JEFFREY PRANG
ASSESSOR
COUNTY OF LOS ANGELES
500 WEST TEMPLE STREET, ROOM 320
LOS ANGELES, CALIFORNIA 90012-2770
assessor.lacounty.gov
(213) 974-3101

Valuing People and Property

August 17, 2018

Dean R. Kinnee, Executive Director
State Board of Equalization
240 N Street
Sacramento, CA 94814

Dear Mr. Kinnee:

BOE AGENDA FOR AUGUST 21, 2018, ITEM G1

The County of Los Angeles, through its elected Assessor, strongly objects to the proposed amendments to Property Tax Rules 302, 305, 305.1, 305.2, and 323 outlined in Item L1 of the State Board of Equalization Agenda of July 24, 2018 and Item G1 of the August 21, 2018 Agenda.

The Board's own policy provides for an Interested Parties (IP) process prior to the commencement of formal rulemaking. Completion of the IP process ensures that the views of all stakeholders are properly brought forth, considered, and analyzed by the Board and its staff, so that the Board can rely on the best information and analysis possible when it engages in formal rulemaking.

Until now, for well over 20 years, this Board has followed its own interested parties process policy prior to engaging in formal rulemaking. Here however, the Board cancelled the interested parties meeting that was scheduled for August 16. A vote to approve California Alliance of Taxpayer Advocates' (CATA) petition and move forward with formal rulemaking would circumvent the IP process and deprive this board of critical information and analysis it should have before engaging in formal rulemaking.

The County of Los Angeles requests that the Board allow the Interested Parties (IP) process to continue. However, if you decide to push on with Agenda Item G1, we request that the Board conclude that the proposed changes are unnecessary, conflict with existing law, impede the assessor's constitutional duty to obtain relevant taxpayer information, damage the ability of assessors and appeals board to correctly establish fair market value of properties, and interfere with existing assessment appeal processes and procedures.

The proponents mischaracterize their proposed amendments as "*essential for uniformity*" or a "*necessity*" for fair hearings for the average taxpayer. This is simply not true.

To the contrary, the proposed amendments violate both the spirit and the letter of state law. And they jeopardize many of the important safeguards put in place by the Legislature in 1966 when the Reform Act was enacted (Stats. 1966, 1st Ex. Sess. 1966, ch. 147 § 37.).

Their true purpose is to systematically create a regime in which (contrary to the requirements of the Revenue and Taxation Code), taxpayers will turn over only that information which supports their own lower opinion of value while withholding information that does not. The proposed amendments are a Trojan Horse designed to allow big business to escape accurate and correct level of taxation while improperly shifting heavier burdens to honest taxpayers, local governments, schools, fire departments and many other essential government agencies.

I. COMMENCING THE RULEMAKING PROCESS ON AUGUST 21 CIRCUMVENTS THE INITIATED IP PROCESS

A. A Vote on August 21 to Commence a Rulemaking Process Would Circumvent the Essential IP Process

The IP process is integral to the rulemaking process. The Board has implemented two processes when adopting, amending, or repealing a Property Tax Rule:

- An ***informal process*** – commonly referred to as the ***interested parties process*** – to solicit input and resolve any differences of interested parties.
- The formal rulemaking process – the procedures required by the Administrative Procedures Act[1] (APA) administered by the Office of Administrative Law (OAL). The formal rulemaking process is mandated by statute, and all rulemaking efforts must abide by the provisions of the APA.

The IP process developed by the Board has proven to be an effective method of drafting comprehensive proposed Property Tax Rules for consideration by the Board. The insights of the various interested parties and Board staff are vital to ensuring the Board has the information necessary to evaluate the proposed amendments and decide whether to accept, reject or modify them. Without that, the amended rules could have serious unintended consequences the Board has not considered, including consequences that could potentially be harmful to unrepresented taxpayers and perhaps even unfairly chill their participation in the assessment appeal process.

