

**First sub-committee: 10:30 a.m. to 11:30 a.m.: Business Personal Property Tax Statement, 571 L**

**571-L Forms**

- Businesses are required by law to file a Business Property Statement if the aggregate cost of business personal property is \$100,000 or more or if the Assessor requests the information

**Opening Remarks by moderator Gary Gartner- Chief Deputy to Vice Chair Schaefer:**

Looking to define what type of data we can achieve so we can come up with a specific plan. Legal opinions, numbers, description of need. Submit in writing bullet points of what is important. On Wed. 4/29, we will reconvene on a total task force on solutions and statement of need.

**Kris Cazadd--Tax Counsel to Chairmen Vazquez---**

Assignment briefing documents due to board in 10 days. Need written submissions from everyone who wants to, to submit:

Statement of need backed up by data

Revenue impact: increase in revenue or decrease in revenue

Any legal arguments that are relevant

Practical solutions that are compatible with the deadline (hopefully, at least 3)

Actual recommendations: What could the board do? A letter to Assessors? FAQ's? Letter to Gov?

Due by next Tuesday.

**Kari Hammond—Chief Deputy to Chairman Vazquez---**

(In speaking to Assessor Stone) We have to weigh out negative economic impacts. Do you believe there is a need for some businesses (regarding the May 7<sup>th</sup> deadline) to have penalties waived? What would be the filing deadline be moved to?

Answer from Stone:

Up until the last day of May. As of now, you can file on the 7<sup>th</sup>, but you can amend until May 31<sup>st</sup>. This is a benefit for someone who files on time, but amends it. Beyond that, it is impossible. In Santa Clara County, for instance, several billion dollars will not get on the assessment roll by the July 1<sup>st</sup> deadline. That is significant. Keep May 7<sup>th</sup>, just amend to the end of May. Most people meet this deadline and are relieved they no longer have to do income tax by April.

### **Larry Stone --Santa Clara County Assessor**

Spoke at 4/21 on this topic. Speaking as Assessor and for CA Assessors' Association, virtually everything in an Assessors' office is on an annual 12-month cycle. Within that cycle, there are many deadlines- some are statutory, and some are internal. Any change in a major deadline compresses work. You simply can't add 13 months to handle a crisis. His County enrolls 35 B in assessments, which is 350 Million in property tax revenue. Most major corporations file on or near the May 7<sup>th</sup> deadline. Enrollment is closed on the statutory deadline every year in order to meet the July 1<sup>st</sup> deadline. Between May 7<sup>th</sup> and June 15<sup>th</sup> he has to process and enroll 35 B. As such, any extension will result in failure to enroll several billion dollars of assessed value. This would be a loss to schools and local government. In 1998, this deadline was successfully negotiated with businesses due to the fact they had income tax deadlines that also needed to be dealt with. Income tax deadline has now been extended to 7/15 which should give businesses more time to focus on property tax. Things are going very well right now even during this pandemic: 85% of corporate taxpayers have already filed returns so this may be a solution looking for a problem. If they can't meet that deadline, simply allow Assessors to waive penalties for not meeting deadline.

Agree the governor should be asked to make an amendment to May 7<sup>th</sup> filing by waiving penalty. Changing any of these dates or trying to have a separate close/move budget dates, are broad issues that include stakeholders not on this call. Really beyond the scope of this committee.

### **Cindy Gompper-Graves -CEO--South County Economic Development Council**

Believes we are placing an undo burden on businesses, not only businesses who have to reopen, but businesses such as accountants who are trying to apply for whatever kind of assistance they can get. Right now, that is there priority. The IRS and Treasury Department have the same

situation, and yet they extended the date, believes we should do the same. Believes we are placing a burden and acting like it is “business as usual” it’s not. Small mom and pop restaurants have laid off workers and are working around the clock, going online trying to secure multiple loans. Anything we can do for them, should be done. Budgets should be pushed back if this is the case, instead of July 1<sup>st</sup>, make it August 1<sup>st</sup>. She is appreciative of suggestion to waive penalties, but leaving deadlines is stringent. CA leads by example, incumbent on us to support businesses.

**Don Gaekle – President/Assessor- CA Assessor’s Association/Stanislaus County**

Willing to accept a good faith effort. 15-20 % of filers are chronic late filers. Most don’t appeal that. He is going to send out information to Assessors across the state to find out where they are in filing now. He will get that information to everyone in this group which should be helpful.

**Leslie Davis—Calaveras County Assessor**

There is a downstream impact when attempting to change deadlines. If the dates are extended, next year you only have 11 months to do 12 months worth of work. If someone changes dates, they need to look at every other date that gets impacted. These dates are very intertwined. The Federal Government doesn’t need to worry about it, they can print money

**David Ginsborg - Deputy Assessor -- Santa Clara County**

Unlike with real property, we must rely on the taxpayer to provide information. This becomes the tax bill, those taxes will not be due until after “shelter in place” orders are long over. May 7<sup>th</sup> is the deadline. Extend until May 31<sup>st</sup>.

**Marc Tonnesen- Solano County Assessor/Recorder**

Agree with Larry Stone. Just mail something in, file it, then work on the rest. Ability to extend 30 days, plus 10 due to disaster. July 15<sup>th</sup> date would push everybody back.

**Marc Aprea- Partner- Aprea and Micheli Government Relations**

Requested clarification on the purpose of the meeting

**Jordan Marks- Taxpayer Advocate-- San Diego County ARCC ---**

We have received 15 phone calls from taxpayers asking for 5/31 extension. Seems that period works for a lot of folks. We are being very flexible to say file by the 7<sup>th</sup> and amend by 31<sup>st</sup>. Seems to have helped a lot of them.

**Sean Keegan- Principal- Property Tax Assistance Company --**

If May 7<sup>th</sup> Deadline continues as planned, it's a step in the right direction. Facilitate a process to waive the penalty. If that's not done, it's going to clog assessment appeals committees. If deadline won't move, assessors should move penalties.

**Marcy Berkman- Santa Clara County Counsel- Assessment Appeals Board**

Create proper authority to waive penalties.

**Ray Blatt- Principal- Blatt and Sorell Tax Group, Inc.**

These times are unprecedented. The issue is the stay at home order. The staff members can't come into work to prepare the information to file. He concurs as far as meeting the statute, it's important to waive the 10% penalty. Also, the May 31<sup>st</sup> deadline is helpful.

**Participants in the 571 L sub-committee include the following:**

Aprea,	Marc	Aprea & Micheli Government Relations
Berkman,	Marcy	Santa Clara County
Blake,	Sue	CSBOE-District 4
Blatt,	Ray	Blatt & Sorell Tax Group, Inc.
Cazadd,	Kris	CSBOE-District 3
Davis,	Leslie	Calaveras County Assessor's Office
Flores,	Juan	CSBOE-District 3
Gaekle,	Don	California Assessor's Association/Stanslaus County
Gartner,	Gary	CSBOE-District 4
Ginsborg,	David	Santa Clara County Assessor
Gompper-Graves	Cindy	South County Economic Development Council

Hammond,	Kari	CSBOE-District 3
Harrison,	Michelle	CSBOE-District 4
Keegan,	Sean	Property Tax Assistance Company
Makamae,	Robert	Santa Clara County
Marks,	Jordan	San Diego County ARCC
Mol,	Charles	McDermott Will & Emery
Nakano,	Jean	CSBOE-District 3
Reguindin,	Joemil	CSBOE-District 3
Renkei,	George	Los Angeles County Assessor
Stone,	Larry	Santa Clara County Assessor
Tonnesen,	Marc	Solano County Assessor/Recorder



# CALIFORNIA ASSESSORS' ASSOCIATION

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**Education****CHRISTINA WYNN**

Sacramento County

**Date:** April 28, 2020**To:** California Board of Equalization**Attn:** Gary Gartner, Chief Deputy to Mike Schaefer, Vice Chair, California Board of Equalization**From:** Don H. Gaekle, President  
California Assessors' Association**RE:** Business Personal Property Tax Statements, 571 L

Dear Mr. Gartner,

During the month of March, both the BOE and the CAA have reached out for additional authority to address potential impacts of the COVID-19 emergency on the ability of the BOE, Assessors to complete official acts and on the ability of taxpayers to meet filing deadlines, specifically the May 7<sup>th</sup> penalty filing deadline for all Form(s) 571 Property Statements.

