

Memorandum

To: Ms. Brenda Fleming
Executive Director

Date: May 5, 2020

/s/ David Yeung

From: David Yeung, Deputy Director
Property Tax Department

Subject: ***Board Meeting, May 2020 – Item K3b – Property Tax Deputy Director's Report
Assessment Appeals Process***

Board staff developed the attached Issue Paper 20-001 after several meetings with County Assessors, county counsels, clerks of boards of supervisors, representatives of taxpayer advocacy groups, and other interested parties. The Issue Paper includes proposed revisions to the *Assessment Appeals Manual* and a newly created *Request for Information* form.

I respectfully recommend that the proposed revisions to the *Assessment Appeals Manual* and the newly created *Request for Information* form be placed on the May 2020 Board agenda.

DY:ab
Attachments

cc: Mr. Henry Nanjo

Approved:

/s/ Brenda Fleming

Brenda Fleming
Executive Director

Board Approved on 05/27/2020:

/s/ Henry Nanjo,

Henry Nanjo, Acting Chief
Board Proceedings Division

Issue Paper Number 20-001

☒ Board Meeting
☐ Other



Revisions to the *Assessment Appeals Manual* and a New Form for Requesting Information from Taxpayers

I. Issue

Should the State Board of Equalization (BOE) adopt and authorize publication of (1) revisions to the *Assessment Appeals Manual* and (2) a new form to be used by County Assessors in requesting information relevant to the assessment of taxable property?

II. Alternative 1 - Staff Recommendation

Staff recommends that the BOE adopt both (1) revisions to the *Assessment Appeals Manual* relating to postponements and continuances, as shown in Attachment A, and (2) a new form, BOE-441d, *Request for Information*, for use by County Assessors to request information from taxpayers, as shown in Attachment B.

III. Other Alternative(s) Considered

None.

Issue Paper Number 20-001

IV. Background

California's 58 County Assessors are charged with assessing all property subject to local property taxation. After an assessment is made, a taxpayer may request a hearing before the county assessment appeals board by filing an application for reduction in assessment.

The Government Code imposes on the BOE certain oversight responsibilities with respect to County Assessors and county assessment appeals boards. Relevant to this issue paper, section 15606, subdivision (d), requires the BOE to prescribe and enforce the use of all forms for the assessment of property for taxation; and subdivision (e) requires that the BOE issue to County Assessors instructions such as those set forth in its *Assessment Appeals Manual*.

In 2017, staff initiated a project to address issues about the county assessment appeals process. Those issues, first raised by taxpayer advocacy groups, were about fair and consistent treatment of taxpayers across the state's 58 counties.

Meetings of interested parties began in December 2017. County Assessors, county counsels, clerks of boards of supervisors, and representatives of taxpayer advocacy groups were involved in the discussions. In 2018, a set of amendments to the BOE's property tax rules governing assessment appeals was adopted by the Board. Those amendments became effective January 1, 2020.

The Board determined, however, that certain issues could not be resolved through amendments to the property tax rules and were instead best addressed through the BOE's informal guidance and its authority with respect to assessment forms. Thus, in 2018 and 2019, the parties collaborated to (1) work out language about postponements and continuances to be added to the BOE's *Assessment Appeals Manual*, and (2) create a form for use by County Assessors to request information from taxpayers.

V. Discussion

Assessment Appeals Manual—Postponements and Continuances

According to taxpayer advocates, some County Assessors had been granted indefinite postponements and continuances of assessment appeal hearings. Advocates were concerned that taxpayers' due process rights were being impaired by unnecessary delays.

To address this issue, the parties agreed upon revised language in the *Assessment Appeals Manual* about postponements and continuances. The language, shown in Attachment A, would replace existing language in the manual on postponements and continuances, as stated currently on pages 97 and 98.

In general, the revised language provides a more expansive discussion of the conditions under which postponements and continuances should be granted and strikes a balance between the due process rights of taxpayers and the resource limitations and time constraints of assessment appeals boards.

Form for Requesting Taxpayer Information

The parties agreed on the language and format of the new form, shown as Attachment B, as a discovery tool to be used by County Assessors to obtain the information they need to properly perform their duties.

In general, the new form makes clear to taxpayers the consequences of failing to comply with a request for information.

