



November 27, 2017

The Honorable Diane Harkey
Chair
California State Board of Equalization
450 N Street
Sacramento, CA 95814

Re: Assessment Appeals Practice/441(d)--Interested Parties

Dear Chairwoman Harkey:

At its August 29 meeting, the State Board of Equalization voted to begin an interested parties process to improve the local assessment appeals process, specifically as it related to assessor information requests. In an October 12 letter, the California Assessor's Association (CAA) presented its views on this issue. I am writing to you on behalf of the California Alliance of Taxpayer Advocates ("CATA") in response to that letter. CATA is dedicated to the professional practice of state and local tax consulting through education, advocacy and high ethical standards. We believe strongly that assessors, taxpayers and assessment appeals boards are best served in a transparent environment.

We are encouraged that the CAA's October 12 letter reported that several counties have modified their correspondence in response to the feedback received from both assessors and taxpayers. We are further encouraged that CAA welcomes the opportunity to participate in the upcoming interested parties process intended to improve best practices, and increase cooperation and compliance by taxpayers. But we have concerns with certain aspects of the CAA October 12 letter.

At the outset, it is important to note that proceedings leading up to an assessment appeal—as opposed to the appeal itself—are where both assessors and taxpayers are most often in conflict. Disputes over discovery under Revenue and Taxation Code Section 441(d)¹ are frequently a subject of contention.

¹ All further statutory references are to the Revenue and Taxation Code. References to "rules" or "regulations" are to corresponding sections of Title 18 of the California Code of Regulations.

This Board's own Assessor's Handbook governing assessment appeals sets the proper tone for addressing this topic:

“In the administration of the property tax in California, achieving equity in the equalization process requires two elements. First, the taxpayer and the appeals board should have as much relevant information as possible about the value of the property and about the assessment placed on that property by the assessor. Second, all parties must receive an adequate, impartial hearing of any appeal regarding that property.”

... To discharge these duties, most counties have adopted rules of notice and procedure relevant to appeals hearings under their jurisdiction. The divergence of the local rules and practices adopted by the various counties has created confusion for taxpayers who have property in more than one county...”

Fairness and consistency are the goals of the Board in providing this guidance. They are CATA's goals as well. CATA's position is that it is in the best interests of the taxpayer/applicant to cooperate with the assessor by responding to reasonable requests for information that is both relevant and readily available. And although most assessors have fairly applied—and continue to fairly apply—Section 441(d), some assessors and assessment appeals boards have misused this statute. There is also a lack of statewide uniformity in the application of Section 441(d).

A new property tax rule—one that combines the concepts of timely, reasonable and adequate discovery (both for taxpayers and assessors) with constitutional requirements of due process—is necessary and will help provide much needed direction for taxpayers, assessors and appeals boards, clearing a backlog of appeals counties are struggling to resolve. With that said, the following are our concerns with the CAA's letter.

(1) **The law requires only that taxpayers make records available to Assessors—nothing more.**

Section 441(d) states in pertinent part as follows:

"At any time as required by the Assessor for assessment purposes, every person shall make available for examination information or records regarding his or her property or any other property located on premises he or she owns or controls. In this connection details of property acquisition transactions, construction costs, rental income and other data relevant to the determination of an estimate of value are to be considered as information essential to the proper discharge of the assessor's duties."

It is clear from the text of Section 441(d) that the taxpayers are not required to submit or mail copies of records. It requires only that the information or records be made available for examination. This is confirmed by Section 470 which states in relevant part:

"Business Records. (a) Upon request of an assessor, a person owning, claiming, possessing or controlling property subject to local assessment shall make available at his or her principal place of business, principal location or principal address in California . . . a true copy of business records relevant to the amount, cost and value of all property that he or she owns, claims, possesses or controls within the county."

The plain language of this statute requires taxpayers to make records available at his or her principal place of business, but there is no requirement or legal obligation for the taxpayer to submit copies of this information by mail or otherwise directly to the Assessor.

As there is no legal authority requiring the taxpayer to mail copies to the assessor and therefore the taxpayer cannot be non-compliant for failure to respond to an assessor's request to send copies of any requested information.

If, on the other hand, the Assessor requests a mutually agreeable time to meet for the purpose of inspecting the information requested at the taxpayer's primary place of business, then the taxpayer would have been required to comply with the request. Accordingly, any request or demand for information letter from the Assessor that cites Section 441(d) requesting that copies be mailed or otherwise delivered to the Assessor is inconsistent with the statutory text. Any Board regulation regarding Section 441(d) requests must also be in keeping with this language.