All participants in the April 21<sup>st</sup> BOE meeting and during the April 23<sup>rd</sup> "Team 1" Form 571 discussion agreed on the need for some action to provide relief for taxpayers who may be impacted in their ability to timely file. There seemed to be some agreement toward the waiver of penalties.

To provide data to the working group I asked for each assessor to provide data on the 2020 filing status in comparison to the 2019 year at the same time of year. Attached is a statewide summary graph of the 2020 filing status for the week ending April 24<sup>th</sup> as compared to Form 571 filings in 2019 at approximately the same date. The reporting counties are home to nearly 26 Million Californians:

- An average of 30% of 2020 Property Statements sent out have been returned for all reporting counties.
- 2020 value processed to date is 25% of the 2019 total roll value.
- 2020 Property Statement filings for the reporting counties are down 25% from the same date in 2019.
- Generally, larger counties are impacted to a much greater degree than small and mid-sized counties.
- Total penalty assessments for the 2019 year for the reporting counties were \$1,640,990,941 or around 1.3% of the total reported 2019 roll value of all Personal Property and Fixtures.
- Total 2019 statements subject to penalty was 58,103.
- Estimated average penalty tax paid per statement was \$282 (Est at 1% Tax)

It is important to remember that the bulk of statements timely filed (received by May 7<sup>th</sup>, or postmarked) each year in California are received from now through approximately May 12<sup>th</sup>. Corporate filers and CPA firms generally file most of their statements during this time so it is difficult to determine what the outcome will be.

# **CALIFORNIA ASSESSORS' ASSOCIATION**

## **EXECUTIVE COMMITTEE**

However, the current filing status indicates filing has been impacted, at least to this point, and shows a shortfall of nearly 47,000 statements filed to date for the counties that have reported. If this trend in filing to date were to continue a significant increase in appeal filing could occur statewide if authority for administrative relief is not made available to Assessors.

R&T Code 441(b) requires that Property Statements not filed by 5:00 PM on May 7<sup>th</sup> are subject to the penalty provisions of R&T Code Section 463(a).

Section 463(a) provides that a penalty of 10% of the unreported value of taxable tangible property *shall* be added to the assessment roll. Section 463(c) states that the recourse for taxpayers penalized is file an assessment appeal with the local AAB.

These provisions are in statute and would require legislative and/or Governor action to provide authority for administrative relief of any penalty required by law.

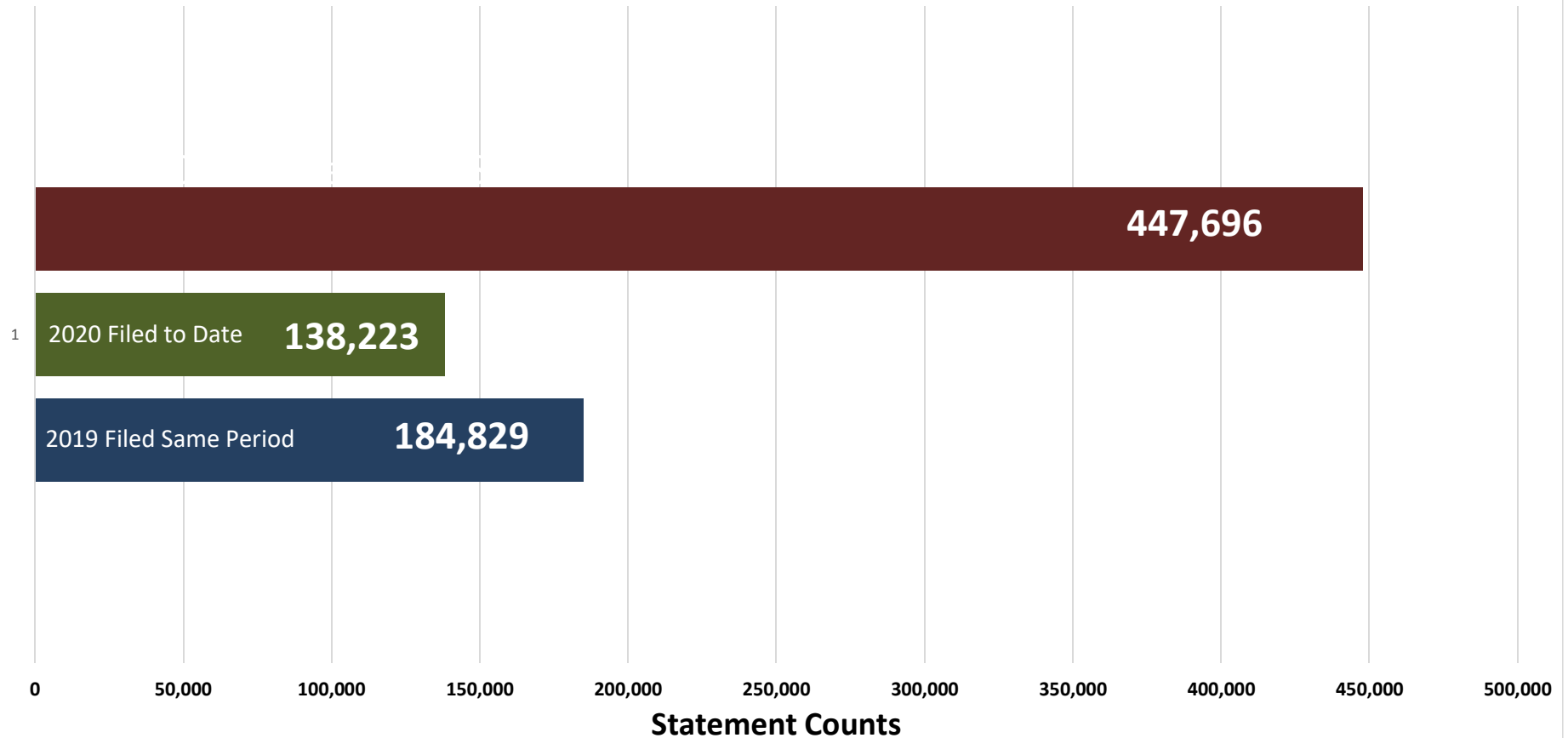
Alternatively, R&T Code 441(i) gives Assessors the authority to waive penalties for any statement filed in good faith by May 7<sup>th</sup> and amended by May 31<sup>st</sup>. Assessors could use this authority for the benefit of taxpayers affected, but this would still require that a Property Statement be filed by May 7<sup>th</sup>.

The California Assessors' Association has requested from the Governor authority for Assessors' to exercise discretion to waive penalties as needed through May 31st due to late filing of Business Property Statements because of the COVID 19 emergency, while leaving the May 7<sup>th</sup> filing deadline in place.

The Association looks forward to working with the BOE, the Governor and the legislature to have the authority to provide relief from penalties for taxpayers where necessary due COVID 19 related impacts affecting timely filing of Business Property Statements.

# 2020 Property Statement Filing Status Compared to 2019

California Assessors' Association







## **SBE PROPERTY TAX RELIEF TASK FORCE – TEAM 1**

### **I. BUSINESS PERSONAL PROPERTY TAX STATEMENT FORMS 571 FILING**

#### **A. Statement of Need for Relief & Support of Action**

Background: Every year taxpayers must file Business Personal Property (BPP) returns with the county Assessors. The returns, sometimes called renditions, list all of the personal property taxpayers had as of January 1<sup>st</sup> of the year. Returns have to be filed by May 7<sup>th</sup> to avoid an automatic late filing penalty. Returns can be amended up to May 31<sup>st</sup>. Returns are filed with Assessors Taxpayers on Form 571s.

California Revenue and Taxation Code (RTC) Sections 441(a) and 441(b) outline the requirement for the Business Property Statement (BPS) Form 571s filing and the due date. If the BPS Form 571 is not filed timely, a penalty assessment is added to the assessment (RTC Section 463 - 10%).

Taxpayers are facing problems in filing their returns because of the COVID-19 statewide and local “stay-at-home” orders. These orders are preventing taxpayers and their employees from gathering and assembling the necessary information to prepare and timely file their Form 571s.

Small businesses are adversely affected since they outsource the BPS Form 571 to their accountants or employees who are prevented from meeting at their place of business. The larger companies in each County will file timely to avoid this “late file” penalty since it is 10% of their assessed value (not proportionately fair). The Assessor’s Office will also be able to make these assessments and maintain the larger roll.