VI. Alternative 1 - Staff Recommendation

Staff recommends that the BOE adopt both (1) revisions to the *Assessment Appeals Manual* relating to postponements and continuances, as shown in Attachment A, and (2) a new form, BOE-441d, *Request for Information*, for use by County Assessors to request information from taxpayers, as shown in Attachment B.

A. Description of Alternative 1

The revised language for postponements and continuances, shown in Attachment A, would replace the existing language in the *Assessment Appeals Manual* as stated currently on pages 97 and 98. The revised language (1) provides a more expansive discussion of the conditions under which postponements and continuances should be granted, and (2) strikes a balance between the due process rights of taxpayers and the resource limitations and time constraints of assessment appeals boards.

The new form, shown in Attachment B, would be a new discovery tool to be used by County Assessors to obtain the information they need to properly perform their duties. The new form also makes clear to taxpayers the consequences of failing to comply with a request for information.

Pros of Alternative 1

Adoption of the revisions to the *Assessment Appeals Manual* and the new form for requesting information from taxpayers better informs taxpayers of their due process rights while recognizing the needs of County Assessors and assessment appeals boards to properly perform their duties.

B. Cons of Alternative 1

None.

C. Statutory or Regulatory Change for Alternative 1

None.

E. Operational Impact of Alternative 1

None.

F. Administrative Impact of Alternative 1

1. Cost Impact

Development of both the *Assessment Appeals Manual* and assessment forms is within the scope of the statutory duties of the County-Assessed Properties Division and will be absorbed by existing staff.

2. Revenue Impact

None.

FORMAL ISSUE PAPER

G. Taxpayer/Customer Impact of Alternative 1

Adoption of the revisions to the *Assessment Appeals Manual* and the new form for requesting information from taxpayers would better inform taxpayers of their due process rights while recognizing the needs of County Assessors and assessment appeals boards to properly perform their duties and promoting uniformity in assessment practices across the state.

H. Critical Time Frames of Alternative 1

None.

VII. Other Alternatives

A. Description of Alternative

None.

Preparer/Reviewer Information

Prepared by: Property Tax Department, County-Assessed Properties Division

Current as of: February 26, 2020

POSTPONEMENTS AND CONTINUANCES

It is within the board's discretion to grant an extension of time before the commencement of a hearing on an application (a postponement) or after the commencement of a hearing on an application (a continuance). However, when such requests are not granted as a matter of right or have not been agreed to between the parties, the board should ensure that good cause exists to grant a postponement or continuance. In this regard, the reasonable needs of the county board of equalization or assessment appeals board or county hearing officer and the parties to the proceedings should be considered in determining whether to grant a postponement or continuance. The board should make every reasonable effort, however, to hold the hearing expeditiously.

The board may postpone or continue a hearing to allow an applicant time to comply with a request for information from the assessor or the board. However, serial continuances or postponements may not be granted where the board determines the information requested is unrelated to the issue or no responsive documents exist. Granting serial continuances or postponements in such instances could effectively deny an applicant a hearing on the merits of the case.

When an applicant's non-compliance to a request for information is at issue and a postponement or continuance is unlikely to result in the production of responsive information, the board, in most cases, should hold a hearing weighing the available evidence and the credibility of the testimony. If the board determines that the applicant has not provided all of the information required by law, the applicant will have the burden of proof.¹ The board may also continue or postpone a hearing to allow time necessary for the assessor or the board to issue a subpoena for the requested information, as well as any time necessary for related court proceedings.

POSTPONEMENTS

Postponements are extensions of time made before the hearing on an application has commenced. Rule 323, subsection (a), provides in part:

The applicant and/or the assessor shall be allowed one postponement as a matter of right, the request for which must be made not later than 21 days before the hearing is scheduled to commence.

If the applicant requests a postponement of a scheduled hearing within 120 days of the expiration of the two-year limitation period provided in section 1604, the postponement will be contingent upon the applicant agreeing to extend and toll indefinitely the two-year period. The applicant has the right to terminate the extension agreement upon 120 days written notice.

