



CALIFORNIA ASSOCIATION OF CLERKS AND ELECTION OFFICIALS

June 5, 2020

The Honorable Antonio Vazquez, Chair
State Board of Equalization
450 N Street
Sacramento, CA 95814

STATE BOARD OF EQUALIZATION



John McKibben Item # M1

Item Name: Impact of Covid-19 on PT Admin.

Meeting Date: 6/09/20 Minutes Exhibit #: 6.2

PUBLIC COMMENT

VIA E-MAIL

Dear Chair Vazquez:

Item M.1. Meeting of June 9, 2020 Impact of COVID-19 on Property Tax Administration – Working Group Report

We members of the California Association of Clerks and Election Officials (CACEO) and our assessment appeals board counsels once again strongly recommend that at your June 9 meeting your Honorable Board approve our recommendation to join us in immediately going to the Governor and urge him to grant county boards the relief from the two-year deadline contained in Revenue and Taxation Code Section 1604, as stated in our proposed Executive Order.

In anticipation of your Board's approval of our recommendation, I have attached a revised version of our proposed Order. The operative portion of this version is identical to the one you have previously seen. However, we have added the customary introductory statements explaining and justifying the need for the Order which precede its operative language.

We hope that this addition will further expedite the remaining steps necessary to accomplish our common goal of ensuring that the county assessment appeal process continues to be able to hold hearings and render decisions on all assessment appeals that accurately reflect evidence presented at their hearings and that are consistent with state law.

We look forward to participating in your June 9 meeting and sincerely hope we can move forward in this effort with no further delays.

The Honorable Antonio Vazquez
June 5, 2020

If you have any questions or matters to discuss prior to the meeting, please do get in touch with me at (213) 200-9610 or at jmckibben@bos.lacounty.gov

Sincerely,

John McKibben, Committee Chair
California Association of Clerks and Election Officials

JM:jm

Attachment (1)

cc: The Honorable Ted Gaines
The Honorable Malia Cohen
The Honorable Mike Schaefer
The Honorable Betty J. Yee
Yvette Stowers, Deputy Controller
Brenda Fleming, Executive Director
Henry Nanjo, Chief Counsel
David Yeung, Deputy Director, Property Tax Department
Dave Titus, First District
Regina Evans, Second District
Kari Hammond, Third District
Gary Gartner, Fourth District
Joe Holland, President, CACEO

California Association of Clerks and Election Officials

Proposed Executive Order

WHEREAS California is facing an unprecedented public health crisis as a result of the novel coronavirus (COVID-19) pandemic; and

WHEREAS county boards of supervisors, sitting as the county board of equalization, and assessment appeals boards created by boards of supervisors for that purpose, are responsible for receiving the assessment appeal applications by which taxpayers challenge their assessed property value and have a constitutional duty to conduct evidentiary hearings and render impartial decisions to establish the correct value for the property under appeal; and

WHEREAS Revenue and Taxation Code 1604 requires that the county boards conduct their hearing and render their decision within two years after an assessment appeal is timely filed; and

WHEREAS If a county board fails to meet that deadline, the taxpayer's opinion of value, as stated on their application for appeal, is placed on the county property tax roll and becomes the basis for calculating the taxes owed on the property for the tax year or years covered by the application; and

WHEREAS the COVID-19 pandemic emergency, since March 2020, has shut down county boards across the State and these county boards have been unable to fulfil their duty of processing assessment appeal applications, conducting evidentiary hearings, and rendering assessment appeal decisions; and

WHEREAS there exists a serious risk that due to the COVID-19 pandemic emergency, the two-year deadline will expire on many assessment appeal applications before the county boards can perform their duty of establishing the correct property value; and

WHEREAS the COVID-19 pandemic social distancing orders and requirements are likely to continue preventing assessment appeals boards from holding assessment appeal hearings for an unknown period of time, placing further cases at risk of not being heard before expiration of the two-year deadline; and

WHEREAS once county boards are able to resume hearings, the ability of the county boards to hear all pending cases before expiration of the two-year statute will be further negatively impacted by the need to clear the backlog of cases that have not been heard since March due to the COVID-19 pandemic; and

WHEREAS social distancing orders and requirements will continue to negatively impact the ability of county boards to work their way expeditiously through the pending assessment appeal applications; and

WHEREAS it is anticipated that extremely large numbers of assessment appeal applications filed due to the COVID-19 pandemic may overwhelm county boards, putting still further assessment appeal applications at risk of not being heard before expiration of the two-year deadline; and

WHEREAS the COVID-19 pandemic emergency has thus placed myriad assessment appeals at risk of not being heard by County Boards before expiration of the two-year deadline, which would result in statewide large scale loss of property tax revenue by default without the constitutionally empowered county boards making impartial decisions at an evidentiary hearing in which the taxpayer and assessor have participated as equals; and