(2) **Assessor's cannot deny a taxpayer's right to a hearing or impose other consequences on taxpayers that are not set forth in statute.**

Although CATA respects the Assessor's preference that the taxpayer provide copies of the information being sought, we find no legal support for some of the proposed consequences in the event that a taxpayer fails to comply. Specifically, there is no legal support authorizing the Assessment Appeals Board to compel the applicant to comply with the assessor's request for information nor to deny the appeal.

For example, CAA's Guidelines Consequences for example 2 recommends that "unless you provide the following requested information by [insert date], the Assessor will request a continuance or postponement of your hearing, and ask the Assessment Appeals Board to require you to provide the requested information in advance of the rescheduled hearing date."

These statements are based on the erroneous assumption that the Assessment Appeals Board has the authority to compel taxpayer compliance with the Assessor's interpretation of Sections 441(d) and 470. However, the authority to compel compliance with these statutory discovery provisions is not now and never has been vested in the Assessor or the Assessment Appeals Board. Instead the authority to enforce compliance with Sections 441(d) and 470 is vested in the Superior Courts. This is so because there are criminal penalties which can be imposed under Section 462 for any taxpayer who actually refuses to make information or records available for examination at his principal place of business. These penalties include fines and imprisonment which can only be imposed by the Superior Courts.

Therefore, the Assessment Appeals Board has no authority to order taxpayer compliance nor does it have the authority to deny the taxpayer's application for failure to comply with the Assessor's request for copies of information and records. However, the Assessment Appeals Board does have some limited authority with respect to the discovery provisions of 441(d). This authority can be found under Section 441(h) which reads in part as follows:

“If a taxpayer fails to provide information to the assessor pursuant to subdivision (d) and introduces any requested materials or information at any assessment appeals board hearing, the Assessor may request and shall be granted a continuance for a reasonable period of time.”

This continuance represents the only legal ramifications or consequences that may apply to a taxpayer who fails to respond to a Section 441(d) request. There is no legal provision that allows an assessment appeals board to deny the appeal or to compel the taxpayer to provide the requested information. Accordingly, the sole purpose of the continuance is not to compel additional compliance from the taxpayer, but rather to provide the Assessor additional time to review the materials or information that were requested but not received until the hearing. In other words, this continuance can be granted only if a taxpayer introduces information at a hearing which the assessor previously requested, that the taxpayer failed to make available for inspection before the hearing at the taxpayer's primary place of business.

Therefore, it is our contention that the Assessment Appeals Boards do not have the authority to compel the taxpayer to provide information to the assessor in a manner that is not accordance with Sections 441(d) and 470 of the Revenue and Taxation Code. We further suggest that the Assessment Appeals Boards do not have the legal authority to deny the taxpayer's application by refusing to proceed with the evidentiary hearing based on the Assessor's erroneous interpretation of the property tax laws. This is particularly true when it becomes clear that the authority to compel compliance with Sections 441(d) and 470 of the Code is vested in the Superior Courts. The jurisdiction of the Assessment Appeals Board is limited to granting a continuance under Section 441(h), which can only be exercised after the taxpayer has presented evidence at a hearing which was specifically requested in writing by the Assessor prior to the hearing and not made available for inspection by the taxpayer at his/her principal location of business prior to the hearing.

The most flagrant contravention of Sections 441(d) and 470 concerns one county that maintains two hearing calendars consisting of both “compliant” and “non-compliant” applicants. “Compliant” applicants become compliant only after the assessor informs the Assessment Appeals Board that they have satisfactorily complied with the Assessor's request for information. “Non-compliant” applicants are those who have not done so. The hearing is then automatically continued to a future date for the sole purpose of securing the taxpayer's full compliance with whatever information request the assessor has propounded. There is no legal support for this ongoing violation of taxpayer rights.

In conclusion, there is no legal authority requiring a taxpayer provide copies of any information requested from the assessor in accordance with Section 441(d). In addition, there is no legal support for any consequences against any taxpayer who has failed to comply with an assessor's

441(d) request other than a possible continuance being granted to the assessor in accordance with Section 441(h).

We look forward to working with the Board, Board staff, and the CAA to further our mutual goals of fairness or consistency. Should you have any questions, please contact the undersigned.

Sincerely,



Mardiros H. Dakessian
President
California Alliance of Taxpayer Advocates

cc: Hon. Jerome E. Horton, State Board of Equalization
Hon. Fiona Ma, State Board of Equalization
Hon. George Runner, Member, State Board of Equalization
Hon. Betty T. Yee, State Controller
Rich Benson, President, California Assessors' Association
John McKibben, California Association of Clerks and Election Officials
Dean R. Kinnee, Deputy Director, State Board of Equalization, Property Tax Department
Russell, Lowery, Chief Deputy, Hon. Diane Harkey