State of California

Board of Equalization
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Memorandum

To: Senator George Runner, Chairman
Honorable Fiona Ma, Vice Chair
Honorable Jerome E. Horton, Third District
Honorable Diane Harkey, Fourth District
Honorable Betty T. Yee, State Controller

Date: September 19, 2018

From: Henry D. Nanjo
Chief Counsel

Subject: **September 25, 2018 Board Meeting;**
Chief Counsel Matters – Item J – Rulemaking
Petition for Amendments to Property Tax Rules:
302, *The Board's Function and Jurisdiction*
305, *Application*
305.1, *Exchange of Information*
305.2, *Prehearing Conference*
323, *Postponements and Continuances*

On July 10, 2018, via email, the California Alliance of Taxpayer Advocates[1] (CATA or petitioner) petitioned the State Board of Equalization (BOE or Board) to amend California Code of Regulations, title 18, sections (Property Tax Rules or Rules[2]) 302, *The Board's Function and Jurisdiction*; 305, *Application;* 305.1, *Exchange of Information*; 305.2, *Prehearing Conference*; and 323, *Postponements and Continuances* (the Proposed Rules).[3] This correspondence included text of the Proposed Rules and a document titled "Reasons why the Appeals Regulation changes are necessary" ("Reasons for Changes"). Consistent with Government Code (GC) section 11340.7, the rule petition was discussed at the July 24, 2018 Board meeting. At that meeting the Board directed the Executive Director to instruct the Chief Counsel to draft a legal analysis on the proposed rule changes as presented by CATA, with the exception of changing the date [in Proposed Rule 323, subd. (d)] from 10 days to 90 days, so that the Board can decide whether to engage in the regulatory process.

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[1] CATA describes itself as a "non-profit trade association made up of tax consultants representing taxpayers before County Assessors, The Franchise Tax Board and The State Board of Equalization. CATA's purpose is to protect the rights of state and local taxpayers by advancing the professional practice of state and local tax consulting through education, advocacy and high ethical standards.". (<https://www.cataxadvocates.org/about> [as of August 9, 2018].)

[2] All Property Tax Rule or Rules are section references to Title 18 of the California Code of Regulations.

[3] The July 10, 2018 petition was preceded by letters and discussions between CATA, the California Assessors' Association, and the Board which led to the commencement of an interested parties process. That interested parties process has been postponed pending this legal analysis of the proposed rule amendments. All documents related to the interested parties process are available at: <http://www.boe.ca.gov/proptaxes/asmappealprocess.htm>.

On August 8, 2018, CATA submitted a letter to the Board's Executive Director with the same proposed rule changes as in its July 10, 2018 correspondence (with the exception of changing "10 days" to "90 days" in Proposed Rule 323, subd. (d)), and explanations for the proposed rule changes.[4] On August 17, 2018, CATA presented a document titled, "Section 441(d) Non-Compliance Hearings" to the Board's Legal Department.[5] On August 21, 2018, the Board discussed this matter further at its hearing. On August 29, 2018, CATA submitted additional information dated August 26, 2018 on the use of third-party confidential information.[6] Prior to the July 24, 2018, and August 21, 2018 Board hearings, proponents and opponents to the petition submitted comments specifying reasons for support or opposition.[7]

On September 7, 2018, we received a copy of an additional letter from CATA to Chairman Runner's office, modifying submitted language in Proposed Rules 305, 305.1 and 323. According to the CATA letter, these modifications have been agreed to with the California Association of Clerks and Election Officials (CACEO) but not with the Assessors. We are providing our analysis of CATA's initial petition, and will comment on CATA's new submission after each relevant section of the Rules. With the exception of Proposed Rule 305, to which it deferred judgment to the CACEO, the CAA continues to object to the remainder of the Proposed Rules as amended for the same reasons it and individual assessors have stated in past letters.[8]

This matter is scheduled for the Board's consideration at the September 25, 2018 meeting on the Chief Counsel Matters Agenda. At the meeting, the Board may: (1) deny the petition; (2) grant the petition in part or in whole and commence the official rulemaking process by ordering publication of a notice of proposed regulatory action pursuant to GC section 11346.5; (3) direct that the interested parties (IP) process be continued to consider the requested amendments in part or in whole; or (4) take any other action the Board deems appropriate.

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[4] It is unclear whether this document triggered the necessity of the Board to meet on the petition in compliance with GC section 11340.7. However, at the August 21, 2018 Board hearing, CATA waived any right it might have under GC section 11340.7 contingent upon the Board's Legal Department's good faith efforts to: (1) bring the matter before the Board at its September 25, 2018 meeting and (2) hold a public hearing on any proposed amendments adopted by the Board prior to the end of calendar year 2018. Footnote 1 of the August 8, 2018 letter states that "CATA's petition is presented in accordance with the "Formal Rulemaking Process" discussed at pages 3 through 5 in the SBE's Letter to Assessors dated April 10, 2014 (LTA No. 2014/21)". However, as the Board has not authorized publication of a Notice of Proposed Regulatory Action for any of the Proposed Rules, the formal rulemaking process has not begun.

[5] Available here: <http://www.boe.ca.gov/meetings/pdf/2018/082118-G1-Rules302-etal-PubCom-Oneall.pdf>.

[6] Available here: <http://www.boe.ca.gov/meetings/pdf/2018/092518-G1-Rules302-etal-PubCom-ONeall-CATA.pdf>.

[7] All comments are posted at: <http://www.boe.ca.gov/meetings/public-comments2018.htm>, and summarized in Attachment 3, "Summary of Comments: Responses to Proposed Amendments to Rules 302, 305, 305.1, 305.2, & 323."For ease of reference, where applicable, comments against various proposed amendments are referred to collectively as comments from "opponents." Comments from proponents are generally subsumed within those attributed to petitioner. Comments include alternative proposals and language put forth by the California Assessors' Association and the California Association of Clerks and Election Officials. Comments also include CATA's responses to Los Angeles County's 8/17 and 8/20/18 letters.

[8] September 13, 2018 email from Chuck Leonhardt, President of CAA, to Yvette Stowers and John McKibben.

Overall Staff Recommendation

Legal and program staff (hereafter together, Staff) recommend that the Board: (1) deny the proposed amendments that, as explained below, are inconsistent with existing law; and (2) refer those proposed amendments that are consistent with existing law and need further refining of its language, back to the IP process to fully discuss the guidance (whether in the form of Letters to Assessors, Assessors' Handbook updates, or regulations) and language that can be adopted by the Board that will clarify those issues raised by CATA in a manner that will be consistent with existing law and that will minimize the potential for unintended consequences.

The additional changes to the language presented in CATA's letter of September 7, 2018, appear to address some of the challenges with their first proposal but do not change Staff's recommendations, except where noted.

I. Background Information

A. Background – Property Tax Assessment and Appeals

In California, the county assessor is charged with assessing all property subject to general property taxation. (Rev. & Tax. Code, §§ 128 & 401; see also *Blackwell Homes v. County of Santa Clara* (1991) 226 Cal.App.3d 1009, 1013.) After an assessment is made, a taxpayer may challenge the assessment by filing an application for a reduction in an assessment (application) with the county board of equalization. (Rev. & Tax. Code, § 1603; see also *Sunrise Retirement Villa v. Dear* (1997) 58 Cal.App.4th 948, 958.)

Section 16 of article XIII of the California Constitution mandates that the county board of equalization "equalize," the value of all property on a local assessment roll by adjusting individual assessments. The county board of supervisors or an assessment appeals board created by the county board of supervisors constitutes the county board of equalization for a county.[9] Section 16, article XIII of the California Constitution also delegates authority to the county board of supervisors to provide resources for the essential administrative functions of appeals boards and to "adopt rules of notice and procedures for those boards as may be required to facilitate their work and to insure uniformity in the processing and decision" of applications. In view of these provisions, a county board of equalization is a constitutional agency exercising quasi-judicial powers. (*Steinhart v. County of Los Angeles* (2010) 47 Cal.4th 1298, 1307.) As a quasi-judicial body, appeals boards exercise,

> judicial functions, and its decisions as to the value of the property and the fairness of the assessment so far as amount is concerned constitutes an independent and conclusive judgment of the tribunal created by law for the determination of that question *which abrogates and takes the place of the judgment of the assessor upon that question*.

[9] For ease of reference, both county boards of equalization and assessment appeals boards are referred to as appeals boards or boards.

(*Los Angeles Gas and Electric Co. v. County of Los Angeles* (1912) 162 Cal. 164, emphasis added.)

The Legislature has enacted Revenue and Taxation Code[10] sections 1601 through 1645.5, and the BOE has adopted Property Tax Rules 301 through 326 to govern the administration of appeals boards.[11] In addition to the procedures mandated by the Legislature and BOE, appeals boards are also governed by local rules adopted by county boards of supervisors. Local rules are valid if they are not preempted by or in conflict with statutes or regulations, and comport with due process. (See *Ceniceros v. State Board of Equalization* (*Ceniceros*) (1998) 63 Cal.App.4th 122; See also, State Bd. of Equalization, *Assessment Appeals Manual* (*AAM*) (May 2003) p. 20.) An appeals board's right to make rules for the government of its business is fully authorized by law. (See *Williamson v. Payne* (1938) 25 Cal.App.2d 497, 504 [county board of equalization, whether a quasi-judicial, ministerial, or administrative body has the right to make rules for its own governance].)

B. Background – Appeals Board Hearings & Due Process

A taxpayer may challenge the assessed value of his property by filing an application for a reduction in assessment. (Rev. & Tax. Code, § 1603.) If the appeals board fails to make a final determination on the application within two years of its timely filing, the applicant's opinion of value shall be the value upon which taxes are levied for the tax years covered by the application. (Rev. & Tax. Code, § 1604, subd. (c).) However, the two year limitation will not apply if the applicant fails to provide full and complete information as required by law. (*Ibid*.)

The process governing appeals boards must not infringe on an applicant's constitutional due process rights. A fundamental premise underlying appeals board hearings is that the constitutional right to an equalization hearing comprehends a decision in the light of the evidence before any determination becomes final. (*Universal Consol. Oil Co. v. Byram* (*Univ. Consol. Oil*) (1944) 25 Cal.2d 353, 360.) All parties must be fully apprised of the evidence to be considered, and must be given opportunity to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal. (*Interstate Commerce Commission v. Louisville & N.R. Co.* (1913) 227 U.S. 88, 93.) Therefore, "[c]ompliance with the constitutional requirement for an equalization hearing is not met unless the substance [and] the form of the hearing is granted to the complaining taxpayer." (*Univ. Consol. Oil*, *supra*, at p. 361; see also *AAM*, p. 80.) However, due process, "unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances [citations omitted]" (*Mathews v. Eldridge* (1976) 424 US 319, 334), and states are afforded great flexibility in satisfying the requirements of due process in the field of taxation (*Batt v. City and County of San Francisco* (2007) 155 Cal.App.4th 65).

Rule 313, subdivision (e) provides that, "[a] full and fair hearing shall be accorded the application. There shall be reasonable opportunity for the presentation of evidence, for cross-examination of all witnesses and materials proffered as evidence, for argument and for rebuttal."

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[10] All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

[11] Section 15606, subdivision (c) of the Government Code authorizes the BOE to "prescribe rules and regulations to govern local boards of equalization when equalizing…"

C. Legal Framework – Assessor Requests for Information

Various statutes authorize an assessor to obtain property valuation information from taxpayers to carry out their duty to assess all property in their county. One such statute is section 441, subdivision (d) (hereafter Section 441(d)) which requires every person to make property information available to the assessor. It 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.

(Emphasis added.)

Section 441(d) is a broad grant of power to the assessor to demand information. (*Roberts v. Gulf Oil Corporation* (*Roberts*) (1983) 147 Cal.App.3d 770, 783 [Both "interpretive" and "raw" data are subject to Section 441(d).]) It was enacted to "'get to underassessment . . . , to uncover assets which were undervalued or undisclosed entirely.'" (*Ibid*, citing the testimony of a qualified expert analyst of legislative intent.) A taxpayer who fails to comply with an assessor's written Section 441(d) request is guilty of a misdemeanor:

> Every person is guilty of a misdemeanor who, *after written request* by the
>
> (a) Refuses to make available to the assessor any information which is required by subdivision (d) of Section 441 of this code.
> (b) Gives a false name.
> (c) Willfully refuses to give his true name.
>
> Upon conviction of any offense in this section, the defendant may be punished by imprisonment in the county jail for a period not exceeding six months or by a fine not exceeding one thousand dollars ($1,000), or by both. If the defendant is a corporation, it may be punished by an additional fine of two hundred dollars ($200) for each day it refuses to comply with the provisions of this section, up to a maximum of twenty thousand dollars ($20,000)

(Rev. & Tax. Code, § 461, emphasis added.)

Further, section 462 provides that,

> Every person who willfully states anything which he knows to be false in any oral or written statement, not under oath, required or authorized to be made as the basis of imposing any tax or assessment, is guilty of a misdemeanor and upon conviction thereof may be punished by imprisonment in the county jail for a period not exceeding six months or by a fine not exceeding one thousand dollars ($1,000), or by both.

The assessor may seek an order from the superior court to force an uncompliant taxpayer to appear and answer concerning his property. (Rev. & Tax. Code, § 468.)

Section 1609.4 makes Section 441(d) explicitly applicable to assessment appeals hearings. (See also *Ceniceros, supra*, at p. 122.) If an assessor makes a Section 441(d) request as part of an assessment appeals hearing, the taxpayer does not comply, and then introduces the requested information at the hearing, the assessor is entitled to a reasonable continuance. (Rev. & Tax. Code, §441, subd. (h).) Furthermore, if a taxpayer does not comply with a Section 441(d) request, the two year limitation within which an appeal must be decided does not apply. (Rev. & Tax. Code, § 1604, subd. (c)(2), Rule 309, subd. (c)(3).)

D. Legal Framework – Use of Third Party Confidential Information

Section 451 requires information requested by the assessor or furnished in the property statement to be held secret by the assessor. It further establishes the property statement as confidential with certain exceptions.

Section 408, subdivision (a) establishes that, subject to certain exceptions, "any information and records in the assessor's office that are not required by law to be kept or prepared by the assessor, . . . are not public documents and shall not be open to public inspection." Section 408, subdivision (d) provides that "[t]he assessor shall, upon the request of an assessee or his or her designated representative, permit the assessee or representative to inspect or copy any market data in the assessor's possession." For purposes of section 408, subdivision (d), "market data" means,

> any information in the assessor's possession, whether or not required to be prepared or kept by him or her, relating to the sale of any property comparable to the property of the assessee, if the assessor bases his or her assessment of the assessee's property, in whole or in part, on that comparable sale or sales.

The assessor, however, may not display any document relating to the business affairs or property of another. (Rev. & Tax. Code, § 408, subd. (d).) In *Chanslor-Western Oil and Development Co. v. Cook* (*Chanslor-Western*) (1980) 101 Cal.App.3d 407, 415), the Court clarified that only "market data" of third party comparable businesses may be disclosed pursuant to section 408, subdivision (d). (*Id*., at pp. 415-16.) Additional information that is reasonably determined to constitute the business affairs of a third party are not to be disclosed in violation of section 408 or 451. (*Id*., pp. at 415-16.) The Court concluded that the use of "information obtained pursuant to Section 441" is limited to either market data or information obtained from the taxpayer seeking the reduction." (*Id*., at p. 416.)

In *Trailer Train Co. v. State Board of Equalization (Trailer Train)* (1986) 180 Cal. App. 3d 565, 568, the Court held that the admission of evidence presented in a redacted format to protect confidentiality was not a violation of due process and did not prevent the cross examination of

the witnesses against it. Implicit in this decision is that disclosure of certain data not tied to a particular taxpayer is not a disclosure of confidential information.[12]

Property Tax Annotation[13] 260.0095 provides that:

> Information submitted by multiple taxpayers on their property statements may be used by the assessor to derive industry wide averages that may be used to assess or defend the assessment of another taxpayer. Identification of the submitters of the property statements should not be made in public session but can be made *in camera* to either the appeals board or a court. C 1/14/1994.

Based on *Trailer Train*, the Board's Legal Department opined in the back-up letter to Annotation 260.0095 that an assessor can use third party business information to appraise property which is the subject of a local appeals board hearing. When presented in a generic format, such evidence does not violate the due process rights of the applicant and that, if necessary, the applicant has a statutory means to force disclosure under section 408, subdivision (e).

Section 408, subdivision (e)(3) provides:

> Except as provided in Section 408.1 [list of county transfers], an assessee, or his or her designated representative, may not be permitted to inspect or copy information and records that also relate to the property or business affairs of another, unless that disclosure is ordered by a competent court in a proceeding initiated by a taxpayer seeking to challenge the legality of the assessment of his or her property.

II. Discussion of the Petition

The petition requests that the Board adopt amendments to five different property tax rules (the proposed amendments) to fulfill its duty under GC section 15606 and section 169 to provide uniform procedures governing all county equalization hearings. The petition alleges that adopting the proposed amendments is necessary because:

> Recent information has shown that several counties throughout the State are postponing, delaying, or in rare instances denying appeal applications on the sole basis that a taxpayer has failed to adequately respond to an assessor's 441 (d) request for information. In addition, pre-hearing conferences are being scheduled with the sole or primary goal to compel the taxpayer to comply with an assessor's 441 (d) request for information before an evidentiary hearing will be scheduled. Existing R&T Code provisions currently provide Assessors and Assessment

[12] *Trailer Train* dealt specifically with section 11655. Similar to the confidentiality provisions of sections 408 and 451, section 11655 requires the Board to hold secret information and records relating to the business affairs of persons required to report information under the private railroad car tax provisions.

[13] Property Tax Annotations are summaries of the conclusions reached in selected legal rulings of Board legal counsel published in the Board's Property Tax Law Guide and on the Board's Website. (See Cal. Code Regs., tit. 18, § 5700 for more information regarding annotations.)

> Appeals Boards with remedies to pursue in the event a taxpayer fails to comply with an assessor's 441 (d) request for information. Therefore, these regulations are made to clarify and support existing law which does not authorize Assessment Appeals Boards or Assessor to deny taxpayers the rights to due process.[14]

Opponents contend, generally, that many of the proposed amendments are contrary to existing law, unnecessary, create unfunded state mandates,[15] will interfere and compromise assessors' duty to conduct the affairs of the State and counties and lead to a lack of uniformity in assessing property. They take issue with the rulemaking process engaged in by the Board, stating that it was removed from the IP process prematurely and does not meet the standards set forth in the Administrative Procedures Act. They also state that the proposed amendments do not account for the differences in the size, resources, and types of properties encountered by different counties, and that statistics show the assessors resolve issues in a fair and efficient manner as intended by law. For these reasons, opponents of the proposed amendments have threatened litigation under section 538 should the Board adopt these proposed rules.

The proposed amendments come within the scope of duties delegated to the BOE by GC section 15606, subdivision (c) which mandates that the Board "[p]rescribe rules and regulations to govern local boards of equalization when equalizing, and assessors when assessing ...." However, "agencies do not have discretion to promulgate regulations that are inconsistent with the governing statute, or that alter or amend the statute or enlarge its scope." (See e.g., *Slocum v. State Board of Equalization* (2005) 134 Cal.App.4th 969, 974, citing *Yamaha Corp. of America v. State Board of Equalization* (1998) 19 Cal.4th 1, 10–11.) Similarly, California courts have held that an administrative rule, to be valid, in addition to complying with the Administrative Practice Act procedurally, must "(1) come[] within the scope of the controlling statute and (2) [be] reasonably necessary to carry out the statutory purpose." (*Ibid*.) These two requirements are commonly referred to as the requirements of consistency and necessity.

Each requested amendment to the Rules is listed below followed by a summary of the position and comments of proponents and opponents, the Legal Department's analysis as to whether the requested amendment is consistent with existing law, and Staff's recommendation.

A. Rule 302, *The Board's Function and Jurisdiction*

1. *Proposal to add new subdivision (c)*: The board has no jurisdiction to deny an application solely on the ground that the applicant has not responded to a request for information made under section 441 of the Revenue and Taxation Code.

This proposed amendment and the proposed amendments to Rules 305.2, subdivision (b) and Rule 323, subdivision (c), seek to prohibit an appeals board, whether at a hearing, a prehearing

[14] "Reasons for Changes" attachment to July 10, 2018, correspondence, p. 1.
[15] An unfunded mandate is a statute or regulation that requires a state or local government to perform certain actions, with no money provided for fulfilling the requirements. (See Cal. Const., art. XIII B, § 6.)

conference, or a Section 441(d) non-compliance hearing,[16] from continuing a hearing or denying an application when an applicant does not comply with a Section 441(d) request.

Summary of Comments[17]

CATA Reasons (Pros)

- Assessment Appeals Boards (AAB) have incorrectly denied appeals because the applicant has not responded with data requested by the assessor. Sometimes this information does not exist or is irrelevant to the market value of the property.
- This change reflects existing law; No provisions contemplate AABs to dismiss or postpone hearings.
- Existing remedies exist for assessors for Section 441(d) non-compliance.
- There are only two methods of enforcing Section 441(d) noncompliance: Section 441(h) and an assessor's subpoena.
- Local boards are not trained to resolve discovery disputes. Most local boards rely on an assessor's determination as to whether satisfactory information has been produced, which is unfair to taxpayers.
- Denial of applications only occur in two situations: nonappearance & failure to carry burden of proof.

Opponents Responses (Cons)

- If rule is adopted that prohibits denials, recommend that BOE inform taxpayers that AAB may take that into account.
- Limits AAB's tools to effectively and efficiently administer appeals prehearings and hearings, and infringes the County board's proper jurisdiction.
- Conflicts with RTC § 1604(c); Conflicts with Rule 323(a), which allows each party "one postponement *of right i.e. for any reason* as long as the request is timely made."
- May delay hearings and increase their cost since both assessors and appeals boards would be more likely to pursue formal methods such as subpoenas to obtain information. It may also make assessors more likely to pursue criminal penalties against noncompliant taxpayers under section 461.
- Conflicts with article XIII, § 16 of the California Constitution which grants local boards of supervisors the authority to adopt local rules and procedures.

[16] Petitioner states that there is no authority for Section 441(d) noncompliance hearings; however, regardless of the name by which they are called, a "Section 441(d) noncompliance hearing" is also a prehearing conference under Rule 305.2. Further counties may specifically provide for such noncompliance hearings by ordinance.

[17] Comments under this heading, throughout the memo, are summaries of select comments posted at: <http://www.boe.ca.gov/meetings/public-comments2018.htm> giving reasons for or against the specific proposed amendment.

Legal Department Analysis

In the view of the legal department, the proposed amendments to the rules prohibiting appeals boards from continuing hearings for an applicant's failure to comply with Section 441(d) **are inconsistent** with existing law. However, amendments to the rules to prohibit an appeals board from denying an application for an applicant's failure to comply with Section 441(d) would generally be **consistent** with existing law.

An assessor and an appeals board are independent agencies and serve different functions. The assessor is charged with assessing all property that is subject to general property taxation. (Rev. & Tax. Code, § 401.) An appeals board equalizes, or adjusts, the value of individual assessments. (Cal. Const., art. XIII, § 16.) Division 1, Part 2, Chapter 3 (titled Assessment Generally) of the Revenue and Taxation Code, where both Section 441(h) and section 454 are found, generally govern the rights and duties of assessors. Specifically, Section 441(h) grants the assessor, if he requests it, an absolute right to a reasonable continuance if an applicant introduces evidence at a hearing that it should have produced in compliance with a Section 441(d) request. Importantly, Section 441(h) does not limit an appeals board to continue or not continue a hearing in any other circumstance. It merely describes one specific situation when the appeals board is required to grant a continuance to the assessor. Therefore, Section 441(h) must be read in conjunction with other rights and duties granted to appeals boards.

Statutes governing appeals boards are found in Revenue and Taxation Code Division 1, Part 3, Chapter 1 (titled Equalization by County Board of Equalization), specifically sections 1601 through 1645.5. The BOE has adopted Property Tax Rules 301 through 326 to interpret and make specific those statutes. Among these provisions are included the duty to schedule hearings (Rev. & Tax. Code, § 1605.6), the ability to hear and request evidence (Rev. & Tax. Code, § 1609.4), the ability to continue hearings (Rule 323, subd. (c)), and the power to issue subpoenas (Rev. & Tax. Code, § 1609.4, Rule 322). Petitioner states that "Legal provisions that require AABs to determine whether information has been supplied to an assessor do not contemplate or permit AABs to dismiss or postpone the hearing on an assessment appeal application."[18] As evidence of this, it cites to the fact that section 1604, subdivision (c)(2), Rules 309, subdivision (c)(3), 313, subdivision (f), and 321, subdivision (d) do not empower an appeals board to dismiss the appeal or postpone the hearing on appeal.[19] While it is true that these provisions do not explicitly empower an appeals board to continue or deny a hearing for an applicant's Section 441(d) noncompliance, section 1604, subdivision (c)(2) provides that the two-year time limitation within which an appeals board must make a final determination on a timely filed application is inapplicable "where the applicant has failed to provide full and complete information as required by law."[20] Since information requested by an assessor under Section 441(d) is required by law, the failure to provide such information makes the two-year time limitation inapplicable, and an appeals board is empowered to decide not to make a final determination within two years. Thus,

[18] CATA August 17, 2018 document, p. 1.
[19] CATA August 17, 2018 document, p. 2.
[20] Rule 309, subd. (c)(3) specifically lists noncompliance with Section 441(d) as an exception to the requirement to enroll applicant's opinion of value if the matter is not decided within the two-year limit.

it necessarily follows that the appeals board may continue the hearing.[21] Importantly, section 1604, subdivision (c)(2) does not require that an applicant noncompliant with Section 441(d) actually introduce the previously requested evidence at the hearing. It is enough that the applicant did not "provide full and complete information as required by law."