As a for instance, the Santa Clara County (SCC) Assessment Roll referencing the 2016/2017 Assessment Year, the Assessment Roll for land, improvements, personal property, fixtures and exemptions was 420,000,000,000 in value. While personal property and fixture assessments made up 25,000,000,000 or 5.95% approximately of the entire SCC roll (See SCC Assessment Survey – SBE Report dated June 2018, Appendix A, P. 16). The assessors base their personal property and fixture assessments on the taxpayer’s costs listed on the BPS Form 571 filing.

So, this smaller portion of the Assessor's Roll is subject to a potential 10% penalty if there is a "late filing" of the BPS Form 571 as specified in RTC Sections 441 & 463. This type of data is available for other California counties.

For 2020, it is reasonable to presume that the California (CA) counties will close the assessment roll timely since real property (land and building assessments) makes up – 90%+ of the assessment rolls (2020/2021 – 2% Inflation Factor – LTA No. 2019/050). So, the Assessor's Association's concerns that County Services will be shut down does not seem reasonable, if 6% of the Assessment Rolls could be affected. Keep in mind that the assessment roll affected is a portion of the referenced 6% of the total roll, only.

### Benefits & Fiscal Impact

We believe that these recommendations will save the County Assessors' and the County Assessment Appeals Boards' staff time with processing paperwork, meeting with taxpayers, and scheduled hearings for this "late file" penalty issue if these recommendations are adopted. "Late File" Penalties are not a factor in County budgets. It would be considered Revenue Neutral or a Budget Savings item.

Small businesses will also save time and monies in having to file an assessment appeal to fight this "late file" penalty which is caused by something beyond their control. They are struggling to be able to make payroll and keep their businesses open. This 10% penalty is unnecessary in these times and California should "lead" in providing assistance rather being punitive to small businesses.

### B. Statutes

The requirement for the submission of the BPS Form 571s is specified in RTC Section 441 (a) and (b). The failure to file the BPS Form 571 by May 7<sup>th</sup> will result in the "late file" penalty being applied.

#### RTC Section 441

a) Each person owning taxable personal property, other than a manufactured home subject to Part 13 (commencing with Section 5800), having an aggregate cost of one hundred thousand dollars (\$100,000) or more for any assessment year shall file a signed property statement with the assessor. Every person owning personal property that does not require the filing of a property statement or real property shall, upon request of the assessor, file a signed property statement. Failure of the assessor to request or secure the property statement does not render any assessment invalid.

(b) The property statement shall be declared to be true under the penalty of perjury and filed annually with the assessor between the lien date and 5 p.m. on April 1. The penalty provided by Section 463 applies for property statements not filed by May 7. If May 7 falls on a Saturday, Sunday, or legal holiday, a property statement that is mailed and postmarked on the next business day shall be deemed to have been filed between the lien date and 5 p.m. on May 7. If, on the dates specified in this subdivision, the county's offices are closed for the entire day, that day is considered a legal holiday for purposes of this section.

The "late file" penalty which is applied to BPS Form 571s received after May 7, 2020 will be applied to the taxpayer's personal property and fixture assessment as calculated.

The penalty added is 10% of the assessment regardless of the assessment amount as provided in RTC Section 463.

#### RTC Section 463

a) If any person who is required by law or is requested by the assessor to make an annual property statement fails to file an annual property statement within the time limit specified by Section 441 or make and subscribe the affidavit respecting his or her name and place of residence, a penalty of 10 percent of the assessed value of the unreported taxable tangible property of that person placed on the current roll shall be added to the assessment made on the current roll.

(c) If the assessee establishes to the satisfaction of the county board of equalization or the assessment appeals board that the failure to file the property statement within the time required by Section 441 was due to reasonable cause and circumstances beyond the assessee's control, and occurred notwithstanding the exercise of ordinary care in the absence of willful neglect, it may order the penalty abated, provided the assessee has filed with the county board written application for abatement of the penalty within the time prescribed by law for the filing of applications for assessment reductions.

Based on RTC Section 463, Paragraph (c), this 10% penalty may be abated if an Appeal Application is filed and the "late filing" was "due to reasonable cause and circumstances beyond the assessee's control". It is well established that COVID-19 is a state-wide emergency and our Federal Government has declared this a national emergency. The business interruption caused by COVID-19 was not the CA taxpayers fault. Most all the appeals for this "late filing" penalty would likely be abated once they are scheduled for a hearing (lacking willful neglect); therefore, it is not practical to wait for a hearing where this relief can be reasonably given or expedited (wasteful for counties and taxpayers).

C. Solutions

1. Move compliance date for filing Form 571s from May 7 to June 15 (for all original and amended filings),
2. Allow County Assessors to postpone roll close date for BPP accordingly,
3. As an alternative to 1. and 2., waive late filing penalties for 571s filed by June 15,
4. As an alternative to 1., 2., & 3., give assessors the authority to abate the “late file” penalty as provided to the county board of equalization or the assessment appeals board,
5. As an alternative to 1. 2. & 3, waive late filing penalties for 571s submitted to Counties for 2020,

Suggested Changes to RTC Sections:

1. Move compliance date for filing Form 571s from May 7 to June 15, 2020 (for all original and amended filings),
2. Allow County Assessors to postpone roll close date for BPP accordingly,
3. As an alternative to 1. and 2., waive late filing penalties for 571s filed by June 15,

RTC Section 441

(b) The property statement shall be declared to be true under the penalty of perjury and filed annually with the assessor between the lien date and 5 p.m. on April 1. The penalty provided by Section 463 applies for property statements not filed by May 7 (except for the 2020-2021 tax year, the filed by date is June 15 due to COVID-19). If May 7 falls on a Saturday, Sunday, or legal holiday, a property statement that is mailed and postmarked on the next business day shall be deemed to have been filed between the lien date and 5 p.m. on May 7. If, on the dates specified in this subdivision, the county’s offices are closed for the entire day, that day is considered a legal holiday for purposes of this section.

4. As an alternative to 1., 2., & 3., give assessors the authority to abate the “late file” penalty as provided to the county board of equalization or the assessment appeals board,

### RTC Section 463

(c) If the assessee establishes to the satisfaction of either the county assessor, county board of equalization or the assessment appeals board that the failure to file the property statement within the time required by Section 441 was due to reasonable cause and circumstances beyond the assessee's control, and occurred notwithstanding the exercise of ordinary care in the absence of willful neglect, it may order the penalty abated, provided the assessee has filed with the county board written application for abatement of the penalty within the time prescribed by law for the filing of applications for assessment reductions.

5. As an alternative to 1., 2., 3, & 4 waive late filing penalties for 571s submitted to Counties for 2020,

### RTC Section 463

a) If any person who is required by law or is requested by the assessor to make an annual property statement fails to file an annual property statement within the time limit specified by Section 441 or make and subscribe the affidavit respecting his or her name and place of residence, a penalty of 10 percent of the assessed value of the unreported taxable tangible property of that person placed on the current roll shall be added to the assessment made on the current roll. The 10% penalty will not be applied for the 2020-2021 assessments only due to COVID-19.

## D. Recommendations

1. Letter to Governor

CATA Correspondence.

RTC Sections 441 & 463 do not provide the satisfactory relief to taxpayers in 2020.

Local assessed property valuations for personal property (computer, manufacturing, test, and other equipment) and fixtures (leasehold improvements) are enrolled by the County Assessors when the taxpayers submit their Business Property Statement (BPS) Form 571 which lists their assets reported by year of acquisition and the costs by category type. These BPS Form 571s are due by April 1, 2020 and deemed late filed if not mailed or submitted by the close of business on May 7, 2020 (RTC Section 441 b). Since the implementation of statewide and local "stay-at-home" orders, there have been widespread layoffs and unemployment caused by the COVID-19 orders. Many industries, hospitality, restaurants, retail to name a few, have been adversely affected. However, small businesses are estimated to be the majority of taxpayers affected and assessed the 10% "late file" penalty in 2020 (RTC Section 463).

## 2. Legislation

RTC Sections 441 & 463 do not provide the satisfactory relief to taxpayers in 2020.

Because COVID-19's impact, taxpayers are concerned about the "penalty" assessments due to "late filing" of their BPS Form 571. Taxpayers are unable to receive any property tax reductions for the "penalty" assessments due to the "late filing" of any Forms 571-A, L, and or R caused by the COVID-19 – "Shelter in Place" directive.

In fact, taxpayers will not be able to obtain property tax relief for this "value" penalty unless an assessment appeal application is filed under current law. The 2020/2021 assessment appeals are due either by 09/15/20 or 11/30/20 depending on the County.