On August 29, 2017, the Board voted to commence the IP process. In December 2017, your Property Tax Department conducted an informal meeting between various stakeholders. Subsequently, letters were submitted to the Board of Equalization (BOE) and the Property Tax Department to address the issues. (Exhibit 1)

The first Interested Parties meeting was held on April 25, 2018. It addressed issues related to (1) requests for taxpayer information from county assessors, (2) the conditions under which an AAB may reject an application for assessment appeal, (3) the conditions under which already-scheduled hearings may be postponed, and (4) other discussion items. The Discussion Document prepared by the Board's Property Tax Department outlined the issues and the parties' positions. (Exhibit 2) The meeting was well attended and the participation was active, however,

[1] Government Code §11340 et seq.

due to the number and complexity of the issues, a substantial number of issues were reserved for the next meeting. (Exhibit 3)

The second IP meeting was noticed for August 16, 2018, however, on July 13, 2018, the Board posted Agenda Item L1 to be heard at the July 24, 2018 BOE meeting to discuss CATA's proposed amendments to the Property Tax Rules. (Exhibit 4) To register my objection to Agenda Item L1 at the July 24th meeting, my office presented a letter on July 23, 2018 outlining my arguments against this interference in the IP process. (Exhibit 5) That second meeting was already scheduled for August 16, 2018, a date that was chosen to allow the assessors time to close the 2018 assessment rolls. (Exhibit 6)

At the August 21 meeting, the Board should not vote to commence formal rulemaking on CATA's petition to amend Property Tax Rules 302, 305, 305.1, 305.2 and 323. A vote on August 21 to commence formal rulemaking meeting would circumvent the existing IP process and deprive this Board of important input and analysis necessary in considering the proposed amendments.

CAA and its member assessors have worked collaboratively with CATA to address their concerns. (Exhibit 7) There has been no demonstrated need for urgency in initiating these rules changes. Even CATA's August 8, 2018 letter does not provide any specific examples of their members' cases that that they allege were negatively impacted by the existing rules. Instead, CATA references vague anecdotes regarding isolated instances of alleged county wrongdoings. Therefore, it appears there is no reason for the Board to deprive itself of important input and analysis resulting from a fully completed Interested Parties process, just to accommodate the timeline and demands of a few tax advocates who represent big businesses.[2]

B. The Board Should Deny CATA's Petition Pursuant to Government Code §11340.7 because it Cannot Satisfy the Minimum Statutory Requirements

The Board should deny CATA's petition to amend the Property Tax Rules under Government Code §11340.7. We believe the proposed amendments could not pass muster with the Office of Administrative Law. Government Code §11346.2 requires that every agency subject to this chapter:

[2] In fact, by doing so, this Board would risk harming taxpayers who prosecute their own cases without tax advocates. For example, CATA seeks to deprive AAB's of the ability to ensure that Applicants have responded to Assessor's 441(d) requests before going to hearing on the merits of their assessment appeal application. CATA suggests that where the Applicant and Assessor have a dispute regarding whether Applicant has documents that must be produced in response to the Assessor's 441(d) request, the Assessor should issue a subpoena and, if necessary, go to the superior court to enforce that subpoena. While CATA's big business clients may have the time and the legal and financial resources to go to court (and even potentially be criminally prosecuted under the provisions of the Revenue and Taxation Code) over whether they have adequately responded to the Assessor's 441(d) requests by providing all information required by law, the ordinary taxpayer does not. Moreover, this process – far more intimidating to the taxpayer than simply discussing with the AAB the status of their 441(d) compliance – would likely have a chilling effect on the homeowners and small business owners who wish to appeal their assessments.

> "shall prepare and submit to the Office [of Administrative Law] with the notice of the proposed action ... [a] notation following the express terms of each California Code of Regulations section, listing the specific statutes or other provisions of law authorizing the adoption of the regulation and listing the specific statutes or other provisions of law being implemented, interpreted, or made specific by that section in the California Code of Regulations."

If the Board were to approve CATA's recommendations for submission to the OAL, the proposed recommendations would not be able to satisfy the requirements of the APA's rulemaking process because many of the amendments proposed by CATA are contrary to controlling state law.