If an appeals board could continue a hearing for failure to comply with Section 441(d) only when requested information was introduced at hearing, it would be powerless to continue a hearing even to allow an applicant more time to comply with Section 441(d). It could also lead to situations where an assessor would be able to issue a subpoena for information and seek criminal penalties under sections 461 and 462 for failure to comply with a written Section 441(d) request, but the appeals board would be powerless to continue the hearing to allow compliance with the subpoena or resolution of the criminal matter. Petitioner's interpretation may also conflict with an appeals board's power under section 1609.4 to issue its own subpoena for information since, even if it issued a subpoena, it could not continue the hearing to allow time for the applicant to comply.

Statutes must be "construed

Elk Hills Power, LLC v. Board of Equalization (2013) 57 Cal.4th 593, 610 citing *Stafford v. Los Angeles County Employees' Retirement Bd.*

Section 441(h) grants an assessor an absolute right to a reasonable continuance only in one particular circumstance (i.e., where a Section 441(d) noncompliant applicant introduces requested information at the hearing and the assessor requests a continuance). In that circumstance, an appeals board may not deny the assessor a continuance. In all other circumstances, the quasi-judicial authority of the appeals board, section 1605.6, Rule 323, and section 1604, subdivision (c) authorize an appeals board to either grant or deny a continuance as it judges necessary. Therefore, for example, if an applicant fails to comply with a Section 441(d) request, and does *not* introduce requested evidence at the hearing, an appeals board may, on its own initiative or at the request of the assessor, decide that that particular information is necessary for it to make a proper judgment and grant a continuance. The AAM provides, "[i]f, in the opinion of the board, not enough evidence was provided during the course of the hearing to make a decision, the board may continue the hearing so that information they believe is pertinent may be assembled and brought before them." (*AAM*, p. 103.) Alternatively, an appeals board may decide that particular information is not essential and allow the hearing to proceed.

Petitioner argues that "[l]ocal boards are not trained to resolve 'discovery' disputes".[22] However, this misses the point. An appeals board's ability to continue hearings for an applicant's Section 441(d) noncompliance does not require it to become an arbiter of discovery rules. It must merely decide whether or not it needs the requested information to make a proper valuation determination. It is well-settled that "

[21] Section 1604, subdivision (e) requires that appeals boards notify the applicant of their decision not to make a final decision within two-years of the application filing. (See Rule 309, subd. (e); see also *Bunker v. County of Orange* (2002) 103 Cal.App.4th 542.)

[22] CATA, August 8, 2018, letter, p. 3.

omitted]." (*Plaza Hollister Ltd. Partnership v. County of San Benito* (1999) 72 Cal.App.4th 1, 23.) Its factual determinations "are entitled on appeal to the same deference due a judicial decision, i.e., review under the substantial evidence standard." (*Shell Western E & P, Inc. v. County of Lake* (1990) 224 Cal.App.3d 974, 979.) Because an appeals board has "special expertise in property valuation" and is the fact finding body for property tax valuation disputes, it must always decide what information is necessary for it to make a proper valuation determination and how to weigh the evidence before it. The AAM, citing to an administrative law treatise states, "[j]udges, like appeals boards members, are presumed to have great familiarity with the subject matter and, therefore, are less susceptible to errors in determining the probative value of many forms of evidence."[23] Therefore, an appeals board's determination that particular data or information is or is not necessary is not "resolving a discovery dispute." It is a critical function to the purpose for which they exist: to properly value property.

Furthermore, the statutes and rules anticipate that appeals boards need not be "experts" in the discovery of evidence, only that they can decide what evidence is necessary for them to make a proper valuation determination. Appeals "hearings need not be conducted according to technical rules relating to evidence and witnesses." (Rev. & Tax. Code, § 1609.) And any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. (Rule 313, subd. (e).) Therefore, whether an appeals board is trained to resolve discovery disputes is irrelevant to their determination of what information is essential to their duty to equalize property valuations.

While an appeals board may continue hearings for failure to comply with Section 441(d), it may not continue a hearing indefinitely or deny a hearing outright in most circumstances. Due process guarantees the opportunity to be heard at a meaningful time and in a meaningful manner.[24] At minimum, each party must receive adequate notice and opportunity for hearing before a fair and impartial hearing body. (*International Medications Systems, Inc. v. Assessment Appeals Bd.* (1997) 57 Cal. App. 4th 991; see also *AAM, supra*, p. 18.) However, because the concept of due process is flexible and calls for such procedural protections as the situation demands (Mathews v. Eldridge, supra, at p. 334), it is conceivable there may be situations where a denial of a hearing for refusal to comply with Section 441(d) would not violate an applicant's due process rights, particularly since property tax information is self-reported, the appeals board and assessor must rely on that information to reach the proper value, and an assessee, itself, can relieve any violation of its own due process rights by its own actions if it produces the required information. This would especially be true if a local ordinance was passed under the authority of California Constitution article XIII, section 16.

Thus, Board adoption of a rule prohibiting appeals boards from continuing and denying hearings for failure to comply with Section 441(d), unless carefully limited to denials in most circumstances, would be contrary to existing law and would likely be held invalid by a court of law.

Finally, we note that while petitioner has made assertions that some county appeals boards indefinitely continue or deny hearings for Section 441(d) noncompliance, no evidence has been

[23] *AAM*, p. 79, citing II Davis & Pierce, *Administrative Law Treatise* (3d ed. 1994) §10.2, p. 119.
[24] 13 Cal. Jur. 3d Constitutional Law § 316.

presented as to how often this occurs, or the specific circumstances under which it has occurred. Therefore, it is unclear whether and to what extent indefinite continuances or denials for Section 441(d) noncompliance are a statewide issue needing regulatory action, particularly when the consequences of such regulatory action have not been fully weighed.

If the Board adopts a rule amendment prohibiting the denial of a hearing for failing to comply with Section 441(d) and prohibiting indefinite continuances, all parties should be made aware that it is presumed that assessing officers have performed their duties properly and that their assessments are regularly and correctly made. (Evid. Code, § 664, Rule 321, subd. (a).) This "presumption of correctness" also exists in cases where assessments are based upon section 501, which allows an assessor to estimate the value of property with information in his possession when an assessee does not comply with Section 441(d). (*Simms v. Pope* (1990) 218 Cal.App.3d 472, 477, see also *Bank of America v. Fresno* (1981) 179 Cal.App.3d 295 [taxpayer failed to make a prima facie case where it did not present evidence of projected future income and expenses when property was assessed by capitalization of income method].)

For these reasons, Staff recommends discussion between all interested parties regarding more specific parameters and guidance for appeals board continuances and denials for Section 441(d) noncompliance before amendments to Rule 302 are adopted.

B. Rule 305, *Application*

1. *Proposal to insert at the bottom of subdivision (a)(1)*: In any county that provides for a taxpayer to file an appeal on-line, the board shall provide a mechanism for an agency authorization to be attached to the on-line filing.

Summary of Comments

CATA Reasons (Pros)	*Opponents Responses (Cons)*
• These proposed amendments reflect current practice in most counties and will prevent confusion surrounding these issues from arising in the future. • Avoids having to mail the authorization which defeats the purpose/benefit an on-line filing.	• Not all counties can accommodate simultaneous filing of authorization. • High cost of programming and implementing a new system is prohibitive with current resources. • Affected counties would likely stop offering online filing, and may discourage others from instituting it. • Proposed amendment would trigger a requirement to reimburse the county by the State as mandated by California

Constitution article XIII B, section 6.[25]

Legal Department Analysis

GC section 15606, subdivision (d) requires the BOE to "[p]rescribe and enforce the use of all forms for the assessment of property for taxation, including forms to be used for the application for reduction in assessment." (See also Rev. & Tax. Code, § 1603, subd. (a).) Section 1603, subdivision (g) provides that the clerk of a county board of equalization may accept an electronically filed application for changed assessment if certain criteria are met. As the BOE is required to prescribe and enforce the use of forms for assessment appeals, this proposed amendment is consistent with existing law.

Staff Recommendation

Given the fiscal and technical uncertainty, especially the fact that this change would likely trigger a state reimbursement requirement, Staff recommends that the Board not move forward on the proposed amendment to Rule 305 and, instead, explore providing guidance to assessors which would not require state reimbursement, which could include changes to the proposed amendment to make on-line authorization attachments permissive.[26]

2. *Proposal to add new subdivision (a)(5)*: No application shall be rejected because the agency authorization is signed by a taxpayer in a different calendar year than the application was filed.

Summary of Comments

CATA Reasons (Pros)	*Opponents Responses (Cons)*
• Sometimes clerks confuse Rule 305(a)(1)(B) to mean that the authorization must be signed in the same year as when the application is filed.	• Agree that no application should be rejected on the basis of the calendar year on the signed authorization. • Creates additional burden on taxpayer. • Proposed rule needs more clarification.

Legal Department Analysis

Section 1603 governs the filing of appeals applications. Section 1603, subdivision (f) requires signature block language that identifies the filer of the form as the applicant, the applicant's

[25] A cost estimate would be prepared for any proposed rules adopted by the Board.
[26] CATA's September 7, 2018 Submission deletes this proposal in subdivision (a)(1) and moves it to a newly created subdivision (a)(2) of Rule 305, as discussed below.

authorized agent, or the applicant's authorized attorney. There is no requirement that an agent or attorney be authorized by an applicant in the same calendar year as the application is filed. However, Rule 305, subdivision (a)(2) makes clear that an agent or attorney "must have authorization to file an application at the time an application is filed: retroactive authorizations are not permitted." Therefore, this proposed amendment is generally consistent with existing law.

Staff Recommendation

This proposal's placement in the Rule and its wording may cause confusion since it is in a different subdivision than Rule 305, subdivision (a)(2). For this reason, we recommend revisions to this language and to its placement within the rule to make clear that while an agent authorization need not be signed in the same calendar year as the application is filed, retroactive applications are not allowed.

3. *Proposal to insert in subdivision (c)(1)*: …both hardcopy and on-line versions,…

Summary of Comments

CATA Reasons (Pros)	*Opponents Responses (Cons)*
• This ensures consistency across on-line filings if BOE is prescribing the form.	• CAA agrees with proposed Rule 305(c)(1).

Legal Department Analysis

As discussed in Part II.B.1, BOE is responsible to prescribe and enforce the use of *all* forms for the assessment of property. (Gov. Code, § 15606, subd. (d).) The use of the word "all" is inclusive of online versions of forms. Therefore, adoption of this proposed amendment is consistent with existing law and would ensure that both hardcopy and online form versions are prescribed by BOE. However, no evidence has been presented of any inconsistency, or danger of inconsistency, between online and hardcopy forms.[27]

Staff Recommendation

Given there has been no demonstration that the amendment is necessary, Staff recommends that the Board consider an easier and more expeditious option such as providing non-regulatory guidance to Assessors.

4. CATA's September 7, 2018 Submission

CATA modified its Petition language for Rule 305, by eliminating the change to Rule 305(a)(1), but adding to Rule 305 (a)(1)(B) and inserting a new subdivision (a)(2) as follows:

[27] CATA has deleted this particular recommendation in its new September 7, 2018 submission, but is proposing additional changes, as discussed below.

"...(B) A statement to the effect that the agent is authorized to sign and file applications in the specific calendar year in which the application is filed or years indicated in the agent's authorization; an agent's authorization may not cover more than four consecutive calendar years in the future, beginning with the year in which the authorization was signed;"

"…(2) For online filing where a county's electronic application system does not permit filing or uploading an agent's authorization form with an image of a signature, or other electronic method acceptable to the county board as adopted in its local rules, the paper form shall be submitted to the board as soon as possible in order to perfect the application. Beginning January 1, 2022, any county offering online filing of an application shall provide a mechanism for an agency authorization form to be submitted electronically with the application."

In addition, CATA in its Sept. 7th submission still includes the language, "No application shall be rejected because the agency authorization is signed by a taxpayer in a different calendar year than the application was filed," but renumbers the provision to subdivision (a)(6) due to the creation of new subdivision (a)(2) above.

Finally, in its Sept. 7th submission, CATA is deleting the addition of the phrase "both hardcopy and on line versions" from Rule 305(c)(1).

The Legal Department's analysis remains unchanged from that described above.

Staff's recommendation notes that although these changes provide some clarity and a phase-in period until January 1, 2022, these changes still have a fiscal impact which may require State reimbursement. Therefore, Staff still recommends exploring whether this can be accomplished through guidance to Assessors or other non-regulatory means which may be easier and more expeditious.

C. Rule 305.1, *Exchange of Information*

1. Proposal to amend rule title and headings for subdivisions (a), (b), and (d). Make specific reference to Revenue and Taxation Code section 1606 in subdivision (a).

Summary of Comments

CATA Reasons (Pros)	*Opponents Responses (Cons)*
• Clarifies that Rule 305.1(a)-(d) are specific to 1606 formal exchanges of Information and not regular 441 requests for information.	• Unnecessary–confusing; redundant.

Legal Department Analysis

Because Rule 305.1 interprets and makes specific section 1606 (dealing with exchanges of information), amendments that achieve petitioner's stated goal are consistent with existing law. However, petitioner has presented no evidence or explanation as to why additional specificity is necessary.

Amendments adding the word "exchange of" before the word "information" to the headings of subdivisions (a), (b) and (d), and adding a reference to section 1606 in subdivision (a) would clarify that those subdivisions apply to section 1606. Amendment to the Rule title adding "and requests for information," however, confuse whether the Rule is about exchanges of information or about requests for information or both, and would defeat petitioner's stated purpose of specifying that Rule 305.1, subdivisions (a) through (d) are specific to section 1606 exchanges of information.

Staff Recommendation

There are no issues with moving forward with this amendment – with the exception of adding "and requests for information". Staff recommends the Board not adopt this proposed amendment as it is counterproductive to petitioner's stated purpose for making the change. However, CATA's September 7, 2018 Submission strikes out the words "and requests for information" from the title. Therefore, it may no longer be at issue.

2. *Proposal to add new subdivision (e)*: [1][28] An assessor's request for information pursuant to section 441 of the Revenue and Taxation Code shall be made in writing, limited to information relating to the property at issue and be issued no less than 20 days prior to a hearing before a county board of equalization or assessment appeals board. The assessor's request shall also recite the Revenue and Taxation Code section or sections authorizing the request so that the recipient is notified of his or her legal obligation in responding to the request. [2] The assessor's request shall not state that the assessor has authority to impose criminal penalties or administrative sanctions against the recipient of the request. [3] Information supplied in response to an assessor's request must be held secret by the assessor under sections 451 and 481 of the Revenue and Taxation Code. Information supplied by one taxpayer shall not be used by the assessor in an assessment appeals board hearing of another taxpayer including a taxpayer in another county, without written authorization from the first taxpayer. [4] The issuance of an assessor's request for information shall not entitle the assessor to take a deposition, issue interrogatories, or seek requests for admissions. [5] Nor shall the recipient of an assessor's request be required to submit a declaration under penalty of perjury when responding to an assessor's request.

Summary of Comments

CATA Reasons (Pros)	*Opponents Responses (Cons)*
• Proposed Rule 305.1(e) addresses harsh	• Conflicts with RTC §§ 441(d), 442, 454,

[28] The bracketed numbers are added for ease of reference in the analysis and are not included in CATA's current Petition or the text of the regulation.

practices by assessors with regard to Section 441(d) requests.

- Proposed Rule 305.1(e) also prohibits assessors from converting section 441(d) information requests into formal discovery used in civil proceedings in Superior Court, such as depositions, interrogatories and requests for admission, or requiring responses to section 441(d) requests to be submitted with a declaration under penalty of perjury, all of which conflict with the informal nature of assessment appeal proceedings.

- Assessors are prohibited from disclosing or using confidential 3rd party information to defend an assessment at an appeals hearing.

- De-identifying confidential 3rd party information does not free an assessor from complying with confidentiality requirements under the law.

- The use of de-identified confidential information nearly always prevents the taxpayer from being able to cross-examine the information. This violates due process and fairness standards.

- Assessors' presentation of de-identified information prevents local boards from being able to fairly evaluate and determine whether evidence presented by assessors is reliable and credible.

- Only assessor has the 3rd party information and only assessor knows the source of the 3rd party information.

- De-identification denies applicants' due process rights to cross-examine evidence.

- Some counties use de-identified 3rd party information, but others do not, so there is lack of uniformity.

461, 462, 468, 470, 1609.4, 451, and 481.

- Contrary to existing state law and precedent upholding assessors' ability to use information provided they maintain confidentiality.

- Results in less information provided to taxpayer.

- § 441(d) requests should be made earlier than 20 days prior to hearing since counties have overloaded dockets.

- § 441(d) requests should not be restricted in time, as it may result in unnecessary continuances and prevent potential case resolution before hearing.

- Prohibiting 441(d) requests requiring declaration under penalty of perjury weakens assessors' access to accurate taxpayer information; Requiring declarations under penalty of perjury helps resolve disputes.

- Interferes with assessors' ability to carry out their mandated duties; Prevents accurate assessment; assessors are mandated to use the best and most credible data to assess property.

- Negatively impacts communication efforts between counties and taxpayers which ultimately save time, energy, and cost to all.

- Interferes with time- and cost-savings through stipulation following the exchange of information.

- Facilitates the falsification and under-reporting of taxable property.

- Results in loss of legitimate tax revenue.

- Cost of obtaining the confidentiality order referred to in R&TC 408(e)(3) is prohibitive – most applicants cannot afford the cost.

- *Trailer Train* does not support use of confidential information in local assessment appeals board hearings.

- Leads to lack of uniformity in property assessment.

- Results in more frequent use of an assessor's subpoena, resulting in unnecessary costs and inefficiencies.

- Most beneficial to commercial taxpayers over residential taxpayers.

Legal Department Analysis

These proposed amendments would add a new subdivision (e) governing Section 441(d) requests, so that Rule 305.1 would cover both section 1606 exchanges of information and Section 441(d) requests for information.

Creating such a new subdivision would create uniformity and govern Section 441(d) requests as currently no rule interpreting Section 441(d) exists. However, adding a new subdivision governing requests for information to Rule 305.1 – a rule about exchanges of information – may cause confusion as to the scope and subject of the rule. Instead, we recommend the creation of a new rule dealing only with Section 441(d) requests for information. Notably, CATA's September 7, 2018 submission moves its new subdivision (e) to a new Rule 305.4 with a few amendments, and is discussed below.

For ease of discussion, we have divided the proposed amendment to Rule 305.1, subdivision (e) into five component parts, each marked in the Part II.C.2 header above in brackets.

Initially, we note that petitioner states that some of the proposed amendments to this rule (i.e., those proposed in Part [4]) would prohibit certain actions by assessors because, as quoted above, they "conflict with the informal nature of assessment appeal proceedings". However, other proposed amendments to this Rule (i.e., those proposed in Part [1]) would make assessment appeal proceedings more formal. Petitioner has not provided reasons as to why certain formalities are necessary while other formalities are not.

Part [1] – General Requirements a Section 441(d) request must meet

Legal Department Analysis

This part sets forth four requirements that a Section 441(d) request would be required to meet. As explained below, three of these requirements – that a request be made in writing, that a request be issued not less than 20 days before the hearing, and that information requested relate to the property at issue – **are inconsistent with existing law.** The requirement that sections of the Revenue and Taxation Code that authorize the request be cited is consistent with existing law.

Section 441(d) imposes no requirement that a request be made in writing. However, section 461 imposes criminal penalties for failure to respond to a *written* Section 441(d) request. Further,

section 501 allows an assessor to make a best estimate of value with existing information in his possession when an assessee has not responded to a *written* request for information under section 441. Therefore, section 461 and section 501 both strongly imply that non-written Section 441(d) requests are allowed. If that were not the case, the word "written" in sections 461 and 501 would be superfluous. However, every word and phrase employed in a statute is presumed to be intended to have meaning and perform a useful function (*Clements v. T.R. Bechtel Co.* (1954) 43 Cal.2d 227, 233), and a construction rendering some words in the statute useless or redundant is to be avoided. (*Playboy Enterprises, Inc. v. Superior Court* (1984) 154 Cal. App. 3d 14, 20–21.)

Section 441(d) explicitly states that assessors may request information "at *any* time." Therefore, imposing a 20-day limit within which a request must be made is inconsistent with existing law.

In *Union Pacific R. Co. v. State Bd. of Equalization* (1989) 49 Cal.3d 138, Union Pacific Railroad brought a prepayment judicial challenge to a BOE request for information. The Supreme Court held that

Requiring assessors to cite the statutory authority for Section 441(d) requests is consistent with the Board's authority to set rules and regulations for assessors when assessing. (See Gov. Code, § 15606, subd. (c).) However, as drafted, the proposed amendment is ambiguous. It is unclear whether petitioner intends that only Section 441(d) be cited generally, or whether it intends that statutory authority be cited for each piece of information requested. If the latter, the proposed amendment is unnecessary since Section 441(d) itself explicitly allows access to information "as required by the assessor for assessment purposes" and, as explained above, this means any information that is "reasonably relevant to the proposed tax."

Staff Recommendation

We believe that discussions regarding putting certain parameters in place as guidelines and best practices would be productive as it would be beneficial to give taxpayers notice as to certain rights and responsibilities in regards to Section 441(d) requests. For example, if it were determined through the IP process that Section 441(d) requests should generally be made within a particular time period before an appeals hearing, a rule could be drafted that explicitly allows the appeals board to hold a hearing even if an applicant has not responded to a Section 441(d) request made outside of that time period. Additionally, while not required to be in writing, we believe that whenever possible, a Section 441(d) request should be made in writing.

Part [2] – Section 441(d) requests and criminal penalties

Legal Department Analysis

Section 461 imposes criminal penalties on every person who refuses to turn over information required by Section 441(d). However, such penalties are not imposed by the assessor. Instead, the

assessor must refer the matter to the District Attorney. Therefore, it is consistent with existing law to state the assessor does not have authority to impose criminal penalties for failure to comply with a Section 441(d) request. However, to state in a rule that the assessor does not have the authority to impose criminal penalties while omitting the fact that an assessee could be subject to criminal penalties may mislead taxpayers as to the potential consequences for failure to comply.

Staff Recommendation

We believe this proposed amendment creates a serious potential to mislead taxpayers. We recommend that Staff draft a cover letter, as part of the IP process, that can be used by assessors when making a Section 441(d) request. This cover letter should make taxpayers aware of their responsibilities and all potential consequences as well as cite the specific authorities relied upon by assessors in seeking information.

Part [3] – Use of 3rd-party confidential information

Legal Department Analysis

Petitioner cites *Chanslor-Western* for the proposition that an assessor cannot use confidential information of third parties, even if it is de-identified:

> [Assessor] argues that in defending his assessment of the Chevron property the assessor has the right to use any information in his possession, even if it relates to the business affairs of another taxpayer. [Assessor] relies upon section 1609.4, which sets forth certain procedures to be used in a hearing on an application for reduction of assessments, and which states in part: "The assessor may introduce new evidence of full cash value of a parcel of property at the hearing And may also introduce information obtained pursuant to Section 441." (Emphasis added.) However, the procedural rules for the conduct of such hearings are subject to the qualification that they shall not "be construed as permitting any violation of Section 408 or 451." (s 1609.6 (formerly s 1605.1).) In order to construe all sections harmoniously, which we are required to do (Code Civ.Proc., s 1858), we must conclude that the assessor's use of "information obtained pursuant to Section 441" **is limited to either market data or information obtained from the taxpayer seeking the reduction**. [citation omitted.][29]

Petitioner also states that *Trailer Train* is a BOE case and does not apply to local assessment, and that the AAM, which governs local appeals hearings does not mention or follow *Trailer Train*.[30]

While *Chanslor-Western* concluded that assessors' use of section 441 obtained information is limited to market data or information obtained from the taxpayer seeking the reduction, it did not

[29] CATA, August 8, 2018 letter, citing *Chanslor-Western, supra*, at p. 415–416, emphasis supplied by petitioner.
[30] CATA, August 17, 2018, letter, p. 3 <http://www.boe.ca.gov/meetings/pdf/2018/082118-G1-Rules302-etal-PubCom-Oneall.pdf>.)

consider the use of redacted data.[31] Since the owner of the confidential data was already known, there was no reason to do so. *Trailer Train*, however, dealt directly with that issue and held that the admission of evidence presented in a redacted format to protect confidentiality was not a violation of due process and did not prevent the cross examination of the witnesses against it.

The Board's historic position on the use of third-party confidential data since at least the publication of *Trailer Train* has been that redacted, confidential information may be used in appeals hearings. In 1994, BOE published Annotation 260.0095 stating that industry wide averages derived from information submitted by multiple taxpayers on their property statements may be used in assessing or defending the assessment of another taxpayer in local appeals hearings. This is also supported by Attorney General Opinion 01-901.[32] In that opinion, the Attorney General opined that BOE may publicly disclose information that its staff compiled regarding timber and log sales transactions if the information is provided in a source-neutral, summary fashion that does not identify or make ascertainable specific timber or log sales transactions or the parties involved in such transactions.

