



April 29, 2019

David Yeung, Chief
County-Assessed Properties Division
Property Tax Department, Board of Equalization

Dear Mr. Yeung,

Thank you for the opportunity to comment on the proposed revisions to the Assessment Appeals Manual concerning Postponements, Continuances, and De-Identifying Confidential Data, as well as the proposed BOE form for R & T Code Section 441(d) requests for information. My staff and our City Attorney have examined the draft documents and I present our consolidated observations to you in the edited attachments as well as general comments below. Overall we feel that the drafts will greatly elucidate the Appeals process, for staff and taxpayers alike.

Use of Confidential Assessor Information – General Comments

1. This section appears to address only confidential information obtained from non-party assessees and used by the Assessor, and does not address the different issues presented by de-identification of confidential information obtained and used by applicants.
2. It is unclear what it means for a board to “accept de-identified data” (and conversely, what “rejection” would be). We have interpreted “accept de-identified data” to mean “accepted the de-identified data into the record of the hearing and considered as evidence under Revenue and Taxation Code section 1609 and Property Tax Rule 313(e).”
3. We think that the tables are very helpful.

Request for Information for Application - General Comments

1. “Event Date” and “Event Type” pertain to all § 441(d) requests, not just those related to assessment appeals, and therefore should be placed between the APN and Due Date fields above the assessment appeals checkbox.
2. Be consistent in capitalization of terms like “Assessor” and “Assessment Appeals Board.”
3. Even if section 441(d) does not permit an Assessor to require responses to be signed under penalty of perjury, this letter does not communicate that whether a particular document is signed under penalty of perjury may affect the weight it is given (see, e.g., Rule 462.200(a) and (b): “Proof may also be made by declarations under penalty of perjury (or affidavits) accompanied by such written evidence as may reasonably be available, such as written agreements, cancelled checks, insurance policies, and tax returns.”), or that certain property tax documents (e.g., parent-child exclusion certifications) must be signed under penalty of perjury to be valid.

4. This form letter appears to be designed for use for all section 441(d) requests, including those not associated with an assessment appeal, and does not include potential consequences for failing to respond outside of the context of an assessment appeals hearing.

Please feel free to contact Megan Elliott at 415-554-5602 should you have any questions.

Sincerely,



Carmen Chu
San Francisco Assessor

Enclosures: Attachments 1-3

POSTPONEMENTS AND CONTINUANCES

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

12
13 The board may postpone or continue a hearing to allow an applicant time to comply with a
14 request for information from the assessor or the board. However, serial continuances or
15 postponements may not be granted where the board determines the information requested is
16 unrelated to the issue or no responsive documents exist. Granting serial continuances or
17 postponements in such instances ~~would~~ could effectively deny an applicant a hearing on the merits
18 of
19 the case.

20 When an applicant's non compliance with a request for information is at issue and a
21 postponement or continuance is unlikely to result in the production of responsive information,
22 the board, in most cases, should hold a hearing weighing the available evidence and the
23 credibility of the testimony. In these cases, the board ~~may place~~ should ensure that the burden of
24 proof is properly placed on the
25 ~~applicant for the failure to provide information required by law.~~¹ The board may also continue or
26 postpone a hearing to allow time necessary for the assessor or the board to issue a subpoena for
27 the requested information, as well as any time necessary for related court proceedings.

POSTPONEMENTS

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

32
33 The applicant and/or the assessor shall be allowed one postponement as a matter
34 of right, the request for which must be made not later than 21 days before the
35 hearing is scheduled to commence.

36
37 If the applicant requests a postponement of a scheduled hearing within 120 days of the expiration
38 of the two-year limitation period provided in section 1604, the postponement will be contingent
39 upon the applicant agreeing to extend and toll indefinitely the two-year period. The applicant has
40 the right to terminate the extension agreement with 120 days written notice.

41
42 The assessor is not entitled to a postponement as a matter of right if the request is made within
43 120 days of the expiration of the two-year limitation period. However, the board, in its
44 discretion, may grant such a request. The board may also grant a postponement for a reasonable

¹ See, e.g., Section 167(a) & (b). See also Rule 321(d).

