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No. 2022/XXX

January XX, 2022

TO CLERKS OF THE BOARD, COUNTY ASSESSORS  
AND INTERESTED PARTIES:

## **Draft**

[This draft displays, in context, the language on which there was consensus to delete (shown in ~~strikeout~~) and add (underlined), and the language which staff was asked to draft (*italicized*) at the last meeting of the Workgroup. Language not marked in any of these ways is language that is unchanged from LTA 2021/002.]

### **ASSESSMENT APPEALS BOARDS REMOTE HEARINGS DURING THE COVID-19 PANDEMIC**

**Note: This letter supersedes LTA Nos. 2020/057, dated November 18, 2020, 2020/063, dated December 16, 2020, and 2021/002 dated, January 13, 2021.**

Following COVID-19 "shelter-in-place" orders, the State Board of Equalization (Board) led the formation of the BOE COVID-19 County Boards of Equalization/Assessment Appeals Boards Collaborative Workgroup. The workgroup is comprised of experts representing taxpayers, County Assessors, clerks of assessment appeals boards, and county counsels. The purpose of the workgroup is to examine and report on the most pressing local assessment issues arising from the COVID-19 pandemic.

One such issue was the need for further guidance pertaining to both the conduct of and the increased use of remote hearings by local assessment appeals boards or local boards of equalization (appeals boards). The guidance in this letter follows meetings of the workgroup on August 18 and 19, 2020; September 23, 2020; and discussions at the Board Meetings on October 21 and November 18, 2020; and is to be read consistently with existing statutes, Property Tax Rules, and the Board's Assessment Appeals Manual. This Letter To Assessors (LTA) provides general principles guiding appeals boards when holding remote hearings. The Board will consider issuing additional guidance that applies to remote hearings as other unresolved or new issues are addressed in the future.

In providing this guidance, as well as future guidance, the Board considers its duty to balance statewide uniformity against the need for county flexibility to hold hearings according to different local needs. The Board recognizes that existing rules governing hearing procedures continue to apply to hearings conducted remotely, and that the conduct of remote hearings should, to the extent possible, mirror the conduct of in-person hearings.

Item M2a  
01/26/22

### **Authority to Conduct Remote Hearings**

Section 18 of article XIII of the California Constitution and Government Code section 15606, subdivision (c), authorize the Board to provide guidance to appeals boards when holding hearings to equalize the value of property on the local roll, as required under section 16 of article XIII of the California Constitution.

Current statutes and regulations set forth rules and procedures an appeals board must follow when holding hearings. No statute may be construed as prohibiting an appeals board from holding hearings remotely. (See Revenue and Taxation Code, §§1616 and 1752.4.) Therefore, appeals boards have the administrative authority and option to provide either in-person hearings or remote hearings, or both. Both in-person and remote hearings must adhere to all state and local public health and safety standards.

### **Rights of Hearing Participants**

In the conduct of remote hearings, it is of paramount importance that, as required by Property Tax Rule (Rule) 302, subdivision (a)(1), the appeals board "ensures that all applicants are afforded due process and given the opportunity for a timely and meaningful hearing." As an initial matter, this includes a taxpayer's right to meet either remotely or in-person. Participants may, as a general matter, reject a remote hearing and receive a postponement until an in-person hearing is available, or may reject an in-person hearing and receive a postponement until a remote hearing is scheduled, provided that the local appeals board offers remote hearings. Therefore, if an appeals board does not or cannot schedule a remote or in-person hearing as ~~desired~~ requested by the participant, the participant may avail themselves of postponement of the hearing in accordance with Rule 323, provided that the applicant signs a written agreement to extend and toll indefinitely the two-year limitation period provided in Revenue and Taxation Code (RTC) section 1604 subject to termination of the agreement by 120 days written notice by the applicant. ~~In this regard, public health impacts resulting from the pandemic constitute reasonable cause for a postponement under Rule 323.~~

*The appeals board may also grant a "good cause" postponement for health concerns stemming from the COVID-19 pandemic if the applicant provides a written agreement to extend and toll indefinitely the two-year limitation period provided in RTC section 1604, subject to termination by 120 days written notice by the applicant. Any postponement request which does not procedurally comply with Rule 323 (both "of right" and discretionary) need not be granted by the appeals board.*

Any applicant-disclosed medical information voluntarily provided to the appeals board must be treated and maintained appropriately as required by the Health Insurance Portability and Accountability Act (HIPAA) and other relevant statutes and regulations.

### **Technology**

Appeals boards may select the best platform based on their needs, priorities, security, and ease for the user. With the use of any remote hearing platform, however, technological issues may occur. Appeals boards should have a plan to deal with interruptions caused by technological issues.

