018 Board Meeting
Chief Counsel Matters – Item G1 – Rulemaking
Petition to amend Property Tax Rules 302, *The Board's Function and Jurisdiction*; 305, *Application*; 305.1, *Exchange of Information*; 305.2, *Prehearing Conference*; and, 323, *Postponement and Continuances*; and, Proposed Property Tax Rule 305.4, *Request for Information*

Dear Chair Runner and Honorable Members of the Board of Equalization,

I am writing to express the County of San Mateo's opposition to the proposed rule changes as submitted by the California Alliance of Taxpayer Advocates ("CATA") on September 7, 2018. The proposed rule changes add nothing and instead improperly hamper the ability of the Assessment Appeals Board ("AAB") to discharge their constitutional duty to equalize property at its fair market value.

First, we object to the implication that taxpayer cases are being dismissed for failure to comply with information requests from the Assessors. There is no evidence that this is happening anywhere in California. It is our understanding that an attorney for CATA, Cris O'Neill, testified before this Board on July 24, 2018 that he witnessed such a dismissal in San Mateo County. While we are aware that the San Mateo County AAB has dismissed appeals for a failure of the taxpayer to appear at the hearing or pre-hearing, we have found no evidence that any appeal has ever been dismissed for failure to comply with an information request from the Assessor. Therefore the 8-8-2018 proposed revision to Rule 302 adding subsection (c) language that the "board has no jurisdiction to deny an application solely on the ground that the applicant has not

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responded to a request for information made under section 441 of the Revenue and Taxation Code” seeks to solve a problem that does not exist. Moreover, under current law, the AAB does not have the jurisdiction to deny an application on these grounds at any rate. This is also true for the proposed change to Rule 305.2 adding subsection (b).

These two proposed rule changes are further objectionable because they also attempt to limit the ability of the AAB to manage its own docket and determine what information may be helpful to it in the exercise of its constitutional duties by stating that the “board shall not continue a prehearing conference to a later date in order to compel an applicant to respond to a request for information under section 441.” An AAB should have the right and ability to determine whether and under what circumstances it wants to order parties to comply with their obligations under the statutes. The Assessor’s requests for information are designed to elicit information from the taxpayer that will address the fair market value of the property and assist the AAB in properly equalizing the property. To arbitrarily take away that ability based on a taxpayer’s intransigence does not serve the constitutional goal of ensuring that property is valued at its fair market value.

In the same vein, the proposed additions to Rule 323(d) unnecessarily restrict the ability of the AAB to case manage the appeals without identifying any actual problem it purports to solve. San Mateo County is unaware of any requests for continuance after the taxpayer has presented evidence that do not comply with the statutes. Specifically, Section 441(h) provides that if the taxpayer “fails to provide information to the assessor pursuant to subdivision (d) and introduces any requested materials or information at any assessment appeals board hearing, the assessor may request and shall be granted a continuance for a reasonable period of time.” There is no ambiguity in the statute that needs to be clarified by the rule making process. The proposed rule, however, limits the AAB’s discretion to continue hearings for purposes of receiving information it might want in the exercise of its constitutional duty. There is nothing in the statutes that supports such a rule change.

I am also writing to object to the proposed addition of a Rule 305.4. The language proposed by CATA abrogates the statutory language of Section 441 and limits it farther than the legislature could have intended. Section 441 allows the Assessor to obtain a broad level of information in the exercise of his/her duties to properly assess property at its fair market value. Assessor staff often has informal interactions with taxpayers and quickly resolves issues by exchanging information. The statute is one of the few tools that the Assessor has to obtain information from the taxpayer and already contains a number of restrictions and requirements of the Assessor. The restrictions and prohibitions in this proposed rule provide no additional protection for the taxpayer and

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unnecessarily hamper, and increase the cost to the Assessor in the exercise of his/her duties. Our concerns are as follows:

- Requiring that all 441 requests be made in writing at least 20 days prior to a hearing is contrary to the statutory language in 441(d) that states that an assessor may make the request “at any time” and further does not work in San Mateo County. Due to the volume of cases, it is common that informal requests for information will result in resolution of the matter just days before the hearing. Moreover, interactions with different taxpayers have different modes of communication and reducing a simple request to writing is unnecessary given the particular circumstances of an assessment. I do note that San Mateo County has a practice of making 441 requests in writing, but requiring it does not seem particularly helpful to the process.
- The proposed prohibition on an assessor informing taxpayers of the legal consequences for noncompliance with the request does not serve any clear purpose. Not informing taxpayers of penalties they may incur would harm, rather than help a taxpayer as a taxpayer would not be immediately aware of the consequences of noncompliance.
- We also object to the proposed rule change because it attempts to limit an assessor’s ability to use information supplied by one taxpayer in the hearing of another. The use of data in the possession of the assessor is an important tool in determining fair market value. It is verified and credible data. The confidentiality protections contained in the Revenue & Taxation Code are sufficient to protect any specific confidential information of a taxpayer in the process. The only purpose of this proposed rule change appears to be to make it harder for the AAB to understand the data regarding the real estate market that assist it in determining fair market value.
- The proposed rule change also tries to solve another problem that does not exist by prohibiting an assessor from taking a deposition, issuing interrogatories or seeking requests for admission. The assessor does not currently have the ability to do any of those things except as prescribed by Sections 454, 468 and 470. Therefore, prohibiting them has no specific effect and appears to contradict portions of those statutory permissions to discover information relevant to an assessment.

The proposed rule changes do nothing more than make it more difficult for an Assessment Appeals Board to determine the full cash value of a property. This Board should not seek to limit the information assessors may procure and utilize to assist the

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AAB in determining fair market value. Advocates of these rule changes invent problems that don't exist in an effort to make it easier to hide the fair market value of their property. The County of San Mateo Assessor's Office opposes these rule changes.

Sincerely,



Mark Church

cc Dean Kinnee, Executive Director, California Board of Equalization
Joann Richmond-Smith, California Board of Equalization Proceedings
Henry D. Nanjo, California Board of Equalization Chief Counsel
Hon. Charles Leonhardt, CAA President, Plumas County Assessor
John Maltbie, San Mateo County Manager
Michael Callagy, San Mateo County Assistant County Manager