Furthermore, in conducting a rulemaking, the APA requires that an agency evaluate, analyze, and consider certain matters in addition to making specified determinations and findings with regard to the rulemaking action. These include, but are not necessarily limited to:

- A rulemaking agency must find that no alternative would be more effective in carrying out the purpose for which a regulation is proposed, or would be as effective as, and less burdensome, to affected private persons than the adopted regulation, or would be more cost effective and equally effective in effectuating the purpose of the statute.
- A rulemaking agency must determine whether the regulation "may have" or "will not have" a significant, statewide adverse economic impact directly affecting business. The agency must solicit alternatives if it determines that the proposed regulation "may have" a significant adverse economic impact on business.
- A rulemaking agency must describe the potential cost impact of a regulation on a representative private person or business, if known.
- A rulemaking agency must state whether a regulation differs from a federal statute or regulation and avoid unnecessary duplication or conflict.
- A rulemaking agency must determine whether and to what extent the proposed regulations impact: 1) costs to any local agency or school district requiring reimbursement; 2) other non-discretionary cost or savings imposed on local agencies; 3) costs or savings to any state agency; and 4) costs or savings in federal funding to the state.
- A rulemaking agency must evaluate whether the proposed regulation is inconsistent or incompatible with existing state regulations.

In fact, if proposed amendments such as Rule 305.1(e) were to be added, it would have a devastating economic impact on local government by eliminating an assessor's ability to utilize the income approach to value multi-million-dollar income generating business property.[3]

[3] Proposed Rule 305.1(e) Request for Information states, "An assessor's request for information pursuant to section 441 of the Revenue and Taxation Code shall be made in writing, limited to information relating to the property at issue, and be issued no less than 20 days prior to a hearing before a county board of equalization or assessment appeals board....Information supplied in response to an assessor's request for information shall not entitle the assessor to take a deposition, issue interrogatories, or seek requests for admission. Nor shall the recipient of an assessor's request be required to submit a declaration under penalty of perjury when responding to an assessor's request."

II. THE PROPOSED AMENDMENTS VIOLATE THE CONSTITUTION, REVENUE &TAXATION CODE AND THE LEGISLATURE'S STATED INTENT

A. Proposed Changes to Rule 305.1 Improperly Infringe Upon Constitutional Rights Granted to County Government in Article XIII, Section 16

Article XIII, Section 16 of the California Constitution, which states that "The county board of supervisors, shall ...adopt rules of notice and procedures for those boards as may be required to facilitate their work and to insure uniformity in the processing and decision of equalization petitions," specifically directs county board of supervisors to adopt rules of notice and procedure to facilitate the work of local assessment appeals boards and to ensure uniformity in the processing of applications before that local assessment appeals. This constitutional right, specifically allows local government, to adopt local procedural rules that reflect the needs and realities *of that particular county*.

A practical reality the Board should also consider is the fact that the particular type of properties under appeal will vary from county to county. Smaller counties are less likely to have, for instance, complex commercial property and industrial property appeals while large and more urban counties are more likely to have such appeals. Los Angeles County has an abundance of appeals from simple appeals filed by homeowners to the exceedingly complex and litigious appeals pertaining to the value of oil and gas fields, hotels, commercial property, and industrial property. Assessment appeal boards and assessors must have discretion and flexibility to deal with the vast differences in the types and complexity of the various appeals presented.

The forced "uniformity" suggested by the taxpayer groups may do more harm than good if it strips assessment appeals boards of their inherent power and discretion to control property tax appeal proceedings, while simultaneously handcuffing assessors from collecting the information they need from taxpayers to properly evaluate and assess their properties.

Superior Court judges deal with many similar challenges when litigants fail to comply with civil discovery orders. In civil cases, judges have the discretion to issue a wide range of sanctions if a party violates a discovery order. Depending on the circumstances of each case, permissible sanctions may include, monetary sanctions, issue sanctions (designating facts as established), evidence sanctions (barring introduction of evidence); terminating sanctions (striking pleadings and dismissal of actions and contempt. (CCP § 2023.030.) All of these types of sanctions have been upheld as within the court's inherent power to control proceedings and within the realm of "minimum due process."

CATA's request for "uniformity" simply cannot override local government's constitutional right to "...adopt rules of notice and procedures for those boards as may be required to facilitate their work and to insure uniformity in the processing and decision of equalization petitions...". Moreover, as explained in your Board's publication entitled "*Hierarchy of Property Tax Authorities*" Property Tax Rules may not conflict with constitutional or statutory law and are binding on state and local governmental entities." (BOE's Letter to Assessors No. 2003/039, 5/29/03, "Hierarchy

of Property Tax Authorities (LTA No. 2003/039), available at http://www.boe.ca.gov/proptaxes/pdf/lta03039.pdf).

B. Proposed Changes to Rule 305.1 Directly Conflict with R & T Code Provisions that Grant Broad Powers to Assessors to Demand Property Information Necessary for the Proper Assessment of Taxable Property.

