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ASSESSMENT APPEALS BOARD  
City Hall, Room 405  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4697

## SPECIAL MEETING OF THE ASSESSMENT APPEALS BOARD

### JOINT MEETING OF ASSESSMENT APPEALS BOARDS NO. 1 AND 2 PURSUANT TO ADMINISTRATIVE CODE SECTION 2B.6

TUESDAY, MAY 29, 2012  
9:30 AM  
CITY HALL, ROOM 406

1. Roll Call.
2. Selection of a Chairperson for the Joint Meeting.
3. Acknowledge and introduce attending Guests.
  - Todd Gilman, Board of Equalization's Taxpayers' Rights Advocate
  - Mark Sutter, Board of Equalization's Lead Property Tax Technical Advisor to the Taxpayers' Right Advocate
  - Phil Ting, San Francisco Assessor/Recorder
4. Public Comment for items on the agenda.
5. Items of interest from the Board of Equalization's Taxpayers' Rights Advocate.
6. Introduction, discussion and possible action to establish and implement standard policies and procedures for allowing a party to renew the request for findings of fact when the original requesting party waives and/or abandons his/her request. (R&T Code §1611.5 and Property Tax Rule 308(a).)  
*(See Attachments: Items 6-A and 6-B)*
7. Introduction, discussion and possible action regarding establishing and implementing AAB protocol regarding R&T Code §408(d) and §408(e) requests made by taxpayers and/or agents. Possible action items may include establishing and/or implementing standard procedures for tracking, follow-up, timelines, tolling of 2-year deadlines, etc."  
*(See Attachments: Items 7-A to 7-D)*
8. Introduction, discussion and possible action regarding the various adjustment grids or guidelines used by the Assessor in the valuation of residential property. Noted areas of particular interest are bathroom, garage and living area adjustments.

9. Introduction and discussion on various Assessment Appeals Board reports for the period ending April 30, 2012.
  - A. Month and Year-to-Date AAB Activity
  - B. Pending Appeals for Board 1, Board 2 and Hearing Officer
  - C. Hearing Activity Report

*(See Attachments: Items 9-A to 9-C)*
10. Discussion on the workload facing the Assessment Appeals Board resulting from the large volume of appeals filed during the past three years. Share ideas and suggestions on how to improve scheduling and hearing efficiencies to ensure that all two-year deadlines are timely met.
11. Review of legislation that changed the fee structure for Assessment Appeals Board Findings of Fact from a sliding scale of \$50 to \$1,000 to an hourly rate of \$215. Discussion on how to best implement and track the time spent by Board Members, Legal Counsel and staff in preparing findings to ensure appropriate and accurate billing to taxpayers.

*(See Attachments: Items 11-A to 11-C)*
12. Update by Marie Blits, Deputy City Attorney, and Dawn Duran, Administrator, on legal issues pertaining to or affecting the Assessment Appeals Board.
  - A. Litigation of Interest.
  - B. State Legislation.
  - C. State Board of Equalization.

*(See Attachments: Items 12-B and 12-C)*
13. Review and discussion regarding Rules of Order, Board Decorum and the role of the Chairperson.
14. Discussion regarding upcoming training for individual Board Members by the Administrator, as well as various training sessions available through the Board of Equalization.

*(See Attachments: Item 14)*
15. Update on Assessment Appeals Board seats that are due to expire in September this year.
16. Open discussion regarding other local procedures, rules or matters effecting the Assessment Appeals Board.
17. Public Comment (for items *not on the agenda*, but under the jurisdiction of the Board).
18. Adjournment.

# ATTACHMENTS

## ITEM 6

to accept the taxpayer's evidence or income method of valuation. *Main & Von Karman Associates v. Orange County*, 23 Cal.App.4th 337. Where the assessor used the comparable sales method to value a property but did not follow the requirements of Property Tax Rule 4 when doing so, remand of the matter to the assessment appeals board for further hearing is the proper remedy. *Mitchell v. Los Angeles County*, 60 Cal.App.4th 497. A remand to the assessment appeals board is generally required if value determinations remain. Where the board assigned a separate value to the rate protection provisions in a franchise agreement, which assignation the trial court determined to be improper, the trial court could excise that value from the board's determination, without remand. *CAT Partnership v. Santa Cruz County*, 63 Cal.App.4th 1071.

**1611. Request for transcript.** The county board shall make a record of the hearing and, upon request, shall furnish the party with an audio recording or a transcript thereof at his or her expense. Request for an audio recording or a transcript may be made at any time, but not later than 60 days following the final determination by the county board.

*History.*—Added by Stats. 1971, p. 761, in effect March 4, 1972. Stats. 1974, Ch. 180, p. 359, in effect April 24, 1974, renumbered the section which was formerly numbered 1605.6, and substituted "hearing" for "proceedings" in the first sentence. Stats. 1976, Ch. 768, p. 1808, in effect January 1, 1977, added "tape recording or a" before "transcript" in the first and second sentences. Stats. 2009, Ch. 88 (AB 176), in effect January 1, 2010, substituted "an audio" for "a tape" after "party with" and added "or her" after "at his" in the first sentence, and substituted "an audio" for "a tape" after "Request for" in the second sentence.

**1611.5. Record, transcript, findings, and conclusions.** Written findings of fact of the county board shall be made if requested in writing by a party up to or at the commencement of the hearing, and if payment of any fee or deposit which may be required to cover the expense of preparing the findings is made by the party prior to the conclusion of the hearing. However, the party requesting findings may abandon the request and waive findings at the conclusion of the hearing. If the requesting party abandons his or her request at this time, his or her fee or deposit shall be returned if no findings have yet been prepared. If the request is abandoned, the other party may orally or in writing renew the request upon payment of the required fee or deposit, and becomes responsible for any costs for the preparation of findings. A reasonable fee may be imposed by the county to cover the expense of preparing findings and conclusions. The written findings of fact shall fairly disclose the board's determination of all material points raised by the party in his or her petition and at the hearing, including a statement of the method or methods of valuation used in appraising the property.

At the hearing the final determinations by the board shall be supported by the weight of the evidence and, with regard to questions of value, its determinations shall be made without limitation by reason of the applicant's opinion of value stated in the application for reduction in assessment pursuant to subdivision (a) of Section 1603.

