

Office of the Assessor

County of Santa Clara

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Lawrence E. Stone, Assessor

October 19, 2018

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

David.Yeung@boe.ca.gov
Angie.Berry@boe.ca.gov

Re: Proposed Form for 441(d) and Draft Language for the Assessment Appeals Manual

Dear Mr. Yeung and Ms. Berry:

I write to express significant concerns with the Proposed Form for 441(d) Appeals Requests for Information and Draft Language for the Assessment Appeals Manual. As drafted, both documents adulterate the broad powers of discovery granted Assessors by statute, and could prejudice the appeals process toward an applicant's convenience over assessment equalization and due process. I strongly concur with the legal analysis of Marie LaSala and Marcy Berkman in their entirety, and urge the board to work with the California Assessors Association to build consensus toward a workable solution that properly advises taxpayers of their rights..

Proposed Form for 441(d)

I urge the Board to discard the suggested form and instead recommend that the board work with CAA and CATA on revised language to the proposed insert (Page 3).

The proposed three-page form would require extensive reprogramming of our internal systems and constitutes an unfunded mandate. Moreover, it makes no sense to recommend a form in which an entire page is effectively blank, such as in the proposed second page. At the last Board meeting, there was agreement amongst the Board, CATA and CAA concerning the concept of an insert in every 441(d) request for information, which would explain the authority of Sections 405, 441, 442, and 470. I urge the Board to direct property tax division staff to work with the CAA and CATA over the next month to identify language that we can all agree on, and provide the board with the discussion necessary to enable the Board to make a fully informed decision at their December meeting.

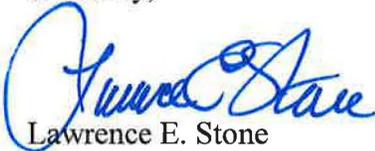
I strongly support the proposed changes to the insert and the comments provided by Marie LaSala. Further, the proposed restriction on what information can be requested ("information that is reasonably related to the proposed tax") conflicts directly with the "broad grants of power to the assessor to demand information" provided by Revenue & Taxation Code 441, 442 and 470.

Draft Language for the Assessment Appeals Manual

The purpose of the manual is to provide clarity. Instead, the proposed language is misleading and one-sided in favor of the taxpayer and contrary to state law and practices. Santa Clara County's Board Counsel Marcy Berkman has drafted revised language which is balanced and fair. It provides direction that is succinct and will not be subject to dispute. It was written from the perspective of Appeal Board Members not the assessor nor the taxpayer.

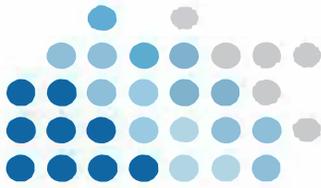
In closing I want to urge the Board to allow more time for both parties to reconcile differences as there are areas of common agreement. Our office was provided three days to provide feedback to these major changes. There is no advantage in imposing inadequately considered rules, forms, or handbook guidance that would remain controversial at best, and at worst, in conflict with existing statutes. Please allow for a more deliberative and thoughtful process during the next month so at least the Board can be advised as to where there is agreement, where there is disagreement and why. Should you have any questions do not hesitate to contact me or Deputy Assessor David Ginsborg at 408-299-5588.

Sincerely,



Lawrence E. Stone
Assessor

CC: Chuck Leonhardt, President, California Assessors' Association
Marie LaSala
Marcy Berkman, County Counsel, Santa Clara County



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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.

Law Office of Marie A. LaSala

Respectfully submitted,



Marie A. LaSala

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October 18, 2018

VIA EMAIL ONLY

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Re: Draft AAB Manual Language re Postponements and Continuances

Dear Messrs. Yeung and Moon:

I am counsel for the Santa Clara County Assessment Appeals Board and write to comment on the draft language for the Assessment Appeals Manual section on Postponements and Continuances that you recently circulated. My comments are provided below and I have attached a redline with additional explanatory comment bubbles regarding suggested revisions:

- It would make organizational sense to switch the order of “Postponements” and “Continuances” in the title and the order of these subsections in the manual.
- The SBE may wish to add a general discussion of the difference between postponements and continuances since this has long been a source of confusion and incorrect language usage for many. [No suggested language provided in my redline.]
- These pages of the AAB manual should be organizationally structured so that any new language generally applicable to both postponements and continuances is separate from the specific subsections for postponements and continuances. As presently structured, the

Letter to David Yeung & Richard Moon

Re: Draft AAB Manual Language re Postponements and Continuances

Date: October 18, 2018

Page 2

SBE's draft language would insert at the end of the subsection specific to postponements two paragraphs of proposed language that the SBE intends to pertain both to postponements and continuances. As noted in the attached redline, I have both suggested new organizational placements for these paragraphs and also suggested substantive edits detailed further in the discussion below.