CATA's proposed amendments are intended to restrict assessors' legal authority to request information and data from taxpayers by making it easier for taxpayers to (1) understate their business property holdings with impunity, (2) stall or avoid an assessor's R & T Code §441(d) requests, and (3) refuse to answer questions or produce documents responsive to a 441(d) request absent a Superior Court order.

In Los Angeles County alone, there are countless instances where taxpayers and their representatives systematically delayed Los Angeles County appraisers' lawful appraisal activities or blatantly refused to comply with lawful requests for information by dishonestly responding that they do not have the information sought, intentionally providing irrelevant information to mislead appraisers or unlawfully ignoring 441 (d) requests all together.

The proposed changes to Rule 305.1(e), also interfere with an assessor's right to issue subpoenas and collect essential information pursuant to Rev. & Tax. Code § 454 and directly conflict with, void or diminish almost every other tool assessors have for detecting falsification or under-reporting of taxable property. Undermining the exchange of information process will also negatively impact the ability of assessors and taxpayers to work together to resolve appeals by stipulation.

An assessor has the right to request and examine all property information held by or accessible to a property owner which he deems relevant and necessary for the proper assessment of taxable property. As explained in the leading case of *Roberts v. Gulf Oil*, the legislative intent behind Rev. & Tax. (R & T) Code §§ 441, 442 and 470 was to provide "local assessors with better tools for detecting falsification and under-reporting on property statements." (*Roberts v. Gulf Oil* (1983) 147 Cal.App.3d 770, 783-784.) R & T Code §§ 441, 442 and 470 give "broad grants of power to the assessor to demand information."

As *Roberts* explains at page 784, these powers are very similar to those granted to the Treasury Department under section 7602(a)(1) of the Internal Revenue Code of 1954. (Id.) This is why the *Robert's* court concluded that "[b]ecause the language contained in section 441, subdivision (d), is at least as broad as that contained in 26 United States Code section 7602(a)(1), the holdings in the federal cases are helpful." (*Roberts* at p. 784.) Thus, in California, a taxpayer's obligation to make information and records relevant to the determination of value available for examination by the assessor has always been viewed "in an expansive, not contractive, sense" because the full examination of such records is considered essential to the proper discharge of the assessor's duties. (*Roberts* at p. 786.)

The obligation to provide information does not stop when a taxpayer files an Application for Changed Assessment. As explained in *State Bd. of Equalization v. Ceniceros* (1998) 63 Cal. App.4th 122, 132 "the Legislature anticipated assessors would use [R & T Code §] 441, subdivision (d), requests as a means of prehearing discovery.... we conclude that, after a taxpayer has applied for a reduction in its assessment, assessors may prepare for the hearing on that assessment appeal by demanding information from the taxpayer pursuant to subdivision (d) of section 441."

The proposed amendments to Rule 305.1 directly conflict with an assessor's use of R & T Code § 441(d) requests to gather relevant information needed to prepare for hearings on assessment appeals, conflict with the Legislative intent for R & T Code § 441 and conflict with well-established case law interpreting this important statute, as summarized in attached chart as Exhibit 8.

C. Proposed Changes to Rule 305.1 Conflict with Settled California Case Law Upholding an Assessor's Right to Information Relevant to Taxable Property

The proposed amendments appear to be an attempt to circumvent well-settled California case law upholding an assessor's right to demand information relevant to taxable property. The California Supreme Court has long recognized that a request for property information may only be refused when the requested information concerns tax exempt property or there is no possibility that the requested information will lead to the disclosure of information relevant to the taxable value of property. (*Union Pacific RR v. State Board of Equalization* (1989) 49 Cal.3d 138 at 145).

When a taxpayer fails to comply with a 441(d) request, an assessor may compel a taxpayer's appearance and examination under oath pursuant to R & T Code § 454. This right was first codified over 100 years ago in 1873 in former Political Code § 3632. The power to subpoena was restated as R & T Code § 454 when the R & T Code was first enacted in 1939. As explained in *Weyse v. Crawford* (1890) 85 Cal. 196, 200:

> "**[T]he assessor ... has a right**, under section 3632 [now R & T Code § 454], **to subpoena the party** making the statement, and also any other person **whom he may supposed to have knowledge upon the subject, and examine him or them on oath, as witnesses are examined, touching any property which is assessable in his county**; or in the absence of a statement, or an insufficient description of real property, he may cite the party to appear in the superior court for such examination, under section 3634 [now R & T Code § 468] where a summary hearing is guaranteed to him, and all proceedings will be had at the expense of the taxpayer **necessary to secure the requisite information for making a proper assessment.**" [Emphasis added.]

