



CALIFORNIA ASSOCIATION OF CLERKS AND ELECTION OFFICIALS

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January 25, 2022

VIA E-MAIL

The Honorable Malia Cohen, Chair
State Board of Equalization
450 N Street, MIC 72
Sacramento, CA 95814

Dear Chairperson Cohen:

CACEO ADDITIONAL INPUT REGARDING CHANGES TO LTA 2021-002

We appreciate your contacting us in response to our letter of last Friday concerning tomorrow's hearing on remote assessment appeals hearings (Item M.2.). We now have had an opportunity to fully review the latest draft of a new letter to Assessors on the subject, as well as the joint memo from yourself and Member Vazquez. We are happy to say that we fully agree with your joint report on the status (consensus or no consensus) of each of the issues discussed at the November 18, 2021 Work Group hearing. And we agree with nearly all of the draft LTA.

There remain, then, only two areas in the draft LTA where there continues to be a lack of consensus: One sentence in *Rights of Hearing Participants* and the first paragraph in *Document Submission*.

Rights of Hearing Participants

We continue to have concerns about one sentence under *Rights of Hearing Participants* now contained in your staff's draft LTA in the 2nd sentence of what is now the first paragraph of that section, which reads:

As an initial matter, this includes a taxpayer's right to meet either remotely or in-person."

Item M2d
01/26/22

We strongly recommend that that sentence be amended, as follows:

As an initial matter, this includes a ~~taxpayer's~~ party's right to meet either remotely or in-person, unless it is infeasible for the appeals board to hold a timely hearing under the particular circumstances using the party's preferred type of hearing.

The remainder of the draft LTA language under this heading would remain unchanged under our proposal.

As we have stated before, counties must retain control over what hearing formats they will offer within their jurisdiction based on local resources and circumstances and, ultimately what format is feasible for any given appeal hearing. Doing so is vital in order for appeals boards to control their own calendars, as any tribunal needs to do. But let us say again that it is the expectation of our members to make every reasonable effort to accommodate a party's request for a particular format, whether that request is made by a taxpayer or an assessor. And we believe that the parties, particularly taxpayers, have been so accommodated, whether they have requested an in-person, or a remote hearing.

While we believe that our earlier recommendations for changing the LTA language under this heading provide greater clarity, we are prepared to achieve a consensus on this subject if this small change is incorporated into the final revised LTA.

Document Submission

We continue to strongly recommend that language be added in the first paragraph of this heading to fully clarify that counties have the authority to enforce local procedures and rules, including those relating to the submission of deadlines for specified documents that are intended for use in remote hearings. The added language would read:

Counties possess the constitutional administrative authority and discretion through California Constitution Article XIII, Section 16, to enforce local appeals board procedures and rules, including rules regarding the submission of document deadlines utilized in their remote hearing process in their jurisdictions.

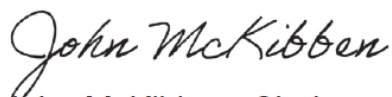
The rest of the paragraphs under the draft LTA should remain unchanged.

It has been the clerks' experience that they must have time to prepare evidence of the parties' case in chief anywhere from one to three days prior to a remote hearing. Such evidence is not released to anyone prior to the hearing. Rebuttal evidence is not required prior to the hearing, only at the hearing. But in order to prevent unacceptable delays on the day of the hearing, reasonable deadlines are necessary. However, it is important that the LTA make clear that counties have the authority under the constitution to enforce such deadlines.

Malia Cohen, Chair
January 25, 2022
Page 3

Our members look forward to meeting with you tomorrow to present more details of their experience using remote hearings that, among other things, support the recommendations contained in this letter.

Sincerely,



John McKibben, Chair
CACEO Assessment Appeals Work Group



Thomas R. Parker
Deputy County Counsel, Los Angeles County
and CACEO Counsel

JM:TP:sg

c: Hon. Ted Gaines, Member
Hon. Antonio Vazquez, Member
Hon. Mike Schaefer, Member
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David Yeung, Deputy Director, Property Tax Department
Marc A. Aprea, Legislative Advocate, CATA
Hon. Leslie Morgan, President, California Assessors' Association
Hon. Ernest J. Dronenburg, Jr., San Diego County Assessor/Recorder/County Clerk



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Santa Cruz County

January 21, 2022

VIA E-MAIL

The Honorable Malia Cohen, Chair
State Board of Equalization
450 N Street, MIC 72
Sacramento, CA 95814

Dear Chairperson Cohen:

CACEO STATEMENT OF RECOMMENDATIONS FOR CHANGES TO LTA 2021-002

The Clerk of the Board of Supervisors members of the California Association of Clerks and Election Officials (CACEO) wish to again provide our recommendations for revised Board of Equalization guidance with regard to remote assessment appeal hearings. As we have stated before, existing guidance under LTA 2021-002 has resulted in needless postponements in hearings which, in turn, has resulted in even more vacated hearing calendars than county boards already experience. Thus, appeals boards are unable to control their own hearing calendars, which is one of the core functions of any quasi-judicial or judicial hearing system. Based on our experience over the last year-and-a-half, we are concerned that, under your Board's current LTA guidance, boards of supervisors which, under the state's Constitution, are responsible for the appeals boards' programs in all counties are, in many situations, effectively not able to determine what format or formats they may offer the parties in such proceedings.