If written findings of fact have been requested, the board shall transmit those findings to the requesting party accompanied by a notice that any request for a transcript of the proceedings must be made within 60 days following the date of the final determination of the board.


*History.*—Added by Stats. 1967, p. 1460, in effect June 7, 1967. Stats. 1968, p. 2292, in effect November 13, 1968, revised this section, deleting "and conclusions of law" from the second sentence, and adding the third and fourth sentences and all language of the section following "findings and conclusions" in the fifth sentence. Stats. 1971, p. 760, in effect March 4, 1972, deleted the first sentence of the first paragraph and added the third paragraph concerning the transcript. Stats. 1974, Ch. 180, p. 358, in effect April 24, 1974, renumbered the section which was formerly numbered 1605.5. Stats. 1977, Ch. 877, in effect January 1, 1978, added the clause to the second paragraph beginning with "and with regard to . . ." Stats. 1978, Ch. 57, in effect January 1, 1979, added the clause to the 10th sentence of the first paragraph, after the word "parcel" beginning with "or a total of fifty dollars . . ." Stats. 1985, Ch. 617, effective January 1, 1986, added ", and if payment . . . conclusion of the hearing" after "commencement of the hearing" in the first sentence, added "or her" after "his", in the third sentence, and added ", his or her fee . . . prepared. If the request is abandoned," after "time", resulting in a new fourth sentence, substituted "upon payment . . . and becomes" for "thereby becoming" after

**Rule 307. (Contd.)**

Amended May 6, 1970, effective June 6, 1970.  
Amended April 14, 1972, effective May 14, 1972.  
Amended March 1, 1984, effective June 8, 1984.  
Amended and effective December 13, 1995.  
Amended and effective August 1, 1996.  
Amended October 6, 1999, effective April 22, 2000.

**Rule 308. REQUEST FOR FINDINGS.**

*Reference:* Sections 1603, 1611.5, 1611.6, Revenue and Taxation Code.



(a) If an applicant or the assessor desires written findings of fact, the request must be in writing and submitted to the clerk before commencement of the hearing. The requesting party may abandon the request and waive findings at the conclusion of the hearing. If the requesting party abandons the request at this time, the other party may orally or in writing renew the request at the conclusion of the hearing and accompany the request with payment of the required fee or deposit. The county may impose a reasonable fee, as determined by the board of supervisors, to cover the expense of preparing the findings and conclusions and may require a deposit to be paid prior to the end of the hearing. If, at the conclusion of the hearing, a party requesting written findings has failed to pay the required fee or deposit, the board need not prepare written findings. The board may deny a request made after the conclusion of the hearing that seeks to waive written findings.

(b) The written findings of fact shall fairly disclose the board's findings on all material points raised in the application and at the hearing. The findings shall also include a statement of the method or methods of valuation used in determining the full value of the property. The county shall provide findings within 45 days after the final determination of the board is entered into the record pursuant to regulation 325 of this subchapter, and shall accompany them with a notice that a request for a transcript of the hearing must be made within 60 days after the final determination.

(c) If the county board fails to make findings upon request, or if findings made are found by a reviewing court to be so deficient that a remand to the county board is ordered to secure reasonable compliance with the elements of findings required by section 1611.5 of the Revenue and Taxation Code, the action of the county board shall be deemed to be arbitrary and capricious within the meaning of section 800 of the Government Code, so as to support an allowance of reasonable attorney's fees against the county for the services necessary to obtain proper findings. The dollar limitation set forth in section 800 of the Government Code shall not apply to an allowance of attorney's fees pursuant to this section.

*History:* Adopted May 11, 1967, effective June 11, 1967.  
Amended November 20, 1968, effective November 22, 1968.  
Amended April 14, 1972, effective May 14, 1972.  
Amended June 23, 1981, effective September 19, 1981.  
Amended November 18, 1987, effective January 28, 1988.  
Amended October 6, 1999, effective April 22, 2000.

# ATTACHMENTS

## ITEM 7

appraisers of the Department of Financial Institutions, the Department of Transportation, the Department of General Services, the State Lands Commission, or the Department of Water Resources pursuant to this section, the department shall reimburse the assessor for any costs incurred as a result thereof.

(c) Upon the request of the tax collector, the assessor shall disclose and provide to the tax collector information used in the preparation of that portion of the unsecured roll for which the taxes thereon are delinquent. The tax collector shall certify to the assessor that he or she needs the information requested for the enforcement of the tax lien in collecting those delinquent taxes. Information requested by the tax collector may include social security numbers, and the assessor shall recover from the tax collector his or her actual and reasonable costs for providing the information. The tax collector shall add the costs described in the preceding sentence to the assessee's delinquent tax lien and collect those costs subject to subdivision (e) of Section 2922.

→ (d) The assessor shall, upon the request of an assessee or his or her designated representative, permit the assessee or representative to inspect or copy any market data in the assessor's possession. For purposes of this subdivision, "market data" means any information in the assessor's possession, whether or not required to be prepared or kept by him or her, relating to the sale of any property comparable to the property of the assessee, if the assessor bases his or her assessment of the assessee's property, in whole or in part, on that comparable sale or sales. The assessor shall provide the names of the seller and buyer of each property on which the comparison is based, the location of that property, the date of the sale, and the consideration paid for the property, whether paid in money or otherwise. However, for purposes of providing market data, the assessor may not display any document relating to the business affairs or property of another.

(e) (1) With respect to information, documents, and records, other than market data as defined in subdivision (d), the assessor shall, upon request of an assessee of property, or his or her designated representative, permit the assessee or representative to inspect or copy all information, documents, and records, including auditors' narrations and workpapers, whether or not required to be kept or prepared by the assessor, relating to the appraisal and the assessment of the assessee's property, and any penalties and interest thereon.

(2) After enrolling an assessment, the assessor shall respond to a written request for information supporting the assessment, including, but not limited to, any appraisal and other data requested by the assessee.

(3) Except as provided in Section 408.1, an assessee, or his or her designated representative, may not be permitted to inspect or copy information and records that also relate to the property or business affairs of another, unless that disclosure is ordered by a competent court in a proceeding initiated by a taxpayer seeking to challenge the legality of the assessment of his or her property.