Revenue & Taxation Code § 454 now provides:

> "**The assessor may subpoena and examine any person in relation to:**
> (a) any statement furnished him, or
>
> (b) **any statement disclosing property assessable in his county** that may be stored with, possessed, or controlled by the person. He may do this in any county where the person may be found, but shall not require the person to appear before him in any other county than that in which the subpoena is served."
> [Emphasis added.]

As summarized above, the proposed changes to Rule 305.1(e) interfere with an assessor's right to issue subpoenas and collect essential information pursuant to R & T Code § 454 and directly conflict with, void or diminish almost every other tool assessors have for detecting falsification or under-reporting of taxable property. Using a Property Tax Rule to frustrate the information gathering powers granted to assessors by the California Legislature over 100 years ago is simply improper. Assessors cannot carry out their statutory duty to assess all taxable property at its full cash value if they are not able to efficiently gather relevant information.

CATA wants to impose "Uniform Rules" that restrict the discretion, judgment and flexibility of assessors and assessment appeals boards to collect the information needed to fairly and accurately equalize assessments for all types of issues, for all types of properties, in all sizes of counties and assessment appeal boards. This demand is unrealistic, unnecessary and unconstitutional. The current rules regarding the conduct of property tax appeal hearings in California do *not deny any applicant due process as required by constitutional and statutory law.* Surely, it is beyond reasonable argument that what may work procedurally for Alpine County will not work for Los Angeles County.

D. CATA's Alleged "Due Process" Concerns Have Not Been Documented

Los Angeles County includes the following charts to illustrate the vast differences between the unsupported claims presented by CATA and the documented statistics for assessment appeals cases filed in Los Angeles County.

Los Angeles County Appeals Filed Application Years 2008 - 2018

Documented statistics for assessment appeals cases filed in Los Angeles County and closed for the years 2014-2018 clearly show that the majority of applications resulted in a withdrawal. The request for information process, both formal (441 (d)) and informal, between the Assessor and taxpayers/agents often resulted in abbreviated and mutually beneficial resolution of the cases and issues in dispute.

Agent Withdrawals
Board* Cases Closed FY 2014 or Later

*Does not include Hearing Officer cases

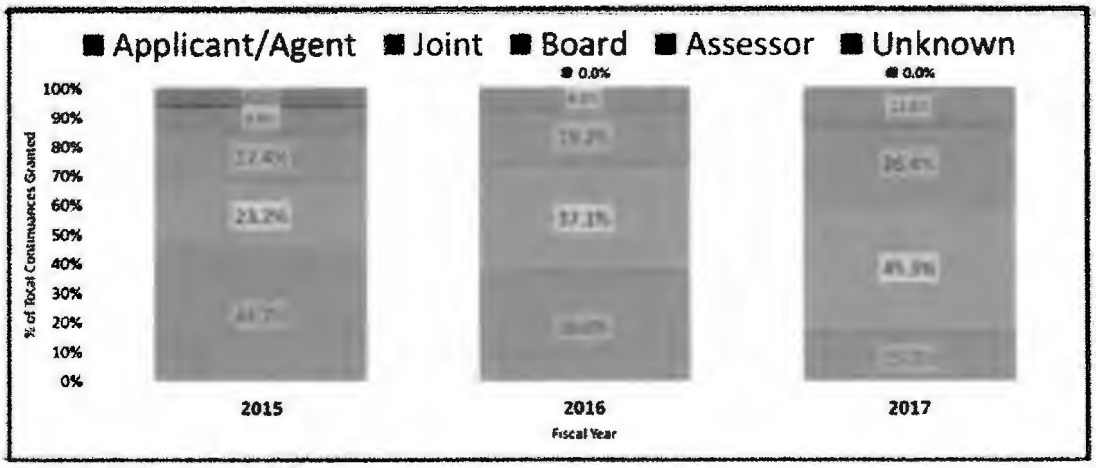
Non-Agent Withdrawals
Board* Cases Closed FY 2014 or Later

*Does not include Hearing Officer cases

In the case of continuances in Los Angeles County, the majority of these have been requested by agents or agents in agreement with the Assessor. A fair percentage of all continuances (14%) were requested either because additional information was needed, or data required verification. Limiting the scope and reach of the 441 (d) process would likely increase the total number of

continuances as well as the percentage of continuances initiated due to information or verified data required by either or both parties.