This longstanding view has not been superseded by more recent Board-published guidance.[33] Although AAM, p. 81 states: "Should any such evidence include confidential information, it should only be admitted with the permission of the affected parties, or be deleted prior to introduction," because of the modifier "any such evidence," this sentence must be read with the sentence preceding it. Both sentences together read as follows:

> Evidence relative to the veracity of witnesses, such as prior inconsistent statements or testimony from an appeals hearing or court action, should be admitted by the appeals board. Should *any such evidence* include confidential information, it should only be admitted with the permission of the affected parties, or be deleted prior to introduction.

Therefore, in its proper context, it is clear that "any such evidence" in the second sentence refers to testimony relating to the veracity of witnesses (i.e., character testimony) and not redacted appraisal information. We are aware of no other Board-published guidance that *directly* contradicts or supports the view that redacted information may be used in local appeals hearings. However, the AAM states on page 102,

> **USE OF CONFIDENTIAL ASSESSOR INFORMATION**
> Confidential documents, as described in sections 408 and 451, obtained by the assessor while discharging the duties of his or her office may not be disclosed to the public or competitors of the taxpayer unless a court so orders. If the confidential information relates to the applicant, it may be used in the course of the appeals hearing.[fn omitted.]

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[31] Justice Kaus's concurring opinion is not the majority holding of the case, and, in any event, does not discuss or contemplate redacted data. It merely states that the information sought by the assessor *is* market data but the actual documents or copies of the documents displaying the *same* information may not be displayed by the assessor because they relate to the business affairs of another.

[32] 85 Ops.Cal.Atty.Gen 141 (2002).

[33] A project to develop "Guidelines on the Proper Handling of Confidential Information" was begun in late 2007 but later cancelled.

This language, read consistently with previous, longstanding, Board guidance as well as prevailing case law, implies the propriety of using redacted, third-party confidential information. It prohibits an assessor from disclosing confidential documents without a court order. It does not prohibit an assessor from using redacted, confidential information at all in an appeals hearing, and is best read to prohibit an assessor from disclosing redacted confidential information (that does not belong to the applicant) in an appeals hearing without a court order. (See Rev. & Tax. Code, § 408, subd. (e)(3).)

Moreover, nothing in *Trailer Train* limits it to appeals of state-assessed properties. And there is no Board guidance that limits *Trailer Train* to appeals of state-assessed properties. The fact that *Trailer Train* is not cited in the AAM is not evidence that the Board intended to limit its holding to state assessment appeals, particularly when its longstanding, explicitly stated position is the opposite.

Although *Trailer Train* involved a BOE hearing where the Board is responsible for both the assessment and the appeal unlike local appeals hearings, nothing in the case suggests this was important or even considered. Rather, taxpayers made their due process claim to seek disclosure of the source of the confidential information to "cross-examine" it. This is no different from local appeals hearings where applicants assert their right to see and cross-examine evidence. It is true that local appeals boards may be hampered in making valuations if they do not know the source of the information, but similar to a decision appeals boards must make relative to Section 441(d) information, appeals boards may also determine whether it will or will not accept redacted data, and, if it does, how much weight to give such data. "At the conclusion of the hearing, the board members must assimilate all the evidence presented to them. In order to evaluate the evidence and render a decision, the members must determine the weight each piece of evidence merits." (*AAM, supra*, p. 103.) The Board may exclude specific evidence if, "[t]he evidence is unreliable though admissible in administrative hearings. When admitted, such evidence should be recognized as potentially unreliable and given appropriate weight by the board members." (*Id.*, at p. 79.)

Finally, Rule 313, subdivision (e), which governs hearing procedures in *local* appeals hearings, states that, "[t]here shall be reasonable opportunity for the presentation of evidence, for cross-examination of all witnesses *and materials proffered as evidence*, for argument and for rebuttal," (emphasis added) while Rule 5523.7, subdivision (e), which applies to *BOE* hearing procedures states that "[e]ach party may cross-examine witnesses" without explicitly stating a right to also cross-examine materials. The differences in these rules cannot be read as evidence of the Board's intent to allow the cross-examination of documents in local hearings but not in BOE hearings (thereby limiting *Trailer Train* to BOE hearings). Such an interpretation would mean that the Board intends that appellants in state assessment appeals have no right to cross-examine documents.

For the reasons stated above, a rule adopted by the Board prohibiting the use of redacted confidential information in local appeals hearings would be inconsistent with existing law, and longstanding Board guidance. Such a rule would likely be given little or no deference by the courts. (See *Henning v. Industrial Welfare Com.* (1988) 46 Cal.3d 1262, 1270 [when an agency's interpretation of a statute is not contemporaneous with the statute's enactment, and contradicts

the position which the agency had enunciated at an earlier date it cannot command significant deference; the ultimate interpretation of statutes is an exercise of judicial power].)

The Legal Department does recognize, however, that applicants, in certain circumstances, may reasonably have concerns that they are not being fully afforded their due process rights to examine witnesses and documents. In such circumstances, applicants may seek court orders for disclosure of the confidential information as contemplated by section 408, subdivision (e)(3). This is not an ideal solution since, as petitioners point out, it can significantly increase the cost and time required to complete an appeals hearing; thus, there should be further discussions to determine if there are appropriate parameters that can be put in place to guide the types of confidential information that can be used, how such information can be used, and to see if there are ways applicants can gain more assurance as to the data without violating the confidentiality rights of other taxpayers and hampering the assessor from using all available information in assessing property.

Finally, we note that while we are not aware of an official Board policy to delay rulemaking on issues currently being litigated, the Board has done so in the past. (See e.g., proposed amendments to Rule 462.040, available at: <https://www.boe.ca.gov/proptaxes/pdf/lta16020.pdf>, p. 4-5.)[34]

Staff Recommendation

Given the need for further discussions, and the fact that this issue is currently being litigated, we recommend continuing the Board's practice of delaying rulemaking on issues which are in litigation. Depending on the outcome of the litigation, amendments to the Board's rulemaking may ultimately have to be adopted. Further, any rulemaking may be seen as an attempt to influence the litigation.[35]

Part [4] – Depositions, interrogatories, and requests for admissions

Legal Department Analysis

Section 1609.4 directs that "No subpoena to take depositions shall be issued nor shall depositions be considered for any purpose *by the county board or the assessment appeals board*." (Emphasis added.) However, this is a prohibition on an appeals board with regard to depositions. It is not a prohibition on assessors.[36]

Section 441(d) does not explicitly allow an assessor to take a deposition, issue interrogatories, or seek requests for admissions. However, Section 441(d) is a broad grant of power to the assessor

[34] In *Olympic and Georgia Partners, LLC vs. Los Angeles*, Sup. Ct. Case No. BC707591, filed on May 25, 2018, taxpayers argue that the "admission of and reliance upon confidential market data" violated plaintiff's due process rights. This argument is substantially the same argument made by petitioners in the petition.

[35] This was the case in *Nortel Networks, Inc. v. Board of Equalization* (2011) 191 Cal.App.4th 1259, 1279 where the court described amendments to regulation 1502, subdivision (b)(10), made by the Board during litigation, as "a very tardy 'Hail Mary' pass after the last whistle blew and the fans were filing toward the exits."

[36] This is not an opinion as to whether assessors can or cannot take depositions in any context, we only point out here that section 1609.4 is direction to appeals boards and not to assessors.

to demand information (*Roberts*, at p. 783) and was enacted to "'get to underassessment ... , to uncover assets which were undervalued or undisclosed entirely.'" (*Id*, at p. 782, citing the testimony of a qualified expert analyst of legislative intent.) Furthermore, section 442 states that, "Every person owning, claiming, possessing, controlling or managing property shall furnish *any required information* or records to the assessor for examination *at any time*." (Emphases added.) Therefore it appears this proposed amendment is consistent with existing law only if it is further amended to make clear the terms "depositions," "interrogatories," and "requests for admissions" do not include general questions an assessor may have regarding information or records provided by an assessee, and the typical conversations and correspondence that may precede an assessment or hearing. Without such amendment, the proposed rule could be read to prohibit an assessor from asking questions and gathering information from an assessee under any circumstance.

We also note that petitioner's stated purpose in proposing this amendment – that depositions, interrogatories, and requests for admissions conflict with the "informal nature of assessment appeal proceedings" – could be frustrated by adopting the proposed amendment as written since an interpretation of the proposed amendment to prohibit an assessor from asking questions or gathering information by informal means would lead to an assessor having to resort to formal processes such as a subpoena of witnesses and documents.

Staff Recommendation

Because the proposed amendment could be misinterpreted as written and could inadvertently increase formality and costs, and thus may result in a fiscal impact for counties, Staff recommends that this proposed amendment not be advanced.

Part [5] – Declarations under penalty of perjury

Legal Department Analysis

Penal Code section 118, subdivision (a) states in relevant part:

> Every person who, having taken an oath that he or she will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, *in any of the cases in which the oath may by law of the State of California be administered*, willfully and contrary to the oath, states as true any material matter which he or she knows to be false . . . .

(Emphasis added.)

Thus, an element essential to perjury is administration of the oath or declaration in a case in which it is permitted by a law. (2 Witkin, Cal. Crim. Law (4th ed. 2012) Govt, § 67.) Assessors, as county officers, are authorized to administer oaths. (See Gov. Code., § 24057.) However, Section 441(d) includes no explicit authorization allowing or requiring information to be provided under penalty of perjury. Therefore, assessors may not require responses to Section 441(d) requests be made under penalty of perjury, and this part of this proposed amendment to Rule 305.1, subdivision (e) is consistent with existing law.

We emphasize, however, that although assessors may not require that Section 441(d) responses be made under penalty of perjury, sections 461 and 462 attach criminal penalties for willful false statements made to the assessor not under oath and refusal to make available to the assessor any information requested under Section 441(d), respectively. Furthermore, there is no limitation on an appeals board requiring testimony or information be made available to it under penalty of perjury, including a declaration that an applicant either does not have information requested by an assessor under Section 441(d) or that such information does not exist.

Staff Recommendation

For the reasons above, if the Board adopts this part of proposed amendment to Rule 305.1, subdivision (e), the language should be amended to make clear that criminal penalties may still attach even though information is not given under penalty of perjury, and that the proposed amendment is not a limitation on appeals boards. As presently worded, the proposed amendment could be read to restrict an appeals board's ability to make such a request.

3. CATA's September 7, 2018 Submission

CATA slightly modified the language below (as indicated) and moved the provision to newly created Rule 305.4 entitled "Requests for Information" in its Sept. 7th submission:

> [1][37] An assessor's request for information pursuant to section 441 of the Revenue and Taxation Code shall be made in writing, limited to information relating to the property at issue and be issued no less than 20 days prior to a hearing before a county board of equalization or assessment appeals board **unless the assessor and the applicant agree to a different date**. The assessor's request shall also recite the Revenue and Taxation Code section or sections authorizing the request so that the recipient is notified of his or her legal obligation in responding to the request. [2] The assessor's request shall not state that the assessor has authority to impose criminal penalties or administrative sanctions against the recipient of the request. [3] Information supplied in response to an assessor's request must be held secret by the assessor under sections **408,** 451 ~~and~~ 481 **and 1609.6** of the Revenue and Taxation Code. Information supplied by one taxpayer shall not be used by the assessor in an assessment appeals board hearing of another taxpayer including a taxpayer in another county, without written authorization from the first taxpayer. [4] The issuance of an assessor's request for information shall not entitle the assessor to take a deposition, issue interrogatories, or seek requests for admissions. [5] Nor shall the recipient of an assessor's request be required to submit a declaration under penalty of perjury when responding to an assessor's request.

These amendments do not affect the Legal Department's analysis above.

Similarly, although the changes above give some more flexibility to the Assessors and applicant choosing a different date beyond the 20 days prior to the hearing, Staff's comments and recommendations above still apply.

[37] The bracketed numbers are added for ease of reference in this analysis and are not included as part of the text in CATA's current petition for amendment to the regulation.

D. Rule 305.2, Prehearing Conference

1. *Proposal to insert in subdivision (a)*: …and requests for information…

Summary of Comments

CATA Reasons (Pros)	*Opponents Responses (Cons)*
• To further clarify that requests for information are separate from a formal exchange.	• CAA agrees with proposed Rule 305.2(a).

Legal Department Analysis

Pursuant to GC section 15606, subdivision (c), BOE has adopted Rule 305.2 to provide for prehearing conferences to resolve issues prior to the board hearing. Specifically adding the issue of determining status of "requests for information" is consistent with existing law, and may clarify that section 1606 exchanges of information and Section 441(d) requests for information are separate procedures, particularly if a new rule governing requests for information is adopted.

Staff Recommendation

Staff has no issue with this proposed amendment.

2. *Proposal to insert new subdivision (b)*: At a prehearing conference, the board shall not deny an application solely on the ground that the applicant has not responded to a request for information made under section 441 of the Revenue and Taxation code. 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.

Legal Department Analysis and Staff Recommendation

Please see Part II.A.1.

E. Rule 323, Postponements and Continuances

1. *Proposal to insert in subdivision (a)*: …by the applicant or the assessor…

Summary of Comments

CATA Reasons (Pros)	*Opponents Responses (Cons)*
• Makes language consistent with remainder of (a).	• CAA agrees with proposed Rule 323(a).

Legal Department Analysis

This proposed amendment clarifies that subsequent requests for a postponement of a hearing by either the applicant or the assessor must be in writing and good cause must be shown. As both applicants and assessors have the right to request hearing postponements, this proposed amendment is merely clarifying of existing law.

Staff Recommendation

Staff has no issue with this proposed amendment.

2. *Proposal to insert new subdivision (c)*: The board shall not postpone the hearing on an application solely on the ground that the applicant has not responded to a request for information made under section 441 of the Revenue and Taxation Code.

Legal Department Analysis and Staff Recommendation

Please see Part II.A.1.

3. *Proposal to insert in subdivision (d)*: If the assessor requests a continuance, it shall be for no more than 90 days unless the assessor demonstrates undue hardship to the satisfaction of the board or the assessor and the applicant mutually agree to a longer period of time. The board shall not grant the assessor a continuance after the applicant has presented his or her case, however, the assessor may be granted a continuance under section 441(h) of the Revenue and Taxation Code if the applicant has introduced information at the hearing which had previously been requested of the applicant as specified in regulation 305.1(e).

Summary of Comments

CATA Reasons (Pros)

- Some assessors have waited to see the applicant's case presentation and then request a continuance. This wastes available hearing time and allows the assessor to tailor their case to the applicant's presentation while the applicant does not have that same advantage.
- Some assessors requests for continuances at the conclusion of taxpayer's presentation often results in delays of many months or up to a year. This is unfair to taxpayers and gives assessors a significant advantage.

Opponents Responses (Cons)

- Limits AAB's tools to effectively and efficiently administer appeals prehearings and hearings.
- Creates unfunded mandate for meetings not on the AAB calendar, especially burdensome on smaller counties with fewer hearings.
- Too restrictive for large counties with heavy hearing schedules, and does not factor in possible recession, specifically Los Angeles and San Bernardino.

- Infringes on the AAB's authority.
- Uniformity is not possible or desirable in all situations given dramatically different circumstances applying to each county. The board must be able to manage its own calendar.
- Does not place same limitations for continuance requests on applicants, even though in some cases the assessor presents first.
- May result in AAB attempting to equalize property value without the benefit of first receiving properly prepared cases from both parties.
- Creates ambiguity/potential conflict with existing Rules 305.1(c) and 323(c).
- Conflicts with article XIII, § 16 of the California Constitution which grants local boards of supervisors the authority to adopt local rules and procedures.

Legal Department Analysis

Section 1605.6 as interpreted and made specific by Rule 323, subdivision (c) allows appeals boards to grant hearing continuances. This proposed amendment would require that an appeals board grant a hearing within 90 days only when an assessor requests a continuance, and prohibit an appeals board from granting an assessor a continuance after the applicant has presented its case. Thus, this proposed amendment is inconsistent with conducting hearings that are fair to both parties in the appeal.[38] Petitioner has not stated why an appeals board should be restricted in granting certain continuances to an assessor without similar restrictions placed on continuances granted to an appellant. Nor does petitioner explain why such restrictions on assessor-requested continuances are necessary but not on applicant-requested continuances. It has only provided assertions of unfairness to applicants. Further, no information is presented as to how this would affect the ability of appeals boards to schedule hearings. Finally, although assertions of assessors requesting and appeals boards granting continuances in some counties after the presentation of an applicant's case have been made, no evidence has been presented as to how often this occurs, or the specific circumstances under which such continuances may have been granted.

[38] Petitioner's September 7, 2018 submission amends the proposal to include both parties, as discussed below.

This proposed amendment, as written, may also be read to conflict with section 1606, subdivision (d) and Rule 305.1, subdivision (c)(1). Those sections provide that if new material is introduced at hearing that was not produced as part of a section 1606 exchange of information, the other party, whether assessor or applicant, is entitled to a reasonable continuance. This proposed amendment could be read to prohibit the appeals board from granting a continuance in such a circumstance only to the assessor.

Finally, we note that to the extent that the portion of the proposed amendment allowing continuances when the Section 441(h) conditions are met mean appeals boards can grant continuances only in those circumstances, it is contrary to existing law as explained in Part II.A.I.

Staff Recommendation

Because it is unclear whether this proposed amendment is necessary, and at least one part of it is contrary to existing law, Staff recommends that it not be advanced.

4. CATA's September 7, 2018 Submission

CATA modified its submission regarding Rule 323 (d) as follows:

> **(d)** At the hearing, the board or a hearing officer may continue a hearing to a later date. The board or hearing officer must make every reasonable effort to maintain continuous hearings. If either party requests a continuance, and the board or hearing officer grants it, the continuance should not exceed 90 days, unless the parties at the hearing stipulate to a longer continuance. However, a longer continuance may be granted by the board or hearing officer where good cause for the continuance is established to the satisfaction of the board or hearing officer by the requesting party or where the reasonable needs of the county board of equalization or assessment appeals board or hearing officer dictate the necessity of a longer continuance. The reasons justifying the continuance shall be stated on the record. ~~If the assessor requests a continuance, it shall be for no more than 90 days unless the assessor demonstrates undue hardship to the satisfaction of the board or the assessor and the applicant mutually agree to a longer period of time.~~ Notwithstanding the prior provisions of this paragraph (d), t~~T~~he board or hearing officer shall not, without good cause, grant the assessor a continuance after the applicant has presented his or her case~~,~~; however, the assessor ~~may~~ shall be granted a continuance under section 441(h) of the Revenue and Taxation Code if the applicant has introduced information at the hearing which had previously been requested of the applicant by the assessor. Likewise, the board or hearing officer shall not, without good cause, grant the applicant a continuance after the assessor has presented his or her case; however, the applicant shall be granted a continuance under section 408(f)(3) of the Revenue and Taxation Code if the assessor has introduced information at the hearing which had previously been requested of the assessor by the applicant.

Since the new proposed amendments place the same restrictions on all parties, the Legal Department's analysis above does not apply with regard to its analysis of the amendments

applying only to one party. Otherwise, the rest of the analysis still stands. Additionally, section 1606, subdivision (d) and Rule 305.1, subdivision (c)(1) provide that if new material is introduced at hearing that was not produced as part of a section 1606 exchange of information, the other party is entitled to a reasonable continuance. To the extent that these amendments require a showing of "good cause" rather than "reasonableness," and require a 90 day time frame regardless of whether it is a "reasonable" one, the proposed amendments are inconsistent with existing law.

As for Staff's recommendations, Staff notes that although these changes provide some clarity, these changes still have a fiscal impact which may require State reimbursement. Further, no information is presented as to how this would affect the ability of appeals boards to schedule hearings, as to how often this occurs, or the specific circumstances under which such continuances may have been granted. As stated above, because it is unclear whether this proposed amendment is necessary, and at least one part of it is contrary to existing law (see Part II.A.I), Staff still recommends that this item not be advanced for the reasons set forth above.

If you need more information or have any questions, please contact Henry Nanjo, Chief Counsel, at (916) 323-1094.

Approved:

Dean Kinnee
Executive Director

Attachments: 1 - Petitioner's July 10, 2018 correspondence (which consists of the text of the Proposed Rules and "Reasons why the Appeals Regulation changes are necessary")
2 - Petitioner's August 8, 2018 correspondence
3 - Summary of Comments: Responses to Proposed Amendments to Rules 302, 305, 305.1, 305.2, & 323
4. – Petitioner's September 7, 2018 correspondence
5. – CAA's September 13, 2018 correspondence

HDN
cc: Mr. Dean Kinnee, MIC: 73
Mr. David Yeung, MIC: 64
Ms. Lisa Thompson, MIC: 70

STATE BOARD OF EQUALIZATION
BOARD APPROVED Publication, in part, with changes
At the 9/25/18 Board Meeting
Joann Richmond-Smith
Joann Richmond-Smith, Chief
Board Proceedings Division

Attachment 1
Petitioner's July 10, 2018 correspondence

Rule 302. THE BOARD'S FUNCTION AND JURISDICTION.

Authority: Section 15606, Government Code.

Reference: Sections 531.1, 1603, 1604 and 1605.5, Revenue and Taxation Code.

(a) The functions of the board are:

(1) To lower, sustain, or increase upon application, or to increase after giving notice when no application has been filed, individual assessments in order to equalize assessments on the local tax assessment roll,

(2) To determine the full value and, where appealed, the base year value of the property that is the subject of the hearing,

(3) To hear and decide penalty assessments, and to review, equalize and adjust escaped assessments on that roll except escaped assessments made pursuant to Revenue and Taxation Code section 531.1,

(4) To determine the classification of the property that is the subject of the hearing, including classifications within the general classifications of real property, improvements, and personal property. Such classifications may result in the property so classified being exempt from property taxation.

(5) To determine the allocation of value to property that is the subject of the hearing, and

(6) To exercise the powers specified in section 1605.5 of the Revenue and Taxation Code.

(b) Except as provided in subdivision (a)(4), the board has no jurisdiction to grant or deny exemptions or to consider allegations that claims for exemption from property taxes have been improperly denied.

(c) The board has no jurisdiction to deny an application solely on the ground that the applicant has not responded to a request for information made under section 441 of the Revenue and Taxation Code.

(d) The board acts in a quasi-judicial capacity and renders its decision only on the basis of proper evidence presented at the hearing.

History: Adopted May 11, 1967, effective June 11, 1967.
Amended May 21, 1968, effective June 26, 1968.
Amended June 4, 1969, effective June 6, 1969.
Amended May 5, 1971, effective June 10, 1971.
Amended December 17, 1975, effective January 25, 1976.
Amended January 6, 2000, effective April 22, 2000.
Amended June 30, 2004, effective August 25, 2004.

Rule 305. APPLICATION.

Authority: Section 15606, Government Code.

Reference: Sections 51, 166, 170, 408.1, 469, 619, 1603, 1603.5, 1604, 1605, 1636, 5097, and 5097.02, Revenue and Taxation Code. Section 25105.5, Government Code.

No change in an assessment sought by a person affected shall be made unless the following application procedure is followed.

(a) ELIGIBLE PERSONS.

(1) An application is filed by a person affected or the person's agent, or a relative mentioned in regulation 317 of this division. If the application is made by an agent, other than an authorized attorney licensed to practice in this state who has been retained and authorized by the applicant to file the application, written authorization to so act must be filed with the application. For purposes of signing an application on behalf of an applicant, an agent shall be deemed to have been duly authorized if the applicant's written agent authorization is on the application or attached to each application at the time it is filed with the board. In any county that provides for a taxpayer to file an appeal on line, the board shall provide a mechanism for an agency authorization to be attached to the on-line filing. The attached authorization shall include the following:

(A) The date the authorization statement is executed;

(B) A statement to the effect that the agent is authorized to sign and file applications in the specific calendar year in which the application is filed;

(C) The specific parcel(s) or assessment(s) covered by the authorization, or a statement that the agent is authorized to represent the applicant on all parcels and assessments located in the specific county;

(D) The name, address, and telephone number of the specific agent who is authorized to represent the applicant;

(E) The applicant's signature and title; and

(F) A statement that the agent will provide the applicant with a copy of the application.

(2) If a photocopy of the original authorization is attached to the application, the agent shall be prepared to submit an original signed authorization if requested by the board. The application form shall show that the agent's authorization was attached to the application. An agent must have authorization to file an application at the time the application is filed; retroactive authorizations are not permitted.

(3) If the applicant is a corporation, limited partnership, or a limited liability company, the agent authorization must be signed by an officer or authorized employee of the business entity.

(4) No application shall be rejected as a duplicate application by the clerk unless it qualifies as a duplicate application within the meaning specified in section 1603.5 of the Revenue and Taxation Code.

(5) No application shall be rejected because the agency authorization is signed by a taxpayer in a different calendar year than the application was filed.

(b) SIGNATURE AND VERIFICATION. The application shall be in writing and signed by the applicant or the applicant's agent with declaration under penalty of perjury that the statements made in the application are true and that the person signing the application is one of the following:

(1) The person affected, a relative mentioned in regulation 317 of this division, an officer of a corporation, or an employee of a corporation who has been designated in writing by the board of directors or corporate officer to represent the corporation on property tax matters;

(2) An agent authorized by the applicant as indicated in the agent's authorization portion of the application; or

(3) An attorney licensed to practice law in this state who has been retained by the applicant and who has been authorized by the applicant, prior to the time the application is filed, to file the application.

(c) FORMS AND CONTENTS. The county shall provide, free of charge, forms on which applications are to be made.

(1) The application form, both hardcopy and on-line versions, shall be prescribed by the State Board of Equalization and shall require that the applicant provide the following information:

(A) The name and address of the applicant.

