

**ASSESSMENT APPEALS PROCESS
POSTPONEMENT AND CONTINUANCES
ALTERNATIVE LANGUAGE/COMMENTS**

| NO | PAGE | LINE | SOURCE | PROPOSED LANGUAGE/COMMENTS | BOE STAFF POSITION |
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| 1 | | | Santa Clara County Assessor, Larry Stone | We do not have any feedback concerning this proposal. | N/A |
| 2 | 1 | 17-18 | San Francisco County Assessor, Carmen Chu | postponements in such instances would <u>could</u> effectively deny an applicant a hearing on the merits of the case. | Accepted. |
| | 1 | 23-24 | | In these cases, the board may place <u>should ensure that</u> the burden of proof <u>is properly placed on the applicant for the failure to provide information required by law.</u> | Not accepted. See proposed rewrite by BOE staff. "If the Board determines that the applicant has not provided all of the information required by law, the applicant will have the burden of proof." |
| 3 | | | California Association of Clerks and Election Officials (CACEO) | We believe the staff's draft manual instruction thoroughly covers the subject. We suggest minor wordsmithing in the first bullet dealing with an amendment of an application. We believe removal of the comma after the word "assessor" would more clearly link the requested continuance to the assessor. | |

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| | 3 | 1-4 | John McKibben, Chairman | <ul style="list-style-type: none"> • Amendment of an application. If the board grants an applicant's request to amend an application, upon request of the assessor, the hearing on the matter shall be continued by the board for no less than 45 days, unless the parties mutually agree to a different period of time. | Accepted. |
| 4 | 3 | 32-36 | California Association of Clerks and Election Officials (CACEO) John McKibben, Chairman | <p>More importantly, we also propose some changes to the last bullet regarding further information required by the board. We strongly believe that there is a need to clarify and limit the kind of additional information or evidence a board might require in order to ensure that the county board has good cause to continue a hearing. While we believe it vital that the county board's judicial discretion be preserved, we believe that the manual should clarify that good cause for continuing a hearing for additional information should be limited to "information <u>relating to or consistent with the evidence already provided</u> during the course of the hearing <u>in order</u> for the board to make a proper determination of value . . . "</p> <ul style="list-style-type: none"> • Further information required by the board. If, in the opinion of the board, not enough evidence was provided <u>relating to or consistent with the evidence already provided</u> during the course of the hearing <u>in order</u> for the board to make a proper determination of value, the board may continue the hearing so that <u>the</u> information the board believes is pertinent may be assembled and brought before them. <u>it.</u> | Need clarification. Added "provided". |
| 5 | 1 | 20-26 | California Alliance of Taxpayer Advocates, Peter Kotschedoff and Michael Brennan | <p>If there is no agreement regarding the production of information and a postponement or continuance is unlikely to result in an agreement regarding the information necessary for the board to make a determination in the case, When an applicant's non-compliance with a request for information is at issue and a postponement or continuance is unlikely to result in the production of responsive information, the board, in most cases, should hold a hearing weighing the available evidence and the credibility of the testimony. In these cases, the board may place the burden of proof on the applicant for the failure to provide information required by law. The board may also continue or postpone a hearing to</p> | Not accepted. See proposed rewrite by BOE staff. "If the Board determines that the applicant has not provided all of the information required by law, the applicant |

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| | | | | allow time necessary for the assessor or the board to issue a subpoena for related information, as well as any time necessary for related court proceedings. | will have the burden of proof." |
| 6 | 2 | 29-31 | California Alliance of Taxpayer Advocates, Peter Kotschedoff and Michael Brennan | This notification must be made not less than 10 days prior to the date of the continued hearing, unless parties agree in writing or on the record to waive written notice. <u>The board shall work with the parties to determine a mutually acceptable date for the next hearing.</u> | Not accepted. This language would imply that the parties must agree to the hearing date. But the law provides only that the parties may stipulate to a notice period shorter than ten days. Absent that, the 10 day notice serves, presumably, to give both parties the opportunity to fit the hearing into their schedules. |
| 7 | 1 | 13-16 | Kern County Assessor, Jon Lifquist Comments from Kern County Counsel | Recommend that this also state that the board may postpone or continue a hearing to allow the assessor time to review a response to a request for information that was not provided at least 15 days prior to the hearing. 15 days is our suggestion as a reasonable time, though this is not backed by law. | Not accepted. Reviewing a response to a request for information is generally much less time-consuming than preparing that response. If not, the board may reschedule the hearing as circumstances warrant. |

