



CALIFORNIA ASSOCIATION OF CLERKS AND ELECTION OFFICIALS

OFFICERS 2018-2020

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April 29, 2019

Via Email

David Yeung, Chief
County-Assessed Properties Division
State Board of Equalization

Dear Mr. Yeung:

Thank you for this opportunity for the California Association of Clerks and Election Officials' Clerk of the Board of Supervisors members to provide their proposed changes and suggestions to the BOE's draft Request for Information form [441(d)] and the two *Assessment Appeal Manual* sections on Postponements and Continuances and Use of Confidential Assessor Information. Our proposed changes and suggestions accompany this letter.

Postponements and Continuances

We believe the staff's draft manual instruction thoroughly covers the subject. We suggest minor wordsmithing in the first bullet dealing with an amendment of an application. We believe removal of the comma after the word "assessor" would more clearly link the requested continuance to the assessor.

More importantly, we also propose some changes to the last bullet regarding further information required by the board. We strongly believe that there is a need to clarify and limit the kind of additional information or evidence a board might require in order to ensure that the county board has good cause to continue a hearing. While we believe it vital that the county board's judicial discretion be preserved, we believe that the manual should clarify that good cause for continuing a hearing for additional information should be limited to "information relating to or consistent with the evidence already provided during the course of the hearing in order for the board to make a proper determination of value . . ."

Use of Confidential Assessor Information – De-Identifying Confidential Data

While we recognize that this topic deals with a subject that properly falls within the assessor's purview, we nevertheless would like to suggest the addition of the following sentence at the end of the first paragraph of this portion of the *Assessment Appeals Manual*:

David Yeung
April 29, 2019

This process balances the potentially conflicting issues of an assessee's right to cross-examine on the assessor's information while also protecting the confidentiality of third-party assessee's data lawfully held and used by the assessor in assessing a third-party assessee's property.

We believe that the added sentence would provide all parties, including board members, with a clear summation and explanation of the proper use of confidential third-party information in arriving at a correct assessed value and how that information should be handled at an appeal hearing.

Request for Information Under Section 441(d)

Again, we recognize that this proposed form would be used by assessors in obtaining the information they to properly do their job and that developing a form for the intended purpose falls to the State Board's staff and assessors to accomplish. However, we would like to suggest, at least, that the draft form may need to request more specific information than it currently does and respectfully ask BOE staff and assessors to consider our suggested content. We do so because if the form and information is later shared with a county board, or if the assessor were to assert that the applicant failed to properly respond to the request, we believe the county board would be confused and would have some difficulty identifying exactly what information the assessor is requesting, in any given case. More information -- especially more specific information -- would help the county board to make a determination as to whether an applicant has fully and appropriately supplied the information the assessor asked for.

We look forward to participating in any upcoming interested parties meetings and hearings of the State Board of Equalization with regard to these proposals, and we again thank you for giving us this opportunity.

If you should have any questions, please get in touch with me, either at jmckibben@bos.lacounty.gov or at (213) 200-9610.

Very truly yours,

John McKibben, Chairman
CACEO BOE Rules Work Group

c: Angie Berry, State Board of Equalization
Joseph E. Holland, President, California Association of Clerks and Election Officials
Thomas R. Parker, Deputy County Counsel, Los Angeles County
Members, CACEO BOE Rules Work Group

Attachments (3)

S: Regulations\CATA issues\CACEO proposed changes to BOE drafts\cover letter

California Association of Clerks and Election Officials Proposed Changes

POSTPONEMENTS AND CONTINUANCES

It is within the board's discretion to grant an extension of time before the hearing on an application has commenced (a postponement) or after the hearing on an application has commenced (a continuance). However, when such requests are not granted as a matter of right or have not been agreed to between the parties, the board should ensure that good cause exists to grant a postponement or continuance. In this regard, the reasonable needs of the county board of equalization or assessment appeals board or county hearing officer and the parties to the proceedings should be considered in determining whether to grant a postponement or continuance. The board should make every reasonable effort, however, to hold the hearing expeditiously.

The board may postpone or continue a hearing to allow an applicant time to comply with a request for information from the assessor or the board. However, serial continuances or postponements may not be granted where the board determines the information requested is unrelated to the issue or no responsive documents exist. Granting serial continuances or postponements in such instances would effectively deny an applicant a hearing on the merits of the case.