→ (f) (1) Permission for the inspection or copying requested pursuant to subdivision (d) or (e) shall be granted as soon as reasonably possible to the assessee or his or her designated representative.

(2) If the assessee, or his or her designated representative, requests the assessor to make copies of any of the requested records, the assessee shall reimburse the assessor for the reasonable costs incurred in reproducing and providing the copies.

→ (3) If the assessor fails to permit the inspection or copying of materials or information as requested pursuant to subdivision (d) or (e) and the assessor introduces any requested materials or information at any assessment appeals board hearing, the assessee or his or her representative may request and shall be granted a continuance for a reasonable period of time. The continuance shall extend the two-year period specified in subdivision (c) of Section 1604 for a period of time equal to the period of continuance.

History.—Added by Stats. 1941, p. 2051, in effect June 6, 1941. Stats. 1961, p. 2809, in effect September 15, 1961, added "(a) Except as otherwise provided in subdivision (b)" and subdivision (b). Stats. 1966, p. 659 (First Extra Session), in effect October 6, 1966, added the reference to subdivision (c) to subdivision (a), added the last clause referring to court order to subdivision (b), and added subdivision (c). Stats. 1969, p. 2481, in effect November 10, 1969, applicable to equalization proceedings for the 1970-71 assessment year and thereafter, added "provide any market data in his possession to an assessee" and the references to designated representative in subdivision (b), and added subdivision (d). Stats. 1970, p. 1141, in effect November 23, 1970, substituted "may provide any market data in his possession to the assessor of any county and shall provide such data" for "shall provide any market data in his possession" in the first sentence of subdivision (b). Stats. 1971, p. 2163, in effect March 4, 1972, revised subdivision (b) to allow the assessor to provide "appraisal data" to the assessor of any county and revised the requirement for the assessee or his designated representative to obtain a court order to situations involving information and records "other than market data which also relate to the property or business affairs of another". Stats. 1974, Ch. 1107, p. 2369, in effect September 23, 1974, added ", and homeowners' exemption claims," after "assessor" in the first sentence, and added the second and third sentences of subdivision (a); and added "the State Controller," after "Government Code" in subdivision (c). Stats. 1976, Ch. 671, p. 1658, in effect January 1, 1977, added "Except as provided in Section 408.1," at the beginning of the third sentence of subdivision (b). Stats. 1978, Ch. 1388, in effect September 30, 1978, added "inheritance tax referees" to subdivision (c). Stats. 1984, Ch. 1641, in effect January 1, 1985, added "or hers" after "his" throughout the section; and added "staff appraisers of the Department of Transportation" after "referees," in the first sentence, and added the second sentence to subdivision (c). Stats. 1985, Ch. 200, effective January 1, 1986, added a comma after "(c)" in subdivision (a), and deleted "State" before "Controller", added "employees of the Franchise Tax Board for tax administration purposes only," after "referees", added a comma after "Equalization", and substituted "the" for "such" after "examine" in the first sentence of subdivision (c). Stats. 1986, Ch. 1457, effective January 1, 1987, substituted "probate" for "inheritance tax" after "Controller," and added "and the Department of General Services" after "Department of Transportation" in the first sentence, and added "or the Department of General Services" after "Department of Transportation" in the second sentence of subdivision (c). Stats. 1987, Ch. 1162, effective September 26, 1987, added "employees of the Controller for property tax postponement purposes" after "Controller" in the first sentence of subdivision (c), and added "the Department of Savings and Loan," after "appraisers of" and added ",," after "Transportation" in the first and second sentences thereof. Stats. 1992, Ch. 523, in effect January 1, 1993, substituted the comma for "and" after "(b)", and added "and (d)" after "(c)", in the first sentence of subdivision (a); added subdivision (d); and relettered former subdivision (d) as subdivision (e). Stats. 1993, Ch. 876, Section 29, in effect October 6, 1993, deleted "and" after "Transportation," and added "the State Department of Social Services," after "Equalization," in the first sentence of subdivision (c). Stats. 1993, Ch. 876, Section 30, in effect October 6, 1993, operative January 1, 1994, deleted "and" after "(c)", and added "and (e)" after "(d)" in the first sentence of subdivision (a); deleted the balance of the first sentence in subdivision (b) after "county", and substantially restated the deleted portion in subdivision (e); deleted former subdivision letter (e) before "The assessor" to establish a second paragraph in subdivision (b); relettered former subdivisions (d) and (e) as (c) and (d), respectively; added the first sentence, substituted "subdivision" for "section" after "this" in the second sentence, and substituted ". However," for ", but" in the third sentence, thereby establishing the fourth sentence of subdivision (d); and added subdivisions (e) and (f). Stats. 1995, Ch. 498, in effect January 1, 1996, added paragraph designation "(1)", added paragraph (2), and created paragraph (3) from former second sentence in subdivision (e); and added paragraph (3) in subdivision (f). Stats. 1996, Ch. 667, in effect September 20, 1996, substituted "that" for "which" after "assessor's office", and substituted "that" for "which" after "maintain records" in subdivision (a); deleted "probate referees" after "tax postponement purposes," substituted "Department of Financial Institutions" for "Department of Savings and Loan" after "staff appraisers of the", and added "the Department of Water Resources," after "Social Services" in the first sentence, substituted "Department of Financial Institutions" for "Department of Savings and Loan" after "staff appraisers of the", deleted "or" after "Department of Transportation", and added "or the Department of Water Resources" after "General Services" in the second sentence of subdivision (b). Stats. 1996, Ch. 1064, in effect January 1, 1997, operative July 1, 1997, substituted "which" for "that" after "maintain records" in subdivision (a); substituted "Department of Financial Institutions" for "Department of Savings and Loan" after "staff appraisers of the" in the first and second sentences, and added "or" after "Transportation," in the second sentence of subdivision (b). Stats. 1997, Ch. 940 (SB 1105), in effect January 1, 1998, deleted "or" after "Department of Transportation," in the second sentence of the second paragraph of subdivision (b) and deleted "assessor's" before "tax lien" in the second sentence of subdivision (c). Stats. 2000, Ch. 647 (SB 2170), in effect January 1, 2001, added "the State Lands Commission," after "Equalization," in the first sentence and added "the