Appeals board clerks should monitor and inform participants of any interruptions; the appeals board chair should call a recess until the problem is resolved.

If it cannot be resolved, the parties may stipulate to continuing or recessing the hearing, and the appeals board may decide whether to accept the stipulation, recess, or continue the hearing in accordance with Rule 323. Furthermore, training for appeals board staff, appeals board members, and all participants is essential and should occur on a regular basis and be instituted as a core part of a county's remote hearing program.

### **Document Submission**

~~Counties~~ Appeals boards may require the electronic submission of evidence up to three business days before the commencement of a remote hearing but are encouraged to require only two business days. ~~Counties~~ Appeals boards may require evidence submitted by hard copy to be submitted up to seven business days before the commencement of a remote hearing but are encouraged to allow exceptions, as appropriate.

In compliance with Rule 313 and as required for in-person hearings, evidence submitted by a party prior to the commencement of a remote hearing must not be made accessible to the other party until the hearing commences and the subject evidence has been introduced.

In further compliance with Rule 313, counties shall allow day-of-the-hearing electronic submissions in remote hearings for all rebuttal evidence and documents for witness impeachment, and for correcting errors as appropriate. PDF documents are preferred in order to protect document integrity, but other forms may be accepted by the appeals board clerks, as appropriate.

All parties must be able to present evidence (written and oral), as well as direct and cross examination of witnesses and documents in real time at remote hearings per Rules 302(a)(1) and 313(e), and Revenue and Taxation Code (RTC) sections 1609 and 1610.2. Unless freely agreed otherwise by the parties, all appeals board members and the parties must also be able to view all documents that have been introduced into evidence and hear all parties in real time in order for the board to render its decision only on the basis of proper evidence presented at the hearing in compliance with Rule 302. Once introduced, the appeals board members and the parties must have the ability to view and download the full exhibit at their discretion independent from the controlled screen display shown during the remote hearing. Additionally, the public must be able to hear the remote hearing, as required by RTC section 1605.4.

Technological platforms for remote hearings should have the ability for evidence to be viewed in real-time and the ability to prevent trade secrets from being viewed by the public. In the event of a connectivity problem, the absence of an available IT resource, or other challenge, the appeals board has legal authority to grant a continuance as it deems appropriate.

### **Technological Efficiencies**

Counties already conducting remote hearings are encouraged to continue to protect their investment, perfect their system, troubleshoot issues, and train staff. Counties not yet conducting remote hearings have flexibility to continue to conduct in-person hearings, subject to their

respective health and safety protocols, and may develop future long-term contingency plans for efficiently utilizing technology to conduct remote hearings, as appropriate. The greatest efficiencies of long-term utilization may be realized for procedural matters (postponement requests, reading in stipulations/recommendations, prehearing conferences, etc.) and for low-value property hearings with few documents. Contingency plans suggested for enhancing efficiencies in counties utilizing remote hearings may include, but are not limited to:

- Establish recessing procedures to troubleshoot issues.
- Provide IT assistance prior to and during the hearings.
- Provide contact information (phone numbers) to contact parties and appeals board members in the event of technical difficulties.
- Establish continuance procedures in the event that a technological problem cannot be resolved.

Additionally, appeals boards should not deny a timely request for reinstatement if the assessment appeal application was denied due to a party's technical difficulties.

### **Scheduling Efficiencies and Notices**

Consistent with the Board's recognition that remote hearing procedures should mirror in-person hearing procedures to the extent possible, if a remote hearing is scheduled, the clerk must provide notices to all parties that (1) inform them that the hearing will be conducted remotely, (2) include instructions for accessing the remote hearing, and (3) provide information about coaching or training videos, staff consultation, and special needs accommodations, where available. In accordance with Rule 307, the notices shall be given no less than 45 days prior to the hearing unless a shorter notice period has been stipulated to by the Assessor and the applicant or the applicant's agent.<sup>1</sup>

Counties are encouraged to develop written protocols and procedures to govern remote hearings. These protocols and procedures should mirror in-person hearings to the extent possible and must comply with all existing laws and regulations. Such written protocols and procedures should be made publicly available and to the extent possible, should be conspicuously posted on the appropriate webpage of the local clerk of the board, assessment appeals board, and/or board of supervisors.