- The new draft language states that the board should ensure that “unnecessary continuances and postponements are not granted.” In Santa Clara County, self-represented applicants very frequently request continuances either at morning roll call or when they first state their appearances once their case is called for hearing. These self-represented applicants frequently state that (a) after listening to the first few cases they realize that they have not come to the hearing properly prepared with evidence to support their position and now seek more time to prepare for hearing; or (b) they do not want to spend the time that day to wait until their case is called (or cannot do so) and prefer to come back on another day. Currently, the Santa Clara County Assessment Appeals Board frequently grants such continuance requests out of a desire to give self-represented Applicants every possible opportunity to put their best foot forward. If the SBE adopts its draft language regarding “unnecessary continuances,” then it would be useful for the SBE to provide guidance in the manual regarding whether these types of continuances are “unnecessary continuances” that should be denied.

Continuances

- I recommend moving the SBE's draft language, “The board should make every reasonable effort, however, to hold the hearing expeditiously” so that this language precedes the specific subsections on postponements and continuances and is therefore made generally applicable to both subsections.
- I suggest deleting the new draft language re “where practicable a continuance should not exceed 90 days unless...” The guidance to hold the hearing expeditiously is already encompassed in the new general language drafted by the SBE. Also, the 90-day reference is not drawn from the RTC or Property Tax Rules.
- To improve the organizational structure of this subsection, I suggest moving the paragraph that begins “If the applicant requests a continuance within 90 days of the two-year limitation period . . .” so that it comes before the explanation of primary reasons for continuing a hearing.
- Primary reasons for continuing a hearing:
 - I suggest changing the order of the primary reasons to improve the logical flow. Additionally, as permitted and envisioned by RTC 1604(c)(2), the manual should include as a primary reason for continuance that the Applicant has failed to

provide all information required by law. Where an applicant has failed to provide all information as required by law, the applicant is not yet entitled to a hearing and the AAB has discretion to continue the matter. As presently written, the draft language omits reference to this and misleadingly provides guidance only about the mandatory continuance required under RTC 441(h). The manual should also include as a primary reason for continuance those situations in which the AAB continues the hearing because it needs more information to make its value decision. I have also suggested various textual edits shown on the redline of suggested edits. Thus, I suggest five primary reasons for continuance arranged in the following order: amendment of an application; applicant has failed to provide all information required by law; new information following section 1606 exchange; inspection of assessor's records; and further information required by board.

- As shown on the attached redline, in the discussion regarding mandatory continuances required pursuant to 441(h), I suggest adding language regarding the automatic tolling of the two-year statute required by 441(h) when such continuances are granted.
- As shown on the attached redline, in the discussion regarding continuances pursuant to Section 408, I suggest adding language regarding the automatic tolling of the two-year statute required by Section 408 when such continuances are granted.

Postponements

- As shown on the attached redline, in an effort to improve clarity and logical flow, I have suggested some minor organizational and linguistic changes that fall within the first seven paragraphs.
- The SBE draft language adds two new paragraphs to the end of the “postponement” subsection. However, these two new draft paragraphs are not specific to postponements but rather expressly pertain both to postponements and continuances. I suggest moving the first of these two paragraphs so that it becomes the first paragraph under “Postponements and Continuances” and precedes the “postponement” and “continuance” subheadings.
- Final paragraph:
 - As further described below, I suggest either deleting the final paragraph or making various substantive edits to that paragraph to render it consistent with governing law. If it is not deleted, then I recommend inserting a new third subheading before the paragraph. See redline for suggested heading.