STATE BOARD OF EQUALIZATION

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State Controller

KRISTINE CAZADD  
Interim Executive Director

September 15, 2011

Mr. Peter Fatooh  
San Francisco Property Tax Appeals  
54 Seward Street  
San Francisco, CA 94114

**Re: *Inspection of Assessor's Records under Revenue and Taxation Code § 408***  
***Assignment No.: 11-124***

Dear Mr. Fatooh:

This is in response to your discussions and emails with the Taxpayers' Rights Advocate (TRA) Office, your appearance at the June 21, 2011 Property Taxpayers' Bill of Rights Hearing in Culver City, and the TRA office's subsequent request on your behalf for a legal opinion regarding certain issues relating to Revenue and Taxation Code<sup>1</sup> section 408 and exchanges of information in property tax appeals with the San Francisco Assessor's Office (the Assessor's Office). As discussed below, it is our opinion that the Assessor's Office must comply with your requests for the comparables sales it intends to present to the assessment appeals board (AAB) prior to an equalization hearing within a reasonable amount of time.

**Facts**

You represent assesseees before the San Francisco AABs who seek reductions in their adjusted base year values under Proposition 8.<sup>2</sup> Prior to the equalization hearings, you state that you make requests to the Assessor's Office pursuant to section 408 that the Assessor's Office furnish to you any market data (as that term is defined by the statute) it intends to present at the hearing. You state that the assessor is typically nonresponsive, and as an example, in one instance responded to your request by providing you with a one-page sheet listing only lot numbers two days prior to the hearing. After some conversations with the Assessor's Office regarding this matter, the Assessor presented his analysis in a letter to you dated July 26, 2011, and signed by Chief Appraiser Matthew A. Thomas (the July 26 letter).

The July 26 letter clarified that it is the policy of the Assessor's Office to allow assesseees (and their representatives) to inspect and copy the file relating to a particular property (which they refer to as an "open file" policy). The Assessor's Office just requests that the assessee or representative make an appointment to ensure that the appraiser and the particular file are available. In addition, Mr. Thomas stated that he has instructed staff to not keep any information out of the files.

<sup>1</sup> All section references are to the Revenue and Taxation Code.

<sup>2</sup> Proposition 8, which was approved by voters on November 7, 1978, added a requirement to Article XIII A of the California Constitution that requires property to be assessed at the lower of its adjusted base year value or its fair market value.

You state, however, that a particular file may contain market data relating to multiple comparable (or not) properties that the appraiser staff have considered at one time or another and you may not be able to discern the particular market data in the file that will be relevant to your appeal and which the assessor will actually present at the equalization hearing. Your view is that if you have made a request under section 408, the Assessor's Office must provide you with the specific market data it intends to present to the AAB prior to the hearing. To this, the Assessor's Office responds in the July 26 letter, "No where [sic] in R & T Code Section 408(d) or (e) does it state or in any way imply that the Assessor is required to pro-actively [sic] provide the market data that he/she intends to use. The Code specifically states that the Assessor shall permit an inspection of the file."

To come to some agreement on this issue, the Assessor's Office offered you three options for handling requests for information:

1. If you have made a section 408 request, you make an appointment to inspect the file (and presumably are only able to inspect the file and not be provided any information with respect to specific market data intended to be presented at hearing);
2. Instead of making a section 408 request, you make an information exchange request under section 1606 (which the Assessor could also initiate); and
3. If you have made a section 408 request, you have a standing meeting to inspect any file two days prior to a hearing because at that time approximately 90 percent of the cases have been prepared for hearing by appraiser staff.

The Assessor's Office says that you have at times used the first option and have rejected the second and third options.

Last, the Assessor's Office claims that because the Assessor only "recommends a value" in an appeal for a reduced base year value under Proposition 8 and it is the AAB that determines the "assessment," the Assessor has not based his assessment of the property on any data, so section 408, subdivision (d) is inapplicable to these types of cases.

### Law and Analysis

Under section 401.3, the Assessor shall assess all property subject to general property taxation on the lien date as provided in the California Constitution, Articles XIII and XIII A.<sup>3</sup> For any lien date, the taxable value of any real property shall be the lesser of the property's base year value or its full cash value. (Rev. & Tax. Code, § 51, subd. (a).)

Issues relating to information exchanges between taxpayers and assessors involve several different statutes, but we are primarily concerned with sections 408, which allows assesseees to view certain records of the assessor used in making his assessment, and 1606, which provides for the formal exchange of information prior to an assessment appeal hearing. Section 408, subdivision (d) provides:

<sup>3</sup> Proposition 13 added Article XIII A to the California Constitution in 1978.

The assessor shall, upon the request of an assessee or his or her designated representative, permit the assessee or representative to inspect or copy any market data in the assessor's possession. For purposes of this subdivision, "market data" means any information in the assessor's possession, whether or not required to be prepared or kept by him or her, relating to the sale of any property comparable to the property of the assessee, if the assessor bases his or her assessment of the assessee's property, in whole or in part, on that comparable sale or sales. The assessor shall provide the names of the seller and buyer of each property on which the comparison is based, the location of that property, the date of the sale, and the consideration paid for the property, whether paid in money or otherwise. However, for purposes of providing market data, the assessor may not display any document relating to the business affairs or property of another.

Section 1606, subdivision (a), provides:

(1) Any applicant for a change of an assessment on the local roll or the assessor, in those cases where the assessed value of the property involved, as shown on the current assessment roll, exceeds one hundred thousand dollars (\$100,000) without regard to any exemptions, may initiate an exchange of information with the other party by submitting the following data to the other party and the clerk in writing:

(A) Information stating the basis of the party's opinion of value.

(B) When the opinion of value is to be supported with evidence of comparable sales, information identifying the properties with sufficient certainty such as by assessor parcel number, street address or legal description of the property, the approximate date of sale, the applicable zoning, the price paid, and the terms of the sale, if known.

(C) When the opinion of value is to be supported with evidence based on an income study, information relating to income, expenses and the capitalization method.

(D) When the opinion of value is to be supported with evidence of replacement costs, information relating to date of construction, type of construction, replacement cost of construction, obsolescence, allowance for extraordinary use of machinery and equipment, and depreciation allowances.