All the appeals submitted for this 2020/2021 "late filing" penalty will be abated once they are scheduled for a hearing, therefore, it is not reasonable to wait for a hearing where this relief can be provided now or at least expedited with tangible time and money savings for the assessors, assessment appeals board and taxpayers.

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# Office of the Assessor

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**Lawrence E. Stone**



April 28, 2020

*Sent via email*

Honorable Antonio Vazquez and Honorable Mike Schaefer  
California State Board of Equalization  
Capitol Mall  
Sacramento, CA 95814

Re: Responses to the Five Hearings Initiated by BOE Task Force on Covid-19

Dear Chair Vazquez and Vice Chair Schaefer,

We have a health crisis which has triggered an equally serious financial crisis. The vast majority of the proposals advanced by CATA, and under consideration by the BOE, will create a political crisis of equal proportions. Consideration of proposals, such as changing the lien/valuation date, is the height of irresponsibility.

As noted in this response, the dramatic, and at times radical, proposals offered by CATA and others are grossly disproportionate to the lack of demonstrated need. Unlike the evidence-based economic crisis and the commensurate national and state response, there is no information to suggest that the property tax system is the appropriate venue to provide financial relief. Implementing the proposals would be neither quick nor easy, and likely to invite lengthy litigation, further hampering the desired objective.

Simply, the property tax system cannot provide the urgent short-term financial relief proposed by CATA. Instead, the property tax system can and will provide the appropriate property tax relief. Where possible, the BOE should support efforts by assessors to waive penalties, or permit assessors to accept documents without a "wet" signature.

I urge the BOE to focus on the "doable" by partnering with assessors in managing through the greatest crisis facing property tax administration in 40 years.

Nevertheless, as requested last Thursday, I write to submit feedback in my capacity as Santa Clara County Assessor.

**I. Business Personal Property Tax Statement, 571L**

Statement of Need:

CATA has stated that Covid-19 is preventing taxpayers and their employees from gathering and assembling the necessary information needed to prepare and timely file business property statements by the May 7<sup>th</sup> deadline. The annual business property statement is the principal tool for assessors to discover equipment and machinery subject to assessment. To date, there is little evidence and minimal anecdotal accounts to support CATA's claim.

As noted by California tax collectors, the collection of property tax payments on April 10 ranged between 93 and 97 percent. Similarly, the Santa Clara County Assessor's Office continues to receive electronic and even paper submissions of the 571L form. Overall, the number of filings year to date remains over 80 percent with the largest numbers expected during the two weeks leading up to the deadline.

Second only to Los Angeles, Santa Clara County is an important indicator statewide of filings. If business owners were having problems filing statements due to this crisis, they would be contacting our office to inquire about the deadline. To date, inquiries have not materialized to any significance. Even though we are the 6<sup>th</sup> most populous County, we have the second largest unsecured roll in excess of \$35 billion.

In a letter to the Governor, the BOE has recommended that the compliance date for filing Form 571s be extended beyond May 7 (CATA requested to June 15 for all original and amended filings). To date, the Governor has not responded. Since the May 7 deadline will have passed by the time the BOE has re-convened, this recommendation is essentially moot.

As I outlined in the attached letter to the Governor, the CAA is strongly opposed to extending the deadline. There is little evidence to suggest that the coronavirus crisis has created a concurrent crisis for the ability of all companies to timely submit their 571L business property statement. In addition, since the filing date of corporate federal and state income taxes has been extended to July 15, many businesses and their tax managers should have sufficient time to prepare their 571L statements.

The Senior Tax Manager for Apple told me personally last week that Apple will have no problem meeting the May 7<sup>th</sup> deadline, and any decent software system should provide the ability for business owners to meet the deadline. Most very small business owners do not need software, as they utilize an online tool created by assessors. Most small businesses can e-file the form in less than 15 minutes.

In recognition that a limited number of taxpayers will need a temporary penalty waiver, I recommend that the Governor empower assessors with the same authority granted to tax collectors to waive the late filing penalties.



Revenue Impact:

Assessors are not revenue agents, and revenue impacts should be directed to the appropriate agency, including the BOE staff which routinely projects financial impacts.

Extending the filing deadline for the 571 would have immediate and significant financial consequences for schools, cities and counties, already struggling to manage the demand for expanded services, while facing diminishing resources due to the economic impact of the impending recession. Any blanket, statewide delay of the filing of the business personal property statement to July, would have immediate impacts on anticipated cash flow derived from \$3 billion in taxes, payable no later than August 31.

Legal Arguments/Considerations:

The only legal recourse must come from the Governor who has not responded to the BOE request.

Solution:

The BOE can support efforts by local assessors to waive the penalty for late filings submitted until May 31.

Recommendation:

It is recommended that the proposal to extend the filing date of the Business Property Statement (571L) be rejected. Further, that the BOE urge the Governor to grant assessors the authority to waive late filing penalties for Covid-19 related circumstances.

**II. County Assessment Appeals Board (AAB) Deadlines (statutes of limitations: 2-year deadline for AAB, 60-day deadline for taxpayer to appeal supplemental assessment notice)**

Statement of Need:

The BOE task force conducted a hearing on the extent to which property owners right to file an assessment appeal is impacted by Covid-19.

Supplemental Assessment Notice

CATA stated that due to the Covid-19, the 60-day deadline to file an assessment appeal on supplemental assessments should be extended as taxpayers will not be receiving mailed notices due to the shelter in place order.

There is no evidence to indicate that taxpayers are not receiving supplemental notices, or that dramatic change is needed. The vast majority of supplemental and escape assessments notices are issued to homeowners who receive their mail at their residence. Businesses are not legally prohibited from entering their premises to gather mail and other documents, including utility bills, bank and mortgage statements, etc. They always have the option to request mail be automatically forwarded to an alternate address.

In Santa Clara County, the public health department FAQ specifically addresses the issue of the "Shelter-in-Place" order as it relates to non-essential businesses. Specifically, it states:

"What if my business is not considered an essential business? Does this Order require that I shut down my business facility? Yes, it does, except for the following "Minimum Basic Operations," which are defined in the following excerpt from the Order:

1. The minimum necessary activities to maintain and protect the value of the business's inventory and facilities; ensure security, safety, and sanitation; process payroll and employee benefits; provide for the delivery of existing inventory directly to residences or businesses; and related functions.
2. The minimum necessary activities to facilitate owners, employees, and contractors of the business being able to continue to work remotely from their residences, and to ensure that the business can deliver its service remotely."

The Revenue and Taxation Code (RTC) provides a sufficient mechanism for relief in limited circumstances. For assessments made outside of the regular roll time period, RTC Section 1605(b)(1) provides that if the taxpayer does not receive the notice of the supplemental assessment or notice of escape assessment at least 15 calendar days before the 60-day deadline to file an assessment appeal application, then the applicant may file their assessment appeal application within 60 days of the date of mailing printed on the tax bill or the postmark on the tax bill, whichever is later, along with an affidavit declaring under penalty of perjury that the notice of assessment was not timely received.

#### Assessment Appeal Issues

Counsel to and the Clerks of the AAB testified that appeals in March, April and May have been cancelled throughout California out of abundance of caution to protect taxpayers and staff alike and due to the shelter in place order. Assessors and taxpayers have agreed to numerous hearing postponements. As shelter in place orders continue to hamper AAB operations and jeopardize due process for a taxpayers, we support efforts by the CACEO that provide relief in a manner that limits a backlog of appeals. It is anticipated that appeals in 2021 will skyrocket and accumulated backlog heading into that difficult situation will only further jeopardize due process.

#### Revenue Impact:

A delay of appeals now will create an uneven flow of appeals and potential refunds (plus interest) as a larger number of appeals than normal will be processed at a later time once appeal hearings resume.

#### Legal Arguments/Considerations:

The BOE has the legal authority to grant, upon request, the AAB with a minimum of forty days extension on appeals with pending deadlines. As the demonstrated need has far exceeded 40 days the BOE should call on the Governor to support tolling of the statute beyond the Covid-19 emergency declaration and other recommendations from the CACEO.

Solution:

Support tolling of the statute beyond the Covid-19 emergency declaration; authorizing AAB to conduct hearings with non-physical appearance of applicants, their agents, and/or assessor office representatives by means of remote-access technology and allow the clerk to schedule an application based on the urgency of the appeal, and not consider whether or not the clerk, county board, or assessment hearing officer had postponed or continued an appeal to a specific calendar date.

Recommendation:

We oppose any extension of time from issuance of supplemental or escape assessments to file assessment appeals and support the CACEO's proposals to toll deadlines to hear appeals during the Covid-19 pandemic.