WHEREAS this situation will impact total state and local government revenues through immediately impending losses of the vital tax revenues that fund the very public services upon which taxpayers rely such as schools, healthcare, police, fire and other important public services.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567 and 8571, do hereby issue the following order to become effective immediately:

IT IS HEREBY ORDERED THAT:

1. Notwithstanding Revenue and Taxation Code Section 1604, the two-year deadline by which a County Board must render a decision in an assessment appeal shall be extended and tolled for the duration of the COVID-19 emergency, as defined by state or county declarations of emergency, whichever is of longer duration, plus 120 days after the termination of the emergency to allow County Boards to resume normal operations, provide taxpayers and assessors time to prepare for resumed hearing schedules, and to reduce the backlog of appeals to a manageable level.

IT IS FURTHER ORDERED that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforcement at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this __ day of _____ 2020.

GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State

6/3/20



CALIFORNIA ASSOCIATION OF CLERKS AND ELECTION OFFICIALS

May 12, 2020

The Honorable Antonio Vazquez, Chair
State Board of Equalization
450 N Street
Sacramento, CA 95814

VIA E-MAIL

Dear Chairman Vazquez:

Item M.1. Meeting of May 13, 2020 COVID-19 Property Tax Task Force Report

The members of the California Association of Clerks and Election Officials (CACEO) and their Assessment Appeals Board Counsels appreciate the opportunity to review and respond to your Board's COVID-19 Task Force Report, which we received Friday evening. We want to take this opportunity to critique the Options set forth in the report and to restate many of the points and suggestions we previously made at your Board's last meeting and at the Task Force and subgroup meetings, which seem to have been overlooked or rejected.

Working Group Team 2: Assessment Appeals Relief

Issue I: Extending and Tolling the 2-Year Deadline

First, I would like to point out some factual errors in the Team 2 Subgroup Report that are worth mentioning. In the Arguments in favor of extending the 2-year statute of limitations on County Boards, it was stated that in the six participating counties the counties were at risk of losing \$442.66 billion in property tax revenue if pending cases were not decided within the 2-year period. This is not correct. Our data reported that that figure was the amount of roll value at risk. Actual property tax revenue loss, then, would be roughly \$4.427 billion, still, a considerable sum. However, we do not want your Board or the public at large to think we were exaggerating the financial impact of the 2-year deadline running out in the second half of 2020.

The report either misconstrued or incorrectly attributed a statement by one of our AAB counsels as being in opposition to our proposal to temporarily extend and toll the 2-year period. I believe he will be submitting a letter to your Board correcting that error and reinforcing our collective recommendations for BOE action.

Other errors in interpretation of law will be addressed in separate letters from our County Counsel colleagues.

Members of our group were extremely disappointed that our primary recommendation for BOE action was not among the four Options for Board consideration in the section of the report dealing with the 2-year statute (Issue I, Team 2). You will recall we strongly urged your Board to join with counties to obtain an Executive Order from the Governor to temporarily extend and toll the 2-year statute for the duration of the state or county emergency, whichever is longer, plus 120 days to fully resume operations and allow time to reschedule postponed and canceled hearings, which mirrors language in your own Property Tax Rule 323. With regard to the four Options laid out in the report, we have the following comments and recommendations:

Option 1: Issue an LTA extending (and tolling) 2-year deadline for AABs by 40 days under Section 155.

This one-time action accomplishes virtually nothing to address the problems County Boards will be facing. An extension and tolling period of 40 days does not begin to cover the full period during which County Boards will be closed for the emergency and it does not even cover the notice of hearing period of 45 days.

We make no recommendation beyond simply pointing that it accomplishes little or nothing.

Option 2: Issue an LTA encouraging AABs to request taxpayers to submit waivers due to COVID-19 with a time certain beyond 40 days for a hearing.

Many of us are already contacting some applicants asking for waivers, so there is no need for an LTA. However, we find the reference to a time-limited waiver particularly repugnant, as we indicated in our testimony and in our earlier letter to your Board. There is no need for establishing a jungle of time-limited waivers that would be virtually impossible to administer in many counties. Further, as we have pointed out before, taxpayers may revoke their waivers at any time, pursuant to your Board's own Rule 323.

We recommend against adopting Option 2.

Option 3: Request an Executive Order for AABs to selectively postpone taxpayer appeals beyond 2 years.

We do not understand the meaning of "selectively". We assume that "postpone" means "extend and toll", but that is not exactly clear either. Regardless of the meaning of "selectively", we object to some sort of limited extending and tolling of the statute. Temporary relief from the 2-year statute must be across the board to make it manageable for clerks and County boards to provide taxpayers and assessors with an orderly process.