When an applicant's non-compliance with a request for information is at issue and a postponement or continuance is unlikely to result in the production of responsive information, the board, in most cases, should hold a hearing weighing the available evidence and the credibility of the testimony. In these cases, the board may place the burden of proof on the applicant for the failure to provide information required by law. The board may also continue or postpone a hearing to allow time necessary for the assessor or the board to issue a subpoena for the requested information, as well as any time necessary for related court proceedings.

POSTPONEMENTS

Postponements are extensions of time made before the hearing on an application has commenced. Rule 323, subsection (a), provides in part:

The applicant and/or the assessor shall be allowed one postponement as a matter of right, the request for which must be made not later than 21 days before the hearing is scheduled to commence.

If the applicant requests a postponement of a scheduled hearing within 120 days of the expiration of the two-year limitation period provided in section 1604, the postponement will be contingent upon the applicant agreeing to extend and toll indefinitely the two-year period. The applicant has the right to terminate the extension agreement with 120 days written notice.

The assessor is not entitled to a postponement as a matter of right if the request is made within 120 days of the expiration of the two-year limitation period. However, the board, in its discretion, may grant such a request. The board may also grant a postponement for a reasonable period of time if one party initiates an information exchange and the other party does not comply within the time specified in section 1606 and Rule 305.1, subdivision (b) .

In addition, if the applicant or the applicant's agent is unable to attend a properly noticed hearing, the applicant or the applicant's agent may request, prior to the hearing date, a postponement of the hearing with a showing of good cause to the board.

Requests for postponements beyond those that are a matter of right, whether by the applicant or the assessor, must be made in writing, and good cause must be shown for the requested postponement. A mutual agreement between an applicant and the assessor shall be deemed to constitute good cause. Postponements granted because of a mutual agreement or other good cause shall result in extending and tolling indefinitely the two-year limitation period, subject to termination of the agreement upon 120 days written notice by the applicant.

Any information exchange dates established pursuant to Rule 305.1 remain in effect based on the originally scheduled hearing date, notwithstanding the hearing postponement, except when a hearing is postponed due to the failure of a party to respond to an exchange of information.

A board of supervisors may delegate decisions concerning postponement to the clerk in accordance with locally adopted rules.

CONTINUANCES

Continuances are extensions of time made after the hearing on an application has commenced. The board may, in its discretion, continue a hearing to a later date.

If the hearing is continued, the clerk must notify both the applicant (or agent) and the assessor, in writing, of the time and place of the continued hearing. This notification must be made not less than 10 days prior to the date of the continued hearing, unless the parties agree in writing or on 30 the record to waive written notice.

If the applicant requests a continuance within 90 days of the expiration of the two-year limitation period provided in section 1604, the board may require a written extension signed by the applicant extending and tolling the two-year period indefinitely. The applicant has the right to terminate the extension agreement upon 120 days written notice.

There are five primary reasons for continuing a hearing:

- **Amendment of an application.** If the board grants an applicant's request to amend an application, upon request of the **assessor, assessor** the hearing on the matter shall be continued by the board for no less than 45 days, unless the parties mutually agree to a different period of time.

- **Applicant has failed to provide all information required by law.** If an applicant has not yet provided all information required by law, the hearing may be continued to a later date for a hearing on the merits of the application or for the board to further inquire into the status of whether applicant has yet provided all information required by law.

If an applicant fails to provide information to the assessor pursuant to section 441(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. The continuance shall extend the two-year period specified in 1604(d) for a period of time equal to the length of the continuance.

- **New information introduced at the hearing.** If new material relating to information received from the other party during an exchange of information under section 1606 is introduced, the other party may request a continuance for a reasonable period of time.

- **Inspection of assessor's records.** If the assessor fails to permit the inspection or copying of materials or information, as requested by the applicant pursuant to section 408 (d) or (e), and the assessor introduces any such requested materials or information at any assessment appeals board hearing, the applicant may request a continuance for a reasonable period of time. The continuance shall extend the two-year period specified in section 1604(c) for a period of time equal to the length of the continuance.