**III. RTC Section 170, Disaster Relief**

Statement of Need:

The BOE task force received a proposal by CATA to adopt a rule permitting taxpayers to file Misfortune and Calamity (M&C) claims under Revenue and Taxation Code Section 170 due to the impact on property values from Covid-19 "Shelter-in-Place" orders. The primary purpose of such a radical change is to provide property tax relief faster than allowed by the California Constitution. The proposal will not provide rapid relief, nor is it lawful. Moreover, it is not consistent with sound appraisal theory, and cannot be implemented without creating extreme chaos with California's property tax system.

Revenue Impact:

It is likely that the increased cost to administer this proposal, and the sudden and dramatic loss of revenue at the apex of the Covid-19 crisis may threaten the state and local government ability to deliver vital public health services.

Legal Arguments/Considerations:

There is significant historical precedent with attempting to apply R&T Code Section 170 for property tax relief as a result of economic harm.

In 2002, I served as President of the CAA after 9/11. The airlines claimed property tax relief as a result of economic harm suffered by 9/11 terrorist attacks.

BOE staff prepared a report concluding that Sec. 170 was not applicable to the events of 9/11 because the statute required physical damage. Nevertheless, BOE adopted Rule 139, allowing relief from a diminution of value resulting from a period of restricted access to the property (aircraft).

CAA filed 538 action against the BOE. Marcy Berkman, Deputy County Counsel in Santa Clara County, litigated the CAA lawsuit.

Assessors argued that State Constitution and related statutes, RTC 170 require that property must be physically damaged in order to qualify for relief. Assessors argued that Section 15, Article 13 of California Constitution, which provides for legislative implementation of calamity relief via Section 170, plainly requires physical damage, not economic damage.

Court on appeal ruled that a property owner must show that the property was physically damaged or destroyed. Court ruled physical damage is distinct from economic damage, and that Rule 139 improperly expanded the definition of damage beyond Section 170.

Solution:

Rely on the federal government to provide short term relief to the business community and rely on existing property tax laws for property tax relief by addressing declines in market value (Proposition 8) as of January 1, 2021.

Recommendation:

We recommend the BOE reject this proposal.

**IV. Prop 8, Decline in Value (Lien date)**

Statement of Need:

CATA representatives recommend that absent supplemental relief provided by R&T Section 170, the provisions of Section 51(a)2 will not provide timely property tax relief because, under current law, the next valuation (lien) date, under which reductions can be granted, will be January 1, 2021, affecting the 21/22 regular assessment roll for which tax bills will be issued in October 2021.

CATA has made two proposals. First, to change the lien date from January 1<sup>st</sup> to July 1<sup>st</sup>, or perhaps some other date. Second, to change Section 402.5 to allow consideration of comparable sales occurring more than 90 days after the valuation date. We strongly oppose both proposals.

First, to abruptly change the lien date would require legislative action to amend RTC Section 2192. In addition, it would throw the administration of California's property tax system into chaos and confusion for taxpayers, as well as assessors, as the lien date is referenced in scores of RTC code sections and official forms. The last time the lien was changed from March 1<sup>st</sup> to January 1<sup>st</sup>, the legislature allowed assessors more than a year to implement the change.

Assessors throughout the state have been preparing their local rolls for 10 months based on the statutory lien date of January 1, 2020. Millions of assessments throughout the state have already been calculated and prepared assuming a January 1, 2020 lien date. It would be impossible to amend these assessments in such a short time period, and deliver 2020 assessment rolls by the end of the June deadline. There are simply insufficient personnel resources available, nor are assessment computer systems, many legacy based, flexible enough to quickly adapt to such a radical change.

This idea risks the timely delivery of assessment rolls throughout California, and would further disrupt operations downstream for Tax Collectors, County Controllers, and Clerks of the Board, forcing changes to multiple noticing requirements, and changes to filing periods for assessment appeals.

In addition, changing the lien date would undermine confidence in the property tax system itself, long valued for its stability and predictability. Undermining that confidence, in a time of crisis, and imperiling the ability for local government to perform constitutional responsibilities, would exacerbate the crisis that we are already enduring. This is the worst time possible to entertain such a destabilizing notion when statewide property tax rolls are set to be delivered by the July 1 deadline.

The second proposal, extending the window of time for consideration of comparable sales, is seriously flawed and does not provide significant, timely relief for the vast majority of taxpayers. Consistent with nationally accepted appraisal practice, the best data available is actual transactions occurring before the date of valuation. Data from transactions after the date of valuation have rapidly diminished merit.

Moreover, a time adjustment would apply to any data not occurring on the date of valuation. A time adjustment of value would likely be greatest the further from the date of valuation. The best, and most plentiful and accessible information and data, would be close to the existing lien date, January 1, 2020. Allowing sales data further past that valuation date would likely not provide reliable relief to taxpayers.

The property tax system is not designed to provide rapid and significant relief, particularly when annual assessment rolls are nearly complete. However, should the Shelter in Place orders persist, creating further economic disruption, assessors statewide will proactively reduce assessments for the next lien date, January 1, 2021, as they did in 2009. At the height of the Great Recession, assessors proactively provided relief to over three million property owners, a clear demonstration of assessors' commitment to protect taxpayers and render accurate assessments.

Today, assessors are better prepared technologically to make proactive reductions, and possess more bandwidth in the appeals system. Market data will be more plentiful, allowing for well documented, auditable assessments.

The system should be allowed to work as designed by Howard Jarvis and Paul Gann, the architects of Proposition 13. As assessors prepare for the largest single year increase in Prop 8 requests, combined with the potential for a negative 2020 CCPI, assessors in 2021 are likely to enroll the steepest one year decline in assessed value in the State's history. This will have catastrophic consequences on property tax revenue and the bonding capacity of public agencies.

Assessors are independently elected and understand the economic crisis caused by Covid-19. As an income property owner, I am sympathetic to the plight of business owners. However, the federal government is providing the near-term response with \$2.3 trillion in stimulus aid to business and local governments. The Federal Reserve extended \$600 billion in loans through its Main Street Lending Program to small and medium-sized businesses impacted by the coronavirus pandemic. The bank's corporate credit facilities and Term Asset-Backed Securities Loan Facility are now collectively offering up to \$850 billion to households, employers, and companies.

With such assistance, the federal government is facilitating its traditional role as the sole entity in the nation that can literally print money. The statewide property tax system is designed to provide longer term relief as it has done historically.

Revenue Impact:

The revenue impact would be severe, hobbling the operations of local governments, schools, and county hospitals, essential to safeguarding our communities. Moreover, the property tax system would be thrown into chaos, confusing property owners as to payment deadlines, valuation dates, appeals filing periods and other unforeseen complications.

Worse, the coronavirus impact would remain for several years, creating controversy as to whether changes implemented due to the crisis would be permanent or sunset, and if so, when.

Legal Arguments/Considerations:

Each of these proposals would require legislative change, delaying implementation. Given there is only two months until completion of the 2020 assessment roll, the proposed changes, if adopted might have to be applied retroactively, further complicating implementation and impacting operations.

Solution:

Rely on the federal government to provide short term relief to the business community and rely on existing property tax laws provide property tax relief by addressing declines in market value as of January 1, 2021.

Recommendation:

We recommend that CATA's proposals be rejected.

**V. Wet Signature vs. e-Signature**

Statement of Need:

According to the BOE Taskforce taxpayers who are unable to hand deliver or mail forms, such as the 571 or assessment applications, requiring "wet" signatures are unable to submit forms due to the shelter in place order. It is feasible that some taxpayers' timely compliance may be hampered by limitations on the method of submission. However, there is no evidence to support the claim.



Assessors strongly support a variety of means to accept documents without a wet signature. Over the past 25 years, we have worked with the BOE to provide guidance, resources and direction, and opposed efforts that require a “one size fits all” solution.

A county that only receives a few hundred forms a year should not be mandated to utilize a technology solution that ignores the cost/benefit.

In 2002, Santa Clara County created an online filing system for businesses. In the absence of leadership and resources from the BOE, we worked with the CAA to create a statewide system for the filing of business property statements. This involved the creation of a JPA to fund the joint effort, including new statutes approving the utilization of this technology. CAA’s electronic filing was launched in 2005 with 35 counties participating. In 2020, most business property statements in California are now processed electronically through this system.

While more than two-thirds of all property statements are received electronically, Santa Clara County recently joined other assessors requesting the BOE to grant our office the authority to accept the 571 form without a wet signature; BOE professional staff promptly approved our request.

