



STATE OF CALIFORNIA

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February 2, 1999

Honorable Carl A. Bontrager
Siskiyou County Assessor
Court House, 311 4th Street
Yreka, California 96097

Re: Admission of Evidence Obtained by Assessment Appeals Board Members

Dear Mr. Bontrager:

This is in reply to your letter of December 10, 1998 addressed to Assistant Chief Counsel Larry Augusta in which you request a legal opinion regarding the introduction of personal knowledge as evidence by appeals board members. Specifically, you were asking for Board staff's view on a question posed by a new member of your county's appeals board, which I quote from your letter as follows: "Can we, as board members, introduce comparable sales that we have personal knowledge of into the testimony at the appeals hearings even to the extent that we can order the Assessor's Office to go back and analyze them?" You state that your County Council advised that members could be permitted to do so but, in your view, that advice is contrary to statutory and case law and to the Board's position in its Assessment Appeals Manual based on interpretation of those authorities.

As set forth below, it is our view that an individual appeals board member may not introduce comparable sales evidence at an appeals hearing. The property tax statutes and regulations require appeals board members to decide applications based solely on evidence presented by the parties or obtained by the board acting as a body. Therefore, if a board member wishes to hear or to obtain evidence not provided by the parties, he or she must make a motion to the appeals board and, if approved, the board will exercise its statutory authority to obtain such evidence.

Law and Analysis

As assessment appeals hearing is an adjudicatory proceeding for deciding disputes between taxpayers and assessors governed by various property tax statutes and by interpretive regulations, known as property tax rules. Those statutes and rules require that an appeals board hearing and deciding an application may act only on relevant evidence which is presented by the parties or which is requested by the board acting as a body.

Revenue and Taxation Code section 1610.8 imposes a mandatory requirement that "the applicant" shall establish the full value of the property by independent evidence. Likewise, Property Tax Rule 321 requires that the applicant must present independent evidence of full value. There is no parallel provision permitting a board member to present evidence on a matter

know to him or her. If a board wishes to hear testimony or evidence not presented by one of the parties then, pursuant to section 1609.4, the board "may subpoena witnesses and books, records, maps, and documents and take evidence in relation to the inquiry." In our view, this section empowers an appeals board, and not an individual board member, hearing an application to take such action.

Further, section 1605.4 refers to "the taking of evidence" by an appeals board, but there is no provision for the presentation of evidence by an individual board member. Rule 307, subdivision (d) provides that a notice of hearing shall advise the taxpayer that the board is required to find the taxable value of the property from the evidence "presented at the hearing". Again, there is no indication that a board is authorized to find taxable value based on evidence obtained by or within the personal knowledge of any board member.

Based on the foregoing provisions, we conclude that an appeals board member who wishes to introduce evidence or testimony not presented by the parties must make a motion to that effect to the board. If the board approves the motion, then pursuant to section 1609.4 the board may issue subpoenas or take other action necessary to obtain the evidence or testimony.

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Very truly yours,

Louis Ambrose
Tax Counsel

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cc: Ms. Wynona Hale – Sacramento County Assessment Appeals Board
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