(B) The name and address of the applicant's agent, if any. If the applicant is represented by an agent, both the applicant's actual mailing address and the agent's mailing address shall be provided on the application.

(C) The applicant's written authorization for an agent, if any, to act on the applicant's behalf.

(D) A description of the property that is the subject of the application sufficient to identify it on the assessment roll.

(E) The applicant's opinion of the value of the property on the valuation date of the assessment year in issue.

(F) The roll value on which the assessment of the property was based.

(G) The facts relied upon to support the claim that the board should order a change in the assessed value, base year value, or classification of the subject property. The amount of the tax or the amount of an assessed value increase shall not constitute facts sufficient to warrant a change in assessed values.

(2) The form shall also include:

(A) A notice that a list of property transfers within the county, that have occurred within the preceding two-year period, is open to inspection at the assessor's office to the applicant upon payment of a fee not to exceed ten dollars ($10). This requirement shall not apply to counties with a population under 50,000 as determined by the 1970 decennial census.

(B) A notice that written findings of fact will be prepared by the board upon request if the applicable fee is paid. An appropriate place for the applicant to make the request shall be provided.

(3) An application may include one or more reasons for filing the application. Unless permitted by local rules, an application shall not include both property on the secured roll and property on the unsecured roll.

(4) An application that does not include the information required by subsection (c)(1) of this regulation is invalid and shall not be accepted by the board. Prompt notice that an application is invalid shall be given by the clerk to the applicant and, where applicable, the applicant's agent. An applicant or the applicant's agent who has received notice shall be given a reasonable opportunity to correct any errors and/or omissions. Disputes concerning the validity of an application shall be resolved by the board.

(5) An application that includes the correct information required by subdivision (1) is valid and no additional information shall be required of the applicant on the application form.

(6) If the county has appointed hearing officers as provided for in Revenue and Taxation Code section 1636, the application form shall advise the applicant of the circumstances under which the applicant may request that the application be heard by such an officer.

(7) If an application appeals property subject to an escape assessment resulting from an audit conducted by the county assessor, then all property, both real and personal, of the assessee at the same profession, trade, or business location shall be subject to review, equalization, and adjustment by the appeals board, except when the property has previously been equalized for the year in question.

(d) TIME OF FILING.

(1) An application appealing a regular assessment shall be filed with the clerk during the regular filing period. A regular assessment is one placed on the assessment roll for the most recent lien date, prior to the closing of that assessment roll. The regular filing period for all real and personal property located in a county is:

(A) July 2 through September 15 when the county assessor elects to mail assessment notices, as defined in section 619 of the Revenue and Taxation Code, by August 1 to all owners of real property on the secured roll; or

(B) July 2 through November 30 when the county assessor does not elect to mail assessment notices by August 1 to all owners of real property on the secured roll.

Additionally, an application appealing a base year value for the most recent lien date, where that value is not the value currently on the assessment roll, shall be filed with the clerk during the regular filing period beginning July 2 but no later than September 15 or November 30, as applicable.

(2) An application appealing an escape assessment or a supplemental assessment must be filed with the clerk no later than 60 days after the date of mailing printed on the notice of assessment or the postmark date, whichever is later, or no later than 60 days after the date of mailing printed on the tax bill or the postmark date, whichever is later, in the county of Los Angeles and in those counties where the board of supervisors has adopted a resolution to that effect, pursuant to section 1605 of the Revenue and Taxation Code.

(3) An application appealing a proposed reassessment made for property damaged by misfortune or calamity pursuant to section 170 of the Revenue and Taxation Code must be filed with the clerk no later than six months after the date of mailing of the notice of proposed reassessment by the assessor. The decision of the board regarding the damaged value of property shall be final, however, the decision regarding the reassessment made pursuant to section 170 shall create no presumption regarding the value of the property subsequent to the date of the damage.

(4) An application may be filed within 60 days of receipt of a notice of assessment or within 60 days of the mailing of a tax bill, whichever is earlier, when the taxpayer does not receive the notice of assessment described in section 619 of the Revenue and Taxation Code at least 15 calendar days prior to the close of the regular filing period. The application must be filed with an affidavit from the applicant declaring under penalty of perjury that the notice was not timely received.

(5) An application will be deemed to have been timely filed:

(A) If it is sent by U.S. mail, properly addressed with postage prepaid and is postmarked on the last day of the filing period or earlier within such period; or

(B) If proof satisfactory to the board establishes that the mailing occurred on the last day of the filing period or within such period. Any statement or affidavit made by an applicant asserting such a timely filing must be made within one year of the last day of the filing period.

(6) An application filed by mail that bears both a private business postage meter postmark date and a U.S. Postal Service postmark date will be deemed to have been filed on the date that is the same as the U.S. Postal Service postmark date, even if the private business postage meter date is the earlier of the two postmark dates. If the last day of the filing period falls on Saturday, Sunday, or a legal holiday, an application that is mailed and postmarked on the next business day shall be deemed timely filed. If the county's offices are closed for business prior to 5 p.m. or for the entire day on which the deadline for filing falls, that day shall be considered a legal holiday.

(7) Except as provided in sections 1603 and 1605 of the Revenue and Taxation Code, the board has no jurisdiction to hear an application unless filed within the time periods specified above.

(e) AMENDMENTS AND CORRECTIONS.

(1) An applicant or an applicant's agent may amend an application until 5:00 p.m. on the last day upon which it might have been timely filed.

(2) After the filing period has expired:

(A) An invalid application may be corrected in accordance with subsection (c)(4) of this regulation.

(B) The applicant or the applicant's agent may amend an application provided that the effect of the amendment is not to request relief additional to or different in nature from that originally requested.

(C) (i) Upon request of the applicant or the applicant's agent, the board, in its discretion, may allow the applicant or the applicant's agent to make amendments to the application in addition to those specified in subdivisions (A) and (B) to state additional facts claimed to require a reduction of the assessment that is the subject of the application.

(ii) The applicant or the applicant's agent shall state the reasons for the request, which shall be made in writing and filed with the clerk of the board prior to any scheduled hearing, or may be made orally at the hearing. If made in writing, the clerk shall provide a copy to the assessor upon receipt of the request.

(iii) As a condition to granting a request to amend an application, the board may require the applicant to sign a written agreement extending the two-year period provided in section 1604 of the Revenue and Taxation Code.

(iv) If a request to amend is granted, and upon the request of the assessor, the hearing on the matter shall be continued by the board for no less than 45 days, unless the parties mutually agree to a different period of time.

(3) An applicant or an applicant's agent shall be permitted to present testimony and other evidence at the hearing to support a full value that may be different from the opinion of value stated on the application. The presentation of such testimony or other evidence shall not be considered a request to amend or an amendment to the application.

(f) CLAIM FOR REFUND. If a valid application is designated as a claim for refund pursuant to section 5097 of the Revenue and Taxation Code, the applicant shall be deemed to have challenged each finding of the board and to have satisfied the requirements of section 5097.02 of the Revenue and Taxation Code.

(g) RETENTION OF RECORDS. The clerk may destroy records consisting of assessment appeal applications when five years have elapsed since the final action on the application. The records may be destroyed three years after the final action on the application if the records have been microfilmed, microfiched, imaged, or otherwise preserved on a medium that provides access to the documents. As used in this subsection, "final action" means the date of the final decision by the board.

(h) CONSOLIDATION OF APPLICATIONS. The board, on its own motion or on a timely request of the applicant or applicants or the assessor, may consolidate applications when the applications present the same or substantially related issues of valuation, law, or fact. If applications are consolidated, the board shall notify all parties of the consolidation.

History: Adopted May 11, 1967, effective June 11, 1967.
Amended December 11, 1967, effective January 13, 1968.
Amended May 21, 1968, effective June 26, 1968.
Amended November 20, 1968, effective November 22, 1968.
Amended June 4, 1969, effective June 6, 1969.
Amended May 6, 1970, effective June 6, 1970.
Amended April 14, 1972, effective May 14, 1972.
Amended June 13, 1974, effective June 14, 1974.
Amended April 7, 1977, effective May 22, 1977.
Amended July 31, 1980, effective November 19, 1980.
Amended July 27, 1982, effective December 30, 1982.
Amended and effective October 23, 1997.
Amended April 5, 2000, effective June 30, 2000.
Amended June 30, 2004, effective August 25, 2004.

Rule 305.1. EXCHANGE OF INFORMATION AND REQUEST FOR INFORMATION.

Authority: Section 15606(c), Government Code.

Reference: Sections 408, 441, 451, 1606 and 1609.4, Revenue and Taxation Code.

(a) REQUEST FOR EXCHANGE OF INFORMATION. When the assessed value of the property involved, before deduction of any exemption accorded the property, is $100,000 or less, the applicant may file a written request for an exchange of information with the assessor; and when the assessed value before deduction of any exemption exceeds $100,000, either the applicant or the assessor may request such an exchange pursuant to section 1606 of the Revenue and Taxation Code. The request may be filed with the clerk at the time an application for hearing is filed or may be submitted to the other party and the clerk at any time prior to 30 days before the commencement of the hearing. For purposes of determining the date upon which the exchange was deemed initiated, the date of postmark as affixed by the United States Postal Service, or the date certified by a bona fide private courier service on the envelope or package containing the information shall control. The clerk shall, at the earliest opportunity, forward any request filed with the application or a copy thereof to the other party. The request shall contain the basis of the requesting party's opinion of value for each valuation date at issue and the following data:

(1) COMPARABLE SALES DATA. If the opinion of value is to be supported with evidence of comparable sales, the properties sold shall be described by the assessor's parcel number, street address or legal description sufficient to identify them. With regard to each property sold there shall be presented the approximate date of sale, the price paid, the terms of sale (if known), and the zoning of the property.

(2) INCOME DATA. If the opinion of value is to be supported with evidence based on an income study, there shall be presented: the gross income, the allowable expenses, the capitalization method (direct capitalization or discounted cash flow analysis), and rate or rates employed.

(3) COST DATA. If the opinion of value is to be supported with evidence of replacement cost, there shall be presented:

(A) With regard to improvements to real property: the date of construction, type of construction, and replacement cost of construction.

(B) With regard to machinery and equipment: the date of installation, replacement cost, and any history of extraordinary use.

(C) With regard to both improvements and machinery and equipment: facts relating to depreciation, including any functional or economic obsolescence, and remaining economic life.

The information exchanged shall provide reasonable notice to the other party concerning the subject matter of the evidence or testimony to be presented at the hearing. There is no requirement that the details of the evidence or testimony to be introduced must be exchanged.

(b) TRANSMITTAL OF EXCHANGE DATA TO OTHER PARTY. If the party requesting an exchange of data under the preceding subsection has submitted the data required therein within the specified time, the other party shall submit a response to the initiating party and to the clerk at least 15 days prior to the hearing. The response shall be supported with the same type of data required of the requesting party. When the assessor is the respondent, he or she shall submit the response to the address shown on the application or on the request for exchange of information, whichever is filed later. The initiating party and the other party shall provide adequate methods of submission to ensure to the best of their ability that the exchange of information process is completed at least 10 days prior to the hearing.

(c) PROHIBITED EVIDENCE; NEW MATERIAL; CONTINUANCE. Whenever information has been exchanged pursuant to this regulation, the parties may introduce evidence only on matters pertaining to the information so exchanged unless the other party consents to introduction of other evidence. However, at the hearing, each party may introduce new material relating to the information received from the other party. If a party introduces such new material at the hearing, the other party, upon request, shall be granted a continuance for a reasonable period of time.

(d) NONRESPONSE TO REQUEST FOR EXCHANGE OF INFORMATION. If one party initiates a request for information and the other party does not comply within the time specified in subsection (b), the board may grant a postponement for a reasonable period of time. The postponement shall extend the time for responding to the request. If the board finds willful noncompliance on the part of the noncomplying party, the hearing will be convened as originally scheduled and the noncomplying party may comment on evidence presented by the other party but shall not be permitted to introduce other evidence unless the other party consents to such introduction.

(e) REQUEST FOR INFORMATION. An assessor's request for information pursuant to section 441 of the Revenue and Taxation Code shall be made in writing, limited to information relating to the property at issue and be issued no less than 20 days prior to a hearing before a county board of equalization or assessment appeals board. The assessor's request shall also recite the Revenue and Taxation Code section or sections authorizing the request so that the recipient is notified of his or her legal obligations in responding to the request. The assessor's request shall not state that the assessor has authority to impose criminal penalties or administrative sanctions against the recipient of the request. Information supplied in response to an assessor's request must be held secret by the assessor under sections 451 and 481 of the Revenue and Taxation Code. Information supplied by one taxpayer shall not be used by the assessor in an assessment appeals board hearing of another taxpayer, including a taxpayer in another county, without written authorization from the first taxpayer. The issuance of an assessor's request for information shall not entitle the assessor to take a deposition, issue interrogatories, or seek requests for admissions. Nor shall the recipient of an assessor's request be required to submit a declaration under penalty of perjury when responding to an assessor's request.

History: Adopted May 6, 1970, effective June 6, 1970.
Amended May 5, 1971, effective June 10, 1971.
Amended June 13, 1974, effective June 14, 1974.
Amended July 27, 1982, effective February 10, 1983.
Amended January 5, 2000, effective April 22, 2000.
Amended and effective September 19, 2002.

Rule 305.2. PREHEARING CONFERENCE.

Authority: Section 15606(c), Government Code.

Reference: Article XIII, Section 16, California Constitution; and Section 1601 et seq., Revenue and Taxation Code.

(a) A county board of supervisors may establish prehearing conferences. If prehearing conferences are established, the county board of supervisors shall adopt rules of procedure for prehearing conferences. A prehearing conference may be set by the clerk at the request of the applicant or the applicant's agent, the assessor, or at the direction of the appeals board. The purpose of a prehearing conference is to resolve issues such as, but not limited to, clarifying and defining the issues, determining the status of exchange of information requests and requests for information, stipulating to matters on which agreement has been reached, combining applications into a single hearing, bifurcating the hearing issues, and scheduling a date for a hearing officer or the board to consider evidence on the merits of the application.

(b) At a prehearing conference, the board shall not deny an application solely on the ground that the applicant has not responded to a request for information made under section 441 of the Revenue and Taxation Code. 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.

(c) The clerk of the board shall set the matter for a prehearing conference and notify the applicant or the applicant's agent and the assessor of the time and date of the conference. Notice of the time, date, and place of the conference shall be given not less than 30 days prior to the conference, unless the assessor and the applicant stipulate orally or in writing to a shorter notice period.

History: Adopted January 5, 2000, effective April 22, 2000.

Rule 323. POSTPONEMENTS AND CONTINUANCES.

Authority: Section 15606, Government Code.

Reference: Sections 1605.6 and 1606, Revenue and Taxation Code.

(a) The applicant and/or the assessor shall be allowed one postponement as a matter of right, the request for which must be made not later than 21 days before the hearing is scheduled to commence. If the applicant requests a postponement as a matter of right within 120 days of the expiration of the two-year limitation period provided in section 1604 of the Revenue and Taxation Code, the postponement shall be contingent upon the applicant's written agreement to extend and toll indefinitely the two-year period subject to termination of the agreement by 120 days written notice by the applicant. The assessor is not entitled to a postponement as a matter of right if the request is made within 120 days of the expiration of the two-year period, but the board, in its discretion, may grant such a request. Any subsequent requests for a postponement by the applicant or the assessor must be made in writing, and good cause must be shown for the proposed postponement. A stipulation by an applicant and the assessor shall be deemed to constitute good cause, but shall result in extending and tolling indefinitely the two-year limitation period subject to termination of the agreement by 120 days written notice by the applicant. Any information exchange dates remain in effect based on the originally scheduled hearing date notwithstanding the hearing postponement, except as provided in regulation 305.1(d) of this subchapter.

(b) A board of supervisors may delegate decisions concerning postponement to the clerk in accordance with locally adopted rules. Requests for postponement shall be considered as far in advance of the hearing date as is practicable.

(c) The board shall not postpone the hearing on an application solely on the ground that the applicant has not responded to a request for information made under section 441 of the Revenue and Taxation Code.

(d) At the hearing, the board or a hearing officer may continue a hearing to a later date. If the assessor requests a continuance, it shall be for no more than 10 days unless the assessor demonstrates undue hardship to the satisfaction of the board or the assessor and the applicant mutually agree to a longer period of time. The board shall not grant the assessor a continuance after the applicant has presented his or her case, however, the assessor may be granted a continuance under section 441(h) of the Revenue and Taxation Code if the applicant has introduced information at the hearing which had previously been requested of the applicant as specified in regulation 305.1(e).

(e) If the applicant requests a continuance within 90 days of the expiration of the two-year period specified in section 1604 of the Revenue and Taxation Code, the board may require a written extension signed by the applicant extending and tolling the two-year period indefinitely subject to termination of the agreement by 120 days written notice by the applicant. The clerk shall inform the applicant or the applicant's agent and the assessor in writing of the time and place of the continued hearing not less than 10 days prior to the new hearing date, unless the parties agree in writing or on the record to waive written notice.

History: Adopted May 11, 1967, effective June 11, 1967.
Amended May 21, 1968, effective June 26, 1968.
Amended November 20, 1968, effective November 22, 1968.
Amended October 6, 1999, effective April 22, 2000.

Reasons why the Appeals Regulation changes are necessary:

The Board of Equalization understands the need for uniformity between County Assessors and Assessment Appeals Boards throughout the State of California. In addition, The Board of Equalization also recognizes a taxpayer's fundamental right to "due process" and a timely hearing once an assessment appeal application has been filed. Recent information has shown that several counties throughout the State are postponing, delaying, or in rare instances denying appeal applications on the sole basis that a taxpayer has failed to adequately respond to an assessor's 441 (d) request for information. In addition, pre-hearing conferences are being scheduled with the sole or primary goal to compel the taxpayer to comply with an assessor's 441 (d) request for information before an evidentiary hearing will be scheduled. Existing R&T Code provisions currently provide Assessors and Assessment Appeals Boards with remedies to pursue in the event a taxpayer fails to comply with an assessor's 441 (d) request for information. Therefore, these regulations are made to clarify and support existing law which does not authorize Assessment Appeals Boards or Assessors to deny taxpayers the rights to due process.

Rule 302

1. Insertion of "(c) The board has no jurisdiction to deny an application solely on the ground that the applicant has not responded to a request for information made under section 441 of the Revenue and Taxation Code."

Reason –Assessment Appeals Boards (AAB) have incorrectly denied appeals because the applicant has not responded with data requested by the assessor. Sometimes this information does not exist or is irrelevant to the market value of the property. This change reflects existing law.

Rule 305

1. Insertion at the bottom of (a)(1)..."In any county that provides for a taxpayer to file an appeal on-line, the board shall provide a mechanism for an agency authorization to be attached to the on-line filing."

Reason – This avoids having to mail the authorization which somewhat defeats the purpose/benefit an on-line filing.

2. Insertion of (5) "No application shall be rejected because the agency authorization is signed by a taxpayer in a different calendar year than the application was filed."

Reason - Sometimes clerks confuse (a)(1)(B) to mean that the authorization must be signed in the same year as the when the application is filed.

3. Insertion in (c)(1) of "...both hardcopy and on-line versions,..."

Reason – This ensures consistency across on-line filings if BOE is prescribing the form.

Rule 305.1

1. Insert "...AND REQUEST FOR INFORMATION" in Rule title, "...EXCHANGE OF..." in title of (a), "...pursuant to section 1606 of the Revenue and Taxation Code." in (a), "EXCHANGE" in title of (b) and "EXCHANGE OF..." In (d).

Reason – Clarifies that Rule 305.1(a)-(d) are specific to 1606 formal exchanges of Information and not regular 441 requests for information.

2. Insert new (e)

Reason – To clarify timing and legal scope of 441 requests.

Rule 305.2

1. Insert "...and requests for information..." in (a)

Reason – To further clarify that requests for information are separate from a formal exchange.

2. Insert (b) "At a prehearing conference, the board shall not deny an application solely on the ground that the applicant has not responded to a request for information made under section 441 of the Revenue and Taxation code. 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."

Reason – Adding to this Rule to make consistent with similar change in Rules 305.2 and 302.

Rule 323

1. Insert in (a)"...by the applicant or the assessor..."

Reason – Making language consistent with remainder of (a)

2. Insert (c) "The board shall not postpone the hearing on an application solely on the ground that the applicant has not responded to a request for information made under section 441 of the Revenue and Taxation Code."

Reason – Adding to this Rule to make consistent with similar changes in Rules 305.2 and 302.

3. Additions to (d).

Reason – Assessors have waited to see the applicant's case presentation and then request a continuance. This wastes available hearing time and allows the assessor to tailor their case to the applicant's presentation while the applicant does not have that same advantage.

Attachment 2
Petitioner's August 8, 2018 correspondence

CALIFORNIA ALLIANCE
OF TAXPAYER ADVOCATES

August 8, 2018

Mr. Dean R. Kinnee
Executive Director
State Board of Equalization
450 N Street, MIC: 73
P.O. Box 942879
Sacramento, CA 94279-0073

Re: Petition to Amend SBE Property Tax Rules 302, 305, 305.1, 305.2 and 323

Dear Mr. Kinnee:

Pursuant to California Government Code section 11340.6 and the State Board of Equalization's authority under Government Code section 15606, paragraphs (c) and (e), the California Alliance of Taxpayer Advocates ("CATA") petitions the State Board of Equalization ("SBE") to amend California Code of Regulations ("CCR"), title 18, sections 302, 305, 305.1, 305.2 and 323, also known as SBE Property Tax Rules 302, 305, 305.1, 305.2 and 323 (hereinafter referred to as the "Rules").[1]

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[1] CATA's request is made in conjunction with the motion by SBE Member Harkey (seconded by SBE Chairman Runner and concurred in by SBE Member Ma) at the July 24, 2018 SBE Meeting that the Executive Director direct the SBE's Chief Counsel to prepare a legal analysis for the proposed SBE Rule changes presented in Board Agenda Item L1. at the July 24th SBE Meeting. CATA's petition is presented in accordance with the "Formal Rulemaking Process" discussed at pages 3 through 5 in the SBE's Letter to Assessors dated April 10, 2014 (LTA No. 2014/021).

Government Code section 11340.6 provides in part "any interested person may petition a state agency requesting the ... amendment ... of a regulation."

Government Code section 15606, paragraphs (c) and (e), state in part that the SBE shall "Prescribe rules and regulations to govern local boards of equalization when equalizing and assessors when assessing" and "Prepare and issue instructions to assessors designed to promote uniformity throughout the state and its local taxing jurisdictions in the assessment of property for the purposes of taxation."

Proposed Amendments to Rules 302, 305, 305.1, 305.2 and 323.

CATA's proposed amendments to the CCR sections or Property Tax Rules listed above are set forth in the attachment to this petition. These sections or Rules relate to the following topics and subjects:

Rule 302 – The Board's Function and Jurisdiction[2]
Rule 305 – Application
Rule 305.1 – Exchange of Information
Rule 305.2 – Prehearing Conference
Rule 323 – Postponements and Continuances

The Rules, and the proposed amendments to the Rules, all pertain to the assessment appeal or equalization process before local boards of equalization and county assessment appeals boards ("local Boards").

The proposed amendments to the Rules address five primary concerns:

(1) Revenue and Taxation Code section 441(d) "Non-Compliance Hearings" by local Boards;

(2) Assessors' practices in issuing Section 441(d) information requests;

(3) Assessors' requests for hearing continuances;

(4) Assessors' use of confidential information obtained from one taxpayer through a Section 441(d) request in proceedings before local Boards by other taxpayers; and

(5) Taxpayer authorizations for the filing of assessment appeal applications.

The primary reasons for amending the Rules are: (1) to insure uniformity in assessment practices statewide,[3] and (2) to insure that due process standards are met so that taxpayers receive fair hearings before local Boards.

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[2] "The Board" in this and the other Rules listed below refers to local boards of equalization or county assessment appeals boards.

[3] California Revenue and Taxation Code section 169 provides: "The [State Board of Equalization] shall encourage uniform statewide appraisal and assessment practices."

(1) Section 441(d) Information Requests and Local Board "Non-Compliance" Hearings.

California Revenue and Taxation Code section 441(d) permits county assessors to request information from taxpayers "for assessment purposes." In the situation where an assessment appeal application has been filed by a taxpayer and the taxpayer fails to respond to an assessor's Section 441(d) information request, an assessor has two means of enforcing compliance with the Section 441(d) request. The first method is to proceed to an equalization hearing before the local Board and, when the taxpayer provides the previously requested information at that hearing, to request a continuance pursuant to Section 441(h). The second method is to issue an "assessor's subpoena" to the taxpayer requiring the taxpayer to provide documents and appear before the assessor. If the taxpayer does not comply with the assessor's subpoena, the assessor may institute proceedings in Superior Court to obtain a court order requiring the taxpayer to provide documents and otherwise comply with the assessor's subpoena.

The prior paragraph sets forth the *only* methods by which an assessor may enforce a Section 441(d) information request. Nevertheless, in recent years some assessors and local Boards have sought to enforce Section 441(d) requests by holding "Section 441(d) Non-Compliance Hearings." Such hearings generally consist of the assessor presenting his/her Section 441(d) information request and listing what information the assessor believes needs to be provided. Taxpayers are then asked to respond. If the response is incomplete in the judgment of the local Board and the assessor, the hearing on the taxpayer's assessment appeal application is postponed until the requested information is provided. Some local Boards have also dismissed assessment appeal applications for a taxpayer's alleged failure to respond to an assessor's Section 441(d) information request to an assessor's satisfaction. It is noteworthy that Section 441(d) Non-Compliance Hearings (or what amount to such hearings) are not held in all counties, and many local Boards never hold such hearings.