1 period of time if one party initiates an information exchange and the other party does not comply
2 within the time specified in section 1606 and Rule 305.1, subdivision (b).²
3

4 In addition, if the applicant or the applicant's agent is unable to attend a properly noticed hearing,
5 the applicant or the applicant's agent may request, prior to the hearing date, a postponement of
6 the hearing with a showing of good cause to the board.³
7

8 Requests for postponements beyond those that are a matter of right, whether by the applicant or
9 the assessor, must be made in writing, and good cause must be shown for the requested
10 postponement. A mutual agreement between an applicant and the assessor shall be deemed to
11 constitute good cause. Postponements granted because of a mutual agreement or other good
12 cause shall result in extending and tolling indefinitely the two-year limitation period, subject to
13 termination of the agreement upon 120 days written notice by the applicant.⁴
14

15 Any information exchange dates established pursuant to Rule 305.1 remain in effect based on the
16 originally scheduled hearing date, notwithstanding the hearing postponement, except when a
17 hearing is postponed due to the failure of a party to respond to an exchange of information.⁵
18

19 A board of supervisors may delegate decisions concerning postponement to the clerk in
20 accordance with locally adopted rules.
21
22

23 CONTINUANCES

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25 Continuances are extensions of time made after the hearing on an application has commenced.
26 The board may, in its discretion, continue a hearing to a later date.⁶
27

28 If the hearing is continued, the clerk must notify both the applicant (or agent) and the assessor, in
29 writing, of the time and place of the continued hearing. This notification must be made not less
30 than 10 days prior to the date of the continued hearing, unless the parties agree in writing or on
31 the record to waive written notice.⁷
32

33 If the applicant requests a continuance within 90 days of the expiration of the two-year limitation
34 period provided in section 1604, the board may require a written extension signed by the
35 applicant extending and tolling the two-year period indefinitely. The applicant has the right to
36 terminate the extension agreement upon 120 days written notice.⁸
37

38 There are five primary reasons for continuing a hearing:
39

² Rule 305.1, subdivision (d).

³ Rule 313.

⁴ Rule 323, subdivision (a).

⁵ Rule 305.1, subdivision (d).

⁶ Rule 323, subdivision (d).

⁷ Rule 323, subdivision (c).

⁸ Rule 323, subdivision (a).

1 • **Amendment of an application.** If the board grants an applicant's request to
2 amend an application, upon request of the assessor, the hearing on the matter shall
3 be continued by the board for no less than 45 days, unless the parties mutually
4 agree to a different period of time.⁹
5

6 • **Applicant has failed to provide all information required by law.** If an
7 applicant has not yet provided all information required by law, the hearing may be
8 continued to a later date for a hearing on the merits of the application or for the
9 board to further inquire into the status of whether applicant has yet provided all
10 information required by law.
11

12 If an applicant fails to provide information to the assessor pursuant to section
13 441(d) and introduces any requested materials or information at any assessment
14 appeals board hearing, the assessor may request and shall be granted a
15 continuance for a reasonable period of time. The continuance shall extend the
16 two-year period specified in 1604(d) for a period of time equal to the length of the
17 continuance.¹⁰
18

19 • **New information introduced at the hearing.** If new material relating to
20 information received from the other party during an exchange of information
21 under section 1606 is introduced, the other party may request a continuance for a
22 reasonable period of time.¹¹
23

24 • **Inspection of assessor's records.** If the assessor fails to permit the inspection or
25 copying of materials or information, as requested by the applicant pursuant to
26 section 408 (d) or (e), and the assessor introduces any such requested materials or
27 information at any assessment appeals board hearing, the applicant may request a
28 continuance for a reasonable period of time. The continuance shall extend the
29 two-year period specified in section 1604(c) for a period of time equal to the
30 length of the continuance.¹²
31

32 • **Further information required by the board.** If, in the opinion of the board,
33 not enough evidence was provided during the course of the hearing for the board
34 to make a proper determination of value, the board may continue the hearing so
35 that information the board believes is pertinent may be assembled and brought
36 before them.

⁹ Rule 305, subdivision (e)(2)(C)(iv).

¹⁰ Section 441(h).

¹¹ Rule 305.1, subdivision (c).

¹² Section 408(f)(3).

1 **De-Identifying Confidential Data Obtained from Other Assesseees**

2 ~~When~~ During an appeals hearing, the county assessor may wish to support his or her value with
3 ~~presents detailed information on the methodology employed to arrive at a~~
4 ~~value during an appeals hearing, such information may have been derived from confidential data~~
5 ~~submitted by assesseees other than the applicant whose property is the subject of an assessment appeal~~
6 ~~hearing, and which the assessor is not otherwise authorized to disclose to the applicant or the public. If~~
7 ~~all the information is disclosed at a hearing, confidentiality would not be~~
8 ~~maintained. However~~In such cases, the information may be used if enough information ~~must be~~
9 is redacted or masked to protect the non-party assessee's
10 confidential data.¹

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

15 Thus, the data cannot be so stripped of context that reasonable inferences about its relevance can no
16 longer be drawn by either the assessee applicant or the appeals board. ~~At the same time~~But sometimes,
17 a property might be so
18 distinctive that data normally considered disclosable may have to be hidden so as not to risk identifying
19 the property. In all cases, the appeals boards will decide whether to accept de-identified data into
20 the record (or the basis for non-acceptance), and,
21 if accepted, how much weight to give such data.² If the appeals board accepts the de-identified data,
22 ~~an assessee~~ the applicant may cross-examine the assessor's ~~appraiser~~ to challenge its reliability. But in
23 all cases, the appeals board must ensure that no violations of confidentiality occur.