There is no demonstrated need requiring assessors divert precious limited resources, during this crisis, toward additional means for receiving taxpayer information. Going forward, the BOE should provide the financial and technology resources to continue to further expand the range of technologies available to assessors for accepting information contained in forms.

In 2018, CATA opposed AB 2425, a simple bill allowing assessors to require the electronic transmittal of information and data from taxpayers. AB 2425 was subsequently chaptered.

Revenue Impact:

It is unlikely there would be an impact on revenue, nor a demonstrated barrier to compliance.

Legal Arguments/Considerations:

The BOE has authority to grant assessors, upon request, the ability to receive documents without a wet signature. The BOE does not have the legal authority to dictate what medium the assessor utilizes for accepting documents and forms.

Solution:

The BOE should continue to grant assessors, upon request, the ability to receive documents without wet signature.

Recommendation:

The BOE should provide guidance and resources to support assessors’ efforts to increase the medium for transmitting information.

Conclusion:

CATA's proposals to extend deadlines would delay workload completion, compounding the problems in future years in which assessors already anticipate unprecedented surges in workload. Virtually everything in an assessor's office is on an annual 12-month cycle, ending with the close of the assessment roll, which is our constitutional responsibility. Within that 12-month cycle, there are many deadlines, some statutory, some internal. Deadlines usually don't stand alone. They are often connected. Changing one date can impact other deadlines in sequence, creating problems for not only assessors, but the tax collector, controller, clerk of the board, and even public jurisdictions, schools, cities, and special districts that depend on property tax revenue.

Any change in major deadlines simply compresses assessors work within that annual cycle. We simply cannot add a 13th month to handle an overload or a crisis. Deadlines are difficult, but they promote work discipline, consistency and efficiency. It is why assessors were united in their opposition to extending the May 7th statutory deadline to file form 571L.

Finally, we urge the BOE to notify and include BOE staff and members of the general public in future hearings. We were disappointed that the many affected parties, like homeowners, counties, schools and cities were not properly noticed.

As an Assessor, property owner and taxpayer, I am deeply troubled that the BOE would seriously entertain such radical changes which endanger the only predictable source of revenue for schools, county, and state government which all residents are relying upon to safeguard the health and welfare of our community.

Sincerely,



Lawrence E. Stone  
Assessor

LES:lcc

Attachments:

Santa Clara County letter to Governor dated April 10, 2020  
Santa Clara County Counsel memorandum re: RTC Sec. 170  
2002 Santa Clara County letter to BOE re: RTC Sec. 170



Honorable Vazquez and Schaefer  
April 28, 2020  
Page 11 of 11

cc: Honorable Malia Cohen, Board of Equalization  
Honorable Ted Gaines, Board of Equalization  
Honorable Betty T. Yee, State Controller  
Honorable Don Gaekle, CAA President, Assessor, Stanislaus County  
Honorable Phil Ting, Assemblymember  
Honorable Adrin Nazarian, Assemblymember  
Rob Grossglauser, CAA Advocate  
California Assessors' Association  
Dr. Jeffrey Smith, County Executive, Santa Clara County

# Office of the Assessor

County of Santa Clara

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[Assessor@asr.sccgov.org](mailto:Assessor@asr.sccgov.org)

Lawrence E. Stone, Assessor



April 10, 2020

Governor Gavin Newsom  
State Capital  
1303 10th Street, Suite 1173  
Sacramento, CA 95814

RE: March 30 Emergency Time Extension Request from Board of Equalization

Honorable Governor Newsom,

In my capacity as Santa Clara County Assessor, I write in strong opposition to the Board of Equalization's (BOE) March 30 request for temporary authority to extend the May 7 business property statement filing deadline on a county by county basis. The information collected between April 1 and May 7 is vital for the timely discovery of equipment and machinery, which generates over \$3 billion statewide in property tax revenue.

Allowing for different deadlines in different counties would bring chaos and uncertainty to assessors, taxpayers, and the local property tax system for which is already under enormous administrative strain as a result of COVID-19. Moreover, it will jeopardize vital property tax revenue from major corporations at the very time that counties, schools, and the state depend on this revenue from major corporations in the fight against COVID-19.

In Santa Clara County, the assessed value of our business property roll is nearly \$35 billion, reflecting \$350 million in property tax revenue. The overwhelming majority of revenue from the assessment of business personal property in Santa Clara County is comprised of a handful of major companies. Apple, Google, Cisco, Intel, Nvidia, LinkedIn, etc. generally file on or near the May 7 deadline. Therefore, we have less than six weeks to process and enroll \$35 billion of assessments before we stop and allow our computer system to prepare the final roll, which exceeds \$500 billion to meet the July 1 deadline. Any extension of the May 7 filing deadline would result in a failure to enroll billions of business assessments, impacting revenue available to schools and local government.

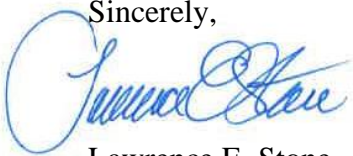
Currently, a business that does not submit a property statement by May 7 is subject to penalties, which can be waived upon request to the assessment appeals board. Penalties have historically demonstrated their effectiveness in motivating compliance.

There is, however, a viable alternative. In recognition of the current crisis, I have recommended to BOE member Malia Cohen, that should the BOE need the additional authority, the BOE should request your office grant assessors, on a county by county basis, the ability to waive penalties, not change the filing date. This would relieve the assessment appeals board of the time-consuming and added

financial burden of adjudicating the merits of a requested waiver. It would empower assessors, who request the authority, to administratively waive penalties due to COVID-19, saving the county significant time and money, both vital commodities at this time.

There is little evidence to suggest that the coronavirus crisis has created a crisis for all companies' ability to timely submit their 571L business property statement. In addition, since the filing date of corporate federal and state income taxes has been extended to July 15, many businesses should have additional time to prepare their 571L statements.

Sincerely,



Lawrence E. Stone  
Assessor

LES:lcc

cc: Ms. Ann O'Leary, Chief of Staff, Office of Governor Newsom  
Mr. Lenny Mendonca, Office of Governor Newsom  
Honorable Board of Equalization Members  
Honorable Betty T. Yee, State Controller  
Ms. Brenda Fleming, Executive Director, State Board of Equalization  
Honorable Don Gaekle, President, California Assessors' Association  
Mr. Rob Grossglauser, Advocate, California Assessors' Association  
Board of Supervisors, Santa Clara County  
Dr. Jeffrey Smith, Chief Executive Officer, Santa Clara County  
Senator Jim Beall  
Senator Bill Monning  
Senator Bob Wieckowski  
Senator Anna Caballero  
Senator Jerry Hill  
Assemblymember Phil Ting  
Assemblymember Adrin Nazarian  
Assemblymember Marc Berman  
Assemblymember Kansen Chu  
Assemblymember Ash Kalra  
Assemblymember Evan Low  
Assemblymember Mark Stone  
Assemblymember Robert Rivas



Gary Gartner, Chief Deputy  
State Board of Equalization  
Via Email: [Gary.Gartner@boe.ca.gov](mailto:Gary.Gartner@boe.ca.gov)

April 27, 2020

Dear Mr. Gartner,

RE: Personal Property Tax Relief form 571

Thank you for putting together the Property Tax Relief Task Force. We appreciate your efforts in alleviating any burdens on the business community at this difficult time.

This letter is in response to the request for information regarding impacts that may be generated from the Business Personal Property Tax Form submittal date. The following is submitted for your consideration:

Statement of Need: Additional time is needed for small businesses and non-profits to complete the Property Tax Relief Form. At present, certain types of small businesses and non-profits are closed. The required form would necessitate a need to open their businesses to obtain the information, thus, calling into question the goal of the Governor's "Stay at Home/Non-Essential Business closure" orders.

Additionally, an unnecessary burden is placed on those small businesses that are open in accordance with the State mandate (such as a restaurant for example). Those business owners have typically released their employees and are working the small business themselves. Many of them have had to alter their business model and as a result are working more hours and making less money. This has led them to seek additional financial assistance requiring an enormous amount of time dedicated to completing loan applications, researching assistance programs and reevaluating their business models. Similarly, small book keepers and accountants, for example, are currently overwhelmed by the need to support businesses and non-profits in their quest to obtain financial information in support of a loan request or to provide business owners with financial information to determine that status of their frequently changing business models.