The assessor is not entitled to a postponement as a matter of right if the request is made within 120 days of the expiration of the two-year limitation period. However, the board, in its discretion, may grant such a request. The board may also grant a postponement for a reasonable

¹ Section 167(b). See also Rule 321(d).

period of time if one party initiates an information exchange and the other party does not comply within the time specified in section 1606 and Rule 305.1, subdivision (b).²

In addition, if the applicant or the applicant's agent is unable to attend a properly noticed hearing, the applicant or the applicant's agent may request, prior to the hearing date, a postponement of the hearing with a showing of good cause to the board.³

Requests for postponements beyond those that are a matter of right, whether by the applicant or the assessor, must be made in writing and good cause must be shown for the requested postponement. A mutual agreement between an applicant and the assessor shall be deemed to constitute good cause. Postponements granted because of a mutual agreement or other good cause shall result in extending and tolling indefinitely the two-year limitation period, subject to termination of the agreement upon 120 days written notice by the applicant.⁴

Any information exchange dates established pursuant to Rule 305.1 remain in effect based on the originally scheduled hearing date, notwithstanding the hearing postponement, except when a hearing is postponed due to the failure of a party to respond to an exchange of information.⁵

A board of supervisors may delegate decisions concerning postponement to the clerk in accordance with locally adopted rules.

CONTINUANCES

Continuances are extensions of time made after the hearing on an application has commenced. The board may, in its discretion, continue a hearing to a later date.⁶

If the hearing is continued, the clerk must notify both the applicant (or agent) and the assessor, in writing, of the time and place of the continued hearing. This notification must be made not less than 10 days prior to the date of the continued hearing, unless the parties agree in writing or on the record to waive written notice.⁷ The board may work with the parties to determine a mutually acceptable date for the next hearing.

If the applicant requests a continuance within 90 days of the expiration of the two-year limitation period provided in section 1604, the board may require a written extension signed by the applicant extending and tolling the two-year period indefinitely. The applicant has the right to terminate the extension agreement upon 120 days written notice.⁸

² Rule 305.1(d).

³ Rule 313(a).

⁴ Rule 323(a).

⁵ Rule 305.1(d).

⁶ Rule 323

⁷ Rule 323(c).

⁸ Rule 323(a).

There are five primary reasons for continuing a hearing:

- **Amendment of an application.** If the board grants an applicant's request to amend an application, upon request of the assessor the hearing on the matter shall be continued by the board for no less than 45 days, unless the parties mutually agree to a different period of time.⁹

- **Applicant has failed to provide all information required by law.** If an applicant has not yet provided all information required by law, the hearing may be continued to a later date for a hearing on the merits of the application or for the board to further inquire into the status of whether applicant has yet provided all information required by law.

If an applicant fails to provide information to the assessor pursuant to section 441(d) and introduces any requested materials or information at any assessment appeals board hearing, the assessor may request and shall be granted a continuance for a reasonable period of time. The continuance shall extend the two-year period specified in section 1604(d) for a period of time equal to the length of the continuance.¹⁰

- **New information introduced at the hearing.** If new material relating to information received from the other party during an exchange of information under section 1606 is introduced, the other party may request a continuance for a reasonable period of time.¹¹

- **Inspection of assessor's records.** If the assessor fails to permit the inspection or copying of materials or information, as requested by the applicant pursuant to section 408(d) or (e), and the assessor introduces any such requested materials or information at any assessment appeals board hearing, the applicant may request a continuance for a reasonable period of time. The continuance shall extend the two-year period specified in section 1604(c) for a period of time equal to the length of the continuance.¹²

- **Further information required by the board.** If, in the opinion of the board, not enough evidence was provided during the course of the hearing for the board to make a proper determination of value, the board may continue the hearing so that information the board believes is pertinent may be assembled and brought before it. A board should exercise caution in deciding that a continuance is warranted.

⁹ Rule 305(e)(2)(C)(iv).

¹⁰ Section 441(h).

¹¹ Rule 305.1(c).

¹² Section 408(f)(3).

REQUEST FOR INFORMATION

This request for information is being made by the assessor pursuant to the authority granted by Revenue and Taxation Code section 441(d). This provision requires you to comply.

NAME AND MAILING ADDRESS
(Make necessary corrections to the printed name and mailing address.)