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| 8 | 1 | 20-26 | Kern County Assessor, Jon Lifquist Comments from Kern County Counsel | <p>Shifting burden of proof to the taxpayer is a misreading of the Statute. This section cites to R&T 167(a) and Rule 321(d). The Rule applies only to "hearing[s] involving the assessment of an owner-occupied single-family dwelling or an escape assessment." Which makes sense because the statute says it applies "in any administrative hearing involving the imposition of a tax on an owner-occupied single-family dwelling, the assessment of an owner-occupied single-family dwelling pursuant to this division, or the appeal of an escape assessment".</p> <p>Neither the Rule nor the Statute indicate that failure to provide information will result in a shift of the burden of proof. Both say is that if an applicant <u>has</u> provided all the relevant information required by law AND it's an escape assessment or an assessment of a single-family dwelling, the presumption affecting the burden of proof shifts in favor of the Applicant and the Assessor then bears the burden of proof. The burden of proof doesn't "shift" back to the Applicant if the Applicant fails to meet the underlying requirement of providing all relevant information.</p> <p>Here's the statutory language of R&T §167:</p> <p>(a) Notwithstanding any other provision of law to the contrary, and except as provided in subdivision (b), there shall be a rebuttable presumption affecting the burden of proof in favor of the taxpayer or assessee <u>who has supplied all information as required by law to the assessor in any administrative hearing involving the imposition of a tax on an owner-occupied single-family dwelling, the assessment of an owner-occupied single-family dwelling pursuant to this division. or the appeal of an escape assessment.</u></p> | <p>Agree.</p> <p>See proposed rewrite by BOE staff.</p> <p>"If the Board determines that the applicant has not provided all of the information required by law, the applicant will have the burden of proof."</p> |
| 9 | 1 | 23-26 | Los Angeles County Assessors' Office, | <p>I want to direct your attention to the Postponements and Continuances document page 1, line 23-26. Our staff recommended changing the wording to "may" to "shall," but after some discussions with other County Counsel attorneys there may be a conflict in the law regarding this suggestion. RTC 167(a) and (b) states as follows:</p> | <p>Not accepted.</p> <p>See proposed rewrite by BOE staff.</p> |

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| | | | Edward Yen, General Counsel | <p>(a) Notwithstanding any other provision of law to the contrary, and except as provided in subdivision (b), there shall be a rebuttable presumption affecting the burden of proof in favor of the taxpayer or assessee <u>who has supplied all information as required by law to the assessor in any administrative hearing involving the imposition of a tax on an owner-occupied single-family dwelling, the assessment of an owner-occupied single-family dwelling pursuant to this division, or the appeal of an escape assessment.</u></p> <p>(b) Notwithstanding subdivision (a), the rebuttable presumption described in that subdivision <u>shall not apply</u> in the case of an administrative hearing with respect to <u>the appeal of an escape assessment resulting from a taxpayer's failure either to file with the assessor a change in ownership statement or a business property statement, or to obtain a permit for new construction.</u></p> <p>So, when determining burden of proof, depending on whether at issue is an owner-occupied single-family home or an appeal of an escape assessment may determine whether the burden of proof shifts to the applicant. I think the word "may" provides the AAB more flexibility depending on the facts of the case, as opposed to changing it to shall. It appears shifting the burden is dependent on the facts which can be argued at the board not dictated by rule.</p> | "If the Board determines that the applicant has not provided all of the information required by law, the applicant will have the burden of proof." |
| 10 | 1 | 3-5 | Los Angeles County Assessors' Office, Edward Yen, General Counsel | <p>It is within the board's discretion to grant an extension of time before the <u>commencement of a hearing on an application</u> has commenced (a postponement) or after the <u>commencement of a hearing on an application</u> has commenced (a continuance).</p> <p>In these cases, the board may <u>shall</u> place the burden of proof on the applicant for the failure to provide information required by law.¹</p> | <p>Accepted (lines 3-5).</p> <p>Not accepted. See proposed rewrite by BOE staff.</p> |

¹ Section 167(a). See also Rule 321(a)&(d).

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| | | | | <p data-bbox="646 570 1199 607">¹ Section 167(a). See also Rule 321(a)&(d).</p> | <p data-bbox="1730 224 2032 509">"If the Board determines that the applicant has not provided all of the information required by law, the applicant will have the burden of proof."</p> <p data-bbox="1730 570 1976 634">Change to footnote accepted.</p> |
| 11 | | | Butte County Assessor, Diane Brown | We don't see any problems with the proposed changes. We have no suggestions or comments. | N/A |