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Re: Concerns Regarding Items L1 & L2 on SBE Agenda for July 24, 2018

Dear State Board of Equalization Board Members, Ms. Yee and Mr. Kinnee:

This letter addresses serious concerns regarding proposed changes to property tax regulations that recently appeared as Items L1 & L2 on the State Board of Equalization Agenda for July 24, 2018 (<http://www.boe.ca.gov/meetings/pubmeet18.htm>). Agenda items L1 & L2 are of great concern to California County Assessors, attorneys who represent Assessors and the public because the proposed regulations undermine the efficient operation of government and

interfere with the essential discovery tools granted to Assessors by the California Legislature over 100 years ago to properly identify and assess all taxable property in this state. The proposed regulations, apparently drafted by the group known as “CATA,” California Alliance of Taxpayer Advocates, will not only undermine an Assessor’s ability to collect information essential to the proper discharge of the Assessor’s statutory duties but may also facilitate the falsification and under-reporting of taxable property.

The proposed changes to Property Tax Rule 305.1 directly conflict with, void or significantly diminish very important provisions of the Revenue & Taxation Code enacted by the California Legislature that Assessors need to collect relevant information regarding taxable property as summarized below:

Cal. Statutes Directly Conflicted, Voided or Diminished	by Proposed Rule 305.1(e)
<p><b>California Revenue and Taxation Code § 441(d)</b> which provides:                      “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. In this connection details of property acquisition transactions, construction and development costs, rental income, and other data relevant to the determination of an estimate of value are to be considered as information essential to the proper discharge of the assessor’s duties.”</p>	<p>Proposed changes to Rule 305.1(e) <b>directly conflict with R &amp; T Code § 441(d) and drastically limit</b> when and how an Assessor can request information or records that are essential to the proper discharge of the assessor’s statutory duties by preventing all requests 20 days prior to a hearing and requiring numerous other restrictions that conflict w/ the R &amp; T Code.</p>
<p><b>California Revenue and Taxation Code § 442</b> which provides in part:                      “Every person owning, claiming, possessing, controlling or managing property shall furnish any required information or records to the assessor for examination at any time.”</p>	<p>Proposed changes to Rule 305.1(e) which attempt to limit an Assessor’s ability to examine and use property related information <b>directly conflict with or void R &amp; T Code § 442.</b></p>
<p><b>California Revenue and Taxation Code § 470(a)</b> which provides:                      “Upon request of an assessor, a person owning, claiming, possessing, or controlling property subject to local assessment shall make available at his or her principal place of business, principal location or principal address in California or at a place mutually agreeable to the assessor and the person, a true copy of business records relevant to the amount, cost, and value of all property that he or she owns, claims, possesses, or controls within the county.”</p>	<p>Proposed changes to Rule 305.1(e) which attempt to limit an Assessor’s ability to examine business records <b>directly conflict with or void R &amp; T Code § 470.</b></p>

<p><b>California Revenue and Taxation Code § 454</b> provides:          "The assessor may subpoena and examine any person in relation to: (a) any statement furnished him, or          (b) any statement disclosing property assessable in his county that may be stored with, possessed, or controlled by the person. He may do this in any county where the person may be found, but shall not require the person to appear before him in any other county than that in which the subpoena is served."</p>	<p>Proposed changes to Rule 305.1(e) which attempt to eliminate an Assessor's right to subpoena and examine persons regarding assessable property <b>directly conflict with or void R &amp; T Code § 454.</b></p>
<p><b>California Revenue and Taxation Code § 461</b> provides:          "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."</p>	<p>Proposed changes to Rule 305.1(e) which attempt to eliminate a Taxpayer's obligation to provide truthful responses to an Assessor's questions or a sworn statement regarding taxable property <b>directly conflict with or void R &amp; T Code § 461.</b></p>
<p><b>California Revenue and Taxation Code § 462(a)</b> provides:          "Every person is guilty of a misdemeanor who, after written request by the assessor, does any of the following:          (a) Refuses to make available to the assessor any information which is required by subdivision (d) of Section 441 of this code."</p>	<p>Proposed changes to Rule 305.1(e) which limit when and how an Assessor can request information or records <b>directly conflict with or void R &amp; T Code § 462(a).</b></p>
<p><b>California Revenue &amp; Taxation Code § 468</b> provides:          "In addition to any other remedies described in this article, if any person fails to furnish any information or records required by this article upon request by the assessor, the assessor may apply to the superior court of the county for an order requiring the person who failed to furnish such information or records to appear and answer concerning his property before such court at a time and place specified in the order. The court may so order in any county where the person may be found, but shall not require the person to appear before the court in any other county than that in which the subpoena is served."</p>	<p>Proposed changes to Rule 305.1(e) <b>conflict with and create ambiguity</b> regarding the ability to seek enforcement of R &amp; T 441(d) requests and R &amp; T 454 Assessor in Superior Court as now permitted under <b>R &amp; T Code § 468.</b></p>
<p><b>California Revenue &amp; Taxation Code § 451</b> provides:          "Information held secret. All information requested by the assessor or furnished in the property statement shall be held secret by the assessor. The statement is not a public document and is not open to inspection, except as provided in Section 408."  <b>California Revenue &amp; Taxation Code § 481</b> provides "Information held secret. All information requested by the assessor or the board pursuant to this article or furnished in the change in ownership statement shall be held secret by the assessor and the board. All information furnished in either the preliminary change in ownership statement or the change in ownership statement shall be held secret by those authorized by law to receive or have access to this information. These statements are not public documents and are not open to inspection, except as provided in Section 408."</p>	<p>Proposed changes to Rule 305.1(e) that reference <b>R &amp; T Code §§ 451 &amp; 481</b> creates ambiguity in the law. <b>Adding portions of R &amp; T Code §§ 451 &amp; 481 to this Rule is misleading, out of context and unnecessary.</b></p>