- **1st Sentence:** See redline for suggested modifications to this sentence. As written, the phrasing incorrectly suggests that such a postponement or continuance is allowed for the benefit of the taxpayer rather than properly reflecting that all information required by law must be provided by the applicant and the board has discretion to postpone or continue the hearing where the applicant has not complied with that statutory requirement.
- **2nd and 3rd sentences:** The draft language is contrary to law. Section 1604(c)(2) makes clear that applicants must first provide all information required by law before they are entitled to a hearing. And the SBE counsel has advised that in situations where the applicant has failed to comply with this legal requirement, it is within the board's discretion to decide whether to postpone/continue the hearing pending the applicant's provision of the required information or instead nevertheless press forward with the hearing. The SBE's draft language, however, would erroneously advise boards that applicants may simply refuse to turn over documents responsive to the assessor's requests and as long as the applicant states in writing that those documents will not be forthcoming, then the AAB cannot serially continue or postpone the case pending applicant's compliance with its statutory obligations. This is contrary to the law. As shown on the suggested redline, if the draft paragraph is not deleted, then I suggest revising the draft language to set forth that if the Applicant has provided the AAB with a declaration under penalty of perjury stating that they have already provided all responsive information or that no further information exists, then the information request may not be the sole basis for further serial continuances and postponements unless the assessor advises the board that the assessor will be using a subpoena, seeking a court order, or relying on other legal remedies to obtain the requested information.
- **4th Sentence:** This draft language is contrary to Section 1604(c) and also improperly impedes the exercise of the AAB's discretion. The law requires applicants to provide all information required by law and it is evident from Section 1604(c) that they are not entitled to a hearing until that information has been provided. Where applicants have not provided all information as required by law, it is properly up to the discretion of the AAB to decide whether to nevertheless press on regardless with a hearing. To state that, even though an applicant has not complied with its duty to provide all information required by law, the board should nevertheless "in most cases hold a hearing..." is both contrary to law and contrary to the proper exercise of the AAB's discretion.

Letter to David Yeung & Richard Moon
Re: Draft AAB Manual Language re Postponements and Continuances
Date: October 18, 2018
Page 5

- **Last Sentence:** As shown on the attached redline, I suggest eliminating this sentence as the concepts contained therein are, I believe, addressed more clearly in the alternate language I suggest.

Very truly yours,

JAMES R. WILLIAMS
County Counsel

A handwritten signature in blue ink, appearing to read "Marcy L. Berkman", written in a cursive style.

MARCY L. BERKMAN
Deputy County Counsel

MLB:mlb

1875188

POSTPONEMENTS AND CONTINUANCES

It is within the board's discretion to grant requests for a continuance or postponement of a hearing. However, in considering postponement and continuance requests beyond those that must be granted as a matter of right and those that are stipulated to between the parties, the board should ensure that unnecessary postponements and continuances are not granted. The reasonable needs of the county board of equalization or assessment appeals board or county hearing officer and the parties to the proceedings may be considered in determining whether to grant a postponement or continuance. The board should make every reasonable effort, however, to hold the hearing expeditiously.

CONTINUANCES

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 will inform the applicant (or agent) and the assessor in writing of the time and place of the continued hearing not less than 10 days prior to the new hearing date, unless the parties agree in writing or on 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 appeals board grants an applicant's request to amend an application, upon request of the assessor, the hearing on the matter will 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. The AAB is not required to hold a hearing until the Applicant has provided all information required by law.
 - If the Applicant has not yet provided all information required by law, the hearing may be continued to a later date. In such circumstances, the hearing may be continued to a later date for the hearing on the merits of the application or it may be continued to a date at which the board will further inquire into the status of whether Applicant has yet provided all information required by law. FN
 - If the assessor did not receive information from the applicant, as requested pursuant to section 441(d), and the applicant presents such information at the hearing, the assessor may request a continuance for a reasonable period of time. If an applicant fails to provide information to the assessor pursuant to section 441(d) and introduces any requested

Commented [BM1]: The organization of this whole section of the manual should be restructured: Postponements take place before a hearing. Continuances take place in front of the AAB. Therefore, the order of these two portions of the manual should be switched

POSTPONEMENTS AND CONTINUANCES
[inert generally applicable language, if any]

POSTPONEMENTS

CONTINUANCES

FURTHER GUIDANCE ON POSTPONEMENTS AND CONTINUANCES BASED ON APPLICANT'S FAILURE TO PROVIDE ALL INFORMATION AS REQUIRED BY LAW

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Commented [BM2]: Applicants frequently -either before they begin their case or when they first state their appearance at the start of their case - request continuances because (a) after watching a case or two they realize they are not properly prepared for their hearing with evidence that could help them make their case; or (b) they decide that they don't have time that day to wait until their case is called. Guidance from the SBE in the AAB manual re how to handle such frequently encountered continuance requests from Applicants would be helpful. Should such requests be granted? Are they an "unnecessary continuances" that should not be granted?

