

LOS ANGELES COUNTY AAB COMMENTS FOR STATE BOARD OF EQUALIZATION MEETINGS (23-24 Sept. 2020), ITEM AA (Thomas R. Parker, Deputy County Counsel)

(a) Clarification on the Rights of the Hearing Participants

-Right to Type of Hearing

- 1) AAB (term includes local BOEs where applicable) should have the administrative option to choose in-person or remote hearing for an appeal, based on needs and circumstances of the AAB at that time, not only in times of emergency.
- 2) The same above should apply for both procedural/administrative matters and evidentiary matters.
- 3) Non-evidentiary ("administrative") hearings should be allowed by telephonic or other non-visual electronic means and not be required to meet full evidentiary remote hearing requirements. Administrative hearings would include the reading in of AAB findings of fact, approval of stipulations, status conferences, withdrawals of appeals, and approval of recommended values agreed upon by all parties.

-Short Term or Long-Term Option

- 1) Should be a long-term option for holding AAB hearings.
- 2) Governor Newsom and the Legislature have made it clear that AABs and local government commissions/bodies generally must be able and prepared to use 21st century technology to hold hearings and meetings, not just when emergencies arise.
- 3) AABs should not be mandated to use a remote hearing process, they should be allowed to use remote hearings as a standing option that meets the needs and circumstances of the local AAB as well as available resources for such a process.
- 4) SBE regulations/guidelines on remote hearing processes should allow for a reasonable degree of local AAB rule flexibility that reflects the needs and circumstances of the local AAB, not an attempt at comprehensive and rigid regulation under the rubric of "statewide consistency". "One size fits all" is not the best regulatory policy for all 58 counties that range from the size of Alpine County to that of Los Angeles County and all counties in between.
- 5) Generic language of Government Code section 15606(e) has never used by the SBE to strictly regulate what AABs may and may not do, more to give uniform guidance on macro-level procedural requirements.
- 6) August 2020 and prior testimony before the SBE demonstrates that strict literal regulatory "uniformity" does not serve the public's interest in all counties.

-Equal Access in Remote Hearings

- 1) Equal access is already part of the current Rule 302(a)(1) language regarding due process and meaningful access for any hearing of an AAB.
- 2) Due process is a flexible constitutional requirement that can vary in terms of hearing details, depending on the nature of the hearing and the issue being determined.
- 3) AABs are quasi-judicial administrative hearings without the use of technical rules of evidence used by trial courts.
- 4) Parties, witnesses and AAB Panels must be able to hear each other and see all documents.
- 5) AAB Panel members must be able to ask questions of the parties during the hearing in real time (see Rules 313(b), 316(a), Rev. & Tax. Code Section 1607).

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6) Parties must be able to present evidence (written and oral) as well as direct and cross-examination of witnesses and documents in real time (see Rules 302(a)(1), 313(e), and Rev. & Tax. Code Sections 1609 and 1610.2).

7) The public must be able to observe the remote hearings as a matter of statute (see Rev. & Tax. Code Section 1605.4).

-In-Person Hearing Safety Standards, Continuances, Other Options If Remote Hearings are not Possible or Refused

1) Any in-person hearing must meet the applicable Public Health standards and orders in effect at the time of the hearing as well as the normal non-emergency procedural rules long in force.

2) The continuance and postponement guidance currently in place in Rule 323 adequately addresses the use of such delays where remote hearings are used by an AAB.

3) An AAB should be able to order remote hearings if they are administratively needed for scheduling purposes and no Applicant should be allowed to refuse merely because they do not like or prefer in-person hearings to remote hearings.

4) If the SBE decides to require Applicant consent to the use of remote hearings, the SBE rules should require the Applicant to execute a time waiver of the Rev. & Tax. Code Section 1604(c) two-year hearing time period where there is no time waiver currently in place and in force.

5) If the Applicant and/or the tax agent/counsel cannot participate in remote hearings for reasons such a lack of computer equipment, broadband capability in the area, or the lack of a county facility that would provide such a capability to the Applicant and/or tax agent/counsel, the Applicant must execute a time waiver to allow scheduling of an in-person hearing.

(d) BOE Role

1) SBE should not seek to over-regulate remote hearings just as in-person hearings are not over-regulated. Allow local AABs reasonable flexibility to tailor how remote hearings are done in their jurisdiction. Kings County does not equal Los Angeles County. The sheer volume of appeals filed in Los Angeles County alone requires a degree of local AAB rule flexibility not needed in counties with lesser appeal workloads.

2) The likelihood of tax agents and counsel practicing in all or nearly all 58 counties is not great. By analogy, there are 58 local Superior Court rules in the state. Attorneys who practice in multiple counties manage to be aware of and follow the local rules of each court. Tax agents can do the same and, as professionals, should be prepared to do so.

3) The following rules that could be amended at a suitable point in time include Rules 309 (authorizing remote hearings, exceptions to remote hearing scheduling, time waivers, and document submission requirements) and 305.1 (discussing when documents exchanged pursuant to Rev. & Tax. Code Section 1606 and this rule shall be electronically submitted to the Board Clerk).