- **Further information required by the board.** If, in the opinion of the board, not enough evidence was provided **relating to or consistent with the evidence already** during the course of the hearing **in order** for the board to make a proper determination of value, the board may continue the hearing so that **the** information the board believes is pertinent may be assembled and brought before **them. it.**

4/29/19

S: Regulations\CACEO proposed changes to BOE drafts\CACEO changes to postponements and continuances

California Association of Clerks and Election Officials Proposed Changes

1 De-Identifying Confidential Data

2 When the county assessor presents detailed information on the methodology employed to arrive at a
3 value during an appeals hearing, such information may have been derived from confidential data
4 submitted by assessees. If all the information is disclosed at a hearing, confidentiality would not be
5 maintained. In such cases, enough information must be redacted or masked to protect the assessee's
6 confidential data. **This process balances the potentially conflicting issues of an assessee's right to
cross-examine on the assessor's information while also protecting the confidentiality of third-party
assessee's data lawfully held and used by the assessor in assessing a third-party assessee's property.**

7 The purpose of redacting or masking confidential data is to *de-identify* the data so that what remains
8 cannot be linked to the identity of the owner or of the specific property from which the data was
9 derived. Assessors and appeals boards, however, often must strive to balance complete anonymity of
10 the data with the usefulness of the data in a hearing.

11 Thus, the data cannot be so stripped of context that reasonable inferences about its relevance can no
12 longer be drawn by either the assessee or the appeals board. At the same time, a property might be so
13 distinctive that data normally considered disclosable may have to be hidden so as not to risk identifying
14 the property. In all cases, the appeals boards will decide whether to accept de-identified data, and,
15 if accepted, how much weight to give such data.² If the appeals board accepts the de-identified data,
16 an assessee may cross-examine the assessor's appraiser to challenge its reliability.

17 The tables on the following pages provide examples of the kinds of data that an assessor may be
18 required to de-identify in a hearing to protect an assessee's confidentiality. As noted, depending on
19 the circumstances data may be (1) disclosed in its entirety, (2) hidden in its entirety, or (3) partially
20 masked or redacted.

21 Note that these are only examples. The determination of whether any specific data point should be
22 de-identified, and to what extent, must be made on a case-by-case basis first by the assessor. The
23 ultimate decision, however, as to what information will be allowed and in what form, as well as the
24 weight any particular piece of de-identified information is given is within the purview of the appeals
25 board. If an applicant believes they are not being fully afforded their due process rights to
26 examine witnesses and documents, they may seek a court order for disclosure of the confidential
27 information as contemplated by section 408, subdivision (e)(3).

¹ See *Trailer Train Co. v. State Board of Equalization (Trailer Train)* (1986) 180 Cal. App. 3d 565.

² See, AAM, p. 79 and 103.

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TABLE 1
LEASE DATA
(For establishing market rent)

Attributes that may be shared ¹	Show	
Effective Rental Rate	Actual Information	
Term	Actual Information	
Market Area/Neighborhood	Actual Information	
Use Type/Property Type	Actual Information	
Expense Model	Actual Information	
Source of Data	Actual Information	
Landlord TI contribution \$	Actual Information	
Tenant TI contribution \$	Actual Information	
Renewal Options	Actual Information	
Escalation Clauses	Actual Information	
Free Rent/Concessions	Actual Information	
Attributes that should be partially redacted ²	Show	Examples
Signing Date	By Quarter	Q1-2018
Commencement Date	By Quarter	Q1-2018
Which Floor in Building	Range of Values	Floors 5-10
Year Built/Effective Age	Range of Values	2000-2010
Rentable SF	Range of Values	5,000-10,000 SF
Attributes that should not be shared ³	Hide	
Street Address	Actual Information	
APN	Actual Information	
Tenant Name	Actual Information	
Owner Name	Actual Information	

5

¹ Items general enough in nature so that identification of the property generally would not be possible.

² Items that, if actual information were used, could lead to identification of the property.

³ Items so specific that they would identify the property either directly or indirectly.