There is no authority in any statute or regulation for local Boards to hold Section 441(d) Non-Compliance Hearings, or for assessors to request such hearings. Local Boards are not trained to resolve "discovery" disputes. Further, local Boards lack the "power of contempt" and have no authority to enforce Section 441(d) requests other than to "browbeat" the taxpayer, dismiss the taxpayer's assessment appeal, or to postpone the hearing on the appeal indefinitely until the taxpayer complies (these latter remedies are not permitted under any law). Moreover, most local Boards rely on the assessor who issued the Section 441(d) information request to also determine whether the taxpayer has complied with the request, which is very unfair to taxpayers, particularly when an assessor's Section 441(d) request is aggressive or overreaching.

The proposed amendments would prohibit local Boards from holding "Section 441(d) Non-Compliance" hearings in the following ways: (a) stating that local Boards have no jurisdiction to deny an assessment appeal application when a taxpayer has not responded to a Section 441(d)

request (adding Rule 302(c)); (b) stating that local Boards may not use Prehearing Conferences to deny applications when a taxpayer has not responded to a Section 441(d) request or continuing Prehearing Conferences in such circumstance in order to compel a taxpayer to respond to a Section 441(d) request (adding Rule 305.2(b)); and (c) prohibiting local Boards from postponing valuation hearings on assessment appeal applications when a taxpayer has not responded to a Section 441(d) information request (adding Rule 323(c)).

(2) Practices of Assessors in Issuing Section 441(d) Requests.

In recent years, some county assessors have engaged in harsh practices which make taxpayer compliance with Section 441(d) requests difficult and, in some cases, intimidate taxpayers. Those practices include: making verbal Section 441(d) requests, requesting information close to or on the eve of an equalization hearing (with the intention of seeking a postponement of the hearing if the taxpayer does not fully comply prior to the hearing), threatening taxpayers with criminal or administrative penalties for failure to comply (under Revenue and Taxation Code section 462), even though only a District Attorney has the authority to prosecute violations and not an assessor, and issuing requests which are overbroad, burdensome and oppressive.[4]

Proposed Rule 305.1(e) addresses harsh practices by assessors with regard to Section 441(d) requests by requiring that requests: be in writing, be made no less than 20 days prior to an equalization hearing, be accompanied by references to the statutes supporting such requests, not stating that assessors have the authority to impose penalties for non-compliance, and be limited to information relating to the property in issue. Proposed Rule 305.1(e) also prohibits assessors from converting section 441(d) information requests into formal discovery used in civil proceedings in Superior Court, such as depositions, interrogatories and requests for admission, or requiring responses to section 441(d) requests to be submitted with a declaration under penalty of perjury, all of which conflict with the informal nature of assessment appeal proceedings.

(3) Unfair Hearing Continuances by Assessors.

In hearings before local Boards, the taxpayer usually presents his or her evidence first. In some counties, at the conclusion of the taxpayer's presentation, the assessor will ask for a continuance of several days or weeks in order to prepare for cross-examination of the taxpayer's case. Because local Boards often do not have days available in order to resume a hearing, this often

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[4] As of the date of this letter, most county assessors have ceased using these practices following complaints by taxpayers, including CATA, to the SBE, and after the California Assessors Association ("CAA") began policing the activities of its members. However, there is no assurance that harsh practices by assessors will not resume in the future.

results in the assessor cross-examining the taxpayer's case many months or up to a year after the taxpayer's initial presentation.

The practice by assessors of seeking continuances in this fashion is very unfair to taxpayers and gives assessors a significant advantage in equalization hearings. Even where a taxpayer and an assessor have exchanged their appraisals prior to a hearing, either informally or through a formal exchange under Revenue and Taxation Code section 1606, assessors will typically request and local Boards will usually grant assessors continuances to study the taxpayer's case and prepare for cross-examination. In some counties local Boards do not always extend the same courtesy to taxpayers after assessors have presented their appraisal evidence. It is noteworthy that local Boards in some counties do not readily grant assessors continuances, while local Boards in other counties regularly grant such requests.

Proposed Rule 323(d) would prevent the practice of assessors requesting and local Boards granting assessors continuances after taxpayers have presented their cases. The proposed rule would also otherwise prohibit assessors from making serial continuance requests in order to postpone hearings for excessive periods of time.

(4) Use of Confidential Third-Party Taxpayer Information in Equalization Hearings.

California Revenue and Taxation Code sections 451 and 481 provide that information supplied by a taxpayer to an assessor "shall be held secret." This secrecy requirement extends to information supplied by taxpayers to assessors in response to Section 441(d) information requests.

In recent years, assessors in some counties have started using confidential information obtained from one taxpayer through a Section 441(d) request in equalization hearings before local Boards for other taxpayers. In order to do so, assessors "de-identify" the confidential information so that the owner of the information cannot be determined.

This use of de-identified confidential information obtained through Section 441(d) requests nearly always prevents the taxpayer against whom the information is used from being able to cross-examine the information during the equalization hearing. Due process and fairness standards require that taxpayers be permitted to cross-examine evidence presented by a taxing authority. (*Interstate Commerce Commission v. Louisville & N.R. Co.* (U.S. Supreme Court, 1913) 227 U.S. 88, 93; *Universal Consol. Oil Co. v. Byram* (Calif. Supreme Court, 1944) 25 Cal.2d 353, 361.) In fact, SBE Property Tax Rule 313(e) requires that taxpayers be permitted to cross-examine the evidence presented in equalization hearings before local Boards. Moreover, assessors' presentation of de-identified information to local Boards prevents those Boards from being able to fairly evaluate and determine whether evidence presented by assessors is reliable

and credible. Finally, the use of de-identified information obtained through Section 441(d) requests in public equalization hearings is unfair to the taxpayers who provided such information with an expectation of secrecy under Sections 451 and 481. It also pits one taxpayer against another because the taxpayer against whom the de-identified but secret information is being used is strongly motivated to learn the source of such information and disclose the information for purposes of cross-examination.

The use of de-identified information obtained through Section 441(d) requests does not occur in all counties. Some assessors rely heavily on such information in the presentation of cases before local boards, while other assessors never use such information.

Revenue and Taxation Code section 408(e)(3) permits a taxpayer against whom an assessor seeks to use de-identified confidential information to seek a confidentiality order from the Superior Court thereby permitting an assessor to release confidential information. However, the procedure for obtaining a Section 408(e)(3) order is complicated, time-consuming and usually expensive as it requires the taxpayer to bring an ancillary proceeding in Superior Court. It is not economic for many taxpayers, and particularly smaller taxpayers, to pursue relief under Section 408(e)(3). Moreover, the assessor and/or the owner of the confidential information may oppose the request for a confidentiality order, so there is no assurance that the Superior Court will grant the taxpayer the necessary confidentiality order.

The proposed amendment to Rule 305.1, adding paragraph (e), would remedy the situation described above, and eliminate a great unfairness to taxpayers, by adding the following sentence to the Rule: "Information supplied by one taxpayer shall not be used by the assessor in an assessment appeals board hearing of another taxpayer, including a taxpayer in another county, without written authorization of the first taxpayer." This language has the following benefits: (a) it places the burden of obtaining authority to use confidential information in equalization hearings on the party who seeks to use such information, the assessor;[5] (b) it removes the heavy burden of seeking permission to disclose such information from taxpayers against who de-identified confidential information is used; (c) it allows third parties who own the confidential information to know whether and how their confidential information is being used by an assessor, and to object to such use instead of relying on an assessor to maintain the information's secrecy through some type of de-identification process; and (d) it permits local Boards to have full information regarding the evidence presented to them so that they can determine whether such information is reliable and credible as quasi-judicial fact-finding tribunals.

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[5] The assessor is always the only party that knows the identity of the owner of the confidential information; placing the burden of obtaining permission for disclosure of information on the assessor is therefore appropriate.

(5) Taxpayer Authorizations for Filing Assessment Appeal Applications.

California law requires that an assessment appeal application filed by an agent be submitted along with a signed statement by the property owner/taxpayer (usually called an "Agent's Authorization") that the agent is authorized by the property owner/taxpayer to file the application. The advent of on-line assessment appeal applications has created some issues with respect to execution and filing of Agent's Authorizations. The proposed amendments to Rule 305 would: (a) permit Agent Authorizations to be attached to electronically-filed assessment appeal applications (amending Rule 305(a)(1)); (b) permit Agent Authorizations to be signed by a taxpayer in a different calendar year than the year for which the assessment appeal application is filed (an issue that arises when a taxpayer gives a multi-year Agent Authorization, and for other reasons) (adding Rule 305(a)(5)); and (c) for those counties which permit on-line filing of assessment appeal applications, require the SBE to prescribe what is included in the on-line applications (amending Rule 305(c)(1)). The proposed amendments to Rule 305 reflect current practice in most California counties, and the amendments will prevent confusion surrounding these issues from arising in the future.

Necessity for Amendments to Rules and Request for Formal Rulemaking Process.

The practices by assessors and local Boards described above vary from county to county, creating a lack of uniformity and disparity in the treatment of taxpayers statewide. The proposed amendments to the Rules are necessary in order to insure uniform treatment of taxpayers in every county in California.

The practices by some assessors and some local Boards also cause some taxpayers to be treated unfairly and interfere with taxpayers' rights to due process in equalization proceedings. At present, the Rules do not address the practices described above, and the amendments to those Rules are necessary in order to protect every taxpayer's right to receive fair treatment and due process in equalization proceedings.

CATA respectfully requests that this petition be placed on the Agenda for the SBE's August 21, 2018 meeting, specifically under the Chief Counsel Matters, Agenda Item G. (Rulemaking).

In addition, CATA respectfully requests that at its August 21st meeting the SBE vote to commence a rulemaking process under the Administrative Procedures Act ("APA") for the amendments to the Rules as proposed by this petition. If a majority of the SBE's Members vote to commence the rulemaking process, CATA asks that the SBE publish a Notice of Proposed Action in accordance with APA procedures at the earliest possible date.

Thank you for your consideration of this petition.

Sincerely,

Sean Kelley
President

Attachment

cc: Senator George Runner, Chairman (w/ Attachment)
Honorable Fiona Ma, Member (w/ Attachment)
Honorable Diane Harkey, Member (w/ Attachment)
Honorable Jerome Horton, Member (w/ Attachment)
Honorable Betty T. Yee, State Controller
c/o Deputy Controller Yvette Stowers (w/ Attachment)
Henry D. Nanjo, Chief Counsel, Legal Department (w/ Attachment)
Joann Richmond-Smith, Chief, Board Proceedings Division (w/ Attachment)
CATA Board of Directors

Rule 302. THE BOARD'S FUNCTION AND JURISDICTION.

Authority: Section 15606, Government Code.

Reference: Sections 531.1, 1603, 1604 and 1605.5, Revenue and Taxation Code.

(a) The functions of the board are:

(1) To lower, sustain, or increase upon application, or to increase after giving notice when no application has been filed, individual assessments in order to equalize assessments on the local tax assessment roll,

(2) To determine the full value and, where appealed, the base year value of the property that is the subject of the hearing,

(3) To hear and decide penalty assessments, and to review, equalize and adjust escaped assessments on that roll except escaped assessments made pursuant to Revenue and Taxation Code section 531.1,

(4) To determine the classification of the property that is the subject of the hearing, including classifications within the general classifications of real property, improvements, and personal property. Such classifications may result in the property so classified being exempt from property taxation.

(5) To determine the allocation of value to property that is the subject of the hearing, and

(6) To exercise the powers specified in section 1605.5 of the Revenue and Taxation Code.

(b) Except as provided in subdivision (a)(4), the board has no jurisdiction to grant or deny exemptions or to consider allegations that claims for exemption from property taxes have been improperly denied.

(c) The board has no jurisdiction to deny an application solely on the ground that the applicant has not responded to a request for information made under section 441 of the Revenue and Taxation Code.

(d) The board acts in a quasi-judicial capacity and renders its decision only on the basis of proper evidence presented at the hearing.

History: Adopted May 11, 1967, effective June 11, 1967.
Amended May 21, 1968, effective June 26, 1968.
Amended June 4, 1969, effective June 6, 1969.
Amended May 5, 1971, effective June 10, 1971.
Amended December 17, 1975, effective January 25, 1976.
Amended January 6, 2000, effective April 22, 2000.
Amended June 30, 2004, effective August 25, 2004.

Rule 305. APPLICATION.

Authority: Section 15606, Government Code.

Reference: Sections 51, 166, 170, 408.1, 469, 619, 1603, 1603.5, 1604, 1605, 1636, 5097, and 5097.02, Revenue and Taxation Code. Section 25105.5, Government Code.

No change in an assessment sought by a person affected shall be made unless the following application procedure is followed.

(a) ELIGIBLE PERSONS.

(1) An application is filed by a person affected or the person's agent, or a relative mentioned in regulation 317 of this division. If the application is made by an agent, other than an authorized attorney licensed to practice in this state who has been retained and authorized by the applicant to file the application, written authorization to so act must be filed with the application. For purposes of signing an application on behalf of an applicant, an agent shall be deemed to have been duly authorized if the applicant's written agent authorization is on the application or attached to each application at the time it is filed with the board. In any county that provides for a taxpayer to file an appeal on line, the board shall provide a mechanism for an agency authorization to be attached to the on-line filing. The attached authorization shall include the following:

(A) The date the authorization statement is executed;

(B) A statement to the effect that the agent is authorized to sign and file applications in the specific calendar year in which the application is filed;

(C) The specific parcel(s) or assessment(s) covered by the authorization, or a statement that the agent is authorized to represent the applicant on all parcels and assessments located in the specific county;

(D) The name, address, and telephone number of the specific agent who is authorized to represent the applicant;

(E) The applicant's signature and title; and

(F) A statement that the agent will provide the applicant with a copy of the application.

(2) If a photocopy of the original authorization is attached to the application, the agent shall be prepared to submit an original signed authorization if requested by the board. The application form shall show that the agent's authorization was attached to the application. An agent must have authorization to file an application at the time the application is filed; retroactive authorizations are not permitted.

(3) If the applicant is a corporation, limited partnership, or a limited liability company, the agent authorization must be signed by an officer or authorized employee of the business entity.

(4) No application shall be rejected as a duplicate application by the clerk unless it qualifies as a duplicate application within the meaning specified in section 1603.5 of the Revenue and Taxation Code.

(5) No application shall be rejected because the agency authorization is signed by a taxpayer in a different calendar year than the application was filed.

(b) SIGNATURE AND VERIFICATION. The application shall be in writing and signed by the applicant or the applicant's agent with declaration under penalty of perjury that the statements made in the application are true and that the person signing the application is one of the following:

(1) The person affected, a relative mentioned in regulation 317 of this division, an officer of a corporation, or an employee of a corporation who has been designated in writing by the board of directors or corporate officer to represent the corporation on property tax matters;

(2) An agent authorized by the applicant as indicated in the agent's authorization portion of the application; or

(3) An attorney licensed to practice law in this state who has been retained by the applicant and who has been authorized by the applicant, prior to the time the application is filed, to file the application.

(c) FORMS AND CONTENTS. The county shall provide, free of charge, forms on which applications are to be made.

(1) The application form, both hardcopy and on-line versions, shall be prescribed by the State Board of Equalization and shall require that the applicant provide the following information:

(A) The name and address of the applicant.

(B) The name and address of the applicant's agent, if any. If the applicant is represented by an agent, both the applicant's actual mailing address and the agent's mailing address shall be provided on the application.

(C) The applicant's written authorization for an agent, if any, to act on the applicant's behalf.

(D) A description of the property that is the subject of the application sufficient to identify it on the assessment roll.

(E) The applicant's opinion of the value of the property on the valuation date of the assessment year in issue.

(F) The roll value on which the assessment of the property was based.

(G) The facts relied upon to support the claim that the board should order a change in the assessed value, base year value, or classification of the subject property. The amount of the tax or the amount of an assessed value increase shall not constitute facts sufficient to warrant a change in assessed values.

(2) The form shall also include:

(A) A notice that a list of property transfers within the county, that have occurred within the preceding two-year period, is open to inspection at the assessor's office to the applicant upon

payment of a fee not to exceed ten dollars ($10). This requirement shall not apply to counties with a population under 50,000 as determined by the 1970 decennial census.

(B) A notice that written findings of fact will be prepared by the board upon request if the applicable fee is paid. An appropriate place for the applicant to make the request shall be provided.

(3) An application may include one or more reasons for filing the application. Unless permitted by local rules, an application shall not include both property on the secured roll and property on the unsecured roll.

(4) An application that does not include the information required by subsection (c)(1) of this regulation is invalid and shall not be accepted by the board. Prompt notice that an application is invalid shall be given by the clerk to the applicant and, where applicable, the applicant's agent. An applicant or the applicant's agent who has received notice shall be given a reasonable opportunity to correct any errors and/or omissions. Disputes concerning the validity of an application shall be resolved by the board.

(5) An application that includes the correct information required by subdivision (1) is valid and no additional information shall be required of the applicant on the application form.

(6) If the county has appointed hearing officers as provided for in Revenue and Taxation Code section 1636, the application form shall advise the applicant of the circumstances under which the applicant may request that the application be heard by such an officer.

(7) If an application appeals property subject to an escape assessment resulting from an audit conducted by the county assessor, then all property, both real and personal, of the assessee at the same profession, trade, or business location shall be subject to review, equalization, and adjustment by the appeals board, except when the property has previously been equalized for the year in question.

(d) TIME OF FILING.

(1) An application appealing a regular assessment shall be filed with the clerk during the regular filing period. A regular assessment is one placed on the assessment roll for the most recent lien date, prior to the closing of that assessment roll. The regular filing period for all real and personal property located in a county is:

(A) July 2 through September 15 when the county assessor elects to mail assessment notices, as defined in section 619 of the Revenue and Taxation Code, by August 1 to all owners of real property on the secured roll; or

(B) July 2 through November 30 when the county assessor does not elect to mail assessment notices by August 1 to all owners of real property on the secured roll.

Additionally, an application appealing a base year value for the most recent lien date, where that value is not the value currently on the assessment roll, shall be filed with the clerk during the regular filing period beginning July 2 but no later than September 15 or November 30, as applicable.

(2) An application appealing an escape assessment or a supplemental assessment must be filed with the clerk no later than 60 days after the date of mailing printed on the notice of assessment or the postmark date, whichever is later, or no later than 60 days after the date of mailing printed on the tax bill or the postmark date, whichever is later, in the county of Los Angeles and in those counties where the board of supervisors has adopted a resolution to that effect, pursuant to section 1605 of the Revenue and Taxation Code.

(3) An application appealing a proposed reassessment made for property damaged by misfortune or calamity pursuant to section 170 of the Revenue and Taxation Code must be filed with the clerk no later than six months after the date of mailing of the notice of proposed reassessment by the assessor. The decision of the board regarding the damaged value of property shall be final, however, the decision regarding the reassessment made pursuant to section 170 shall create no presumption regarding the value of the property subsequent to the date of the damage.

(4) An application may be filed within 60 days of receipt of a notice of assessment or within 60 days of the mailing of a tax bill, whichever is earlier, when the taxpayer does not receive the notice of assessment described in section 619 of the Revenue and Taxation Code at least 15 calendar days prior to the close of the regular filing period. The application must be filed with an affidavit from the applicant declaring under penalty of perjury that the notice was not timely received.

(5) An application will be deemed to have been timely filed:

(A) If it is sent by U.S. mail, properly addressed with postage prepaid and is postmarked on the last day of the filing period or earlier within such period; or

(B) If proof satisfactory to the board establishes that the mailing occurred on the last day of the filing period or within such period. Any statement or affidavit made by an applicant asserting such a timely filing must be made within one year of the last day of the filing period.

(6) An application filed by mail that bears both a private business postage meter postmark date and a U.S. Postal Service postmark date will be deemed to have been filed on the date that is the same as the U.S. Postal Service postmark date, even if the private business postage meter date is the earlier of the two postmark dates. If the last day of the filing period falls on Saturday, Sunday, or a legal holiday, an application that is mailed and postmarked on the next business day shall be deemed timely filed. If the county's offices are closed for business prior to 5 p.m. or for the entire day on which the deadline for filing falls, that day shall be considered a legal holiday.

(7) Except as provided in sections 1603 and 1605 of the Revenue and Taxation Code, the board has no jurisdiction to hear an application unless filed within the time periods specified above.

(e) AMENDMENTS AND CORRECTIONS.

(1) An applicant or an applicant's agent may amend an application until 5:00 p.m. on the last day upon which it might have been timely filed.

(2) After the filing period has expired:

(A) An invalid application may be corrected in accordance with subsection (c)(4) of this regulation.

(B) The applicant or the applicant's agent may amend an application provided that the effect of the amendment is not to request relief additional to or different in nature from that originally requested.

(C) (i) Upon request of the applicant or the applicant's agent, the board, in its discretion, may allow the applicant or the applicant's agent to make amendments to the application in addition to those specified in subdivisions (A) and (B) to state additional facts claimed to require a reduction of the assessment that is the subject of the application.

(ii) The applicant or the applicant's agent shall state the reasons for the request, which shall be made in writing and filed with the clerk of the board prior to any scheduled hearing, or may be made orally at the hearing. If made in writing, the clerk shall provide a copy to the assessor upon receipt of the request.

(iii) As a condition to granting a request to amend an application, the board may require the applicant to sign a written agreement extending the two-year period provided in section 1604 of the Revenue and Taxation Code.

(iv) If a request to amend is granted, and upon the request of the assessor, the hearing on the matter shall be continued by the board for no less than 45 days, unless the parties mutually agree to a different period of time.

(3) An applicant or an applicant's agent shall be permitted to present testimony and other evidence at the hearing to support a full value that may be different from the opinion of value stated on the application. The presentation of such testimony or other evidence shall not be considered a request to amend or an amendment to the application.

(f) CLAIM FOR REFUND. If a valid application is designated as a claim for refund pursuant to section 5097 of the Revenue and Taxation Code, the applicant shall be deemed to have challenged each finding of the board and to have satisfied the requirements of section 5097.02 of the Revenue and Taxation Code.

(g) RETENTION OF RECORDS. The clerk may destroy records consisting of assessment appeal applications when five years have elapsed since the final action on the application. The records may be destroyed three years after the final action on the application if the records have been microfilmed, microfiched, imaged, or otherwise preserved on a medium that provides access to the documents. As used in this subsection, "final action" means the date of the final decision by the board.

(h) CONSOLIDATION OF APPLICATIONS. The board, on its own motion or on a timely request of the applicant or applicants or the assessor, may consolidate applications when the applications present the same or substantially related issues of valuation, law, or fact. If applications are consolidated, the board shall notify all parties of the consolidation.

History: Adopted May 11, 1967, effective June 11, 1967.
Amended December 11, 1967, effective January 13, 1968.

Amended May 21, 1968, effective June 26, 1968.
Amended November 20, 1968, effective November 22, 1968.
Amended June 4, 1969, effective June 6, 1969.
Amended May 6, 1970, effective June 6, 1970.
Amended April 14, 1972, effective May 14, 1972.
Amended June 13, 1974, effective June 14, 1974.
Amended April 7, 1977, effective May 22, 1977.
Amended July 31, 1980, effective November 19, 1980.
Amended July 27, 1982, effective December 30, 1982.
Amended and effective October 23, 1997.
Amended April 5, 2000, effective June 30, 2000.
Amended June 30, 2004, effective August 25, 2004.

Rule 305.1. EXCHANGE OF INFORMATION AND REQUEST FOR INFORMATION.

Authority: Section 15606(c), Government Code.

Reference: Sections 408, 441, 451, 1606 and 1609.4, Revenue and Taxation Code.

(a) REQUEST FOR EXCHANGE OF INFORMATION. When the assessed value of the property involved, before deduction of any exemption accorded the property, is $100,000 or less, the applicant may file a written request for an exchange of information with the assessor; and when the assessed value before deduction of any exemption exceeds $100,000, either the applicant or the assessor may request such an exchange pursuant to section 1606 of the Revenue and Taxation Code. The request may be filed with the clerk at the time an application for hearing is filed or may be submitted to the other party and the clerk at any time prior to 30 days before the commencement of the hearing. For purposes of determining the date upon which the exchange was deemed initiated, the date of postmark as affixed by the United States Postal Service, or the date certified by a bona fide private courier service on the envelope or package containing the information shall control. The clerk shall, at the earliest opportunity, forward any request filed with the application or a copy thereof to the other party. The request shall contain the basis of the requesting party's opinion of value for each valuation date at issue and the following data:

(1) COMPARABLE SALES DATA. If the opinion of value is to be supported with evidence of comparable sales, the properties sold shall be described by the assessor's parcel number, street address or legal description sufficient to identify them. With regard to each property sold there shall be presented the approximate date of sale, the price paid, the terms of sale (if known), and the zoning of the property.

(2) INCOME DATA. If the opinion of value is to be supported with evidence based on an income study, there shall be presented: the gross income, the allowable expenses, the capitalization method (direct capitalization or discounted cash flow analysis), and rate or rates employed.

(3) COST DATA. If the opinion of value is to be supported with evidence of replacement cost, there shall be presented:

(A) With regard to improvements to real property: the date of construction, type of construction, and replacement cost of construction.

(B) With regard to machinery and equipment: the date of installation, replacement cost, and any history of extraordinary use.