### **Withdrawal of Application**

Generally, an applicant can withdraw an application at any time prior to a hearing, including a remote hearing. In some counties, however, if the Assessor has indicated that evidence to support a higher value will be introduced at the hearing, the applicant will not be allowed to withdraw the application without the concurrence of the Assessor. Counties that use this process must have a local rule allowing such a procedure. If an applicant withdraws an application that has also been designated as a claim for refund, the applicant should be advised that withdrawal of the application will also constitute withdrawal of the claim for refund. Clerks of the appeals boards should inform

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<sup>1</sup> In the case of a continuance, in accordance with Rule 323(c), the notice must be given no less than 10 days prior to the continued hearing unless the parties agree in writing or on the record to waive written notice.

applicants to withdraw their application at the earliest possible date if they do not intend to proceed with the hearing, so that their scheduled time can be given to others, as available dates and county resources are limited.

### **Information Requests**

~~Clerks of the appeals boards should remind applicants that~~ RTC section 441(d) requires a taxpayer to make available to the Assessor, for assessment purposes, information or records regarding the taxpayer's property or any other personal property located on premises the taxpayer owns or controls. The Assessor may obtain details of property acquisition transactions, construction and development costs, rental income, and other data relevant to an estimate of value, and it may be introduced at an appeals board hearing.

Taxpayers are expected to comply with an Assessor's reasonable requests, as both the Assessor and the taxpayer must be able to use and present the same information at hearings. If a taxpayer fails to provide requested information to the Assessor under RTC section 441(d) and introduces any of that information at a hearing, the Assessor may request and will be granted a continuance for a reasonable time. RTC section 441(d) applies regardless of whether or not an appeal has been filed.

~~Clerks of the appeals boards should also remind applicants that~~ Under RTC section 408, Assessors are expected to comply with an applicant's reasonable request for information ~~relevant to a determination of value~~. If an Assessor fails to provide requested information to the taxpayer under RTC section 408 and introduces any of that information at a hearing, the taxpayer may request and will be granted a continuance for a reasonable time pursuant to RTC section 408(f)(3). RTC section 408 applies regardless of whether or not an appeal has been filed. The continuance shall extend the two-year period specified in subdivision (c) of Section 1604 for a period of time equal to the period of continuance.

### **Informal Discussion Between the Parties Prior to Hearing**

Whether a hearing is conducted remotely or in person, the process is most efficient when taxpayers and Assessors are encouraged to provide each other with comprehensive information regarding the subject property and the taxpayers' and the Assessors' opinions of value for the subject property. Various means and opportunities for informal discussion between the taxpayer and the Assessor can help to narrow and resolve issues before a hearing. As a result of such discussions, many appeals are resolved by a stipulation as to value between the parties, pursuant to RTC section 1607. If a county has a formal meet and confer process, the parties may consider using this method for an early resolution of the issues.

### **Formal Prehearing Conferences**

The Board encourages appeals boards to use their authority under Rule 305.2 to establish prehearing conferences, as appropriate, to meet their needs and, if established, to adopt procedures for holding prehearing conferences, either in-person or remotely, as these conferences can be a valuable tool in the orderly scheduling and conduct of appeals board hearings. Such conferences are often appropriate for hearings that will consume more than one day of an appeals board's time. The conference may be conducted remotely and may deal with a variety of subjects, including, but

not limited to, application validity, bifurcation of hearings, time estimates, resolution on noncontroversial factual or valuation issues, outline of basic legal and/or valuation issues to the appeals board, stipulations, status of requests for information, and calendaring of the full hearing on the issues.

Prehearing conferences are an option for all counties and have been shown to save considerable time and expense for the appeals board, as well as the parties. They are helpful in scheduling hearings for a mutually convenient date and time. In addition, or as an alternative, if the Assessor and the applicant resolve the disputed issues, RTC section 1607 provides that a written stipulation may be submitted to the appeals board, as further provided in LTA No. 2013/039.

### **Continuing Role of the Board**

The Board is charged with prescribing rules and regulations to govern local boards of equalization (i.e., appeals boards) when equalizing. (See Government Code, §15606, subdivision (c).) The Board has determined that no immediate new Property Tax Rule or rule amendments are necessary in order to facilitate remote hearings. In addition to promulgating rules and regulations, the Board has an important clearinghouse role in facilitating communication and training regarding remote hearing procedures, practices, questions, and protections among the counties and providing transparency for all participants. Therefore, the Board will provide additional guidance to counties through LTAs and additions to the Assessment Appeals Manual with regard to remote hearing issues and training as they are addressed, and will regularly inform counties of remaining items to be addressed, as well as any new legislation or rule-making efforts that may occur in the future.

If you have questions or comments regarding the guidance for remote hearings, please contact the County-Assessed Properties Division at 1-916-274-3350.

Sincerely,

David Yeung  
Deputy Director  
Property Tax Department

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