Board* Continuances – Requesting Party
Fiscal Years 2015, 2016, 2017



*Does not include Hearing Officer cases

III. LOS ANGELES AAB AGREES WITH ASSESSOR'S OBJECTION TO PROPOSED AMENDMENTS TO PROPERTY TAX RULES

The Los Angeles County Assessor's Office and taxpayers have used the current R & T Code §441(d) request of information procedure for many years, and have found the procedure to be an effective, efficient, and cooperative way to smoothly move the assessment appeal process along towards a value hearing on the merits. In Los Angeles County, as is the case in other counties, a large percentage of appeals are either withdrawn or stipulated to after the applicant has provided information requested by the Assessor pursuant to 441(d). Stipulating can be an important avenue in the appeals process as it can save both the assessor and taxpayer the time, energy and cost of an appeal hearing. The vast majority of the time there is rarely a contentious exchange of information process, and it is an effective way to see if the parties can collaborate to resolve issues or narrow issues before a formal hearing is needed. Furthermore, the Los Angeles County Assessment Appeals Board does not deny applications solely on the basis of Rev. & Tax. Code §441(d) noncompliance.

A. The Proposed Amendments to Rule 323 Would Violate Due Process; Create Procedural Problems for AABs; and Conflicts with Other Existing Property Tax Rules. It also Creates Procedural Problems and Ambiguities due to Sloppy Drafting.

Due to its heavy hearing schedule with available hearing dates filled long in advance and myriad complex appeals (e.g. oil refineries and major commercial and industrial properties) that last anywhere from several hearing days to several weeks, it is not possible for the Los Angeles County Assessment Appeals Board to reschedule a continued hearing within 90 days.[4]

The proposed amendment to Rule 323 would effectively force the Los Angeles County Assessment Appeals Board into an untenable position: either (a) deny continuances requested by the Assessor and attempt to equalize property value without the benefit of first receiving properly prepared cases from both sides; or (b) grant the Assessor's requested continuance but risk placing the equalized value at legal jeopardy because granting the continuance violated proposed 90-day limit established by the proposed amendment to Rule 323(d).

The application of the proposed rule amendments from CATA will force the Assessment Appeals Board to violate Rule 323(d). It will not be difficult for the assessee to force a remand of the valuation decision back to the Assessment Appeals Board on procedural grounds alone. The real source of dissatisfaction (whether justified or not) of the unhappy assessee will be the valuation determination and that fundamental issue will not be reviewed by the Superior Court. Multiple and unnecessary litigation over property tax appeals does not serve the public interest as represented by taxpayers and assessors.

The proposed amendment to 323(d) violates due process by drastically limiting an assessor's ability to secure a continuance without imposing the same strictures on continuance requests made by Applicants. It does so in two ways: (1) It sets a 90-day limit on continuance requests made by the Assessor without establishing the same limitation for continuance requests made by the Applicant; (2) It prohibits the AAB from granting a continuance to the Assessor after the Applicant has presented its case without imposing the same prohibition on continuance requests made by the Applicant after the Assessor's case has been presented.

The Assessor's office presents first in five types of assessment appeals: Single family owner-occupied properties, penalty assessments, escape assessments, non-enrollment of purchase price, and when the Assessor intends to request a higher value than is on the roll. Thus, in many cases – and in some counties the vast majority of cases – the Assessor has the burden of going first.

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[4] Los Angeles has four panels running five days a week with 10-30 applications typically scheduled each day before each panel. Additionally, Los Angeles has 27 Hearing Officers. Four times each week, the hearing officers run hearings with agendas of 150 to 300 applications per day. In FY 2017-18 alone, 19,179 property tax appeals were filed in Los Angeles County, down from 40,000 applications per year filed during recession. In Fiscal Year 2017-18 alone, the Los Angeles County Assessment Appeals Board scheduled 54,616 appeals for Board and Hearing Officer hearings. As of July 2018, 26,962 appeals remain pending in the Los Angeles County Assessment Appeals Board scheduling system

Thus, the proposed amendment to Rule 323(d) would violate due process by leaving in place the AAB's unfettered discretion in ruling on continuance requests made by Applicants after the Assessor's case has been presented while prohibiting the AAB from granting identical continuance requests made by the Assessor after the Applicant's case has been presented – it would set up an inherent imbalance in the system.