**I. Proposed Changes to Rule 305.1 Are Improper Because They Directly Conflict with Revenue & Taxation Code Provisions that Grant Broad Powers to Assessors to Demand Property Information Necessary for the Proper Assessment of Taxable Property.**

An assessor has the right to request and examine all property information held by or accessible to a property owner which he deems relevant and necessary for the proper assessment of taxable property. As explained in the leading case of *Roberts v. Gulf Oil*, the legislative intent behind Revenue & Taxation (R & T) Code §§ 441, 442 and 470 was to provide "local assessors with better tools for detecting falsification and under-reporting on property statements." (*Roberts v. Gulf Oil* (1983) 147 Cal.App.3d 770, 783-784.) R & T Code §§ 441, 442 and 470 give "broad grants of power to the Assessor to demand information."

As *Roberts* explains at page 784, these powers are very similar to those granted to the Treasury Department under section 7602(a)(1) of the Internal Revenue Code of 1954. (Id.) The similar language and purpose of R & T Code § 441(d) and 26 U.S.C. § 7602 is quite clear when the two statutes are compared side by side. This is why the *Robert's* court concluded that "[b]ecause the language contained in section 441, subdivision (d), is at least as broad as that contained in 26 United States Code section 7602(a)(1), the holdings in the federal cases are helpful." (*Roberts* at p. 784.)

<b>Revenue &amp; Taxation Code § 441</b>	<b>26 U. S. C § 7602</b>
"(d) (1) 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. In this connection details of property acquisition transactions, construction and development costs, rental income, and other data relevant to the determination of an estimate of value are to be considered as information essential to the proper discharge of the assessor's duties."	"(a) Authority to Summon -- For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary or his delegate is authorized ... "(1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry."

Thus, in California, a taxpayer's obligation to make information and records relevant to the determination of value available for examination by the Assessor has always been viewed "in an expansive, not contractive, sense" because the full examination of such records is considered essential to the proper discharge of the assessor's duties. (*Roberts* at p. 786.) The obligation to provide information does not stop when a taxpayer files an Application for Changed Assessment. As explained in *State Bd. of Equalization v. Cenicerros* (1998) 63 Cal. App.4th 122, 132 "the Legislature anticipated assessors would use [R & T Code §] 441, subdivision (d), requests as a means of prehearing discovery.... we conclude that, after a taxpayer has applied for a reduction in its assessment, assessors may prepare for the hearing on that assessment appeal by demanding information from the taxpayer pursuant to subdivision (d) of section 441."

The proposed changes to Rule 305.1 directly conflict with an assessor's use of R & T Code § 441(d) requests to gather relevant information needed to prepare for hearings on assessment appeals, conflict with the Legislative intent for R & T Code § 441 and conflict with well established case law interpreting this important statute.

## **II. California Courts Have Consistently Upheld an Assessor's Right to Gather Information Relevant to the Assessment of Taxable Property**

A request for property information may only be refused when the requested information concerns tax exempt property or there is no possibility that the requested information will lead to the disclosure of information relevant to the taxable value of property. (*Union Pacific RR v. State Board of Equalization* (1989) 49 Cal.3d 138 at 145).

When a taxpayer fails to comply with a 441(d) request, an assessor may compel a taxpayer's appearance and examination under oath pursuant to R & T Code § 454. This right was first codified over 100 years ago in 1873 in former Political Code § 3632. The power to subpoena was restated as R & T Code § 454 when the R & T Code was first enacted in 1939. As explained in *Weyse v. Crawford* (1890) 85 Cal. 196, 200:

**"[T]he assessor ... has a right, under section 3632 [now R & T Code § 454], to subpoena the party making the statement, and also any other person whom he may suppose to have knowledge upon the subject, and examine him or them on oath, as witnesses are examined, touching any property which is assessable in his county; or in the absence of a statement, or an insufficient description of real property, he may cite the party to appear in the superior court for such examination, under section 3634 [now R & T Code § 468] where a summary hearing is guaranteed to him, and all proceedings will be had at the expense**

of the taxpayer **necessary to secure the requisite information for making a proper assessment.**" [Emphasis added.]

Revenue and Taxation Code § 454 now provides:

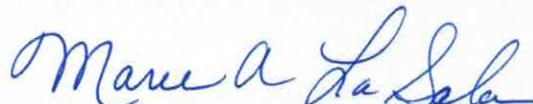
**"The assessor may subpoena and examine any person in relation to:**

- (a) any statement furnished him, or
- (b) **any statement disclosing property assessable in his county** that may be stored with, possessed, or controlled by the person. He may do this in any county where the person may be found, but shall not require the person to appear before him in any other county than that in which the subpoena is served."  
[Emphasis added.]

As summarized above, the proposed changes to Rule 305.1(e) interfere with an Assessor's right to issue subpoenas and collect essential information pursuant to R & T Code § 454 and directly conflict with, void or diminish almost every other tool Assessors have for detecting falsification or under-reporting of taxable property. Using a Property Tax Rule to frustrate the information gathering powers granted to Assessors by the California Legislature over 100 years ago is simply improper. Assessors cannot carry out their statutory duty to assess all taxable property at its full cash value if they are not able to efficiently gather relevant information.

We trust the State Board of Equalization will not approve changes to property tax regulations that conflict with numerous provisions of the Revenue & Taxation Code, the intent of the Legislature and well settled California case law.

Respectfully Submitted,  
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