DATE OF REQUEST		DUE DATE FOR REQUESTED INFORMATION	
STREET ADDRESS OR PHYSICAL LOCATION OF THE PROPERTY		CITY	STATE ZIP
ASSESSOR'S PARCEL NUMBER			
ACCOUNT NUMBER/ASSESSMENT NUMBER			
EVENT DATE		EVENT TYPE	

SEE ENCLOSURE FOR THE LIST OF INFORMATION SPECIFICALLY BEING REQUESTED. IF YOU ARE UNCERTAIN AS TO WHAT INFORMATION IS BEING REQUESTED OR NEED MORE TIME TO COMPLY WITH THE REQUEST, PLEASE CONTACT THE ASSESSOR'S OFFICE EMPLOYEE WHOSE NAME AND CONTACT INFORMATION APPEAR ON THE ENCLOSURE.

<p>Is this request being made in conjunction with an assessment appeal hearing?</p> <p><input type="checkbox"/> NO</p> <p><input type="checkbox"/> YES If yes, please complete the following:</p> <p>Assessment Appeal Application number(s), if assigned: _____</p> <p>Applicant: _____</p> <p>Hearing date, if scheduled: _____</p> <p>Type of assessment being appealed: _____</p>

Various provisions in the Revenue and Taxation Code grant assessors the authority to obtain information to fulfill their assessment duties. This request for information is made pursuant to the authority granted by Revenue and Taxation Code section 441, subdivision (d), which states:

(1) At any time, as required by the assessor for assessment purposes, every person shall make available for examination information or records regarding their property or any other personal property located on premises they own or control. 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.

(2) (A) Upon written request of an assessor, the assessee or the assessee's designated representative shall transmit the information or records described in paragraph (1) by mail, or in electronic format if the information or records are available in electronic format or have been previously digitized. This paragraph shall not be construed or interpreted to limit the assessor's authority to also examine information or records described in paragraph (1).

(B) Information or records requested pursuant to this paragraph shall be transmitted within a reasonable time period.

(3) (A) This subdivision shall also apply to an owner-builder or an owner-developer of new construction that is sold to a third party, is constructed on behalf of a third party, or is constructed for the purpose of selling that property to a third party.

(B) The owner-builder or owner-developer of new construction described in subparagraph (A), shall, within 45 days of receipt of a written request by the assessor for information or records, provide the assessor with all information and records regarding that property. The information and records provided to the assessor shall include the total consideration provided either by the purchaser or on behalf of the purchaser that was paid or provided either, as part of or outside of the purchase agreement, including, but not limited to, consideration paid or provided for the purchase or acquisition of upgrades, additions, or for any other additional or supplemental work performed or arranged for by the owner-builder or owner-developer on behalf of the purchaser.

Please read the enclosure carefully, as the assessor may also request information authorized under other provisions of law, as set forth in the enclosure. All information requested by the assessor or furnished in the property statement shall be held secret by the assessor pursuant to Revenue and Taxation Code section 451.

If the assessor has checked the box "YES" indicating that this request is being made in conjunction with an assessment appeal hearing, based on the information you provide, the assessor may arrive at a value conclusion that is satisfactory to you. If this occurs, the assessor will make a recommendation to the assessment appeals board that your assessed value be changed to that value. However, if you still do not agree with the recommended value, a hearing will proceed.

If you do not comply with this request, or provide only a portion of the information requested, your hearing may proceed as scheduled or it may be delayed or the assessment appeals board may schedule a prehearing conference to be held in advance of your hearing. If you do not provide the requested information to the assessor before the hearing or the prehearing conference (if scheduled), you will have an opportunity to explain to the assessment appeals board members or hearing officer why you have not complied with the request for information, and they will decide whether to hold the hearing without the information, whether to postpone or continue the hearing in order to give you time to comply with the request, whether to postpone or continue the hearing so that a subpoena can be issued, or whether any other action should be taken by the assessor or by the assessment appeals board.

If you appear at the hearing and introduce any information that had been requested under Revenue and Taxation Code section 441(d) and was not provided to the assessor, the assessor is entitled to a continuance of the hearing to examine the new information.

If you do not comply with this section 441(d) request, you may be asked to appear before the Superior Court. (See Revenue and Taxation Code section 468.) Please also be advised that noncompliance or the making of a false statement with regard to the request may subject you to criminal misdemeanor penalties. (See Revenue and Taxation Code sections 461 and 462.)

For more information about the assessment appeal process, including how to obtain information from the assessor, please see the State Board of Equalization's Assessment Appeals Manual at:

<http://www.boe.ca.gov/proptaxes/asmappeal.htm>