RTC 1606(d) and Property Tax Rule 305.1(c) expressly provide that whenever a formal exchange of information has been conducted pursuant to RTC 1606 and PTR 305.1, if at the hearing a party introduces new material relating to the information received from the other party, the other party, upon requests, shall be granted a continuance for a reasonable period of time. However, the proposed amendment violates the requirements of RTC 1606(d) and conflicts with PTR 305.1 Where RTC 1606(d) requires that if Applicant introduces such new information, the Assessor shall be granted a continuance upon request, the proposed amendment to PTR 323(d) would prohibit the AAB from granting such a request. Accordingly, adopting this proposed amendment as written is outside of the AAB's statutory authority as the proposed amendment would violate RTC 1606(d). Adoption of the proposed amendment would also create ambiguity doe to the conflict between Property Tax Rule 305.1(c) which would require that the AAB grant the Assessor a continuance and Property Tax Rule 323(d) which would prohibit the AAB from granting the same requested continuance.

Existing Rule 323(c) provides that the AAB may continue a hearing to a later date and provides that at least 10 days before the continued hearing, the clerk shall give written notice of the continued hearing date.

The sloppy drafting of the proposed amendment to Rule 323 would change that notice requirement, or at the very least create ambiguity surrounding it. As drafted, Rule 323 creates Rule 323(d), which focuses on denying and narrowly circumscribing continuances requested by the Assessor; newly created subdivision 323(e) now addresses Applicants' continuance requests and the 10-day written notice requirement.

Because the requirement that the AAB provide 10-days written notice of the continued hearing date to the parties is now contained in a paragraph that otherwise pertains only to continuance requests made by the Applicant, the language of the proposed amendment creates the potential reading that the AAB need give 10-days written notice of the continued hearing date only when the continuance request was made by the Applicant, not when the request was made by the Assessor.

B. Rule 323(c) Amendments Violate Legislative Intent of R & T § 1604

Proposed Rule 323(c)'s language prohibiting postponements "solely on the ground that the applicant has not responded to a request for information made under section 441..." is inconsistent with the longstanding and unchanged Rule 323(a). Rule 323(a) allows each side one postponement *of right i.e. for any reason* as long as the request is timely made.

Additionally, proponents of the rule changes insist that the assessor must use the cited Rev. & Tax. Code remedies when a §441(d) dispute between the assessor and the assessee arises (see R & T Code §§454, 461, 462 468) and the assessor believes that an appropriate §441(d) request has not been responded to by the assessee.

The most glaring problem with this proposed amendment is that it violates Section 1604(c) of the Revenue and Taxation Code. Section 1604 provides that the taxpayer's opinion of value shall prevail (even if it is zero) if the appeal is not heard within two years, absent certain limited exceptions. The most important exception is "where the taxpayer failed to provide full and complete information as required by law." To trigger that very important exception, the assessor must be able to (1) request relevant information from the taxpayer; (2) delay commencement of the hearing on the merits until that information has been produced; and (3) establish on the record the status of Applicant's response to the Assessor's 441(d) request.

The Legislative history for R & T § 1604 clearly expresses the need for taxpayers to comply with assessor's requests for information and the need to continue the 2-year deadline when relevant information has not been timely produced.

The Los Angeles County Assessment Appeals Board supports the alternative proposed language for Rule 323(c) that Ms. Dawn Duran of the City and County of San Francisco submitted to the State Board of Equalization on July 17, 2018 on behalf of CACEO:[5]

> "At the hearing, the board or hearing officer may continue a hearing to a later date. **The board or hearing officer must make every reasonable effort to maintain continuous hearings given the reasonable needs of the county board of equalization or assessment appeals board or county hearing officer and the parties to the proceedings. Before granting such a request, the board or hearing officer must make sure that there is good cause sufficient to justify the continuance.** If the applicant requests a continuance within 90 days of the expiration of the two-year period..." (Proposed language in **bold**.)

