Agenda Item 2 - Current State of Property Tax Administration: Perspectives

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CALIFORNIA STATE BOARD OF EQUALIZATION MEETING
September 19, 2019, 12:00 p.m. to 5:00 p.m.
San Diego, CA

Prepared Remarks by Cris K. O'Neall, Board Member
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1. Introduction

Good afternoon. My name is Cris O'Neall, and I am an attorney with the law firm of Greenberg Traurig in Irvine, California. For the past 25 years, my law practice has focused entirely on advising and representing taxpayers in property tax assessment proceedings. I represent taxpayers in many California counties, and have tried property tax appeals before county assessment appeals boards and the courts in most metropolitan counties and a number of smaller counties throughout California. I am here today on behalf of California Alliance of Taxpayer Advocates (CATA).

I have submitted a lengthy PowerPoint presentation that lists a multitude of topics relating to property tax assessment and appeals processes in other states and in California, and in different California counties. I don't have time today to review that entire outline, so I am going to focus on two topics on Page 9 of my PowerPoint: first, information exchanges in property tax appeal proceedings, or what some would call the "discovery process" and, second, the handling of larger and more complex cases before assessment appeals boards. My comments on these topics are directed toward the topic for the SBE's meeting today: "Modernizing California's Property Tax System: Opportunities, Challenges & Emerging Issues." My intention is to focus on how the two areas I will discuss are in some ways outdated, and how changing the practices in those two areas could significantly improve the property tax appeal process in California.

2. Property Tax Information Exchanges

The first topic is how taxpayers and assessors exchange information in the assessment process, particularly the assessment appeal process. The system we have today was put in place in the late 1960s when assessment appeals were first introduced in California. The system follows the discovery system that was used in the judicial or court system prior to the mid-1960s before the California Civil Discovery Act was adopted for use in the courts – in order to improve the fairness of the judicial system. The system was simple, and was designed for assessment appeals where the issues were few and the taxpayer/appellant was a homeowner or small business owner.

There are two primary means of obtaining information in the assessment appeal process. The first is written requests for information under Revenue and Taxation Code section 408 for taxpayers and section 441 for assessors. The second is under Revenue and Taxation Code section 1606, which is used for exchanges of appraisal information when there is an assessment appeal pending.

Over the years I have observed many problems with these discovery tools. The Section 408/441 information requests require that taxpayers and assessors cooperate in order to be effective. The recourses available for non-compliance are limited: assessors can seek a subpoena and go to court to obtain documents from recalcitrant taxpayers, although taxpayers don't have the same option. In addition, either party can delay an appeals board hearing if the other party has not complied, which is the primary way parties try to enforce compliance. The problem with this, however, is that the first-level arbiter of discovery disputes is the assessment appeals board which has no power to enforce discovery requests other than to lecture the parties to comply or postpone a hearing until compliance occurs (this latter course is probably improper as it denies the parties a hearing).

The second discovery tool is the Section 1606 pre-hearing exchange of appraisal information. Unfortunately, Section 1606 exchanges are optional, not mandatory. Additionally, Section 1606 only requires that a minimal amount of information be exchanged, not entire appraisals. And the exchange is not simultaneous – one party commences the exchange and the other party responds a few weeks later which creates opportunities for "gamesmanship." As a result, the information exchanged under Section 1606 is usually not helpful in resolving disputes or in expediting hearings, and either party is likely to assert "surprise" when full appraisal reports containing information that was not previously exchanged are presented at hearings.

Other states have adopted more formalized and rigorous information exchange systems. Those systems usually require entire appraisals to be exchanged simultaneously prior to hearings. By way of example, such systems exist in Florida (Fla. Stat. § 194.011(4)); Indiana (Ind. Code § 6-1.1-15-4(l), 52 Ind. Admin. Code § 2-7-1(b)); Kansas (Kan. Bd. of Tax App. Memo § 17-527); Texas (Tex. Tax Code § 41.45(h)); and Washington (Wash. Admin. Code §§ 458-14-076(4), 458-14-066). These mandatory appraisal exchange systems both promote early resolution of appeals (because the parties see each other's cases before the hearing) and expedite hearings by reducing or eliminating delays caused by "surprise" evidence being introduced at the time of a hearing, which often results in a continuance of the hearing to allow the "surprised" party time to study and respond to the newly-presented information.

The assessment appeal process, particularly the process for appeals of commercial properties, not homeowner cases, would proceed more expeditiously if the parties were required to simultaneously exchange appraisals at least 15 days, and preferably 60 days, prior to an assessment appeals board hearing. In my experience, when such exchanges occur and entire appraisals are exchanged, the appeals are heard more quickly, with fewer continuances, and resources of assessor's offices and assessment appeals boards are used more efficiently. Changes to pertinent statutes and/or the SBE's Property Tax Rules would be necessary to effectuate the change described above.

3. Special Procedures for High-Value Property Appeals

High-value property appeals are the most time-consuming for assessors and assessment appeals boards to handle.[1] This is due the time needed to prepare for such hearings and to the number of days required for such appeals to be heard. Procedures which streamline hearings for high-value property appeals will reduce the number of wasted hearing days and expedite such appeals.

Several California county assessment appeals boards have adopted mandatory rules of procedure for handling high-value property appeals. Those rules generally call for a pre-hearing conference before the appeals board where the assessor and the taxpayer discuss hearing scheduling, information exchanges including exchanges of appraisal information, pre-hearing briefing of issues, pre-hearing exchanges of witness and exhibit lists, and other issues.

The SBE has no Property Tax Rules that apply solely to high-value property appeals. SBE Property Tax Rules 301 through 326 can be and are used for high-value appeals. However, those rules were promulgated in the late 1960s when assessment appeals boards were first introduced. The rules work well for smaller appeals, such as homeowner appeals. But many provisions in Property Tax Rules 301 to 326 are not well-suited for the complexities of high-value property appeals. Adopting high-value property appeal rules, such as those which a number of county assessment appeals boards have already adopted, would greatly improve the processing of high-value property appeals.

I would urge the SBE to look at the high-value property appeal rules adopted by assessment appeals board in several California counties to see if those rules might be adopted by the SBE for the processing of high-value property appeals in assessment appeals boards statewide. I would also note that high-valued property appeals are best handled by assessment appeals board members with more experience and training in the valuation and appraisal of complex properties. Adoption of high-value property regulations should also be coupled with additional training for assessment appeals board members who would hear such appeals.

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[1] There is no specific definition of a "high-value property," but as of this writing most tax practitioners would consider a property with an assessed value in excess of $5 million to be a "high-valued property."