



November 24, 2020

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

RE: December 2020 BOE Meeting—Recommended Agenda Items for the COVID-19
County Boards of Equalization / Assessment Appeals Boards Collaborative
Workgroup: Consensus Guidance / Letters to Assessor

Dear Chairman Vazquez:

I am writing to you on behalf of California Alliance of Taxpayer Advocates (“CATA”) to request that the items described below be added to the December BOE meeting for discussion among the workgroup. First, we provide two non-consensus items related to remote hearings. While no consensus has yet been reached on these items, we believe consensus may still be possible. Second, we provide additional detail regarding our suggested creation of a meet-and-confer like procedure, as well as our recommended use of prehearing conferences.

CATA’S SUGGESTIONS FOR NON-CONSENSUS ITEMS BY ISSUE AND SUB-ISSUE TO BE ADDED TO THE BOE’S DECEMBER MEETING.

Please note that in an effort to facilitate consensus, we have removed or modified most of the items from the list previously included in our November 16, 2020 letter.

Issue b. Appropriate Methods for Dealing with Document Submission

Sub-issue 4. Ensuring parties and AAB members can view all documents during hearings; necessity for simultaneous viewing.

- It is essential that participants have the ability to view the testifying witness, all board members, and the evidence being presented. Unless freely agreed otherwise by the parties and the board members (e.g., for routine, non-evidentiary matters), the testifying witness and all board members must appear by video throughout the active portions of the hearing.

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Issue c. Technology Options

Sub-issue 4. Notice requirements to parties – access instructions, coaching/training videos and accommodations for special needs.

- In LTA 2020/057 dated November 18, 2020, the BOE provided the following guidance: “If a remote hearing is scheduled, appeals boards must provide notices to all parties informing them of remote hearing access instructions, coaching and/or training videos, staff availability, and accommodations for special needs.” Such notice should be provided as early as possible to the participants and no later than the notice required under Property Tax Rule 307.

SUGGESTED LONG-TERM SOLUTIONS TO INCREASE EFFICIENCIES AT THE ASSESSMENT APPEALS BOARDS.

The local assessment appeals boards in many counties are significantly backlogged, causing assessment appeal hearings in some counties to be delayed for years. Delays have significantly increased as a result of the COVID-19 pandemic. The Legislature responded to the severity of these delays by passing AB 107 to extend the two-year deadline by which assessment appeals boards must render a final determination on certain assessment appeal applications to March 31, 2021. AB 107 is designed as a stopgap measure to provide short-term relief; however, extension of the two-year deadline is not a long-term solution to the delays that existed in many counties well before the pandemic hit and will persist once it has passed. Undoubtedly, the problem will be heightened by the volume of Proposition 8 “decline in value” assessment appeal applications that are anticipated for the upcoming 2021-22 tax year.

The problem of assessment appeal delays must be addressed head on through long-term solutions aimed at increasing the efficiency of the assessment appeals process. Two key inefficiencies should be addressed—(1) scheduling and (2) prehearing resolutions.

Currently, in most counties, applicants do not have any input into when their applications are scheduled for hearing. This results in seriatim postponement requests, as inevitably one of the parties or witnesses is unavailable on the designated hearing date. Oftentimes hearings that require multiple days to complete are scheduled initially for a single day, causing hearings to drag out for months, years in some cases, as the parties struggle to coordinate their calendars one hearing day at time. This is not an efficient use of the assessment appeals boards’ resources.

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Additionally, the current approach to prehearing resolutions must be streamlined. The vast majority of applications are resolved amicably through stipulations, value recommendations, or withdrawals. However, in most cases, the parties do not significantly engage with one another until the case has been set for hearing. This prolongs resolution and adds to the backlog of assessment appeals.

To address these inefficiencies, CATA recommends that the BOE create a meet-and-confer like procedure that can be used by counties to facilitate functional scheduling and prehearing resolutions. The procedure should encourage the parties to meet in private (outside of the presence of the assessment appeals board clerk or the assessment appeals board members) well in advance of the case being scheduled for hearing to discuss the topics outlined in Property Tax Rule 305.2(a) (Prehearing Conferences). These topics include the following:

- clarifying and defining the issues;
- determining the status of exchange of information requests and requests for information;
- stipulating to matters on which agreement has been reached;
- combining applications into a single hearing;
- bifurcating the hearing issues; and
- scheduling a date for a hearing officer or the board to consider evidence on the merits of the application.

To maximize the benefits of this new procedure, the BOE should create a sample form for the parties to submit to the assessment appeals board clerk to report the outcome of the meet and confer meeting. The form should cover items such as the following:

- date of the meeting;
- whether a resolution was reached;
- high-level statement of any procedural issues that need to be addressed by the assessment appeals board before hearing, including issues related to bifurcation, sufficiency of any informal or formal exchanges of information, the burden of proof, or other legal issues;
- high-level statement of the substantive issues that remain for hearing;
- stipulation of agreed upon facts and/or issues;
- estimated number of days needed for hearing;
- whether consecutive hearing dates are needed; and
- dates all parties and witnesses are available for hearing or alternatively, unavailable for hearing.

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This recommended procedure is intended to mirror the meet and confer process and case management statements used in civil litigation as a means to manage scheduling and narrow the number of cases and issues to be tried by the court. Encouraging, but not requiring, counties to implement these proven procedures into the assessment appeals process will be mutually beneficial to all parties involved and will help alleviate the growing backlog of assessment appeals. We believe that the efficiencies gained by implementing a meet-and-confer like procedure would far outweigh the additional time needed to process the related paperwork. Indeed, this procedure achieves many of the same benefits as a prehearing conference but does not require the clerk to spend time scheduling a prehearing and also frees up additional space on the assessment appeals board agenda for substantive matters.

As a compliment to this new procedure, we request that the BOE remind counties of the benefits of prehearing conferences and encourage counties to utilize them as appropriate.

We appreciate the opportunity to provide input and the BOE's continued leadership on these important topics.

Sincerely,



Breann E. Robowski
Chair, CATA Ad Hoc Committee on Remote Hearings

cc: Honorable Malia Cohen, Member
Honorable Ted Gaines, Member
Honorable Michael Schaefer, Member
Honorable Betty T. Yee, State Controller
c/o Deputy Controller Yvette Stowers
Henry Nanjo, Acting Chief Board Proceedings
California Assessors' Association
c/o President Don Gaekle, Stanislaus County Assessor
California Association of Clerks and Election Officials
c/o Committee Chair John McKibben
CATA Board of Directors