(C) With regard to both improvements and machinery and equipment: facts relating to depreciation, including any functional or economic obsolescence, and remaining economic life.

The information exchanged shall provide reasonable notice to the other party concerning the subject matter of the evidence or testimony to be presented at the hearing. There is no requirement that the details of the evidence or testimony to be introduced must be exchanged.

(b) TRANSMITTAL OF EXCHANGE DATA TO OTHER PARTY. If the party requesting an exchange of data under the preceding subsection has submitted the data required therein within the specified time, the other party shall submit a response to the initiating party and to the clerk at least 15 days prior to the hearing. The response shall be supported with the same type of data required of the requesting party. When the assessor is the respondent, he or she shall submit the response to the address shown on the application or on the request for exchange of information, whichever is filed later. The initiating party and the other party shall provide adequate methods of submission to ensure to the best of their ability that the exchange of information process is completed at least 10 days prior to the hearing.

(c) PROHIBITED EVIDENCE; NEW MATERIAL; CONTINUANCE. Whenever information has been exchanged pursuant to this regulation, the parties may introduce evidence only on matters pertaining to the information so exchanged unless the other party consents to introduction of other evidence. However, at the hearing, each party may introduce new material relating to the information received from the other party. If a party introduces such new material at the hearing, the other party, upon request, shall be granted a continuance for a reasonable period of time.

(d) NONRESPONSE TO REQUEST FOR EXCHANGE OF INFORMATION. If one party initiates a request for information and the other party does not comply within the time specified in subsection (b), the board may grant a postponement for a reasonable period of time. The postponement shall extend the time for responding to the request. If the board finds willful noncompliance on the part of the noncomplying party, the hearing will be convened as originally scheduled and the noncomplying party may comment on evidence presented by the other party but shall not be permitted to introduce other evidence unless the other party consents to such introduction.

(e) REQUEST FOR INFORMATION. An assessor's request for information pursuant to section 441 of the Revenue and Taxation Code shall be made in writing, limited to information relating to the property at issue, and be issued no less than 20 days prior to a hearing before a county board of equalization or assessment appeals board. The assessor's request shall also recite the Revenue and Taxation Code section or sections authorizing the request so that the recipient is notified of his or her legal obligations in responding to the request. The assessor's request shall not state that the assessor has authority to impose criminal penalties or administrative sanctions against the recipient of the request. Information supplied in response to an assessor's request must be held secret by the assessor under sections 451 and 481 of the Revenue and Taxation Code. Information supplied by one taxpayer shall not be used by the assessor in an assessment appeals board hearing of another taxpayer, including a taxpayer in another county, without written authorization from the first taxpayer. The issuance of an assessor's request for information shall not entitle the assessor to take a deposition, issue interrogatories, or seek requests for admissions. Nor shall the recipient of an assessor's request be required to submit a declaration under penalty of perjury when responding to an assessor's request.

History: Adopted May 6, 1970, effective June 6, 1970.
Amended May 5, 1971, effective June 10, 1971.
Amended June 13, 1974, effective June 14, 1974.
Amended July 27, 1982, effective February 10, 1983.
Amended January 5, 2000, effective April 22, 2000.
Amended and effective September 19, 2002.

Rule 305.2. PREHEARING CONFERENCE.

Authority: Section 15606(c), Government Code.

Reference: Article XIII, Section 16, California Constitution; and Section 1601 et seq., Revenue and Taxation Code.

(a) A county board of supervisors may establish prehearing conferences. If prehearing conferences are established, the county board of supervisors shall adopt rules of procedure for prehearing conferences. A prehearing conference may be set by the clerk at the request of the applicant or the applicant's agent, the assessor, or at the direction of the appeals board. The purpose of a prehearing conference is to resolve issues such as, but not limited to, clarifying and defining the issues, determining the status of exchange of information requests and requests for information, stipulating to matters on which agreement has been reached, combining applications into a single hearing, bifurcating the hearing issues, and scheduling a date for a hearing officer or the board to consider evidence on the merits of the application.

(b) At a prehearing conference, the board shall not deny an application solely on the ground that the applicant has not responded to a request for information made under section 441 of the Revenue and Taxation Code. 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.

(c) The clerk of the board shall set the matter for a prehearing conference and notify the applicant or the applicant's agent and the assessor of the time and date of the conference. Notice of the time, date, and place of the conference shall be given not less than 30 days prior to the conference, unless the assessor and the applicant stipulate orally or in writing to a shorter notice period.

History: Adopted January 5, 2000, effective April 22, 2000.

Rule 323. POSTPONEMENTS AND CONTINUANCES.

Authority: Section 15606, Government Code.

Reference: Sections 1605.6 and 1606, Revenue and Taxation Code.

(a) The applicant and/or the assessor shall be allowed one postponement as a matter of right, the request for which must be made not later than 21 days before the hearing is scheduled to commence. If the applicant requests a postponement as a matter of right within 120 days of the expiration of the two-year limitation period provided in section 1604 of the Revenue and Taxation Code, the postponement shall be contingent upon the applicant's written agreement to extend and toll indefinitely the two-year period subject to termination of the agreement by 120 days written notice by the applicant. The assessor is not entitled to a postponement as a matter of right if the request is made within 120 days of the expiration of the two-year period, but the board, in its discretion, may grant such a request. Any subsequent requests for a postponement by the applicant or the assessor must be made in writing, and good cause must be shown for the proposed postponement. A stipulation by an applicant and the assessor shall be deemed to constitute good cause, but shall result in extending and tolling indefinitely the two-year limitation period subject to termination of the agreement by 120 days written notice by the applicant. Any information exchange dates remain in effect based on the originally scheduled hearing date notwithstanding the hearing postponement, except as provided in regulation 305.1(d) of this subchapter.

(b) A board of supervisors may delegate decisions concerning postponement to the clerk in accordance with locally adopted rules. Requests for postponement shall be considered as far in advance of the hearing date as is practicable.

(c) The board shall not postpone the hearing on an application solely on the ground that the applicant has not responded to a request for information made under section 441 of the Revenue and Taxation Code.

(d) At the hearing, the board or a hearing officer may continue a hearing to a later date. If the assessor requests a continuance, it shall be for no more than 90 days unless the assessor demonstrates undue hardship to the satisfaction of the board or the assessor and the applicant mutually agree to a longer period of time. The board shall not grant the assessor a continuance after the applicant has presented his or her case, however, the assessor may be granted a continuance under section 441(h) of the Revenue and Taxation Code if the applicant has introduced information at the hearing which had previously been requested of the applicant by the assessor.

(e) If the applicant requests a continuance within 90 days of the expiration of the two-year period specified in section 1604 of the Revenue and Taxation Code, the board may require a written extension signed by the applicant extending and tolling the two-year period indefinitely subject to termination of the agreement by 120 days written notice by the applicant. The clerk shall inform the applicant or the applicant's agent and the assessor in writing of the time and place of the continued hearing not less than 10 days prior to the new hearing date, unless the parties agree in writing or on the record to waive written notice.

History: Adopted May 11, 1967, effective June 11, 1967.
Amended May 21, 1968, effective June 26, 1968.
Amended November 20, 1968, effective November 22, 1968.
Amended October 6, 1999, effective April 22, 2000.

Attachment 3
Summary of Comments: Responses to Proposed Amendments to Rules 302, 305, 305.1, 305.2, & 323

Summary of Comments:
Proposed Amendments to Rules 302, 305, 305.1, 305.2, & 323

Proposed Amendment	CATA/Proponents	Opponents	Alternative Proposal
Rule 302 Insertion of "(c) The board has no jurisdiction to deny an application solely on the ground that the applicant has not responded to a request for information made under section 441 of the Revenue and Taxation Code."	Assessment Appeals Boards (AAB) have incorrectly denied appeals because the applicant has not responded with data requested by the assessor. Sometimes this information does not exist or is irrelevant to the market value of the property. This change reflects existing law. (Attachment to Mark Aprea email to Vice Chair Ma's office, July 11, 2018 (CATA 7/11/18), p. 1;CATA President Sean Kelley, letter to SBOE Executive Director Dean R. Kinnee, Aug. 8, 2018 (CATA 8/8/18) pp. 3-4.) This is consistent with existing law, and no provisions do not contemplate AABs to dismiss or postpone hearings. There are existing remedies for assessors for Section 441(d) non-compliance. Denial of applications only occur in two situations: nonappearance & failure to carry burden of proof. (CATA 8/17/18, p. 1.) There are only two methods of enforcing Section 441(d) noncompliance: Section 441(h) and an assessor's subpoena. But some assessors attempt to enforce compliance through Section 441(d) non-compliance hearings. There is no such authority. Local boards are not trained to resolve discovery disputes. Most local boards rely on an assessor's determination as to whether satisfactory information has been produced, which is unfair to taxpayers. (CATA 8/8/18, p. 3.)	If rule is adopted that prohibits denials, recommend that BOE inform taxpayers that AAB may take that into account. (Los Angeles County Assessor Hon. Jeffrey Prang, letter to SBOE Hon. George Runner, Aug. 20, 2018 (Prang 8/20/18) p.1; County Counsel Daniel C. Cederborg, Fresno County Counsel, letter to SBOE Members, SBOE Executive Director Dean R. Kinnee, and Cal. State Controller Betty Yee, July 23, 2018 (Cederborg 7/23/18) p. 4.) Limits AAB's tools to effectively and efficiently administer appeals prehearings and hearings. (San Francisco County Assessor-Recorder Hon. Carme Chu, letter to SBOE Hon. George Runner, Aug. 20, 2018 (Chu 8/20/18), p. 1.) Unnecessary; redundant. (California Assessors' Association President Charles W. Leonhardt, letter to SBOE Hon. George Runner, July 23, 2018 (CAA 7/23/18) p. 1.) Conflicts with article XIII, § 16 of the California Constitution which grants local boards of supervisors the authority to adopt local rules and procedures. (CAA 9/13/18)	CAA proposes the following amendments to Rule 309(b), as an alternative to petitioner's amendments regarding Section 441(d) requests: "A hearing must be held and a final determination made on the application within two years of the timely filing of an application for reduction in assessment submitted pursuant to subdivision (a) of section 1603 of the Revenue and Taxation Code, unless as provided in Section 1604(c) of the Revenue and Taxation Code: (1) the applicant or the applicant's agent and the board mutually agree in writing or on the record to an extension of time; (2) the application for reduction is consolidated for hearing with another application by the same applicant with respect to which an extension of time for the hearing has been granted; (3) the Applicant has failed to provide full and complete information as required by law; or (4) litigation is pending directly related to the application. (1) Where the Applicant has failed to provide full and complete information as required by law, the application shall not [be] heard on the merits of the application, absent

Summary of Comments:
Proposed Amendments to Rules 302, 305, 305.1, 305.2, & 323

Proposed Amendment	CATA/Proponents	Opponents	Alternative Proposal
			the consent of the Assessor, until the Applicant has provided full and complete information to the Assessor as required by law. Where there is a dispute between the Applicant and the Assessor regarding whether or not the Applicant has provided full and complete information to the Assessor as required by law, the Applicant (or Applicant's Agent) and the Assessor shall appear before the Assessment Appeals Board to present their positions on the issue and the Assessment Appeals Board shall determine whether or not the Applicant has provided full and complete information to the Assessor as required by law."
Rule 305	These proposed amendments reflect current practice in most counties and they will prevent confusion surrounding these issues from arising in the future. (CATA 8/8/18, pp. 7.)		
Insertion at the bottom of (a)(1)… "In any county that provides for a taxpayer to file an appeal on-line, the board shall provide a mechanism for an agency authorization to be attached to the on-line filing."	This avoids having to mail the authorization which somewhat defeats the purpose/benefit an on-line filing. (CATA 7/11/18, p. 1; CATA 8/8/18, p. 7)	Not all counties can accommodate simultaneous filing of authorization, and high cost of programming and implementing a new system is prohibitive with current resources. (California Association of Clerks and Election Officials (CACEO) Member Dawn P. Duran, letter to SBOE Hon. Diane L. Harkey, July 18, 2018 (CACEO 7/18/18), p. 2; CACEO Chairman John McKibben, letter to SBOE Hon. George Runner, Aug. 16, 2018 (CACEO 8/16/18) p. 2; Prang 8/20/18, p. 2; CACEO Chairman John McKibben, letter to Henry Nanjo, 8/30/2018 (CACEO 8/30/18), p. 2.)	Insert (a)(2) "For online filing where a county's electronic application system does not permit filing or uploading an agent's authorization form with an image of a signature, or other electronic method acceptable to the county board as adopted in its local rules, the paper form shall be submitted to the board as soon as possible in order to perfect the application. Beginning January 1, 2022, any county offering online

Summary of Comments:
Proposed Amendments to Rules 302, 305, 305.1, 305.2, & 323

Proposed Amendment	CATA/Proponents	Opponents	Alternative Proposal
		Agrees with proposed Rule 305(a)(1). (CAA 7/23/18, p. 1.) Affected counties would likely stop offering online filing, and may discourage others from instituting it. (CACEO 8/30/18), p. 2.)	filing of an application shall provide a mechanism for an agency authorization form to be submitted electronically with the application." (CACEO 8/30/18)) Delete at the bottom of (a)(1)… "In any county that provides for a taxpayer to file an appeal on-line, the board shall provide a mechanism for an agency authorization to be attached to the on-line filing." Instead, insert new (a)(2): "(2) For online filing where a county's electronic application system does not permit filing or uploading an agent's authorization form with an image of a signature, or other electronic method acceptable to the county board as adopted in its local rules, the paper form shall be submitted to the board as soon as possible in order to perfect the application. Beginning January 1, 2022, any county offering online filing of an application shall provide a mechanism for an agency authorization form to be submitted electronically with the application." (CATA 9/7/18)
Insertion of (5) "No application shall be rejected because the agency authorization is signed by a taxpayer in a different	Sometimes clerks confuse (a)(1)(B) to mean that the authorization must be signed in the same year as when the application is filed. (CATA 7/11/18, p. 2; CATA 8/8/18, p. 7)	Agrees that no application should be rejected on the basis of the calendar year on the signed authorization. (CACEO 7/18/18, p. 1; CACEO 8/16/18, p. 2; CACEO 8/30/18, p. 2.)	Insert at end of (a)(1)(B) ... "or years indicated in the agent's authorization; an agent's authorization may not cover more than four calendar years

Summary of Comments:
Proposed Amendments to Rules 302, 305, 305.1, 305.2, & 323

Proposed Amendment	CATA/Proponents	Opponents	Alternative Proposal
calendar year than the application was filed."		Creates additional burden on taxpayer. (CAA 7/23/18, p. 1.) Proposed rule needs more clarification. (CAA 7/23/18, p. 1; Los Angeles County Assessor Hon. Jeffrey Prang, letter to SBOE Executive Director Dean R. Kinnee, Aug. 17, 2018 (Prang 8/17/18), p. 15.)	in the future, beginning with the year in which the authorization was signed." (CACEO 8/30/18) Insert at the end of (a)(1)(B): ". . . or years indicated in the agent's authorization; an agent's authorization may not cover more than four consecutive calendar years in the future, beginning with the year in which the authorization was signed;" (CATA 9/7/18)
Insertion in (c)(1) of "…both hardcopy and on-line versions,…"	This ensures consistency across on-line filings if BOE is prescribing the form. (CATA 7/11/18, p. 2; CATA 8/8/18, p. 7)	Agrees with proposed Rule 305(c). (CAA 7/23/18, p. 1.)	Delete the insertion of "both hardcopy and on line versions" in (c)(1) (CATA 9/7/18)
Rule 305.1 Insert "…AND REQUEST FOR INFORMATION" in Rule title, "…EXCHANGE OF…" in title of (a), "…pursuant to section 1606 of the Revenue and Taxation Code." in (a), "EXCHANGE" in title of (b) and "EXCHANGE OF…" In (d).	Clarifies that Rule 305.1(a)-(d) are specific to 1606 formal exchanges of Information and not regular 441 requests for information. (CATA 7/11/18, p. 2; CATA 8/8/18.)	Unnecessary–confusing; redundant. (Calaveras County Assessor Hon. Leslie K. Davis, letter to SBOE Hon. George Runner, July 23, 2018 (Davis 7/23/18), p. 2; CAA 7/23/18, p. 2.) Co-mingling Board direction about Requests for Information and Exchanges in the same Rule is poor policy and may result in unintended consequences. (CAA 9/13/18)	Delete insertion of "…AND REQUEST FOR INFORMATION" in Rule title. (CATA 9/7/18)
Insert new (e): An assessor's request for information pursuant to section 441 of the	To clarify timing and legal scope of 441 requests. (CATA 7/11/18, p. 2; CATA 8/8/18, pp. 4-6)	Agrees that RTC § 441(d) requests should be made in writing. (CACEO 7/18/18, p. 2; CACEO 8/16/18, p. 3.)	Insert new (e): "If an application for assessment appeal has been filed with respect to a property, the parties

Summary of Comments:
Proposed Amendments to Rules 302, 305, 305.1, 305.2, & 323

Proposed Amendment	CATA/Proponents	Opponents	Alternative Proposal
Revenue and Taxation Code shall be made in writing, limited to information relating to the property at issue and be issued no less than 20 days prior to a hearing before a county board of equalization or assessment appeals board. The assessor's request shall also recite the Revenue and Taxation Code section or sections authorizing the request so that the recipient is notified of his or her legal obligation in responding to the request. The assessor's request shall not state that the assessor has authority to impose criminal penalties or administrative sanctions against the recipient of the request. Information supplied in response to an assessor's request must be held secret by the assessor under sections 451 and 481 of the Revenue and Taxation Code. Information supplied by one taxpayer shall not be used by the assessor in an assessment appeals board hearing of another taxpayer including a taxpayer in another county, without written authorization from the first taxpayer. The issuance of an assessor's request for information shall	Some assessors have engaged in harsh practices, including: making verbal Section 441(d) requests, requesting information close to or on the eve of a hearing intending to seek postponement, threatening taxpayers with administrative or criminal penalties, and issuing overbroad, burdensome, and oppressive requests. (CATA 8/8/18, p. 4.) The use of de-identified confidential information nearly always prevents the taxpayer from being able to cross-examine the information. This violates due process and fairness standards. Assesssors' presentation of de-identified information to local Boards prevents those Boards from being able to fairly evaluate and determine whether evidence presented by assessors is reliable and credible. Further: • Only assessor has the 3rd party information and only assessor knows the source of the 3rd party information • De-identification denies applicants' due process rights to cross-examine evidence, even though case law and Property Tax Rule 313(e) mandates "reasonable opportunity . . . for cross-examination" • De-identification keeps AABs from obtaining reliable and credible information which the SBE's *Assessment Appeals Manual* says is required for AABs to adjudicate appeals • Some counties use de-identified 3rd party information, but others do not, so there is lack of uniformity	Conflicts with RTC § 441(d). (Marie A. LaSala, letter to SBOE Members, SBOE Executive Director Dean R. Kinnee, and Cal. State Controller Betty Yee, July 20, 2018 (LaSala 7/20/18) pp. 2; Deputy County Counsel Kristine Bell-Valdez, Riverside County Counsel, letter to SBOE Hon. George Runner, July 23, 2018 (Bell-Valdez 7/23/18), p. 1; Hon. Lawrence E. Stone, Santa Clara County Assessor, letter to SBOE Hon. George Runner, July 23, 2018 (Stone 7/23/18) p. 2; Stone, 7/23/18, attachment Santa Clara County Deputy County Counsel Robert A. Nakamae, mem. to Santa Clara County Assessor Hon. Lawrence E. Stone, July, 20, 2018, p. 1; San Francisco County Assessor-Recorder Hon. Carme Chu, letter to SBOE Hon. George Runner, July 23, 2018 (Chu 7/23/18) p. 1; Cederborg 7/23/18, p. 3; CAA 7/23/18, p. 2; Napa County Assessor Hon. John Tuteur, letter to SBOE Hon. George Runner, July 23, 2018 (Tuteur 7/23/18) p. 2; Stanislaus County Assessor Hon. Don H. Gaekle, letter to SBOE Hon. George Runner, July 23, 2018 (Gaekle 7/23/18) p. 2; CACEO 8/30/18, p. 3; CAA 9/13/18.) Conflicts with RTC § 442 (LaSala 7/20/18, pp. 2, 4; Chu 7/23/18, p. 1; Prang 8/17/18, p. 6.) Conflicts with RTC § 454. (LaSala 7/20/18, p. 3-6; Bell-Valdez 7/23/18, pp. 1-2; Chu 7/23/18, p. 1; Cederborg 7/23/18, p. 3; CAA 7/23/18, p. 3; Prang 8/17/18, p. 6-8.) Conflicts with RTC § 461. (LaSala 7/20/18, p. 3; Chu 7/23/18, p. 1.) Conflicts with RTC § 462(a). (LaSala 7/20/18, p. 3;	should make requests under Section 408 or 441, as applicable, in writing and the written request should be delivered to the other party as far ahead of a scheduled assessment appeal hearing as possible in order to allow the party sufficient time to respond and avoid a postponement of the hearing. Written requests may include electronically transmitted requests." (CACEO 8/30/18) Delete insertion of new (e); instead, create new Rule 305.4 entitled, "REQUEST FOR INFORMATION" stating (amendments to original proposal in bold): "An assessor's request for information pursuant to section 441 of the Revenue and Taxation Code shall be made in writing, limited to information relating to the property at issue and be issued no less than 20 days prior to a hearing before a county board of equalization or assessment appeals board **unless the assessor and the applicant agree to a different date**. The assessor's request shall also recite the Revenue and Taxation Code section or sections authorizing the request so that the recipient is notified of his or her legal obligation in responding to the request. The assessor's request shall not state that the assessor has authority to impose criminal penalties or administrative

Proposed Amendment	CATA/Proponents	Opponents	Alternative Proposal
not entitle the assessor to take a deposition, issue interrogatories, or seek requests for admissions. Nor shall the recipient of an assessor's request be required to submit a declaration under penalty of perjury when responding to an assessor's request.	• Cost of obtaining the confidentiality order referred to in R&TC 408(e)(3) is prohibitive – most applicants cannot afford the cost. (CATA 8/8/18, p. 5-6, CATA 8/17/18, p. 3; CATA Member Cris O'Neall 8/26/18 (CATA 8/26), pp. 1-3.) • *Trailer Train* does not support use of confidential information in local assessment appeals board hearings. (CATA 8/26/18, pp. 4-6.)	Chu 7/23/18, p. 1; CAA 7/23/18, p. 2.) Conflicts with RTC § 468. (LaSala 7/20/18, p. 3; Bell-Valdez 7/23/18, pp. 1-2; Chu 7/23/18, p. 1; CAA 7/23/18, p. 3; Tuteur 7/23/18, p. 2; Gaekle 7/23/18, p. 2.) Conflicts with RTC § 470. (LaSala 7/20/18, pp. 2, 4; Prang 8/17/18, p. 6.) Conflicts with RTC § 1609.4. (Tuteur 7/23/18, p. 2; Gaekle 7/23/18, p. 2.) Creates ambiguity with RTC §§ 451 and 481; misleading, out of context, unnecessary. (LaSala 7/20/18, p. 3; Cederborg 7/23/18, p. 3.) Conflicts with precedent. (Bell-Valdez 7/23/18, p. 1.) Results in less information provided to taxpayer. (Cederborg 7/23/18, p. 3.) Firm deadline promotes game-playing by the parties (CACEO 8/16/18, p. 3.) § 441(d) requests should be made earlier than 20 days prior to hearing, since counties have overloaded dockets. (CACEO 8/16/18, p. 3.) § 441(d) requests should not be restricted in time, as may result unnecessary continuance and prevent potential case resolution before hearing. (CACEO 7/18/18, p. 2; Prang 8/20/18, p.1; Prang 8/17/18, p. 15.) Prevents accurate assessment; assessors are	sanctions against the recipient of the request. Information supplied in response to an assessor's request must be held secret by the assessor under sections **408**,451, ~~and~~ 481 **and 1609.6** of the Revenue and Taxation Code. Information supplied by one taxpayer shall not be used by the assessor in an assessment appeals board hearing of another taxpayer including a taxpayer in another county, without written authorization from the first taxpayer. The issuance of an assessor's request for information shall not entitle the assessor to take a deposition, issue interrogatories, or seek requests for admissions. Nor shall the recipient of an assessor's request be required to submit a declaration under penalty of perjury when responding to an assessor's request." (CATA 9/7/18)

Proposed Amendment	CATA/Proponents	Opponents	Alternative Proposal
		mandated to use the best and most credible data to assess property. (Prang 8/20/18, p. 2; Chu 8/20/18, p. 1; Yolo County Assessor-Clerk-Recorder-Registrar of Voters Hon. Jesse Salinas, letter to SBOE Members, SBOE Executive Director Dean R. Kinnee, and Cal. State Controller Betty Yee, July 23, 2018 (Salinas 7/23/18) p. 2.) Contrary to existing state law and precedent upholding assessors' ability to use information provided they maintain confidentiality. (Chu 8/20/18, p. 1; Stone 7/23/18, pp. 2-3; CAA 7/23/18, p. 3.) Requiring written permission to use other taxpayer information adds unnecessary and onerous bureaucratic expenses. (Chu 8/20/18, p. 1.) Conflicts with RTC § 408. (Bell-Valdez 7/23/18, pp. 2-4; CAA 7/23/18, p. 2-3; Tuteur 7/23/18, p. 2; Gaekle 7/23/18, p. 2.) Prohibiting 441(d) requests requiring declaration under penalty of perjury weakens assessors' access to accurate taxpayer information. (Chu 8/20/18, p. 1; Bell-Valdez 7/23/18, p. 1; Mono County Assessor Hon. Barry Beck, letter to SBOE Hon. George Runner, July 23, 2018 (Beck 7/23/18) p. 1.) Requiring declarations under penalty of perjury helps resolve disputes. (CAA 7/23/18, p. 3.) Conflicts with case law. (CAA 9/13/18)	
Rule 305.2			

Summary of Comments:
Proposed Amendments to Rules 302, 305, 305.1, 305.2, & 323

Proposed Amendment	CATA/Proponents	Opponents	Alternative Proposal
Insert in (a) "…and requests for information…"	To further clarify that requests for information are separate from a formal exchange. (CATA 7/11/18, p. 2; CATA 8/8/18.)	Agrees with proposed Rule 305.2(a). (CAA 7/23/18, p. 3.)	Insert in (a): "...under section 1606 and requests for information under sections 408 and 441, ..." (CACEO 8/30/18) Insert in (a): "...determining the status of Applicant's provision to the assessor of all information required by law and resolving disputes regarding whether Applicant has provided all provided [sic] all information required by law to the Assessor." (CAA 7/23/18.)
Insert (b) "At a prehearing conference, the board shall not deny an application solely on the ground that the applicant has not responded to a request for information made under section 441 of the Revenue and Taxation code. 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.	Adding to this Rule to make consistent with similar change in Rules 305.2 and 302. (CATA 7/11/18, p. 2; CATA 8/8/18, p. 4.)	Limits AAB's tools to effectively and efficiently administer appeals prehearings and hearings. (LaSala 7/20/18, p. 2; Chu 8/20/18, p. 1.) If adopted, should include additional language. (Cederborg 7/23/18, p. 4.) Conflicts with RTC § 1604(c). (Sacramento County Assessor Hon. Christina Wynn, letter to SBOE Hon. George Runner, July 23, 2018 (Wynn 7/23/18); Stone 7/23/18, p. 3; Stone, 7/23/18, attachment Santa Clara County Deputy County Counsel Marcy L. Berkman letter to Santa Clara County Assessor Hon. Lawrence E. Stone, May 29, 2018 (Berkman 5/29/18) pp. 2-4; Bell-Valdez 7/23/18, p. 3; Cederborg 7/23/18, p. 3; CAA 7/23/18, p. 3-4; Tuteur 7/23/18, p. 2-3; Gaekle 7/23/18, p. 2.) Infringes County board's proper jurisdiction. (CACEO 8/30/18, p. 3.)	Insert (b) "The board may, in its judicial discretion, continue a prehearing conference to a later date in order to provide the parties sufficient time to comply with exchanges of information procedures under section 1606 and requests for information under sections 408 and 441." (CACEO 8/30/18.)