The fundamental purpose of appeals boards is to provide an impartial and fair property tax dispute resolution process, providing taxpayers with as much benefit as possible in terms of maximizing the ease of determining the correct property value. Restricting the ability of appeals boards to achieve this by artificially limiting its ability to resolve appeals as soon as possible does not serve the public purpose or the public good. It also does not save taxpayers money in the long run.

Experience in several counties has shown that being able to conduct evidentiary hearings remotely has provided taxpayers and assessors, as well as appeals board members and clerks, with a safe environment while also enabling counties to provide effective hearings that provide the parties due process, as required by Revenue and Taxation Code 1616 and Article XIII, Section 16 of the California Constitution. Remote hearings have allowed user counties to continue to make progress in minimizing the

growing backlog of appeals. Being able to provide remote hearings is vital, especially in the face of the continuing COVID-19 pandemic now dramatically aggravated by the Omicron variant. There seems to be no end in sight of this ongoing disaster. It is absolutely vital that appeals boards continue to provide parties with remote hearings where appropriate and necessary. Without that ability under existing conditions, the backlog of unheard appeals will grow exponentially and may ultimately become untenable. This, in turn, will result in widespread failure to meet assessment appeal decision deadlines under Revenue and Taxation Code 1604(c).

Not only have remote hearings assisted counties in their efforts to keep pace with the appeal workload, they have benefitted taxpayers by speeding up the scheduling process through the flexibility of such hearings. Remote hearings remove the need for taxpayers to travel long distances to the hearing, paying for expensive parking, and having to spend much of the day waiting for their hearings. Many taxpayers who have availed themselves of a remote hearing have expressed their appreciation for the convenience such hearings provide.

Moreover, as counties have gained progressively more experience with remote hearings, they have been able to develop increasingly effective web platforms and protocols to facilitate the more complex evidentiary hearings. Indeed, this was recognized in a letter to your Board from the California Alliance of Taxpayer Advocates (CATA) as long ago as September of last year in which CATA recognized Los Angeles County's remote hearing format as a "best practice". And since that time, both Los Angeles County and other counties that utilize remote hearings have continued to improve their methods. At the same time, clerks and appeals boards that lack some of the more sophisticated and expensive tools for remote hearings have acted responsibly and have limited remote hearings to less-complex cases or even to only non-evidentiary matters. Yet despite the successful use of remote hearings in several counties, some taxpayer advocates, including many members of CATA, continue to assert that virtual evidentiary hearings fundamentally fail to provide taxpayers with due process.

At past meetings of your Board, several of our members have provided testimony that clearly indicates that remote hearings can and do provide the parties with due process. Remote hearings represent the way of the future. We respectfully request that your Board facilitate, rather than hinder, their further development and use.

County boards of supervisors and their clerks simply must be able to offer the type of hearing that local circumstances and resources allow under the policies established by the board of supervisors – the governing body of the county. Clerks do not intend to force the parties into a type of hearing that they adamantly wish to avoid. Neither do the boards of supervisors seek to needlessly require such results. Clerks in counties that offer both in-person and remote hearings currently make, and will continue to make, every reasonable effort to provide the format of hearing that a taxpayer – or an assessor – requests. But again, the final decision must be made by the clerk and appeals board based on circumstances at that time. Under conditions created by the Omicron variant, this is of vital importance. Limiting remote hearings to only non-evidentiary matters, "less complex" matters, or matters involving a "relatively small number of exhibits" makes no sense, provided, of course, that a county has the resources and protocols necessary to conduct hearings of a more complex nature.

The requested LTA language is not just grounded on practical appeal hearing considerations. The California Constitution, at Article XIII, Section 16 and Revenue and Taxation Code section 1616 both provide legal authority for appeals board administrative control over appeal hearings. The clerks further note the concurrence of your Board's legal staff with its legal view, stated at your Board's November 18, 2021, Work Group meeting, that the county board fundamentally controls the hearing format decision. The CACEO is not seeking an extension of legal authority beyond that currently enjoyed by counties in managing appeals hearings. The CACEO simply seeks a declared acknowledgment of that existing authority.