Legal Arguments: It would appear that the inflexibility of the deadline necessitates actions that contradict the intent of the Governor's orders for "Stay at Home/Non-Essential Business Closure". It may also cause an unnecessary burden on the small businesses and non-profit community. The Federal government, recognizing this world-wide pandemic as a national emergency, has changed the deadline for federal tax forms. Additionally, many of the larger financial

institutions, for example, have similarly offered relief due to the impacts of this world wide pandemic indicating that it can be done.

Additionally, the State has received federal assistance, as have some municipalities, to provide support during this national emergency. It should be incumbent upon the State to offer their constituency relief by extending the form filing deadline.

Solutions: The solution is a time extension for the small business and non-profit communities to file their form. This will allow them to reopen their business, comply with the State mandated closures and provide the necessary information within a timeframe that is more conducive to a business friendly environment.

Recommendations: To implement a no-cost three-month time extension for businesses to file their form. This should be an automatic time extension with no application required, similar to what the Federal government has done with income tax.

Please do not hesitate to contact me if you need additional information at 619-988-2010.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cindy', followed by a long, sweeping horizontal line that ends in a small upward curve.

Cindy Gompper Graves, President & CEO



# CALIFORNIA ASSESSORS' ASSOCIATION

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April 16, 2002

Ms. Diane Olson

Regulations Coordinator

California State Board of Equalization

MIC:80

P.O. Box 942879

Sacramento, California 94279-0080

RE: Proposed Property Tax Rule 139

Dear Ms. Olson,

This letter is to present the objections, comments, and observations of the California Assessors' Association, to the proposed adoption by the State Board of Equalization (the "SBE" or this "Board") of Property Tax Rule 139, and to request that this Board withdraw the proposed rule.

## 1. Background

In the wake of the events of September 11, 2001, members of this Board directed the SBE staff to present options to provide commercial airlines with property tax relief as a result of the economic harm caused by the terrorist attacks. In particular, the SBE staff was directed to examine whether section 170 of the Revenue and Taxation Code<sup>1</sup> allows for calamity reassessments as a result of the economic harm suffered by the airlines caused by the events of September 11.

The SBE staff convened two interested party meetings, at which it gathered input from industry and County representatives. At these interested party meetings, County representatives expressed that, while the terrorist attacks of September 11 served as the catalyst for property tax relief proposals, the measures under consideration would have ramifications far transcending that context. After these meetings, the SBE staff prepared a report, dated December 14, 2001, on proposals for property tax relief related to the September 11 terrorist attacks. Among other things, this report concluded section 170 is inapplicable to the events of September 11 because that statute requires *physical damage* to be applicable.

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<sup>1</sup> Unless otherwise stated, all statutory references are to the Revenue and Taxation Code.

The SBE met in Administrative Session on December 20, 2001, at which time it heard from its staff and other speakers regarding the applicability of section 170 to the events of September 11. The Board also discussed Proposed Property Tax Rule 139. At the conclusion of the Administrative Session, the Board stated its intent to hold a public hearing on proposed Rule 139. Pursuant to notice dated February 8, 2002, the Board set a public hearing on proposed Rule 139 for March 27, 2002, and indicated that written comments should be submitted by that date.

## 2. **Comments of California Assessors Association**

### A. **Proposed Property Tax Rule 139 Unconstitutionally Allows Calamity Relief in the Absence of Physical Damage to Property**

Proposed Property Tax Rule 139 is constitutionally flawed because, by its terms, it allows calamity reassessments under ordinances adopted pursuant to section 170 in the absence of any physical damage to the property for which the reassessment is sought.

Rule 139 defines “damage or destruction,” as that term is used in section 170 of the Code, to include a “diminution in value of . . . property resulting from a period of restricted physical access to the property.” Proposed Prop. Tax Rule 139(a). In turn, Rule 139 also defines “periods of restricted physical access” to mean that “access to the property was wholly or partially denied . . . as a result of compliance with a directive, order, law or other exercise of police or regulatory power by the federal, state or local government.” Proposed Prop. Tax Rule 139(b).

Stated differently, Rule 139 equates mere “restricted physical access” imposed by a governmental entity with property “damage or destruction” for purposes of section 170. However, as discussed below, the State Constitution and statutes, as well as other controlling precedent, require that property be *physically* damaged in order to qualify for calamity reassessments. This Board cannot promulgate a rule, such as proposed Rule 139, that ignores the *physical damage* requirement.

Section 15 of Article 13 of the California Constitution, which predates section 170 as it currently exists (and which authorized the Legislature to adopt that statute), makes unambiguous that the power of a county to provide for reassessments of property due to misfortune or calamity applies only to property that has been *physically* damaged:

The Legislature may authorize local government to provide for the assessment or reassessment of taxable property *physically* damaged or destroyed after the lien date to which the assessment or reassessment relates.

Cal. Const., Art. 13, § 15 (emphasis added).

Section 170, which Rule 139 purports to construe, provides that, under certain circumstances, property owners may be eligible for reassessment of damaged or destroyed property prior to the next lien date following the damage to or destruction of the property in question:

[T]he board of supervisors [of each county in the State] may, by ordinance, provide that every assessee of any taxable property, or any person liable for taxes thereon, whose property was damaged or destroyed without his or her fault, may apply for a reassessment of that property . . . .

Cal. Rev. & Tax. Code § 170(a).

The Code goes on to state that counties may adopt resolutions providing for reassessment of property damaged under one or more of the following circumstances:

- (1) A major misfortune or calamity, in an area or region subsequently proclaimed by the Governor to be in a state of disaster, if that property was damaged or destroyed by the major misfortune or calamity that caused the Governor to proclaim the area or region to be in a state of disaster. As used in this paragraph “damage” includes a diminution in the value of property as a result of restricted access to the property where the restricted access was caused by the major misfortune or calamity.
- (2) A misfortune or calamity.
- (3) A misfortune or calamity that, with respect to a possessory interest in land owned by the state or federal government has caused the permit or other right to enter upon the land to be suspended or restricted. As used in this paragraph, “misfortune or calamity” includes a drought condition such as existed in this state in 1976 and 1977.

Clear from the above constitutional and statutory language is that, in order to make a claim under any ordinance adopted pursuant to section 170, a property owner must show that property was “damaged or destroyed.”

Significantly, all who have addressed the matter -- including this Board’s staff -- have concluded that section 170 and its precursor statutes apply only in the case of *physical* damage to property. See 55 Ops. Cal. Atty. Gen. 412, 413-14 (1972) (“[I]t is abundantly clear that the Legislature did not regard the word ‘damage’ as encompassing economic loss except in those instances where economic devaluation directly resulted from restricted access to property.”); 58 Ops. Cal. Atty. Gen. 327, 330 (“As noted in the prior opinion of this office, the words ‘damaged or destroyed’ as



used [in the precursor statutes to section 170] d[o] not encompass economic loss in the absence of physical injury.”); State Board of Equal. Letter to Assessors (Jan. 24, 1977) (lack of snow at ski resort does not qualify as a casualty because there was no physical damage). Indeed, this Board’s legal staff recently opined that relief under an ordinance adopted pursuant to section 170 requires physical damage to property, and that there is no indication that the Legislature intended section 170 to apply to losses other than those caused by physical damage. See Attachment A to this letter.

Rule 139’s apparent attempt to equate a restriction on access to property with *physical* damage finds no support in the law or in common understanding. First, nowhere in the text of the California Constitution or section 170 is there any indication that a restriction on access is sufficient, in itself, to constitute “physical damage” so as to support a calamity reassessment to property.<sup>3</sup> Cf. In re Rojas (1979) 23 Cal. 3d 152, 155 (“In engaging in statutory interpretation we are to accord words their usual, ordinary, and common sense meaning based on the language the Legislature used and the evident purpose for which the statute was adopted.”); County of Orange v. Flournoy 42 Cal. App. 3d 908, 912 (“[I]n construing a statute a word should not be given a forced and strained meaning contrary to its common understanding.”).

A common sense reading “physical damage” makes clear that term is distinct from economic damages occasioned by a mere loss of access. See Webster’s Ninth Colleg. Dictionary (1983), at 887 (defining “physical,” among other things, as “having material existence, perceptible especially through the senses and subject to the laws of nature,” and as “characterized or produced by the forces and operations of physics”); cf. Assess. Handbk. § 501, at 81 (Jan. 2002) (noting that “physical deterioration” may be “the result of wear and tear either from use or the forces of nature”).

