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October 18, 2018

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Re: Comments Regarding Proposed Form for 441(d)

Dear Mr. Yeung:

Thank you for allowing me to comment on the Proposed Form for 441(d) and Draft Language for the Assessment Appeals Manual. My comments are provided below:

**Cover Letter has Expanded into a Prescribed Form:** On August 21, 2018, the Board instructed staff to develop a "cover letter" to be used by Assessors when issuing 441(d) requests for information. The Proposed Form is much more than the requested cover letter.

**Page One:** The title of the form is confusing because it is not clear as to whether it is intended to apply only when an assessment appeal has been filed or whenever an assessor seeks information pursuant to 441(d). Section 441(d) requests are issued throughout the year for general assessment purposes, not just for information related to assessment appeals. Clarification regarding this issue is needed.

The utility of this form is also questionable because many assessors find it much more effective to issue 441(d) requests in conjunction with Revenue & Taxation Code § 442 requests for information and Revenue & Taxation Code § 470 requests for business records.

Please keep in mind that the inappropriate limitations regarding the scope of the information taxpayers are required to produce, as described on page three, are inconsistent with California decisional law interpreting Revenue & Taxation Code §§ 441(d), 442 and 470.

**Page Two:** The first sentence on page two (2) suffers from the same lack of clarity as the title of the form. It appears that this form should only be used to gather information related to an assessment appeal, but as noted above Section 441(d) requests are issued throughout the year for general assessment purposes.

**Page Three: IMPORTANT INFORMATION**

This section creates a great deal of uncertainty because it is inconsistent with numerous existing statutes and decisional law and also ignores many of the other information gathering powers granted to assessors by the California Legislature as summarized below:

**Paragraphs One & Two**

a. Paragraphs one and two incorrectly assume that all Assessment Appeal Applications and Requests for Information regarding such Applications will be directed to the “owners” of property. This is not the case. Revenue & Taxation Code § 405 permits assessors to issue property tax assessment to persons owning, claiming, possessing or controlling property. This means 441(d) requests may be sent to persons that own, claim, possess, or control taxable property including the lessors and managers of property.

More important, paragraphs one and two are misleading and inconsistent with statutory and decisional law because they fail to acknowledge that 441(d) requests are often issued in conjunction with 442 and 470 requests which provide in pertinent parts as follows:

§ 441. Filing of signed property statement; Penalty for noncompliance;  
Examination of records; Continuance...

(d) (1) 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 personal property located on premises he or she owns or controls. In this connection details of property acquisition transactions, construction and development 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.

§ 442. Contents of statement:

(a) Every person owning, claiming, possessing, controlling or managing property shall furnish any required information or records to the assessor for examination at any time.

§ 470. 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 or at a place mutually agreeable to the assessor and the person, 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.

**Page Three:** IMPORTANT INFORMATION cont.

b. The limitation on what information can be requested (“information that is reasonably related to the proposed tax”) conflicts with the “broad grants of power to the assessor to demand information” provided by Revenue & Taxation Code §§ 441, 442 and 470. See, *Roberts v. Gulf Oil Corp.* (1983) 147 Cal. App. 3d 770, 782-783. The proposed language improperly limits the scope of what must be produced from “information essential to the proper discharge of the assessor's duties” which is necessarily determined by the assessor to “information that is reasonably related to the proposed tax” which will be determined by the taxpayer or the taxpayer's counsel. This type of limitation was considered and rejected in *Roberts v. Gulf Oil, supra*, at pp. 782-783.

The *Roberts* Court explained that Revenue & Taxation Code §§ 441(d), 442 and 470 can be and often are used together, and determined that:

- “The language ‘other data relevant to the determination of an estimate of value’ contained in *section 441, subdivision (d)*, and ‘any required information or records to the assessor’ set forth in *section 442*, and finally, the words ‘business records relevant to the amount, cost and value of all property’ contained in *section 470* are broad grants of power to the Assessor to demand information.”
- “Because 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.”
- “The need for accurate and complete data exists in both systems. The same policy considerations which mandate the investiture of broad powers to federal tax agents argue for equally broad discretion to county tax assessors. Further, it is not true that the California ad valorem tax system is not dependent on self-reporting. The Legislature has deemed the concept so important that it has imposed criminal and civil penalties for failure to provide information. (See §§ 462, 463, 482 and 501-504.)”
- *Section 441, subdivision (d)*, does not use the word necessary, but does use the word ‘essential.’”
- “The term ‘essential’ serves to prohibit harassment by the taxing authority. It is analogous to the requirement in *26 United States Code section 7605 (b)* which precludes ‘unnecessary examination or investigations.’ *Section 7605(b)* has been construed broadly.”
- “More basically, the word ‘essential,’ in the context of *section 441, subdivision (d)*, is used in an expansive, not contractive, sense. The words ‘are to be considered as information essential to the proper discharge of the assessor's duties,’ follow language in the statute permitting access to data relevant to the determination of an estimate of value. The phrase containing the word ‘essential’ is nothing more than a statement that such data is necessary for the proper performance of an assessor's duties.”

*Roberts* at pp. 785-787.

**Page Three: IMPORTANT INFORMATION cont.**

**Paragraph Two**

c. Paragraph two is patently misleading because it fails to acknowledge any of the other information gathering tools the Legislature has provided to assessors that are often issued with 441(d) requests including Revenue & Taxation Code §§ 442 that requires the production of “any required information or records,” Revenue & Taxation Code § 454 that allows assessors to 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.

**Paragraph Three**

d. Paragraph three seems to serve no constructive purpose because it fails to reconcile the fact that that information provided by taxpayers to assessors on all other forms, including BOE approved forms, must be submitted under penalty of perjury. Paragraph three also fails to adequately inform the taxpayer of the substance of Revenue & Taxation Code §§ 461, 462 and 468 which subject individuals to prosecution for misdemeanors for failing or refusing to provide information or providing false statements.

§ 461. False statement.

Every person who willfully states anything which he knows to be false in any oral or written statement, not under oath, required or authorized to be made as the basis of imposing any tax or assessment, is guilty of a misdemeanor and upon conviction thereof may be punished by imprisonment in the county jail for a period not exceeding six months or by a fine not exceeding one thousand dollars (\$1,000), or by both.

§462(a). Refusal to give information.

Every person is guilty of a misdemeanor who, after written request by the assessor, does any of the following:

- (a) Refuses to make available to the assessor any information which is required by subdivision (d) of Section 441 of this code.

§ 468. Failure to Furnish Information:

In addition to any other remedies described in this article, if any person fails to furnish any information or records required by this article upon request by the assessor, the assessor may apply to the superior court of the county for an order requiring the person who failed to furnish such information or records to appear and answer concerning his property before such court at a time and place specified in the order. The court may so order in any county where the person may be found, but shall not require the person to appear before the court in any other county than that in which the subpoena is served.

**Paragraph Four**

No objection.

**CONCLUSION**

Paragraphs one, two and three are fatally flawed because they misstate the law and frustrate the Legislative intent of Revenue & Taxation Code §§ 441d, 442, 454, and 470.

Paragraph one may be corrected by expanding the language to apply to persons owning, claiming, possessing or controlling property. As mentioned above, paragraph four is acceptable. Paragraphs two and three should be eliminated in their entirety or replaced with the relevant portions of Revenue & Taxation Code §§ 442, 454, 470, 461 and 468.

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Respectfully submitted,



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