Summary of Comments:
Proposed Amendments to Rules 302, 305, 305.1, 305.2, & 323

Proposed Amendment	CATA/Proponents	Opponents	Alternative Proposal
		Conflicts with article XIII, section 16 of the California Constitution, which grants local boards of supervisors the authority to adopt local rules and procedures. (CAA 9/13/18)	
Rule 323 Insert in (a)"…by the applicant or the assessor…"	Making language consistent with remainder of (a). (CATA 7/11/18, p. 3; CATA 8/8/18.)	Agrees with proposed Rule 323(a). (CAA 7/23/18, p. 4.)	
Insert (c) "The board shall not postpone the hearing on an application solely on the ground that the applicant has not responded to a request for information made under section 441 of the Revenue and Taxation Code."	Adding to this Rule to make consistent with similar changes in Rules 305.2 and 302. (CATA 7/11/18, p. 3; CATA 8/8/18, pp. 3-5.)	Agrees that AAB should not routinely continue hearings, but proposed amendment infringes on AAB's authority. (CACEO 7/18/18, p. 2.) Conflicts with Rule 323(a), which allows each party "one postponement *of right i.e. for any reason* as long as the request is timely made." (Prang 8/17/18, pp. 13-14.) Conflicts with RTC § 1604(c). (Wynn 7/23/18; Berkman 5/29/18, pp. 2-4; Stone 7/23/18, p. 3; Prang 8/17/18, pp. 13-14; Bell-Valdez 7/23/18, p. 3; Cederborg 7/23/18, p. 3; CAA 7/23/18, p. 3-4; Tuteur 7/23/18, p. 2-3; Gaekle 7/23/18, p. 2.) Limits AAB's tools to effectively and efficiently administer appeals prehearings and hearings. (Chu 8/20/18, p. 1.) Conflicts with article XIII, section 16 of the California Constitution, which grants local boards of supervisors the authority to adopt local rules and procedures. Significant fiscal impacts to some	Insert (c) "At the hearing, the board or a hearing officer may exercise their judicial discretion by continuing a hearing to a later date. The board or hearing officer must make every reasonable effort to maintain continuous hearings. If either party requests a continuance, and the board grants it, [sic] the continuance, the continuance should not exceed 90 days, unless the parties at the hearing stipulate to a longer continuance. However, a longer continuance may be granted by the board or hearing officer where good cause for the continuance is established to the satisfaction of the board or hearing officer by the requesting party or where the reasonable needs of the county board of equalization or assessment appeals board or county hearing officer dictate the necessity of a longer continuance. The reasons

Summary of Comments:
Proposed Amendments to Rules 302, 305, 305.1, 305.2, & 323

Proposed Amendment	CATA/Proponents	Opponents	Alternative Proposal
		counties, including large counties with with limited resources and large appeals volumes. (CAA 9/13/18)	justifying the continuance shall be stated on the record. The assessor may also be granted a continuance pursuant to the terms of subdivision (d) of section 441 of the Revenue and Taxation Code." (CACEO 8/30/18.)
Re-number current (c) to (d) and add the following underlined language: "At the hearing, the board or a hearing officer may continue a hearing to a later date. If the assessor requests a continuance, it shall be for no more than 90 days unless the assessor demonstrates undue hardship to the satisfaction of the board or the assessor and the applicant mutually agree to a longer period of time. The board shall not grant the assessor a continuance after the applicant has presented his or her case, however, the assessor may be granted a continuance under section 441(h) of the Revenue and Taxation Code if the applicant has introduced information at the hearing which had previously been requested of the applicant as specified in regulation 305.1(e)." Additionally, re-number the	Assessors have waited to see the applicant's case presentation and then request a continuance. This wastes available hearing time and allows the assessor to tailor their case to the applicant's presentation while the applicant does not have that same advantage. (CATA 7/11/18, p. 3; CATA 8/8/18, pp. 4-5.) In some counties assessors ask for continuances at the conclusion of taxpayer's presentation to prepare for cross-examination of the taxpayer's case. This often results in delays of many months or up to a year. This is unfair to taxpayers and gives assessors a significant advantage. (CATA 8/8/18, pp. 4-5.)	Limits AAB's tools to effectively and efficiently administer appeals prehearings and hearings. (Chu 8/20/18, p. 1.) Creates unfunded mandate for meetings not on the AAB calendar, especially burdensome on smaller counties with fewer hearings. (Shasta County Assessor-Recorder Hon. Leslie Morgan, letter to SBOE Hon. George Runner, July 23, 2018 (Morgan 7/23/18); San Luis Obispo County Assessor Hon. Tom J. Bordonaro, Jr., letter to SBOE Executive Director Dean R. Kinnee, July 23, 2018 (Bordonaro 7/23/18); Davis 7/23/18, p. 2; Cederborg 7/23/18, p. 3; CAA 7/23/18, p. 4.) Too restrictive for large counties with heavy hearing schedules, and does not factor in possible recession, specifically Los Angeles and San Bernardino. (CACEO 8/16/18, p. 3; Prang 8/17/18, p. 12; CACEO 8/30/18, p. 4.) Infringes on the AAB's authority. (CACEO 8/16/18, p. 3; Cederborg 7/23/18, p. 3; Prang 8/17/18, p. 13.) Uniformity is not possible or desirable in all situations given dramatically different circumstances applying to each county. The board must be able to manage its own calendar. (CACEO 8/30/18, p. 4.)	Amend the prior proposed addition to (d) as follows: " . . . The board or hearing officer must make every reasonable effort to maintain continuous hearings. If either party requests a continuance, and the board or hearing officer grants it, the continuance should not exceed 90 days, unless the parties at the hearing stipulate to a longer continuance. However, a longer continuance may be granted by the board or hearing officer where good cause for the continuance is established to the satisfaction of the board or hearing officer by the requesting party or where the reasonable needs of the county board of equalization or assessment appeals board or hearing officer dictate the necessity of a longer continuance. The reasons justifying the continuance shall be stated on the record. ~~If the assessor requests a continuance, it shall be for no more than 90 days unless the assessor demonstrates undue hardship to the satisfaction of the board or the assessor and the applicant mutually agree to a longer~~

Summary of Comments:
Proposed Amendments to Rules 302, 305, 305.1, 305.2, & 323

Proposed Amendment	CATA/Proponents	Opponents	Alternative Proposal
remainder of current (c) to new (e): If the applicant requests a continuance within 90 days of the expiration of the two-year period specified in section 1604 of the Revenue and Taxation Code, the board may require a written extension signed by the applicant extending and tolling the two-year period indefinitely subject to termination of the agreement by 120 days written notice by the applicant. The clerk shall inform the applicant or the applicant's agent and the assessor in writing of the time and place of the continued hearing not less than 10 days prior to the new hearing date, unless the parties agree in writing or on the record to waive written notice.		Does not place same limitations for continuance requests on applicants, even though in some cases the assessor presents first. (Prang 8/17/18, p. 12.) May result in AAB attempting to equalize property value without the benefit of first receiving properly prepared cases from both parties. (Prang 8/17/18, p. 12.) Creates ambiguity / potential conflict with existing Rules 305.1(c) and 323(c). (Prang 8/17/18, p. 13.) Conflicts with article XIII, section 16 of the California Constitution, which grants local boards of supervisors the authority to adopt local rules and procedures. Significant fiscal impacts to some counties, including large counties with limited resources and large appeals volumes. (CAA 9/13/18)	~~period of time.~~ Notwithstanding the prior provisions of this paragraph (d), t~~T~~he board or hearing officer shall not, without good cause, grant the assessor a continuance after the applicant has presented his or her case~~,~~; however, the assessor ~~may~~ shall be granted a continuance under section 441(h) of the Revenue and Taxation Code if the applicant has introduced information at the hearing which had previously been requested of the applicant by the assessor. Likewise, the board or hearing officer shall not, without good cause, grant the applicant a continuance after the assessor has presented his or her case; however, the applicant shall be granted a continuance under section 408(f)(3) of the Revenue and Taxation Code if the assessor has introduced information at the hearing which had previously been requested of the assessor by the applicant." (CATA 9/7/18)
General Comments	Recent information has shown that several counties throughout the State are postponing, delaying, or in rare instances denying appeal applications on the sole basis that a taxpayer has failed to adequately respond to an assessor's 441 (d) request for information. In addition, pre-hearing conferences are being scheduled with the sole or primary goal to	In addition to its proposed rule amendments, CACEO also proposes corresponding amendments to the Assessment Appeals Manual. (CACEO 8/16/18, p. 3; CACEO 8/30/18.) Matter should be returned to interested parties process. (Inyo County Assessor Hon. David Stottlemyre, e-mail to SBOE Hon. George Runner,	

Proposed Amendment	CATA/Proponents	Opponents	Alternative Proposal
	compel the taxpayer to comply with an assessor's 441 (d) request for information before an evidentiary hearing will be scheduled. Existing R&T Code provisions currently provide Assessors and Assessment Appeals Boards with remedies to pursue in the event a taxpayer fails to comply with an assessor's 441 (d) request for information. Therefore, these regulations are made to clarify and support existing law which does not authorize Assessment Appeals Boards or Assessor to deny taxpayers the rights to due process. (CATA 7/11/18, p. 1.) Responses to opposition to adoption of proposed amendments. (CATA Member Cris K. O'Neall, Public Comment to SBOE Board Proceedings Division, Aug. 17, 2018.) Supports adoption of proposed amendments. Need for uniformity. Taxpayers have right to due process and timely hearing. Assessors are misusing RTC § 441(d) requests. (Sean P. Keegan, Property Tax Assistance Co., Inc., letter to SBOE Hon. George Runner, July 17, 2018; Peter Kotschedoff, Versatax Consulting, Inc., letter to SBOE Hon. George Runner, July 17, 2018; Mark Ong, Independent Tax Representatives, LLC, letter to SBOE Hon. George Runner, July 17, 2018; Albert P. Zamarripa, Property Tax Assistance Co., Inc., letter to SBOE Hon. George Runner, July 17, 2018.) Section 441 noncompliance hearings: Proposed rules are necessary for uniformity; prehearing	July 23, 2018; Marin County Assessor-Recorder-County Clerk Hon. Richard N. Benson, letter to SBOE Hon. George Runner, July 20, 2018 (Benson 7/20/18) p. 2; Stone 7/23/18, p. 1; Davis 7/23/18, pp. 1-2; Wynn 7/23/18; Jeffrey Prang, letter to SBOE Hon. George Runner, July 23, 2018 (Prang 7/23/18), pp. 1-2; Prang 8/17/18, p. 2; CACEO 7/18/18, p. 1; Morgan 7/23/18; Beck 7/23/18, p. 2; Bordonaro 7/23/18; Cederborg 7/23/18, p. 3; CAA 7/23/18, p. 7; Tuteur 7/23/18, p. 1; Gaekle 7/23/18, p. 1.) Potential RTC § 538 legal action if proposed regulations are adopted. (Stone 7/23/18, p. 3; Davis 7/23/18, p. 2; Prang 7/23/18, p. 2; Wynn 7/23/18.) Infringes on Constitutional rights granted to county government by Cal. Const. Art. XIII, § 16. (Berkman 5/29/18, p. 2; Davis 7/23/18, p. 2; Prang 8/17/18, pp. 5-6; Salinas 7/23/18, p. 2.) Improper attempt to legislate violating Cal. Const. Art. XIII, § 33. (Davis 7/23/18, p. 2.) Will not pass muster with the Office of Administrative Law. (Prang 8/17/18, pp. 3-4.) Interferes with assessors' ability to carry out their mandated duties. (LaSala 7/20/18, p. 2, 4, 6; Wynn 7/23/18; Chu 7/23/18, p. 1; Chu 8/20/18, p. 2; President Tom O'Connor, San Francisco Fire Fighters Local 798, letter to Hon. George Runner, Aug. 20, 2018 (O'Connor 8/20/18); President Susan Solomon, United Educators of San Francisco, letter to Hon. George Runner, Aug. 20, 2018 (Solomon 8/20/18); Recording Secretary/Field Representative/Political Captain Vince Courtney,	

Summary of Comments:
Proposed Amendments to Rules 302, 305, 305.1, 305.2, & 323

Proposed Amendment	CATA/Proponents	Opponents	Alternative Proposal
	conferences may result in application denials or non-scheduling for 441(d) non-compliance; assessors and appeals boards misapply the law through improper procedure. (CATA 8/29/2018 response to Prang 8/20/2018 (CATA 8/29/18-1), p. 1.) County assessors have engaged in harsh practices when issuing Section 441(d) requests. (CATA 8/29/18-1, p. 2.) Proposed rule change is necessary to prevent continuances after the taxpayer has presented their case. (CATA 8/29/18-1, p. 3.) Taxpayer's are specifically being denied the opportunity to view and verify confidential information obtained by the assessor through 441(d) requests which denies the due process rights of the taxpayer; Uniform Standards of Professional Appraisal Practice does not allow the introduction of redacted information in appraisals that cannot be verified; the assessor can use information from other taxpayers after obtaining permission from the taxpayer who owns the proprietary information or they can prepare their case in the same manner as the applicant (using public data); the proposed regulation change will not place the assessor at a disadvantage and will not result in a loss in tax revenue. (CATA 8/29/18-1, pp. 2-3.) The proposed changes regarding filing appeals on-line only apply to those counties with on-line filing. (CATA 8/29/18-1, p. 4.)	Laborer's Inernat. Union of North America Local Union 261, letter to Hon. George Runner, Aug. 20, 2018 (Courtney 8/20/18); Bell-Valdez 7/23/18, p. 1; Beck 7/23/18, p. 1; Dictos 7/22/18, p. 2.) Interferes with AABs' ability to carry out their mandated duties. (Chu 8/20/18, p. 2.) Conflicts with precedent. (Cederborg 7/23/18, p. 4.) Conflicts with precedent and legislative intent. (LaSala 7/20/18, pp. 4-5; Bell-Valdez 7/23/18, pp. 3-4; Prang 7/23/18, p 1.) Conflicts with the RTC. (Yolo County Board of Supervisors Chair Oscar Villegas letter to SBOE Members and Exec. Dir. Dean Kinnee (Yolo 8/17/18), 8/17/2018; Salinas 7/23/18, p. 2.) Rules address problems that are largely non-existent. Unnecessary. (Gaekle 7/23/18, p. 2; Cederborg 7/23/18, p. 2; Salinas 7/23/18, p. 2.) Causes confusion and results in unintended consequences. (Tuteur 7/23/18, p. 3.) Negatively impacts communication efforts between counties and taxpayers which ultimately safe time, energy, and cost to all. (Morgan 7/23/18; Beck 7/23/18, p. 1.) Interferes with time- and cost-savings through stipulation following the exchange of information. (Beck 7/23/18, p. 1; Bordonaro 7/23/18; California Tax Reform Association Executive Director Roy Ulrich and Legislative Advocate Samantha Corbin,	

Summary of Comments:
Proposed Amendments to Rules 302, 305, 305.1, 305.2, & 323

Proposed Amendment	CATA/Proponents	Opponents	Alternative Proposal
	Interested parties meeting has not been effective because participants are not motivated to reach a result. Parties were slow and delayed the process; the proposed rule changes meet the requirements for rulemaking. (CATA 8/29/2018 response to Prang 8/17/2018 (CATA 8/29/18-2), p. 1.) Proposed rule changes do not violate California Constitution, Rev. & Tax Code, or Legislative Intent. SBE is charged with promoting uniformity and the proposed rules do not place an undue burden on the assessors, taxpayers or appeals boards in different counties. Proposed amendments to 305.1 do not interfere with assessors' subpoena power under Rev. & Tax Code section 454 or the information exchange process. (CATA 8/29/18-2, p. 2-3.) CATA has concerns that LA County AAB represents the LA County Assessor and should be independent of one another. (CATA 8/29/18-2, p. 5.) Proposed changes to 323(c) do not violate 1604 because these changes address continuances not postponements. (CATA 8/29/18-2, p. 5.) Changes to Rule 305 pertain to assessment appeals board and not assessors and CAA has indicated that they are in agreement on these changes. (CATA 8/29/18-2, p. 6.) No support has been given that requiring 441(d) requests be made at 20 days before hearing does not increase	letter to SBOE Hon. George Runner, July 23, 2018 (CTRA 7/23/18); CAA 7/23/18, p. 2.) Facilitates the falsification and under-reporting of taxable property. (LaSala 7/20/18, p.2; Dictos 7/22/18, p. 2.) Results in loss of legitimate tax revenue. (Benson 7/20/18, p. 1; Prang 7/23/18, p. 2; Chu 8/20/18, p. 2; O'Connor 8/20/18; Solomon 8/20/18; Courtney 8/20/18.) Leads to lack of uniformity in property assessment. (Benson 7/20/18, p. 1; CTRA 7/23/18; CAA 7/23/18, pp. 2-3.) Results in more frequent use of an assessor's subpoena, resulting in unnecessary costs and inefficiencies to assessors, courts, applicants, and taxpayers in general. (Benson 7/20/18, p. 1; Beck 7/23/18, p. 1; Chu 7/23/18, p. 1; Prang 7/23/18, p. 2; CTRA 7/23/18.) Most beneficial to commercial taxpayers (at the expense of residential taxpayers). (Benson 7/20/18, p. 2; Dictos 7/22/18, p. 2 Cederborg 7/23/18, p. 2; CTRA 7/23/18.) Proposed rules imply AABs cannot fairly administer the judicial process they oversee and will undermine the core function of every assessor and AAB. (Salinas 7/23/18, p. 1; Yolo 8/17/2018, p. 1.) Opposes the proposed rules because they will restrict an assessor's ability to collect necessary information and remove effective administrative tools for AABs,	

Summary of Comments:
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Proposed Amendment	CATA/Proponents	Opponents	Alternative Proposal
	postponements/continuances. (CATA 8/29/18-2, p. 6.)	which will have repercussions for county revenue statewide. (Terry Bernard, SEIU Budget, Revenue, & Pensions Director, SBOE Hon. George Runner, Sept. 12, 2018.)	

Attachment 4
Petitioner's September 7, 2018 correspondence

CALIFORNIA ALLIANCE
OF TAXPAYER ADVOCATES

September 7, 2018

Senator George Runner, Chairman
State Board of Equalization, 1st District
Sacramento Office
500 Capitol Mall, suite 1750
Sacramento, CA 95814

Re: Proposed Revisions to Property Tax Rules

Dear Chairman Runner:

On September 4, 2018, CATA met with the CACEO and CAA to discuss CATA's Petition to Amend SBE Property Tax Rules 302, 305, 305.1, 305.2 and 323. One of the topics discussed in that meeting was CACEO's August 30, 2018, alternate language proposals for four of the five Rules (305, 305.1, 305.2 and 323). Following that meeting, CATA and CACEO met again and agreed upon language in three Rules - 305, 305.1 and 323.

The attached revised Rules 305, 305.1 (portion moved to new Rule 305.4) and 323 reflect our agreement with CACEO. These documents are dated 9/6/18 and display tracked changes. It should be noted that CATA and CACEO have partial agreement in attached Rule 323. The parties could not agree on proposed 323(c) and the attached still contains CATA's proposed language in (c). However, the language in the remainder of 323 is agreed upon.

Rules 302 and 305.2 are also attached and are still in the same form as proposed by CATA on August 8, 2018. CACEO is not taking a position on CATA's proposed Rule 302 and 305.4. Further, CACEO does not support CATA's proposed Rule 305.2.

Sincerely,

Sean Kelley
President

Attachment (Proposed Property Tax Rules 302, 305, 305.1, 305.2 and 323)

cc: Honorable Fiona Ma, Member (w/ Attachment)
Honorable Diane Harkey, Member (w/ Attachment)
Honorable Jerome Horton, Member (w/ Attachment)
Honorable Betty T. Yee, State Controller
c/o Deputy Controller Yvette Stowers (w/ Attachment)
Dean Kinnee, Executive Director (w/ Attachment)
Henry D. Nanjo, Chief Counsel, Legal Department (w/ Attachment)
Joann Richmond-Smith, Chief, Board Proceedings Division (w/ Attachment)
CATA Board of Directors
CACEO
CAA

Rule 302. THE BOARD'S FUNCTION AND JURISDICTION.

Authority: Section 15606, Government Code.

Reference: Sections 531.1, 1603, 1604 and 1605.5, Revenue and Taxation Code.

(a) The functions of the board are:

(1) To lower, sustain, or increase upon application, or to increase after giving notice when no application has been filed, individual assessments in order to equalize assessments on the local tax assessment roll,

(2) To determine the full value and, where appealed, the base year value of the property that is the subject of the hearing,

(3) To hear and decide penalty assessments, and to review, equalize and adjust escaped assessments on that roll except escaped assessments made pursuant to Revenue and Taxation Code section 531.1,

(4) To determine the classification of the property that is the subject of the hearing, including classifications within the general classifications of real property, improvements, and personal property. Such classifications may result in the property so classified being exempt from property taxation.

(5) To determine the allocation of value to property that is the subject of the hearing, and

(6) To exercise the powers specified in section 1605.5 of the Revenue and Taxation Code.

(b) Except as provided in subdivision (a)(4), the board has no jurisdiction to grant or deny exemptions or to consider allegations that claims for exemption from property taxes have been improperly denied.

(c) The board has no jurisdiction to deny an application solely on the ground that the applicant has not responded to a request for information made under section 441 of the Revenue and Taxation Code.

(d) The board acts in a quasi-judicial capacity and renders its decision only on the basis of proper evidence presented at the hearing.

History: Adopted May 11, 1967, effective June 11, 1967.
Amended May 21, 1968, effective June 26, 1968.
Amended June 4, 1969, effective June 6, 1969.
Amended May 5, 1971, effective June 10, 1971.
Amended December 17, 1975, effective January 25, 1976.
Amended January 6, 2000, effective April 22, 2000.
Amended June 30, 2004, effective August 25, 2004.

Rule 305. APPLICATION.

Authority: Section 15606, Government Code.

Reference: Sections 51, 166, 170, 408.1, 469, 619, 1603, 1603.5, 1604, 1605, 1636, 5097, and 5097.02, Revenue and Taxation Code. Section 25105.5, Government Code.

No change in an assessment sought by a person affected shall be made unless the following application procedure is followed.

(a) ELIGIBLE PERSONS.

