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RON THOMSEN
ASSESSOR

October 19, 2018

David Yeung, Chief
County-Assessed Properties Division
Board of Equalization
450 N Street, MIC 73
Sacramento, CA 95814

Re: Comments Regarding Proposed Form for 441(d)

Dear Mr. Yeung:

I am in receipt of the proposed form of a request for information pursuant to Revenue and Taxation Code ("RTC") section 441(d), as well as proposed amendments to the Assessment Appeals Manual concerning continuances to assessment appeal hearings in response to noncompliance with requests made pursuant to RTC section 441(d). I am appreciative of the opportunity to comment on these proposed documents.

Requests for information pursuant to RTC section 441(d) are one of the essential tools my staff rely upon in fulfilling my constitutional duty to assess real and personal property for purposes of taxation. It is important to me, my staff and the public that assessments are accurate, but that is only possible to the extent my staff receives complete, accurate and timely information. Thus, I am concerned that some of the proposed language appears to narrow the scope and timing of circumstances in which request may be made when those limitations do not appear in the letter of the law. Those limitations can lead to inaccurate assessments, and are contrary to the public interest and the State Constitution's command.

With respect to the proposed form letter, I have the following concerns:

- The letter makes repeated mention of the request arising in response to the filing of an assessment appeal. The RTC does not so limit requests. My staff may need to make requests under RTC section 441(d) without an appeal having been filed to ensure staff have sufficient information to make an accurate assessment. Those references should be removed.
- Page 1 of the letter includes the phrase describing the purpose of the request: "so that both you and the Assessor are aware of all information pertaining to the subject property prior to an assessment appeal hearing." That is not the purpose of a request pursuant to RTC section 441(d). That is the purpose of an exchange pursuant to RTC section 1606. RTC section 441 contains subsections allowing assesseees or their representatives to get access to nonpublic information about property they own or control, but those provisions are not strictly reciprocal. The public should be given an accurate impression about how these different information-gathering tools work.

- Also on page 1, the following sentence is somewhat misleading: “Based on the information you provided, the Assessor may arrive at a value conclusion that is satisfactory to you.” Assessors are not limited to using responses to requests pursuant to RTC section 441(d) when determining property value. The Assessor may rely on other publicly-available information, or information derived from other kinds of lawful information requests. The public should understand the sources of information that inform assessments.
- Also on page 1, the following phrase is not always true: “This will allow adequate time for an appraisal to be prepared, reviewed, and approved prior to your hearing.” As was indicated in the first comment, it is not necessary to have a request linked to an assessment appeal, in which case there would be no hearing set. Likewise, it may be the case that what is produced in response to an information request may necessitate continuance of a hearing. This language should not be held against an assessor making a showing of good cause for a continuance.
- On page 3, paragraphs 1 and 2, there is a discussion of the use of RTC section 441(d) requests in contrast to civil discovery requests that cannot be used. The implication of this language is that RTC section 441(d) is the sole authority for assessors making information requests, but there are other information-gathering tools in the RTC. If there is reason for these two paragraphs, those other tools should be mentioned as well, including but not limited to RTC sections 442 and 470.
- Page 3, paragraph 3 advises the public that the assessor cannot compel records given in response to an RTC section 441(d) request be made under penalty of perjury. This language is unnecessary when using the form request because it does not indicate that a response be made under penalty of perjury. Moreover, it is somewhat misleading because to the extent the request is in response to an assessment appeal, the assessment appeal application statements must be made under penalty of perjury such that the response to an RTC section 441(d) request may implicate the perjured statements in the assessment appeal application. Given these complexities, and that the use of a form letter obviates the need for this proposed statement, I would recommend it be removed.

With respect to the proposed amendments to the Assessment Appeals Manual, my concern is with language in the final paragraph indicating that local boards of equalization should not repeatedly continue assessment appeals hearings when the assessee repeatedly fails to respond to requests pursuant to RTC section 441(d). Instead, the paragraph advises the local board to conduct the hearing regardless. This language is contrary to the express terms of RTC section 441(h) that provide that in the face of noncompliance “the assessor may request and *shall* be granted a continuance for a reasonable period of time.”

Moreover, this language seems to invite assessees to hold out on responding to RTC section 441(d) information requests in the hope that the assessor will be disadvantaged at the assessment appeal hearing due to any incomplete response. That kind of gamesmanship is a waste of time and will lead to inaccurate assessments, especially in cases where the assessor bears the burden of proof. It also raises potential due process concerns. It is not clear why an assessee should get a hearing having not completely responded to an RTC section 441(d) request when failing to respond to such a request is a misdemeanor. I do, however, recognize that there is great value in advising local boards on practical means to resolving these disputes, and would recommend instead language advising that a better tool for

resolving these situations is use of the subpoena power, and if necessary enforcement of subpoena noncompliance in the Superior Court.

Thank you for the opportunity to comment on these proposed changes and please let me know of further opportunities for comment.

Sincerely,

A handwritten signature in cursive script that reads "Ron Thomsen".

Ron Thomsen
Assessor
County of Alameda