We recommend revising this Option to include, exactly, the language we have earlier proposed to your Board and which is repeated on the last page of this letter.

Option 4: Do nothing; maintain the status quo.

Given that the other Options presented in your Board's report, and absent revising Option 3 as we recommend, this would be the best option, which will allow county folk go back to the Governor, as well as the Legislature, to obtain meaningful relief.

Issue II: Extend the Deadline for Filing Appeals of Supplemental and Escape Assessments under RTC 1605

Option 1: Issue an LTA extending the 60-day deadline for taxpayers to file appeals by 40 days per Section 155.

This and other Options under this subject are solutions in search of a problem. Such relief is unnecessary. As has been explained before, in counties where the filing period for appeals of supplemental and escape assessments is triggered by the mailing of the notice of reassessment, taxpayers who are, for whatever reason, unable to get their mail and do not timely receive the notice of reassessment may file an appeal within 60 days after mailing of the resulting tax bill some months later, along with an affidavit, signed under penalty of perjury, that they did not timely receive the notice. To change the filing period would mainly cause nothing more than confusion and create costs for counties, especially for those counties where the notice of reassessment forms have already been printed with now out of date filing information.

We recommend that your Board reject this Option.

Option 2: Issue an LTA encouraging AABs to notify taxpayers unable to file in 60 days that they may file late with an affidavit declaring that the notice of assessment was not received timely.

There is no need for such an LTA, since clerks and AABs will send a taxpayer a notice that their appeal is not timely. We can, and I think most or all of us do, include information informing late filers how they can remedy the problem. That is, we notify them that if they were untimely in filing an appeal of an escape or supplemental assessment, they may file the necessary affidavit, signed under penalty of perjury, provided that the application is perfected within 60 days of the mailing of the resultant tax bill.

Option 3: Issue an LTA encouraging AABs to allow a “safe harbor” period for taxpayers to late file appeals and provide an affidavit for them to attach.

Adequate relief already exists, as noted above. Upon notifying the late-filing taxpayer, we can include an affidavit form.

We recommend that your Board reject this recommendation, with the exception of the creation of an affidavit form, if you believe it would be useful to do so.

Option 4: Do nothing, maintain the status quo.

We agree that this could be the best option, although also creating a standard affidavit form might help some taxpayers.

Other CACEO Recommendations

We yet again strongly urge your Board to act without delay and join together with us to ask Governor Newsom to either grant the temporary relief, as written below, or at minimum, to ask the Governor to delegate the necessary authority to your Board to issue the same relief. We request the following relief:

Notwithstanding Revenue and Taxation Code Section 1604, the two-year deadline by which a County Board must render a decision in an assessment appeal shall be

extended and tolled for the duration of the COVID-19 emergency, as defined by state or county declarations of emergency, whichever is of longer duration, plus 120 days after the termination of the emergency to allow County Boards to resume normal operations, provide taxpayers and assessors time to prepare for resumed hearing schedules, and to reduce the backlog of appeals to a manageable level.

We must also again point out that we are not asking for an indefinite, open-ended relief from RTC 1604(c), as it was implied by our CATA colleagues. We are asking that the deadline be extended and tolled for a finite period of time. We very strongly recommend that your Board NOT take any action to create time-limited waivers. The waiver is, and has always been, within the taxpayer's ability to control by simply revoking the waiver upon written notice within the timeframes outlined in Property Tax Rule 323.

We also strongly recommend that, before you act, your Board further consult with your Chief Counsel and staff and staff of the Property Tax Department to provide you with additional input with respect to the options discussed in your report.

Sincerely,

John McKibben, Committee Chair
California Association of Clerks and Election Officials

cc: The Honorable Ted Gaines
The Honorable Malia Cohen
The Honorable Mike Schaefer
The Honorable Betty T. Yee, State Controller
Yvette Stowers, Deputy Controller
Brenda Fleming, Executive Director
Henry Nanjo, Chief Counsel
David Yeung, Deputy Director, Property Tax Dept.
Dave Titus, First District
Regina Evans, Second District
Kari Hammond, Third District
Gary Gartner, Fourth District

CALIFORNIA ASSOCIATION OF CLERKS AND ELECTION OFFICIALS
PROPOSED EXECUTIVE ORDER RE: TWO-YEAR ASSESSMENT APPEAL
BOARD DECISION DEADLINE

Notwithstanding Revenue and Taxation Code Section 1604, the two-year deadline by which a County Board must render a decision in an assessment appeal shall be extended and tolled for the duration of the COVID-19 emergency, as defined by state or county declarations of emergency, whichever is of longer duration, plus 120 days after the termination of the emergency to allow County Boards to resume normal operations, provide taxpayers and assessors time to prepare for resumed hearing schedules, and to reduce the backlog of appeals to a manageable level.