(1) An application is filed by a person affected or the person's agent, or a relative mentioned in regulation 317 of this division. If the application is made by an agent, other than an authorized attorney licensed to practice in this state who has been retained and authorized by the applicant to file the application, written authorization to so act must be filed with the application. For purposes of signing an application on behalf of an applicant, an agent shall be deemed to have been duly authorized if the applicant's written agent authorization is on the application or attached to each application at the time it is filed with the board. ~~In any county that provides for a taxpayer to file an appeal on line, the board shall provide a mechanism for an agency authorization to be attached to the on-line filing.~~ The attached authorization shall include the following:

(A) The date the authorization statement is executed;

(B) A statement to the effect that the agent is authorized to sign and file applications in the specific calendar year in which the application is filed or years indicated in the agent's authorization; an agent's authorization may not cover more than four consecutive calendar years in the future, beginning with the year in which the authorization was signed;

(C) The specific parcel(s) or assessment(s) covered by the authorization, or a statement that the agent is authorized to represent the applicant on all parcels and assessments located in the specific county;

(D) The name, address, and telephone number of the specific agent who is authorized to represent the applicant;

(E) The applicant's signature and title; and

(F) A statement that the agent will provide the applicant with a copy of the application.

(2) For online filing where a county's electronic application system does not permit filing or uploading an agent's authorization form with an image of a signature, or other electronic method acceptable to the county board as adopted in its local rules, the paper form shall be submitted to the board as soon as possible in order to perfect the application. Beginning January 1, 2022, any county offering online filing of an application shall provide a mechanism for an agency authorization form to be submitted electronically with the application.

(32) If a photocopy of the original authorization is attached to the application, the agent shall be prepared to submit an original signed authorization if requested by the board. The application form shall show that the agent's authorization was attached to the application. An agent must have authorization to file an application at the time the application is filed; retroactive authorizations are not permitted.

(43) If the applicant is a corporation, limited partnership, or a limited liability company, the agent authorization must be signed by an officer or authorized employee of the business entity.

(54) No application shall be rejected as a duplicate application by the clerk unless it qualifies as a duplicate application within the meaning specified in section 1603.5 of the Revenue and Taxation Code.

(65) No application shall be rejected because the agency authorization is signed by a taxpayer in a different calendar year than the application was filed.

(b) SIGNATURE AND VERIFICATION. The application shall be in writing and signed by the applicant or the applicant's agent with declaration under penalty of perjury that the statements made in the application are true and that the person signing the application is one of the following:

(1) The person affected, a relative mentioned in regulation 317 of this division, an officer of a corporation, or an employee of a corporation who has been designated in writing by the board of directors or corporate officer to represent the corporation on property tax matters;

(2) An agent authorized by the applicant as indicated in the agent's authorization portion of the application; or

(3) An attorney licensed to practice law in this state who has been retained by the applicant and who has been authorized by the applicant, prior to the time the application is filed, to file the application.

(c) FORMS AND CONTENTS. The county shall provide, free of charge, forms on which applications are to be made.

(1) The application form~~, both hardcopy and on-line versions,~~ shall be prescribed by the State Board of Equalization and shall require that the applicant provide the following information:

(A) The name and address of the applicant.

(B) The name and address of the applicant's agent, if any. If the applicant is represented by an agent, both the applicant's actual mailing address and the agent's mailing address shall be provided on the application.

(C) The applicant's written authorization for an agent, if any, to act on the applicant's behalf.

(D) A description of the property that is the subject of the application sufficient to identify it on the assessment roll.

(E) The applicant's opinion of the value of the property on the valuation date of the assessment year in issue.

(F) The roll value on which the assessment of the property was based.

(G) The facts relied upon to support the claim that the board should order a change in the assessed value, base year value, or classification of the subject property. The amount of the tax or the amount of an assessed value increase shall not constitute facts sufficient to warrant a change in assessed values.

(2) The form shall also include:

(A) A notice that a list of property transfers within the county, that have occurred within the preceding two-year period, is open to inspection at the assessor's office to the applicant upon payment of a fee not to exceed ten dollars ($10). This requirement shall not apply to counties with a population under 50,000 as determined by the 1970 decennial census.

(B) A notice that written findings of fact will be prepared by the board upon request if the applicable fee is paid. An appropriate place for the applicant to make the request shall be provided.

(3) An application may include one or more reasons for filing the application. Unless permitted by local rules, an application shall not include both property on the secured roll and property on the unsecured roll.

(4) An application that does not include the information required by subsection (c)(1) of this regulation is invalid and shall not be accepted by the board. Prompt notice that an application is invalid shall be given by the clerk to the applicant and, where applicable, the applicant's agent. An applicant or the applicant's agent who has received notice shall be given a reasonable opportunity to correct any errors and/or omissions. Disputes concerning the validity of an application shall be resolved by the board.

(5) An application that includes the correct information required by subdivision (1) is valid and no additional information shall be required of the applicant on the application form.

(6) If the county has appointed hearing officers as provided for in Revenue and Taxation Code section 1636, the application form shall advise the applicant of the circumstances under which the applicant may request that the application be heard by such an officer.

(7) If an application appeals property subject to an escape assessment resulting from an audit conducted by the county assessor, then all property, both real and personal, of the assessee at the same profession, trade, or business location shall be subject to review, equalization, and adjustment by the appeals board, except when the property has previously been equalized for the year in question.

(d) TIME OF FILING.

(1) An application appealing a regular assessment shall be filed with the clerk during the regular filing period. A regular assessment is one placed on the assessment roll for the most recent lien date, prior to the closing of that assessment roll. The regular filing period for all real and personal property located in a county is:

(A) July 2 through September 15 when the county assessor elects to mail assessment notices, as defined in section 619 of the Revenue and Taxation Code, by August 1 to all owners of real property on the secured roll; or

(B) July 2 through November 30 when the county assessor does not elect to mail assessment notices by August 1 to all owners of real property on the secured roll.

Additionally, an application appealing a base year value for the most recent lien date, where that value is not the value currently on the assessment roll, shall be filed with the clerk during the regular filing period beginning July 2 but no later than September 15 or November 30, as applicable.

(2) An application appealing an escape assessment or a supplemental assessment must be filed with the clerk no later than 60 days after the date of mailing printed on the notice of assessment or the postmark date, whichever is later, or no later than 60 days after the date of mailing printed on the tax bill or the postmark date, whichever is later, in the county of Los Angeles and in those counties where the board of supervisors has adopted a resolution to that effect, pursuant to section 1605 of the Revenue and Taxation Code.

(3) An application appealing a proposed reassessment made for property damaged by misfortune or calamity pursuant to section 170 of the Revenue and Taxation Code must be filed with the clerk no later than six months after the date of mailing of the notice of proposed reassessment by the assessor. The decision of the board regarding the damaged value of property shall be final, however, the decision regarding the reassessment made pursuant to section 170 shall create no presumption regarding the value of the property subsequent to the date of the damage.

(4) An application may be filed within 60 days of receipt of a notice of assessment or within 60 days of the mailing of a tax bill, whichever is earlier, when the taxpayer does not receive the notice of assessment described in section 619 of the Revenue and Taxation Code at least 15 calendar days prior to the close of the regular filing period. The application must be filed with an affidavit from the applicant declaring under penalty of perjury that the notice was not timely received.

(5) An application will be deemed to have been timely filed:

(A) If it is sent by U.S. mail, properly addressed with postage prepaid and is postmarked on the last day of the filing period or earlier within such period; or

(B) If proof satisfactory to the board establishes that the mailing occurred on the last day of the filing period or within such period. Any statement or affidavit made by an applicant asserting such a timely filing must be made within one year of the last day of the filing period.

(6) An application filed by mail that bears both a private business postage meter postmark date and a U.S. Postal Service postmark date will be deemed to have been filed on the date that is the same as the U.S. Postal Service postmark date, even if the private business postage meter date is the earlier of the two postmark dates. If the last day of the filing period falls on Saturday, Sunday, or a legal holiday, an application that is mailed and postmarked on the next business day shall be deemed timely filed. If the county's offices are closed for business prior to 5 p.m. or for the entire day on which the deadline for filing falls, that day shall be considered a legal holiday.

(7) Except as provided in sections 1603 and 1605 of the Revenue and Taxation Code, the board has no jurisdiction to hear an application unless filed within the time periods specified above.

(e) AMENDMENTS AND CORRECTIONS.

(1) An applicant or an applicant's agent may amend an application until 5:00 p.m. on the last day upon which it might have been timely filed.

(2) After the filing period has expired:

(A) An invalid application may be corrected in accordance with subsection (c)(4) of this regulation.

(B) The applicant or the applicant's agent may amend an application provided that the effect of the amendment is not to request relief additional to or different in nature from that originally requested.

(C) (i) Upon request of the applicant or the applicant's agent, the board, in its discretion, may allow the applicant or the applicant's agent to make amendments to the application in addition to those specified in subdivisions (A) and (B) to state additional facts claimed to require a reduction of the assessment that is the subject of the application.

(ii) The applicant or the applicant's agent shall state the reasons for the request, which shall be made in writing and filed with the clerk of the board prior to any scheduled hearing, or may be made orally at the hearing. If made in writing, the clerk shall provide a copy to the assessor upon receipt of the request.

(iii) As a condition to granting a request to amend an application, the board may require the applicant to sign a written agreement extending the two-year period provided in section 1604 of the Revenue and Taxation Code.

(iv) If a request to amend is granted, and upon the request of the assessor, the hearing on the matter shall be continued by the board for no less than 45 days, unless the parties mutually agree to a different period of time.

(3) An applicant or an applicant's agent shall be permitted to present testimony and other evidence at the hearing to support a full value that may be different from the opinion of value stated on the application. The presentation of such testimony or other evidence shall not be considered a request to amend or an amendment to the application.

(f) CLAIM FOR REFUND. If a valid application is designated as a claim for refund pursuant to section 5097 of the Revenue and Taxation Code, the applicant shall be deemed to have challenged each finding of the board and to have satisfied the requirements of section 5097.02 of the Revenue and Taxation Code.

(g) RETENTION OF RECORDS. The clerk may destroy records consisting of assessment appeal applications when five years have elapsed since the final action on the application. The records may be destroyed three years after the final action on the application if the records have been microfilmed, microfiched, imaged, or otherwise preserved on a medium that provides access to the documents. As used in this subsection, "final action" means the date of the final decision by the board.

(h) CONSOLIDATION OF APPLICATIONS. The board, on its own motion or on a timely request of the applicant or applicants or the assessor, may consolidate applications when the applications present the same or substantially related issues of valuation, law, or fact. If applications are consolidated, the board shall notify all parties of the consolidation.

History: Adopted May 11, 1967, effective June 11, 1967.
Amended December 11, 1967, effective January 13, 1968.
Amended May 21, 1968, effective June 26, 1968.
Amended November 20, 1968, effective November 22, 1968.
Amended June 4, 1969, effective June 6, 1969.
Amended May 6, 1970, effective June 6, 1970.
Amended April 14, 1972, effective May 14, 1972.
Amended June 13, 1974, effective June 14, 1974.
Amended April 7, 1977, effective May 22, 1977.
Amended July 31, 1980, effective November 19, 1980.
Amended July 27, 1982, effective December 30, 1982.
Amended and effective October 23, 1997.
Amended April 5, 2000, effective June 30, 2000.
Amended June 30, 2004, effective August 25, 2004.

Rule 305.1. EXCHANGE OF INFORMATION ~~AND REQUEST FOR INFORMATION~~.

Authority: Section 15606(c), Government Code.

Reference: Sections ~~408, 441, 451,~~ 1606 ~~and 1609.4~~, Revenue and Taxation Code.

(a) REQUEST FOR EXCHANGE OF INFORMATION. When the assessed value of the property involved, before deduction of any exemption accorded the property, is $100,000 or less, the applicant may file a written request for an exchange of information with the assessor; and when the assessed value before deduction of any exemption exceeds $100,000, either the applicant or the assessor may request such an exchange pursuant to section 1606 of the Revenue and Taxation Code. The request may be filed with the clerk at the time an application for hearing is filed or may be submitted to the other party and the clerk at any time prior to 30 days before the commencement of the hearing. For purposes of determining the date upon which the exchange was deemed initiated, the date of postmark as affixed by the United States Postal Service, or the date certified by a bona fide private courier service on the envelope or package containing the information shall control. The clerk shall, at the earliest opportunity, forward any request filed with the application or a copy thereof to the other party. The request shall contain the basis of the requesting party's opinion of value for each valuation date at issue and the following data:

(1) COMPARABLE SALES DATA. If the opinion of value is to be supported with evidence of comparable sales, the properties sold shall be described by the assessor's parcel number, street address or legal description sufficient to identify them. With regard to each property sold there shall be presented the approximate date of sale, the price paid, the terms of sale (if known), and the zoning of the property.

(2) INCOME DATA. If the opinion of value is to be supported with evidence based on an income study, there shall be presented: the gross income, the allowable expenses, the capitalization method (direct capitalization or discounted cash flow analysis), and rate or rates employed.

(3) COST DATA. If the opinion of value is to be supported with evidence of replacement cost, there shall be presented:

(A) With regard to improvements to real property: the date of construction, type of construction, and replacement cost of construction.

(B) With regard to machinery and equipment: the date of installation, replacement cost, and any history of extraordinary use.

(C) With regard to both improvements and machinery and equipment: facts relating to depreciation, including any functional or economic obsolescence, and remaining economic life.

The information exchanged shall provide reasonable notice to the other party concerning the subject matter of the evidence or testimony to be presented at the hearing. There is no requirement that the details of the evidence or testimony to be introduced must be exchanged.

(b) TRANSMITTAL OF EXCHANGE DATA TO OTHER PARTY. If the party requesting an exchange of data under the preceding subsection has submitted the data required therein within the specified time, the other party shall submit a response to the initiating party and to the clerk at least 15 days prior to the hearing. The response shall be supported with the same type of data required of the requesting party. When the assessor is the respondent, he or she shall submit the response to the address shown on the application or on the request for exchange of information, whichever is filed later. The initiating party and the other party shall provide adequate methods of submission to ensure to the best of their ability that the exchange of information process is completed at least 10 days prior to the hearing.

(c) PROHIBITED EVIDENCE; NEW MATERIAL; CONTINUANCE. Whenever information has been exchanged pursuant to this regulation, the parties may introduce evidence only on matters pertaining to the information so exchanged unless the other party consents to introduction of other evidence. However, at the hearing, each party may introduce new material relating to the information received from the other party. If a party introduces such new material at the hearing, the other party, upon request, shall be granted a continuance for a reasonable period of time.

(d) NONRESPONSE TO REQUEST FOR EXCHANGE OF INFORMATION. If one party initiates a request for information and the other party does not comply within the time specified in subsection (b), the board may grant a postponement for a reasonable period of time. The postponement shall extend the time for responding to the request. If the board finds willful noncompliance on the part of the noncomplying party, the hearing will be convened as originally scheduled and the noncomplying party may comment on evidence presented by the other party but shall not be permitted to introduce other evidence unless the other party consents to such introduction.

[Paragraph (e) in Proposed Revision 8-8-2018 re-numbered and re-titled "Rule 305.4. REQUEST FOR INFORMATION" – **see below**]

~~**(e) REQUEST FOR INFORMATION.** An assessor's request for information pursuant to section 441 of the Revenue and Taxation Code shall be made in writing, limited to information relating to the property at issue, and be issued no less than 20 days prior to a hearing before a county board of equalization or assessment appeals board. The assessor's request shall also recite the Revenue and Taxation Code section or sections authorizing the request so that the recipient is notified of his or her legal obligations in responding to the request. The assessor's request shall not state that the assessor has authority to impose criminal penalties or administrative sanctions against the recipient of the request. Information supplied in response to an assessor's request must be held secret by the assessor under sections 451 and 481 of the Revenue and Taxation Code. Information supplied by one taxpayer shall not be used by the assessor in an assessment appeals board hearing of another taxpayer, including a taxpayer in another county, without written authorization from the first taxpayer. The issuance of an assessor's request for information shall not entitle the assessor to take a deposition, issue interrogatories, or seek requests for admissions. Nor shall the recipient of an assessor's request be required to submit a declaration under penalty of perjury when responding to an assessor's request.~~

History: Adopted May 6, 1970, effective June 6, 1970.

Amended May 5, 1971, effective June 10, 1971.
Amended June 13, 1974, effective June 14, 1974.
Amended July 27, 1982, effective February 10, 1983.
Amended January 5, 2000, effective April 22, 2000.
Amended and effective September 19, 2002.

Rule 305.4. REQUEST FOR INFORMATION

Authority: Section 15606(c), Government Code.

Reference: Sections 408, 441, 451, 481, ~~1606~~ and 1609.4, Revenue and Taxation Code.

~~**(c) REQUEST FOR INFORMATION.**~~ An assessor's request for information pursuant to section 441 of the Revenue and Taxation Code shall be made in writing, limited to information relating to the property at issue, and be issued no less than 20 days prior to a hearing before a county board of equalization or assessment appeals board unless the assessor and the applicant agree to a different date. The assessor's request shall also recite the Revenue and Taxation Code section or sections authorizing the request so that the recipient is notified of his or her legal obligations in responding to the request. The assessor's request shall not state that the assessor has authority to impose criminal penalties or administrative sanctions against the recipient of the request. Information supplied in response to an assessor's request must be held secret by the assessor under sections 408, 451, ~~and~~ 481 and 1609.6 of the Revenue and Taxation Code. Information supplied by one taxpayer shall not be used by the assessor in an assessment appeals board hearing of another taxpayer, including a taxpayer in another county, without written authorization from the first taxpayer. The issuance of an assessor's request for information shall not entitle the assessor to take a deposition, issue interrogatories, or seek requests for admissions. Nor shall the recipient of an assessor's request be required to submit a declaration under penalty of perjury when responding to an assessor's request.

Rule 305.2. PREHEARING CONFERENCE.

Authority: Section 15606(c), Government Code.

Reference: Article XIII, Section 16, California Constitution; and Section 1601 et seq., Revenue and Taxation Code.

(a) A county board of supervisors may establish prehearing conferences. If prehearing conferences are established, the county board of supervisors shall adopt rules of procedure for prehearing conferences. A prehearing conference may be set by the clerk at the request of the applicant or the applicant's agent, the assessor, or at the direction of the appeals board. The purpose of a prehearing conference is to resolve issues such as, but not limited to, clarifying and defining the issues, determining the status of exchange of information requests and requests for information, stipulating to matters on which agreement has been reached, combining applications into a single hearing, bifurcating the hearing issues, and scheduling a date for a hearing officer or the board to consider evidence on the merits of the application.

(b) At a prehearing conference, the board shall not deny an application solely on the ground that the applicant has not responded to a request for information made under section 441 of the Revenue and Taxation Code. 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.

(c) The clerk of the board shall set the matter for a prehearing conference and notify the applicant or the applicant's agent and the assessor of the time and date of the conference. Notice of the time, date, and place of the conference shall be given not less than 30 days prior to the conference, unless the assessor and the applicant stipulate orally or in writing to a shorter notice period.

History: Adopted January 5, 2000, effective April 22, 2000.

Rule 323. POSTPONEMENTS AND CONTINUANCES.

Authority: Section 15606, Government Code.

Reference: Sections 1605.6 and 1606, Revenue and Taxation Code.

(a) The applicant and/or the assessor shall be allowed one postponement as a matter of right, the request for which must be made not later than 21 days before the hearing is scheduled to commence. If the applicant requests a postponement as a matter of right within 120 days of the expiration of the two-year limitation period provided in section 1604 of the Revenue and Taxation Code, the postponement shall be contingent upon the applicant's written agreement to extend and toll indefinitely the two-year period subject to termination of the agreement by 120 days written notice by the applicant. The assessor is not entitled to a postponement as a matter of right if the request is made within 120 days of the expiration of the two-year period, but the board, in its discretion, may grant such a request. Any subsequent requests for a postponement by the applicant or the assessor must be made in writing, and good cause must be shown for the proposed postponement. A stipulation by an applicant and the assessor shall be deemed to constitute good cause, but shall result in extending and tolling indefinitely the two-year limitation period subject to termination of the agreement by 120 days written notice by the applicant. Any information exchange dates remain in effect based on the originally scheduled hearing date notwithstanding the hearing postponement, except as provided in regulation 305.1(d) of this subchapter.

(b) A board of supervisors may delegate decisions concerning postponement to the clerk in accordance with locally adopted rules. Requests for postponement shall be considered as far in advance of the hearing date as is practicable.

(c) The board shall not postpone the hearing on an application solely on the ground that the applicant has not responded to a request for information made under section 441 of the Revenue and Taxation Code.

(d) At the hearing, the board or a hearing officer may continue a hearing to a later date. The board or hearing officer must make every reasonable effort to maintain continuous hearings. If either party requests a continuance, and the board or hearing officer grants it, the continuance should not exceed 90 days, unless the parties at the hearing stipulate to a longer continuance. However, a longer continuance may be granted by the board or hearing officer where good cause for the continuance is established to the satisfaction of the board or hearing officer by the requesting party or where the reasonable needs of the county board of equalization or assessment appeals board or hearing officer dictate the necessity of a longer continuance. The reasons justifying the continuance shall be stated on the record. ~~If the assessor requests a continuance, it shall be for no more than 90 days unless the assessor demonstrates undue hardship to the satisfaction of the board or the assessor and the applicant mutually agree to a longer period of time.~~ Notwithstanding the prior provisions of this paragraph (d), t~~T~~he board or hearing officer shall not, without good cause, grant the assessor a continuance after the applicant has presented his or her case~~,~~; however, the assessor ~~may~~ shall be granted a continuance under section 441(h) of the Revenue and Taxation Code if the applicant has introduced information at the hearing which had previously been requested of the applicant by the assessor. Likewise, the board or

hearing officer shall not, without good cause, grant the applicant a continuance after the assessor has presented his or her case; however, the applicant shall be granted a continuance under section 408(f)(3) of the Revenue and Taxation Code if the assessor has introduced information at the hearing which had previously been requested of the assessor by the applicant.

(e) If the applicant requests a continuance within 90 days of the expiration of the two-year period specified in section 1604 of the Revenue and Taxation Code, the board may require a written extension signed by the applicant extending and tolling the two-year period indefinitely subject to termination of the agreement by 120 days written notice by the applicant. The clerk shall inform the applicant or the applicant's agent and the assessor in writing of the time and place of the continued hearing not less than 10 days prior to the new hearing date, unless the parties agree in writing or on the record to waive written notice.

History: Adopted May 11, 1967, effective June 11, 1967.
Amended May 21, 1968, effective June 26, 1968.
Amended November 20, 1968, effective November 22, 1968.
Amended October 6, 1999, effective April 22, 2000.

Attachment 5
CAA's September 13, 2018 correspondence

From: Leonhardt, Chuck [mailto:CLeonhardt@countyofplumas.com]
Sent: Thursday, September 13, 2018 1:20 PM
To: Stowers, Yvette; jmckibben@bos.lacounty.gov
Cc: Nanjo, Henry; Kinnee, Dean
Subject: RE: CATA Updated Revised Regulation Package

Good afternoon,

Clearly my responses on these issues below are abbreviated. CAA has filed more comprehensive responses thru Los Angeles County and others.

The main point being, Rule 305 is the only proposed rule that has been agreed to by CAA, CACEO and CATA.

Thank you

Chuck

From: Leonhardt, Chuck
Sent: Thursday, September 13, 2018 11:21 AM
To: 'YStowers@sco.ca.gov'; jmckibben@bos.lacounty.gov
Cc: Henry.Nanjo@boe.ca.gov; Dean.Kinnee@boe.ca.gov
Subject: RE: CATA Updated Revised Regulation Package

Good morning Yvette,

I am sorry to be slow in responding to you. I was in the middle of a time sensitive project.

As noted by CACEO, the Proposed Revisions to Property Tax Rules tendered by CATA a number changes. I will attempt to summarize CAA's position on each rule as follows:

Rule 302

This rule appears to be the same as what was proposed originally. CAA is Opposed to this proposed rule change, as we believe it is in conflict with Article XIII Section 16 of the California Constitution which grants local board of supervisors the authority to adopt local rules and procedures. CAA awaits the Board Legal Staff's guidance on this issue.

Rule 305

CAA deferred judgement on this item to CACEO. CACEO and CATA have developed compromise language. The compromise language appears to have been inserted in to the September 7, 2018 Proposed Revisions to Property Tax Rules.

Rule 305.1 (a)

CAA Believes that comingling Board direction about Requests for Information and Exchanges in the same Rule is poor policy and may result in unintended consequences. CAA suggests that a separate section 305.4 to address Exchanges of Information

Rule 305.4

CAA Objects to the 20 day limit prior to the hearing for 441 (d) requests. R & T Code Section 441 (d) (1) states: "At any time". CATA's proposed language is contrary to existing law. CAA believes that the Board Legal Staff analysis will recognize that fact.

CAA also objects to the attempt to limit the assessor's use of 3rd party information which is provided for under existing law and has been decided upon by the courts.

Rule 305.2

CAA is Opposed to this proposed rule change as we believe it is in conflict with Article XIII Section 16 of the California Constitution which grants local board of supervisors the authority to adopt local rules and procedures. CAA awaits the Board Legal Staff's guidance on this issue.

Rule 323

CAA is Opposed to this proposed rule change as we believe it is in conflict with Article XIII Section 16 of the California Constitution which grants local board of supervisors the authority to adopt local rules and procedures. CAA awaits the Board Legal Staff's guidance on this issue.

Attempts to limit the appeals board's discretion would also have severe impacts on large counties with limited resources and large appeals volumes. This proposed revision could have significant fiscal impacts to some counties. CAA awaits the Board Legal Staff's guidance on this issue.

I hope this short summary helps you to see that some of the CATA Proposed Revisions to Property Tax Rules are expectable. (Rule 305)

While CATA has proposed revisions to other proposed rules, CAA believes that these proposals are contrary to existing law.

Feel free to contact me in the event you have further questions.

Chuck