(2) To initiate an exchange of information, the initiating party shall submit the data required by paragraph (1) at least 30 days before the commencement of the hearing on the application. . . .

Under section 1606, subdivision (b), if the initiating party has complied, the other party must provide the same types of information to the initiating party and the clerk at least 15 days prior to the hearing.

Initially, we note that section 408 is a confidentiality statute while section 1606 is a discovery statute. As explained below, however, this does not mean that the two statutes are mutually exclusive. In fact, section 408 contemplates that information obtained pursuant to that section may be used in an assessment appeal hearing. (See Rev. & Tax. Code, § 408, subdivision (f)(3).)

The California Court of Appeal has specifically addressed the interplay between sections 408 and 1606, and is directly on point to your dispute with the Assessor's Office. *Henderson v. Bettis* (1975) 53 Cal.App.3d 486, involved a situation where a couple of property owners had demanded that the Plumas County assessor furnish to them all information and records relating to the assessment of their property for the 1974-75 tax year, including any and all market data relating to the sale of any comparable properties upon which the assessor based his assessment in whole or in part, and made this request within 20 days before the hearing. The assessee made this demand pursuant to an application for reduction in assessment which was pending and set for hearing before the Plumas County Board of Equalization. The assessor refused to provide the market data he intended to present during the hearing unless the assessee were also willing to make an information exchange under section 1606. The assessee brought an action for a writ of mandate to force the assessor to comply with their section 408 request. The trial court granted the writ and directed the assessor to furnish the market data and other information the assessee sought. The assessor appealed to the Court of Appeals, making several arguments in support of his position.

First, the assessor argued that by using section 408 (which is a one-way request by an assessee of the assessor's information and data), the assessee were trying to avoid their obligations for mutual sharing of information under section 1606. Because the assessee waited until there was less than 20 days before the hearing before making the section 408 request, at which point the assessor could not initiate a request under section 1606, the assessor claimed that this "strategy resorted to by the taxpayers is repugnant to the legislative intent inherent in the enactment of *section 1606 of the Revenue and Taxation Code*, and that the timing of taxpayers' demand was intended to circumvent the exchange information requirements of that section." (*Henderson*, 53 Cal.App.3d at 491.) The assessor also argued that because section 1606 falls under Part 3 of Division 1 of the Revenue and Taxation Code, which governs "Equalization by County Board[s] of Equalization", and section 408 appears in Part 2 of Division 1, entitled "Assessment Generally", only section 1606 applies in an assessment appeal before a county appeals board. Finally, the assessor argued that there was an "apparent inconsistency" or conflict between sections 408 and 1606.

The Court of Appeal disagreed with all of the assessor's arguments. First, it noted that the two sections provide taxpayers with "alternative procedures for obtaining information used by the assessor in his appraisal of the taxpayer's property," writing that the two statutes were "entirely different", providing "alternatives, each of which has its own advantages and disadvantages." (*Henderson*, 53 Cal.App.3d at 493-494.) For example, since section 408 may be used only by an assessee, the assessee "enjoys an advantage in that he is not required to disclose his market data to the assessor" unless the property has an assessed value of more than \$100,000 (at that time \$25,000) and the assessor has initiated an exchange under section 1606. (*Ibid.*) A disadvantage to assessee in using section 408 is that it is only helpful when the assessor used the comparable sales method because it enables access only to comparable sales market data whereas section 1606 covers information relating to the other appraisal methodologies. Thus, the court concluded that there was no conflict between the two sections

and that a taxpayer may take advantage of either one. (*Henderson*, 53 Cal.App.3d at 494; see also *Bank of America v. County of Fresno* (1981) 127 Cal.App.3d 295, 306.)

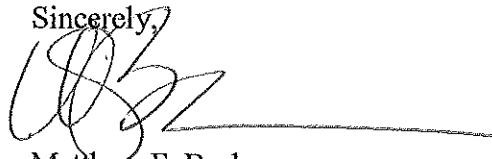
Lastly, the court addressed the assessor's argument that he was at a disadvantage if an assessee operates solely under section 408, because "the taxpayer gets the opportunity to review in advance the case which the assessor will present at the equalization hearing and at the same time may refuse to allow the assessor the opportunity to review the case to be presented by the taxpayer." (*Henderson*, 53 Cal.App.3d at 494.) The court found this argument without merit, pointing out that it is the assessor who has the superior advantage because "[t]he law presumes that an assessor has performed his duties properly and that his assessments are both regularly and correctly made." (*Id.* at 494-95; see also *Bank of America*, 127 Cal.App.3d at 306.) Thus, the Court of Appeal held that if an assessee makes a request under section 408 in connection with an assessment appeal, the assessor is required to furnish to the assessee the market data upon which the assessor bases the assessment that he intends to present at the hearing.

We also note that despite the fact that *Henderson* pre-dates Propositions 13 and 8, we find it equally as applicable today in the context of an appeal seeking a reduction of a base year value under Proposition 8 as it was prior to the enactment of those propositions. While it could be argued that the presentation of data to support the disallowance of a Proposition 8 adjustment is not the making of an assessment within the meaning of section 408, subdivision (d), in *Henderson* the assessor had refused to provide "market data and information gathered by him which he intended to present during the course of an equalization hearing." (*Henderson*, 53 Cal.App.3d at 488.) Thus, the court required the assessor to provide not only market data it had used to make the initial assessment, but also any information *it intended to present* at an equalization hearing. Therefore, given the *Henderson* decision, we believe the better view is that if the data an assessor intends to present at an equalization hearing to support its opinion of value is market data consisting of comparable sales, and an assessee makes a request under section 408 to be furnished that specific data, the assessor must furnish the data to the assessee. This is also true since any comparable sales to support the disallowance of a Proposition 8 adjustment at hearing is presented to support the assessment that was placed on the roll.