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TABLE 2
CAP RATE DATA
(From internally derived data)

Attributes that may be shared¹	Show	
Use Type/Property Type	Actual Information	
Cap Rate	Actual Information	
Market Area/Neighborhood	Actual Information	
Source of Data	Actual Information	
Attributes that should be partially redacted²	Show	Examples
Year Built	Range of Values	2000-2010
Rentable SF	Range of Values	5000-10,000 SF
Sales Price	Range of Values	\$1M-\$5M
Sales Date	Range of Values	2016-17
Attributes that should not be shared³	Hide	
Owner	Actual Information	
Street Address	Actual Information	
APN	Actual Information	
Income	Actual Information	
Expenses	Actual Information	
NOI & NOI/SF	Actual Information	

4

¹ Items general enough in nature so that identification of the property generally would not be possible.

² Items that, if actual information were used, could lead to identification of the property.

³ Items so specific that they would identify the property either directly or indirectly.

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TABLE 3
CONSTRUCTION COST DATA
(For extraction of typical \$/SF costs, or extraction of entrepreneurial profit after sale)

Attributes that may be shared ¹	Show	
\$/SF Hard Costs	Actual Information	
\$/SF Soft Costs	Actual Information	
Entrepreneurial Profit	Actual Information	
Construction Class	Actual Information	
Market Area/Neighborhood	Actual Information	
Source of Data	Actual Information	
Attributes that should be partially redacted ²	Show	Examples
Year Built	Range of Values	2000-2010
Gross SF	Range of Values	5,000-10,000 SF
Use Type	Generic Type	Industrial, Retail, Office
Sales Price	Range of Values	\$1M-\$5M
Sales Date	Range of Values	2016-17
Attributes that should not be shared ³	Hide	
Owner	Actual Information	
Street Address	Actual Information	
APN	Actual Information	

5

¹ Items general enough in nature so that identification of the property generally would not be possible.

² Items that, if actual information were used, could lead to identification of the property.

³ Items so specific that they would identify the property either directly or indirectly.

California Association of Clerks and Election Officials Suggested Changes

BOE-XX (P1) REV. 00 (10/18)

- 1 Assessor Request for Information
- 2 PURSUANT TO REVENUE & TAXATION CODE
- 3 SECTION 442(d)
- 4
- 5 Underlined text are suggested edits.

<p><u>For Assessor's Use Only:</u></p>	<p><u>Due Date for Requested Information:</u> _____</p> <p><u>Property Location or Situs:</u> _____</p> <p><u>Assessor's Parcel Number(s):</u> _____</p> <p><u>Assessor's Business Account Number(s):</u> _____</p> <p><u>Assessor's Assessment Number(s):</u> _____</p> <div style="border: 1px dashed black; padding: 5px; margin-top: 10px;"> <p><u>Type of Assessment:</u></p> <ul style="list-style-type: none"> <input type="checkbox"/> <u>Regular Assessment for Roll Year(s)</u> _____ <input type="checkbox"/> <u>Supplemental Assessment for Transfer Occurring on</u> _____ <input type="checkbox"/> <u>Supplemental Assessment for New Construction Dated</u> _____ <input type="checkbox"/> <u>Roll Change for Roll Year(s)</u> _____ <input type="checkbox"/> <u>Escape Assessment for Roll Year(s)</u> _____ <input type="checkbox"/> <u>Calamity Reassessment for Roll Year(s)</u> _____ <input type="checkbox"/> <u>Penalty Assessment for Roll Year</u> _____ </div> <p><input type="checkbox"/> <u>This request is NOT being made in conjunction with an assessment appeal application or hearing.</u></p> <p><input type="checkbox"/> <u>This request is being made in conjunction with an assessment appeal hearing:</u></p> <ul style="list-style-type: none"> - <u>Assessment Appeal Application Number(s):</u> _____ - <u>Hearing Date (if scheduled):</u> _____
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8 Various provisions in the Revenue and Taxation Code grant assessors the authority to obtain information to fulfill

9 their assessment duties. This request for information is made pursuant to the authority granted by Revenue and

10 Taxation Code section 441, subdivision (d), which states:

11

12 At any time, as required by the assessor for assessment purposes, every person shall make available for

13 examination information or records regarding his or her property or any other personal property located on

14 premises he or she owns or controls. In this connection details of property acquisition transactions,

15 construction and development costs, rental income, and other data relevant to the determination of an

16 estimate of value are to be considered as information essential to the proper discharge of the assessor's

17 duties.

18

19 Therefore, you are required by law to comply with this request. The information specifically being requested is listed

20 on the enclosure. If you are uncertain as to what information is being requested or need more time to comply with