C. Proposed Amendment to Rule 305

CATA's proposed amendment to Rule 305 is problematic. The property tax appeals system requires some degree of assurance that an agent-filed application accurately reflects the authorization of the underlying property owner.

The current language of Rule 305 reflects the factual conclusions of the Board of Equalization and local board clerks that agents were filing applications for particular years using out-of-date authorizations and not fully pursuing the appeals process to the detriment of the property owners

[5] Exhibit 9

they supposedly represented. The current language of Rule 305 insures the integrity of the appeal process and avoids the expenditure of unnecessary public resources on appeals that were not pursued or even authorized by the property owner for that tax year.

CATA's proposed amendment to Property Tax Rule 305(a)(5) does not clarify the issue it raises, which is whether or not each agency authorization for an application filed be signed by the property owner in that application year. The CACEO and the Los Angeles County Clerk of the Board are open to appropriately clarifying this procedure to avoid an overly strict yet still effective agent authorization rule.

Los Angeles County supports the alternative language that CACEO proposed, which would amend Rule 305(a)(1)(B) by adding the following language at the end of the current rule, " "...or years indicated in the agent's authorization; an agent's authorization may not cover more than four calendar years in the future, beginning with the year in which the authorization was signed."

D. Proposed Amendment to Rule 305.1

CATA's proposed amendment to Property Tax Rule 305.1, which would require 441(d) requests to be made at least 21 days before a hearing, is unacceptable to the Los Angeles County Assessment Appeals Board. In an appeals system the size of Los Angeles County, such a requirement would increase postponements and continuances and likely further delay in completing appeals hearings.

This proposed amendment is symptomatic of other CATA-proposed amendments for Assessment Appeals Board procedures. In the name of "uniformity", CATA's proposed amendments seek enactment of "one size fits all" procedures regardless of the number of appeals filed in each county. The practical "real life" reality for an appeals system such as the Los Angeles County appeals system is very different from that of small counties..

V. Assessor's Right to Challenge State Board of Equalization Rules

R & T Code § 538, subdivision (a), requires that an assessor bring an action in court if the assessor believes that application of a Property Tax Rule will require property to be assessed in a manner contrary to the California Constitution, a statute, or another rule, or that the assessor believes a Property Tax Rule is unconstitutional or invalid. The proposed changes directly conflict with or violate various provisions of the R & T Code, and invalidate existing Property Tax Rules, as summarized in Exhibit 8.

If the Board approves the rule changes outlined in Agenda Item L1 and G1, the CAA members and the Los Angeles County Assessor, in particular, will have no choice but to file a Section 538 legal action to prohibit this overreach of authority that directly interferes and diminishes the statutory duty assessors uphold to assess all taxable property at its full cash value and to pursue

all other appropriate avenues of judicial remedy the improper enactment of the proposed amendments.

The Los Angeles County Office of the Assessor submits this letter requesting the Board reject CATA's changes, avoid the necessity of a Section 538 legal action against the Board, and allow the IP process to unfold in a thoughtful and considered manner that will allow all stakeholders to be heard. Certainly, Assessors should also be given the opportunity to submit their own set of proposals. To that end, the information contained in this letter will be helpful so the Board and its legal staff are apprised of the legal and factual background animating the Assessor's Office's strenuous objection to these rule changes. Alternatively, we recommend that the Board re-establish the County Assessed Properties Committee to allow discussions that would have occurred during the IP process, to offer all Board member staff to engage the stakeholders in discussion of the issues.

We trust the State Board of Equalization will not approve the petition to amend the property tax regulations that conflict with numerous provisions of the Revenue & Taxation Code, the intent of the Legislature and well settled California case law.

Sincerely,

JEFFREY PRANG
Assessor

JP:EY:ac

c: Senator George Runner, Chariman
Honorable Fiona Ma, Member
Honorable Diane Harkey, Member
Honorable, Jerome Horton, Member
Honorable Betty T. Yee, State Controller
c/o Deputy Controller Yvetter Stowers
Henry D. Nanjo, Chief Counsel, Legal Department
Joann Richmond-Smith, California State Board of Equalization Proceedings
Charles Leonhardt, CAA President, Plumas County Assessor
Mary C. Wickham, County Counsel
Celia Zavala, Acting Executive Officer