Based upon the analysis above, it is our opinion that the Assessor's Office must allow an assessee to inspect or copy any comparable sales market data it intends to present at a hearing upon request. We note, however, that section 408 only requires that such access be given "as soon as reasonably possible." In other words, there is nothing in the statute that mandates a specific time within which such access must be granted. If a more formal exchange of information is desired with set dates within which data must be provided, either the assessee or the assessor (if the assessed value of the property exceeds \$100,000) may avail himself of the provisions set forth in section 1606. In addition, there is no provision that requires an assessor to select comparable sales it intends to present within a certain time of a section 408 request. Thus, if an assessor has not chosen comparable sales to present at a hearing when a section 408 request is made, the assessor cannot, at that time, provide such data to the assessee because that data has not yet been identified. However, we are of the opinion that once such comparable sales are chosen, they must be specifically identified and an assessee must be allowed to inspect or copy such information. We also believe that best practices would dictate an assessor's office contact an assessee that has made a section 408 request as soon as such data is available. If the assessor's office fails to comply and then introduces any requested information at a hearing, you may request and must be granted a continuance under section 408, subdivision (f)(3).

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely,



Matthew F. Burke  
Tax Counsel III (Specialist)

MFB/yg

J:/Prop/Prec/Appeals Process/2011/11-124.doc

cc: Honorable Phil Ting  
San Francisco County Assessor  
1 Dr. Carlton B. Goodlett Place, City Hall Room 190  
San Francisco, CA 94102-4698

Stephanie Profitt  
Deputy City Attorney  
San Francisco City Attorney's Office  
1 Dr. Carlton B. Goodlett Place, City Hall Room 234  
San Francisco, CA 94102-4698

Mr. David Gau (MIC:63)  
Mr. Dean Kinnee (MIC:64)  
Mr. Todd Gilman (MIC:70)

HARRIET W. HENDERSON et al., Plaintiffs and Respondents, v. DOW BETTIS, as  
Assessor, etc., et al., Defendants and Appellants

Civ. No. 15115

Court of Appeal of California, Third Appellate District

**53 Cal. App. 3d 486**; 126 Cal. Rptr. 199; 1975 Cal. App. LEXIS 1582

December 5, 1975

**PRIOR-HISTORY:** Superior Court of Plumas County, No. 8458, Stanley C. Young,  
Jr., Judge.

**COUNSEL:** Bagshaw, Martinelli, Corrigan & Jordan and Leland H. Jordan for  
Defendants and Appellants.

Carr, Kennedy, Peterson & Frost and Daniel S. Frost for Plaintiffs and Respondents.

**JUDGES:** Opinion by Regan, Acting P. J., with Evans, J., concurring, Janes, J.,  
concurring in the result.

**OPINION BY:** REGAN

#### OPINION

By their petition for a writ of mandate, petitioners allege they had demanded of the Assessor of Plumas County that he furnish to them "any and all information and records relating to the assessment of petitioners' said real property for the tax fiscal year 1974-1975, including any and all market data relating to the sale of any property comparable to the property of petitioners upon which respondent bases his assessment of petitioners' property in whole or in part." The demand was made pursuant to petitioners' applications for reduction in their real property assessments which had been set for hearing before the Plumas County Board of Equalization. The respondent assessor refused to provide the market data and information gathered by him which he intended to present during the course of the equalization hearing, unless the petitioners were willing to exchange such information in accordance with the provisions of Revenue and Taxation Code section 1606. The trial court issued a peremptory writ of mandate directing respondent to furnish the data and information sought.

The assessor appeals.

This case, one of first impression, involves the construction and interpretation of sections 1606 and 408 of the Revenue and Taxation Code.

Section 1606 provides as follows: "(a) At the time of filing the application [for reduced assessment] or at any time prior to 20 days before the commencement of the hearing on the application, any applicant for a change of an assessment on the local roll or the assessor, in those cases, where the assessed value of the property involved, as shown on the current assessment roll, exceeds twenty-five thousand

dollars (\$ 25,000) without regard to any exemptions, may cause an exchange of information between himself and the other party by submitting the following data to the other party in writing:

"(1) Information stating the basis of such party's opinion of value.

"(2) When the opinion of value is to be supported with evidence of comparable sales, information identifying the properties with sufficient certainty such as by assessor parcel number, street address or legal description of the property, the approximate date of sale, the applicable zoning, the price paid, and the terms of the sale, if known.

" (3) When the opinion of value is to be supported with evidence based on an income study, information relating to income, expenses and the capitalization method.

"(4) When the opinion of value is to be supported with evidence of replacement cost, information relating to date of construction, type of construction, replacement cost of construction, obsolescence, allowance for extraordinary use of machinery and equipment, and depreciation allowances.

"(b) Notwithstanding any limitation on assessed value contained in subdivision (a), if an applicant for a change of an assessment or the assessor has submitted the data required by subdivision (a) within the specified time, at least 10 days prior to the hearing the other party shall submit to the party who caused the exchange of information in writing the following data:

"(1) Information stating the basis of such other party's opinion of value.

"(2) When the opinion of value is to be supported with evidence of comparable sales, information identifying the properties with sufficient certainty such as by assessor parcel number, street address or legal description of the property, the approximate date of sale, the applicable zoning, the price paid, and the terms of the sale, if known.

"(3) When the opinion of value is to be supported with evidence based on an income study, information relating to income, expenses and the capitalization method.

"(4) When the opinion of value is to be supported with evidence of replacement cost, information relating to date of construction, type of construction, replacement cost of construction, obsolescence, allowance for extraordinary use of machinery and equipment, and depreciation allowances.

"The person assigning a hearing date shall provide adequate notice to the parties of such date, so that the exchange of information permitted by this section can be made without requiring a continuance of the hearing.

"Whenever information has been exchanged pursuant to this section the parties may not introduce evidence on matters not so exchanged unless the other party consents to such introduction. However, at the hearing, each party may introduce new material relating to the information received from the other party. If a party introduces new material at the hearing, the other party, upon his request, shall be granted a continuance for a reasonable period of time.



"Nothing in this section shall be construed as an intent of the Legislature to change, alter or modify generally acceptable methods of using the sales approach, income approach, or replacement cost approach to determine full cash value." (Italics added.)

The pertinent subdivisions of section 408 provide as follows: "(b) The assessor may provide any appraisal data in his possession to the assessor of any county and shall provide any market data in his possession to an assessee of property or his designated representative upon request. The assessor shall permit an assessee of property or his designated representative to inspect at the assessor's office any information and records, whether or not required to be kept or prepared by the assessor, relating to the appraisal and the assessment of his property. An assessee or his designated representative, however, shall not be provided or permitted to inspect information and records, other than market data, which also relate to the property or business affairs of another person, unless such disclosure is ordered by a competent court in a proceeding initiated by a taxpayer seeking to challenge the legality of his assessment."

