

CALIFORNIA ASSOCIATION OF CLERKS AND ELECTION OFFICIALS



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STATE BOARD OF EQUALIZATION

John McKibben Item # AA1

Item Name: AAB Remote Hearings

Meeting Date: 11/18/20 Minutes Exhibit # 11.9

PUBLIC COMMENT

November 16, 2020

The Honorable Antonio Vazquez
Chairman, Board of Equalization
450 N Street, MIC: 72
Sacramento, CA 95814

VIA E-MAIL

RE: Item AA. 1. COVID-19 County Boards of Equalization / Assessment Appeals Boards Collaborative Workgroup: Consensus Guidance / Letters to Assessors - AAB Remote Hearings: Non-consensus Items

Dear Chairman Vazquez:

The California Association of Clerks and Election Officials (CACEO) respectfully provides the following comments and positions on the Non-Consensus and "New Sub-Issues" items presented in your letters of October 9, 2020 and November 3, 2020 with regard to remote hearing guidelines for county boards of equalization and assessment appeals boards (AABs).

General CACEO Position:

A reasonable degree of procedural flexibility at the local AAB level is appropriate. Different AABs use different platforms and have different workloads, staffing levels, and other resources which necessitate some operational variances from county to county.

Non-consensus Items

Issues b.1 and 2 -- Protocols for submission of evidence to the clerk of the county board and for entering electronic evidence at a hearing:

It is most appropriate and practical to allow each County to choose the remote hearing document submission time-period that works for its AAB hearings, based on local conditions. If the State Board recommends or requires a range of time periods, those time periods should be expressed in "business day" terms.

We concur that parties should also be allowed to submit day-of-the-hearing electronic submissions in remote hearings for rebuttal evidence, impeachment evidence, and correcting errors as appropriate. However, we do not agree with the final sentence in your November 3 discussion of Sub-item b. 2. That language comes from Revenue and Taxation Code 1606 and Property Tax Rule 305.1 regarding hearings conducted following a formal section 1606 exchange of information and provides for a continuance when new information is first introduced at the hearing that was not exchanged during the pre-hearing formal exchange of information between the parties. It is neither necessary nor appropriate to include such language in guidance for the general conduct of remote hearings where no section 1606 formal exchange between the parties preceded the hearing. The inclusion of such language would inappropriately create a remote hearing that operates under different rules than the rules that govern in-person hearings.

CATA has requested that electronic submission and sharing among the parties and AAB members of evidence must ensure that "confidential information and documents" be protected from improper disclosure. We agree that must be done to comply with existing statute and with the Property Tax Rules but ask that remote hearing guidelines use the terminology of existing law, i.e., "trade secret", not "confidential information or "confidential documents." We recognize that this also relates to CATA's statements with regard to consensus item Issue c. 2.

Further, CACEO requests the State Board to additionally provide guidance clarifying that applicants cannot use Revenue and Taxation Code section 408 to obtain, prior to the hearing, documents prepared by the assessor that are submitted to the AAB clerk prior to the hearing in order to facilitate a remote hearing. Allowing applicants to use RTC 408 to obtain such documents would give applicants an unfair advantage and thereby violate the assessor's due process rights. The early preparation and submission of documents to the clerk is necessary to technologically facilitate conducting remote hearings; therefore, it must be clear that neither the applicant nor the assessor is entitled to an advance viewing of the documents submitted to the clerk. Due process requires that AAB hearings be fair and impartial, and that neither side be provided an unfair advantage. Only in such an environment can the AAB properly carry out the quasi-judicial constitutional hearing body function assigned to AABs by law.

As a quasi-judicial constitutional hearing body, AABs provide due process at all hearings, regardless of whether those hearings are conducted in person or remotely. AB 107 amended Revenue and Taxation Code section 1616 to clarify that AAB hearings include remote hearings and Property Tax Rule 302 memorializes that the AAB must provide due process to all parties. We believe that no further guidelines on this issue are needed.

As part of that obligation, AABs and their clerks will, of course, ensure that remote hearings are conducted in a way that provides due process and will continue hearings that experience technological or other difficulties that cannot be promptly resolved and would otherwise mar the hearing process.