Further, it is beyond cavil that the California Legislature acted with full knowledge of the prior administrative interpretation of section 170’s predecessor statutes as requiring physical damage. It should therefore be presumed that the Legislature intended that section 170 be read in the same manner. See, e.g., California Motor Express, Ltd. v. State Board of Equal. (1955) 133 Cal. App. 2d 237, 239-40 (“Reenactment of a provision which has a meaning well established by administrative construction is persuasive that the intent was to continue the same construction previously recognized and applied.”) (citing cases); Godward v. Board of Trustees (1928) 94 Cal. App. 160, 163 (stating that it should be presumed that the Legislature has knowledge of an administrative agency’s “long-standing practical construction” of a statute).

Moreover, in other contexts, the case law of this state has recognized a distinction between “physical damage” on the one hand, and the mere impairment of rights, which might result in economic loss, on the other. Cf. Kazi v. State Farm Fire and Cas. Co. (2001) 24 Cal. 4<sup>th</sup> 871, 887 (discussing an insurer’s duty to defend, and stating that “a loss of ‘pure rights in

property’ is not physical damage or injury to tangible property that triggers a duty to defend under a comprehensive liability insurance policy that provides coverage only for such losses”); *Aas v. Superior Court of San Diego County* (2000) 24 Cal. 4<sup>th</sup> 627, 636 (“In actions for negligence, a manufacturer’s liability is limited to damages for *physical injuries*; no recovery is allowed for economic loss alone.”) (emphasis added; citation omitted).

Assuming, for the sake of argument, that section 170 provided for calamity reassessment in the absence of *physical* damage -- an assumption without support in the record -- the statute would be void as inconsistent with the State Constitution, which explicitly requires ***physical damage***. *Hotel Employees and Restaurant Employees Internat. Union v. Davis* (1999) 21 Cal. 4<sup>th</sup> 585, 602. Such a reading of section 170 should be avoided. *Metromedia, Inc. v. City of San Diego* (1982) 32 Cal. 3d 180 (“If the terms of a statute are by fair and reasonable interpretation capable of a meaning consistent with the requirements of the Constitution, the statute will be given that meaning, rather than another one in conflict with the Constitution.”) (internal quotation and citation omitted).

**B. Proposed Rule 139 Improperly Expands the Definition of “Damage” Beyond The Parameters Specifically Stated by the Legislature**

Section 170(a)(1) states that *for the purposes of that paragraph*, “‘damage’ includes a diminution in the value of property as a result of restricted access to the property . . . .” That paragraph also provides, however, that, in order to be eligible for calamity reassessment on the basis of a restriction on access, the property must be “in an area or region subsequently proclaimed by the Governor to be in a state of disaster . . . .” Similarly, section 170(a)(3) provides for calamity reassessments where a misfortune or calamity has resulted in the suspension of or restriction on entry “with respect to a possessory interest in land owned by the state or federal government.”

Proposed Rule 139, if adopted, would have the effect of defining “damage” to include “restricted physical access” for *all purposes* under section 170, notwithstanding the Legislature’s clear mandate that restricted access may constitute “damage” only in limited circumstances (none of which are applicable to the events of September 11, 2001).<sup>2</sup> This Board’s purported expansion of the term “damage” to include “restricted physical access” even in the absence of a Governor-declared state of disaster and with respect to property other than possessory interests in

<sup>2</sup> Section 170(a)(1) of the Code provides that “damage” includes a diminution in value to property due to restricted access where the restriction on access is caused by a major misfortune or calamity in an area declared by the Governor to be in a state of disaster. However, given the requirement for a declared state of disaster, it seems clear that reassessment relief under section 170(a)(1) is predicated on the existence of physical damage causing the restricted access.

Ms. Diane Olson

April 21, 2020

Page 6

land owned by the state or federal government, clearly violates the well recognized rule of statutory construction that where exceptions to a general rule are specified by statute, other exceptions are not to be implied or presumed. People v. Pieters (1991) 52 Cal. 3d 894, 905; see also 58 Cal. Jur. 3d (1980) Statutes, § 115, at 503 (“Under the maxim *expressio unius est exclusio alterius*, which applies only in the event of statutory ambiguity or uncertainty, the enumeration of acts, things, or persons as coming within the operation or exception of a statute will preclude the inclusion by implication in the class covered or excepted of other acts, things, or persons.”).

A common example serves to illustrate the overbroad scope of proposed Rule 139. Under the proposed rule, a property owner whose restaurant has been shut down by a local health department (i.e., in compliance with a local government order) could apply for a calamity reassessment, arguing that his property has been “damaged” within the meaning of section 170 (as modified by Rule 139) by the health department’s actions. There exists no indication that the State Constitution (or the Legislature) contemplated calamity reassessments under circumstances involving the exercise of police power, except in a Governor-declared disaster area. Yet, proposed Rule 139, by its literal terms, arguably allows a claim when a local government exercises its police powers in circumstances such as those set forth above.

It is axiomatic that an administrative agency’s rule making power is limited by the scope of the statutes that the agency is empowered to construe. Simply put, an administrative agency may not adopt a regulation that alters or amends a statute, or that enlarges or impairs its scope. See Morris v. Williams (1967) 67 Cal. 2d 733, 748; Welsh v. Gnaizda (1976) 58 Cal. App. 3d 119, 124-25. Here, through proposed Rule 139, this Board proposes to expand the scope of section 170 and the county ordinances adopted thereunder by broadening the meaning of the term “damage” to include restricted access beyond those cases explicitly provided for by the Legislature under the authority provided by the State Constitution. Indeed, proposed Rule 139 purports to require local assessors to apply a definition of “damage” clearly proscribed by state law. For this reason, the proposed rule should be withdrawn.

### **C. Proposed Rule 139 Intrudes Upon the Authority of County Governments and the State Legislature**

“A county or city may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws.” Cal. Const., Art. IX, § 7. Article 15 of the California Constitution, and the State Legislature (through section 170), clearly vests in the counties the power to allow and implement calamity reassessments.

This constitutional and statutory delegation of authority vests counties with broad discretion to determine the substance of their respective calamity claims ordinances, and, in areas where

counties are empowered to exercise police power, such power is as broad as that exercised

Ms. Diane Olson

April 21, 2020

Page 7

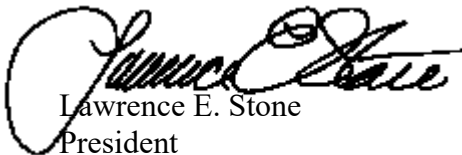
by the Legislature itself. See Birkenfeld v. Berkeley (1976) 17 Cal. 3d 129, 140 ("The Constitution itself confers upon all cities and counties the power to "make and enforce within [their] limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." (Cal. Const., art. XI, § 7.) A city's police power under this provision can be applied only within its own territory and is subject to displacement by general state law but otherwise is as broad as the police power exercisable by the Legislature itself.") (citations omitted). It follows that only the State Legislature, the entity that has vested the counties with authority to adopt and implement calamity ordinances, has power to limit or modify the county's exercise of their ordinance power in this area.

Consequently, this Board's attempt, through proposed Rule 139, to define the meaning and determine the scope of county calamity claim ordinances is unlawful.

### 3. Conclusion

For the reasons discussed above, as well as for those stated by the SBE staff in its report of December 14, 2001, the California Assessors Association requests that proposed Rule 139 be withdrawn.

Sincerely,



Lawrence E. Stone  
President

**Subject:** [External]California Board of Equalization Hearings On 2020 Business Personal Property Tax Filings

Hi Gary,

Thank you again for allowing me to take part in the BOE hearings with respect to filing of the 2020 California Business Personal Property Tax Returns Form 571-L.

Typically a business closes their books at December 31<sup>st</sup> and follows with sending us the necessary information by the end of February or March. That allows us to timely file their Form 571-L on or before May 7. This year we have gotten some information in March and some this month but a considerable amount remains.

These are unprecedented times. With the Work At Home Order staff from these businesses are grounded and in many cases don't have the opportunity in electronically sending us the information we need to prepare their company's 571-L.

If our clients are assessed the 10% penalty for late filing we would need to file an assessment appeals applications as others would as well with the Clerk of the Board in arguing the matter, which would create an unnecessary burden on the board.

What we are recommending is that the BOE with the Governor's approval have the 10% penalty waived for late filing, which would be less intrusive then extending the May 7<sup>th</sup> filing deadline.

Respectfully,  
Raymond Blatt

Partner

*A Member of IAAO*

*International Association of Assessing Officers*

Blatt & Sorell Tax Group, Inc.