"(d) For purposes of this section, 'market data' means any information in the assessor's possession, whether or not required to be prepared or kept by him, relating to the sale of any property comparable to the property of the assessee, if the assessor bases his assessment of the assessee's property, in whole or in part, on such comparable sale or sales. The assessor shall provide the names of the seller and buyer of each property on which the comparison is based, the location of such property, the date of the sale, and the consideration paid for the property whether paid in money or otherwise, but for purposes of providing such market data, the assessor shall not display any document relating to the business affairs or property of another."

The assessor first points out that the taxpayers in this case waited until less than 20 days remained before the equalization hearing before making a demand upon the assessor pursuant to Revenue and Taxation Code section 408; that they demanded he furnish them not only the information used to make the original assessment, but also furnish all appraisal data he intended to present to the local board of equalization. By utilizing this procedure, the assessor claims the taxpayers are seeking to avoid their reciprocal obligation under section 1606 to furnish to the assessor the data which they intended to present at the hearing. The assessor contends the strategy resorted to by the taxpayers is repugnant to the legislative intent inherent in the enactment of section 1606 of the Revenue and Taxation Code, and that the timing of the taxpayers' demand was intended to circumvent the exchange requirements of that section.

In order to avoid such a result, the assessor contends that an "apparent inconsistency" arises when sections 408 and 1606 of the Revenue and Taxation Code are first compared. He argues that this apparent inconsistency lies in the fact that section 408 appears to give to the taxpayer a right to obtain any and all information constituting the basis of the assessor's opinion of value, whereas section 1606 at least implies that the taxpayer is entitled to such information only if he first offers to give similar information relating to his opinion of value. He argues the apparent inconsistency can be reconciled if the differing purposes underlying these two code sections is recognized, as follows:

Section 408 is found in part 2 of division 1 of the Revenue and Taxation Code.

Chapter 3 of this part is entitled "Assessment Generally." These portions of the code are concerned primarily with valuation principles to be observed by the assessor in making his appraisals *for purposes of preparing the assessment roll*. Thus, section 408 is intended to outline the rights of the taxpayer and the assessor with respect to the information used by the assessor for these purposes. (In general, see Ehrman & Flavin, Taxing Cal. Property, §§ 39, 267, 268; 22 Hastings L.J. 1.)

On the other hand, section 1606 is found in part 3 of division 1 of the code. Chapter 1 of this part is entitled "Equalization by County Board of Equalization." Thus, this chapter deals with the procedures governing the *equalization of the assessment roll by county boards of equalization*.

If the property owner disagrees with the appraisal and assessment of his property as it appears on the assessment roll, he may apply for a reduction. (Rev. & Tax. Code, § 1603.) The equalization process then begins. The assessor contends that it is at this stage (and only at this stage) that section 1606 applies.

The assessor argues that the equalization process is a true adversary proceeding (see, e.g., Rev. & Tax. Code, §§ 1607, 1609.4, 1611 and 1611.5), and in this connection that section 1606 is a discovery device created by the Legislature to promote a fair and effective equalization process in order to take the "game" and element of surprise out of the proceedings. (See Greyhound Corp. v. Superior Court (1961) 56 Cal.2d 355, 376 [15 Cal.Rptr. 90; 364 P.2d 266].) He further argues that by enacting section 1606, the Legislature has indicated that the taxpayer is not entitled to additional information gathered by the assessor solely for the equalization hearing *unless* the taxpayer is willing to reciprocate and provide the assessor with like information regarding his case. The assessor contends that common decency and fairness require the taxpayer to reciprocate. He concludes: "Section 1606 is meaningless and unnecessary if it is the intent of Section 408 to allow a taxpayer complete access to the Assessor's appraisal data after the taxpayer has filed an application for a reduction in assessment. If Section 408 allows the taxpayer, at the eleventh hour, to demand of the Assessor all of the evidence which the Assessor intends to introduce at the equalization hearing, then the Legislature might as well repeal Section 1606. Under such circumstances, no taxpayer would ever proceed under Section 1606 which imposes upon him an obligation to submit his data to the Assessor prior to the hearing."

The assessor asserts an "apparent inconsistency" or conflict between sections 408 and 1606 of the Revenue and Taxation Code. If there is no such conflict, however, the supposed need for statutory construction and interpretation disappears, and the assessor's argument must fail. (See Caminetti v. Pac. Mutual L. Ins. Co. (1943) 22 Cal.2d 344, 353-354 [139 P.2d 908]; First Congreg. Church v. County of L.A. (1937) 9 Cal.2d 591, 594 [71 P.2d 1106].) A careful reading of the two sections discloses no conflict between sections 408 and 1606; section 408 does not render section 1606 "meaningless and unnecessary;" and the two sections provide the taxpayer with alternative procedures for obtaining information used by the assessor in his appraisal of the taxpayer's property.

There are several important differences between the two statutes which support this conclusion. First, section 408 can be used *only* by the taxpayer to obtain any information the assessor has relating to the appraisal and assessment of his property as long as it does not relate also to the property or business affairs of another, and the assessor's market data as defined in that section. Thus, the taxpayer enjoys an

advantage in that he is not required to disclose his market data to the assessor (unless the property has an assessed value of more than \$ 25,000). The procedure under section 408 has the disadvantage, however, of being restricted to data relating to comparable sales, and thus is of no use in obtaining income or other nonsales valuation data. (See Ehrman & Flavin, *supra*, (1975 Supp.) § 468, pp. 250-251.)

Section 1606, on the other hand, allows the taxpayer to obtain from the assessor the information on which his opinion of value is based. In addition, under this same section, the assessor has the right to initiate the exchange of information in cases where the property has an assessed value of \$ 25,000 or more. In such a case, the assessor may avoid any "eleventh hour" demand for information by invoking the exchange procedure under section 1606. In an exchange of information, the opinion of value may be supported with evidence of comparable sales, income studies, or replacement costs. In each instance, the statute provides in detail what types of information must be provided by each party to the exchange.