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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 period of the continuance. 4

• New information introduced at the hearing following Section 1606 exchange. If new material relating to the information received from the other party during an exchange of information is introduced, the other party may request a continuance for a reasonable period of time.3

• 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 period of the continuance. 5

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

POSTPONEMENTS

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, at the discretion of the board, in its discretion, may grant such a request. may be granted.

If the applicant or the applicant's agent are unable to attend a properly noticed hearing, the applicant or the applicant's agent may request in writing, prior to the hearing date, a postponement of the hearing with a showing of good cause to the board.8

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 stipulation by an applicant and the assessor shall be deemed to constitute good cause. Postponements granted to an applicant for good cause or by stipulation shall result in extending and tolling indefinitely

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• Requested information not provided. If the assessor did not receive information from the applicant, as requested pursuant to section 441(d), and the applicant presents such information at the hearing, the assessor may request a continuance for a reasonable period of time.4

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Amendment of an application. — If the appeals board grants an applicant's request to amend an application, upon request of the assessor, the hearing on the matter ~~will~~ shall be continued by the board for no less than 45 days, unless the parties mutually agree to a different period of time.6

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Moved up [1]: 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.7 ¶

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the two-year limitation period, subject to termination of the agreement by 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.9

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

C. FURTHER GUIDANCE ON POSTPONEMENTS AND CONTINUANCES BASED ON APPLICANT'S FAILURE TO PROVIDE ALL INFORMATION AS REQUIRED BY LAW

The board may continue or postpone a hearing because an applicant has not yet complied with a request for information from the assessor or the board. Where a taxpayer has provided the assessment appeals board a declaration under penalty of perjury stating that the taxpayer has already provided all responsive information required by law and that the taxpayer either does not have any further responsive information or that no further responsive information exists, then the information request at issue may not be the sole basis for further serial continuances and postponements unless the assessor advises the board that the assessor will be utilizing a subpoena, seeking a court order, or relying on other legal remedies to obtain the requested information.

1 Rule 323, subdivision (d).

2 Rule 323, ~~subsection~~ subdivision (c).

FN Section 1604(c)(2)

3 Rule 305.1, ~~subsection~~ subdivision (c).

4 Section 441(h).

5 Section 408(f)(3).

6. Rule 305, ~~subsection~~ subdivision (e)(2)(C)(iv).

7 Rule 323, ~~subsection~~ subdivision (a).

8 Rule 313.

9 Rule 305.1, ~~subsection~~ subdivision (d); Rule 323, ~~subsection~~ subdivision (a).

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Moved up [2]: In addition, if the applicant or the applicant's agent are 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.8 ¶

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Deleted: It is within the board's discretion to grant requests for a continuance or postponement of a hearing. However, the board or hearing officer in considering such requests beyond those that are a matter of right, must ensure that unnecessary continuances and postponements are not granted. The board or hearing officer may consider the reasonable needs of the county board of equalization or assessment appeals board or county hearing officer and the parties to the proceedings in determining whether to grant a continuance or postponement.¶

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Deleted: serial continuances or postponements may not be granted solely to force compliance with an information request with which a

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Commented [BM7]: The taxpayer is required by law to provide all responsive information required by law. Per RTC 1604(c)(2) the AAB is not required to hold a hearing until the taxpayer does so and the two year statute does not run where taxpayer has not done so. However, the SBE's draft language – contrary to law - would permit the applicant to simply refuse to provide responsive information and force the AAB to nevertheless conduct a hearing as long as the Applicant states in writing that that they will not provide the requested information. This section should either be deleted because, as written, it does not comport with the law. Alternatively, it should be modified to something along the lines of the redline here suggested.

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Deleted: Granting such serial continuances or postponements would effectively deny an applicant a hearing on the merits of his case. When a taxpayer's non-compliance of requested information is at issue, the board, in most cases, should hold a hearing weighing the evidence and the credibility of the testimony appropriately. The board may also continue or postpone a hearing to allow time to resolve the issue with an applicant's noncompliance ...

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