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

28 Note that these are only examples. The determination of whether any specific data point should be
29 de-identified, and to what extent, must be made on a case-by-case basis ~~first by the assessor~~ The
30 ultimate decision, however, as to what information will be allowed and in what form, as well as the
31 weight any particular piece of de-identified information is given, is within the purview of the appeals
32 board. If an applicant believes they are not being fully afforded their due process rights to
33 examine witnesses and documents, they may seek a court order for disclosure of the confidential
34 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 shared¹	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 redacted²	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 shared³	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	

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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	

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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.

Request for Information for Application – San Francisco Assessor-Recorder Comments

Edits to text of form (original line numbers omitted; deletions are in ~~strike~~through; additions are underlined; comments are in *italics*):

Various provisions in the Revenue and Taxation Code grant assessors the authority to obtain information to fulfill their assessment duties. This request for information is made pursuant to the authority of [*insert other provisions as needed, and*] Revenue and Taxation Code section 441, subdivision (d), which states:

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.

Therefore, you are required by law to comply with this request. The information specifically being requested is listed on the enclosure. ~~If you are uncertain as to what information is being requested or need more time to comply with the request, please contact the assessor's office employee whose name and contact information appear on the enclosure.~~

While Revenue and Taxation Code section 441(d) requires you to comply with this request for information, it does not authorize the assessor to require you to submit to depositions, formal interrogatories, or requests for admissions. If the assessor wishes to use those more formal discovery techniques, he or she will do so based on different statutes. **Please read the enclosure carefully, as the assessor may also request in this letter information authorized under other provisions of law.** If you are uncertain as to what information is being requested or need more time to comply with the request, please contact the assessor's office employee whose name and contact information appear on the enclosure.

~~[¶] Additionally, Under Revenue and Taxation Code section 441(d), does not allow an assessor to require you cannot be required to provide information under penalty of perjury. However, please be advised that you may be subject to criminal penalties if you do not provide the requested information, or if you provide false information *even if you do not sign a penalty of perjury statement.* (See Revenue and Taxation Code, §§ 461, 462, and 468.)~~

If the Assessor has checked the box above indicating that this request is being made in conjunction with an assessment appeals hearing, based on the information you provided, the Assessor may arrive at a value conclusion that is satisfactory to you. If this occurs, the Assessor ~~will~~may make a recommendation to the Assessment Appeals Board that your assessed value be changed to that value. You should contact the assessor's office to see if you need to attend the hearing. However, if you ~~still~~ do not agree with the recommended value, a hearing will proceed.

~~[¶~~[¶ If you do not comply with this request, your hearing may proceed as scheduled, or may be delayed, or the board may schedule a prehearing conference to be held in advance of your hearing]. If you do not provide the requested information to the assessor before [the prehearing conference (if scheduled) or] the hearing, you will have an opportunity to explain to the board members or hearing officer why you have not complied with the request for information, and they will decide whether to hold the hearing without the information, whether to postpone or continue the hearing in order to give you time to comply with the request, whether to postpone or continue the hearing so that a subpoena can be issued, or whether any other action should be taken by the assessor or by the board.

~~[¶~~[¶ If you appear at the hearing and introduce ~~the~~ any information that had been requested under Revenue and Taxation Code section 441(d) and not provided to the assessor, the assessor is entitled to a continuance of the hearing to examine the new information. ~~If you do not bring the requested information, you will have an opportunity to explain to the board members or hearing officer why you have not complied with the request for information, and they will decide whether to hold the hearing without the information, whether to continue the hearing in order to give you time to comply with the request, whether to continue the hearing so that a subpoena can be issued, or whether other action should be taken by the assessor or by the board.~~[Deleted text moved to prior paragraph for clarity.]

For more information about the assessment appeals process, including how to obtain information from the assessor, please see the State Board of Equalization's Assessment Appeals Manual at: <http://www.boe.ca.gov/proptaxes/asmappeal.htm>