One additional point we would like to make is that, in the remote hearing environment, it is essential that the clerk receive evidence supporting a party's case in chief in advance of the hearing in order to prepare for a smooth presentation at the hearing, especially if the evidence submitted is not in the appropriate electronic form. In such situations, the clerk needs time to ready the evidence for review by the parties and board members on the day of the hearing. The clerk fully understands that evidence may not be shared with anyone prior to the hearing, only *at* the hearing. We also wish to make you aware that there is no requirement for rebuttal evidence to be submitted in advance of the hearing, so that should not be a concern for anyone. This administrative issue is not present with in-person hearings because each party brings its own documents to the hearing when it commences (unless the Revenue and Taxation Code section 1606 exchange procedure was invoked for the appeal by one of the parties, of course). The nature of a remote hearing requires that the hearings not be delayed and hearing time lost, a waste of public tax dollars than can and should be avoided by timely electronic submission of hearing documents by the parties. The CACEO is not proposing a statewide administrative standard of enforcement for this issue. The Association is only seeking recognition of its existing administrative authority under the state constitution and state statute to enforce its administrative remedy for failure to timely submit documents prior to a remote hearing.

We have reviewed your staff's draft LTA revisions that were posted on the agenda yesterday. We support the new language regarding "good cause" for granting postponements for health concerns stemming from COVID-19, the added language relating to HIPAA, and the added language under *Scheduling Efficiencies and Notices*, and the amended language concerning RTC section 408 under *Information Requests*.

However, while we greatly appreciate some of the progress that the draft would provide with respect to the section under *Rights of Hearing Participants*, that portion of the LTA would still not address the need for language that clearly preserves the appeals board's and clerk's authority to determine the format of a hearing. Further, the draft LTA does not address the need to clearly state that county boards possess the legal authority and discretion to enforce local appeals board procedures and rules, including rules regarding the submission of document deadlines in the remote hearing process. Therefore, we propose that the changes to existing LTA 2021-002 shown below be approved by your Board.

Under the LTA heading *Rights of Hearing Participants*

CACEO proposes the following changes shown in underlined and lined-out language:

Revenue and Taxation Code sections 1616 and 1752.3 clarify and establish the authority of county appeals boards to hold either remote or in-person appeal hearings to satisfy statutory and constitutionally required assessment appeal application decisions. Participants receive due process in both remote and in-person hearings and cannot choose one type of hearing to the exclusion of the other type of hearing. Appeals boards possess the fundamental constitutional and statutory administrative authority to provide appeal hearings for the resolution of property tax appeals, ensuring that the participants receive fair and impartial hearings consistent with recognized due process, whether the hearing type is remote or in-person and regardless of the type of hearing available in any particular jurisdiction. Appeals boards are strongly encouraged to grant participants the type of hearing requested by the participant as long as such a request is reasonably feasible as well as available in the jurisdiction. Should the participant's requested hearing type cause a delay in the hearing of the taxpayer's appeal, the appeals board has authority to require execution of an indefinite time waiver on the taxpayer's part.

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, unless it is infeasible for the appeals board to hold a timely hearing under the particular circumstances using the taxpayer's preferred type of hearing. Participants may, as a general matter, reject request a remote hearing and receive a postponement until ~~an in-person~~ a remote hearing is available, or may ~~reject request~~ request an in-person hearing and receive a postponement until a ~~remote~~ an in-person hearing is scheduled. 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 a 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 section 1604 subject to termination of the agreement by 120 days written notice by the applicant.

Postponement requests which do not procedurally comply with Rule 323 (both "of right" and discretionary) need not be granted by the appeals board provided that the appeals board or board clerk, based on all of the circumstances, finds that the requesting party (i) could have complied with Rule 323, (ii) had the required statutory and regulatory advance notice of the hearing, and (iii) cannot provide a reasonable factual basis for the non-compliant postponement or continuance request, the appeals board has the authority to deny the request. Reasonable basis grounds shall not include the mere inconvenience of the participant seeking the postponement or continuance because of the type of scheduled hearing. In this regard, public health impacts resulting concerns stemming from the COVID-19 pandemic as well as any publicly declared state of disaster or state of emergency may constitute reasonable good cause for a postponement under 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 section 1604 subject to termination of the agreement by 120 days written notice by the applicant. Any applicant-disclosed medical information voluntarily provided to the appeals board must be treated and maintained appropriately as required by HIPPA and other relevant statutes and regulations.

Under the LTA heading *Document Submission*

CACEO proposes the following addition (underlined) to only the first paragraph under this heading; the rest of the language under that heading is left intact:

Counties 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 may require evidence submitted by hard copy to be submitted up to seven days before the commencement of a remote hearing but are encouraged to allow exceptions, as appropriate. County boards possess the constitutional administrative authority and discretion through California Constitution Article XIII, Section 16, to enforce local appeals board procedures and rules, including rules regarding the submission of document deadlines utilized in their remote hearing process in their jurisdictions.

Although we understand that, to at least some degree, remote hearings are a work in progress, nonetheless we firmly believe that they are the way of the future, in fact the way of the immediate future, thanks to COVID. We strongly urge your Board to adopt the changes to LTA 2021-002 we propose in the furtherance of creating effective remote hearing procedures that protect the safety and wellbeing of all participants and that provide taxpayers with an earlier hearing than would otherwise be possible.

Sincerely,



John McKibben, Chair
CACEO Assessment Appeals Work Group



Thomas R. Parker
Deputy County Counsel, Los Angeles County
and CACEO Counsel

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c: Hon. Ted Gaines, Member
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