However, the CACEO opposes any proposal to require that the AAB clerk begin remote hearings by reading a statement to the effect that a party, if it thinks it is being denied due process, may at any time request a continuance until an in-person hearing is available or until such time as the remote hearing issue is resolved. Such a statement would erroneously imply that remote hearings are different than and lesser to other AAB hearings such that they require additional formal AAB clerk announcements to the parties about providing due process.

Issue b. 3 – Required platform for document submissions and required format for documents (Word, pdf, Excel, etc.)

We propose that a guideline on this issue state that pdf is recommended but that other platforms may be acceptable in situation where a party did not have the capability of submitting evidence in pdf. Some taxpayers may not be able to, say, scan a photograph and convert it to pdf. As long as the clerk has the wherewithal to accept and distribute the electronic evidence in a readable format, evidence in different platforms would be acceptable. However, it should be noted that conversion may involve extra steps and, therefore, extra time on the part of the clerk.

Issue b.4 – Ensuring parties can view all documents:

The CACEO agrees with CATA on the need for the parties and AAB members to be able to view all submitted documents during hearings. There is no consensus, as was made evident in the September and October 2020 State Board meetings, on the "necessity for simultaneous viewing of witnesses." The CACEO takes no official position on the latter part of Issue b.4, other than to restate our general position that flexibility should be permitted individual counties based on local needs, resources, and other local circumstances. Documents that are confidential under state law and State Board regulations ("trade secrets") should be protected from disclosure, as stated above.

Issue c.4 – Investment in remote hearing capability:

The issue of "investment" in remote hearing capability and "efficiencies realized long term" involves useful goals for each county and its AAB system to be aware of and to address in its own particular fashion as a part of the county budget process. The CACEO does not have a role to play in county budget priority decisions. This issue is best reserved to county boards of supervisors, the bodies best able to make appropriate decisions for their respective counties.

New Sub-Issues to Address:

1. Develop efficiencies around scheduling and scheduling mechanisms

This sub-issue is best left to each local AAB to determine, based on its resources, workloads, and needs. As previously noted in developing the consensus statements for the State Board Letter to Assessors, the State Board can serve as a clearing house for possible ways of handling procedural aspects of appeals. Ultimately, the county AAB must be allowed to control its own calendar.

2. Establish a meet and confer process

CATA suggests the development of a "meet and confer" process for AAB appeals. As utilized in Superior Court litigation, meet and confer sessions can discuss procedural issues or substantive issues placed before the court of law, potentially resulting in an agreed upon settlement of the dispute in the best of worlds. CACEO notes that assessors and applicants are able, if they wish to do so, to meet on their own and discuss pending appeals and the issues (procedural and substantive) involved. Tentative settlements and stipulations can result from such meetings, which can then be put before the AAB at a formal valuation hearing.

AAB clerks, generally speaking, encourage applicants and the assessor's office to communicate with each other in advance of their AAB hearing and to work cooperatively and informally together to define and narrow the scope of issues and to informally resolve appeals. However, AABs should not be involved in a meet and confer process between applicants and assessors. Such meetings, if they involve AAB members, incur the risk of the AAB members hearing substantive valuation evidence of one or both parties *before* a formal valuation hearing has begun and forming impressions that could improperly prejudice their decision-making in advance of the hearing. AAB members are required to be impartial tax "judges" who cannot see or hear the parties' evidence until a hearing commences.

3. Prehearing Conferences

Property Tax Rule 305.2 already provides that county boards of supervisors can, if they wish to do so, establish prehearing conferences that can be set at the request of the applicant, at the request of the assessor, or at the direction of the AAB. The existing State Board rule already incorporates flexibility in the use of such conferences at the local level. Rule 305.2 provides that, inter alia, prehearing conferences can be used to clarify and define the issues, determine the status of information exchanges and information requests, stipulate to matters on which agreement has been reached, consolidate multiple-applications for a single hearing, bifurcate hearing issues, and schedule mutually convenient hearing dates.

Some counties use prehearing conferences as a regular and mandatory step in the AAB hearing process while others provide for prehearing conferences on an as-needed basis.

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CACEO urges the State Board to continue to allow each county to decide on its own whether their AAB will conduct prehearing conferences and establish their own local rules governing prehearing conferences in accordance with that county's needs. Additional State Board guidance is not needed.

CACEO members appreciate this opportunity to provide your Board with their recommendations with regard to guidelines for county remote assessment appeal hearings. We look forward to actively participating in your November 18 meeting on the subject.

Sincerely,



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