Once the exchange procedure under section 1606 has been invoked by either party, the parties may not introduce evidence on matters not revealed in the exchange unless the other party consents, although they may introduce new material relating to the information received from the other party. If this is done, the one to whom the material is new may obtain a continuance of the hearing.

It is clear from the foregoing that the two statutory procedures are entirely different. They provide alternatives, each of which has its own advantages and disadvantages. We conclude there is no conflict between the two code sections and thus there is no need for statutory construction. Either method of procedure is available to the taxpayer.

- We make two further observations. The assessor's argument based on the phraseology of the headings is meritless. Section 6 of the Revenue and Taxation Code specifically provides as follows: "Division, part, chapter, article, and section headings do not in any manner affect the scope, meaning, or intent of the provisions of this code." (See also *In re Halcomb* (1942) 21 Cal.2d 126, 130 [130 P.2d 384].)

- Secondly, the assessor maintains that to give independent meaning to section 408 as a valid alternative to obtaining information after a request for a reduction has been made, places the assessor at a "distinct disadvantage." He argues the taxpayer gets the opportunity to review in advance the case which the assessor will present at the equalization hearing and at the same time may refuse to allow the assessor the opportunity to review the case to be presented by the taxpayer. These contentions are meritless.

"In the past, those attempting to understand the assessment process and determine whether it was being properly carried out often encountered a wall of secrecy around the assessor's records. Few taxpayers had the courage or financial resources to challenge the assessor's bald assertion that the information in his records was confidential." (Ehrman & Flavin, *supra*, § 39, p. 46.)

- It was not until 1961 that section 408 of the Revenue and Taxation Code was broadened to allow the assessee to inspect information and records relating to the appraisal and assessment of his property. By the enactment of section 1606 of the Revenue and Taxation Code, it is extremely doubtful that the Legislature intended to do away with this valuable right. (See *People v. Connor* (1964) 229 Cal.App.2d 716,

718 [40 Cal.Rptr. 603] [repeal by implication not favored]; cf. *State Board of Equalization v. Watson* (1968) 68 Cal.2d 307, 312 [66 Cal.Rptr. 377, 437 P.2d 761]; in general, see Carr, *Need for Disclosure in Property Tax Proceedings*, 40 State Bar J. 794.)

More to the point, however, is the fact that it is the assessor who enjoys the superior advantage. The law presumes that an assessor has performed his duties properly and that his assessments are both regularly and correctly made. ( *Westlake Farms, Inc. v. County of Kings* (1974) 39 Cal.App.3d 179, 186-187 [114 Cal.Rptr. 137].) Furthermore, should the county board of equalization adopt the position of the assessor, the determination of the board will not be rejected by the reviewing court if there is in the record substantial evidence to support the board's determination. ( *Hunt-Wesson Foods, Inc. v. County of Alameda* (1974) 41 Cal.App.3d 163, 169 [116 Cal.Rptr. 160]; *Westlake Farms, Inc. v. County of Kings, supra*, 39 Cal.App.3d at p. 183.)

We conclude that section 408 of the Revenue and Taxation Code is clear on its face, is not unfair, and does nothing more than set up a procedure affording the taxpayer access to information relating to the appraisal and assessment of his property. Section 1606 merely establishes an alternative procedure which may be followed.

The judgment is affirmed.

SECTION 573

EFFECTIVE: May. 2012	<b>R &amp; T CODE SECTION 408d REQUEST PROCESS</b>	SECTION: 573
		PAGE: 1 of 7

For clarity, the process for R & T 408d requests is as follows:

1. A 408d request is sent to our office. (See Example A) The request goes directly to Eric Ho, currently our Jr. Administrative Analyst.
2. Eric emails a receipt received to the requestor and the area appraiser. (See Example B)
3. Eric logs the 408d request on a ledger. (See Example C)
4. The area appraiser fills out the comparable properties on the market data sheet indicating what comps will be used for the upcoming appeal. A blank form is available in the template folder as a word document. (See Example D)
5. Once the area appraiser completes the market data sheet, a copy goes in the file and a copy is given to Eric. When this market data is available, Eric sends an email to the requestor to make an appointment to review the data. (See Example E)
6. Requestor suggests available times to come into our office to receive the comparables. (See Example F).
7. Eric confirms appointment date and time to review market data by sending an email to requestor. (See Example G)

SECTION 573

Example A:

JAN 10 2012 12:55

CULLEWELL

P.01/01



San Francisco  
Property Tax Appeals

FACSIMILE TRANSMITTAL SHEET

TO: <i>Matt Thomas</i>	FROM: Peter J. Fatoh	<i>699-6449</i>
COMPANY: SF Assessor's Office	DATE: <i>1-10-11</i>	
FAX NUMBER: 415- 554-7915	TOTAL NO. OF PAGES INCLUDING COVER: 1	
PHONE NUMBER:	SENDER'S REFERENCE NUMBER:	
F2: AAB # <i>2010-0402 +0403</i>	YOUR REFERENCE NUMBER: <i>1-24-12 Hearing</i>	

URGENT  
 FOR REVIEW  
 PLEASE COMMENT  
 PLEASE REPLY  
 PLEASE RECYCLE

NOTES/COMMENTS:

Pursuant to R & T Code section 408 (d), the taxpayer requests the information from the Assessor's office as cited in that R&T Code section to be made available to the taxpayer.

Thank you.

cc: AAB  
SBE



**408 Request Acknowledged**

Eric Ho for: platooh

On: Matthew Thomas

Exec: Ricky Lee, Donald Wiggam, Harvey Huey

01/10/2012 03:21 PM

Dear Mr. Fatooch,

The San Francisco Assessor-Recorder's Office acknowledges receipt of your request to inspect public records pursuant to Section 408 of the Revenue and Taxation Code. An open invitation has been extended for you to come in to inspect the public files anytime during office hours. It is recommended that you make an appointment so that we may prepare the records for your visit thereby minimizing delays and down time.

The following is a list of the specific cases and associated APNs which you have requested to inspect and the date your request was received:

<u>Requested by:</u>	<u>Case#</u>	<u>APN</u>	<u>Request Rec'd on:</u>	<u>Hearing Date</u>
Peter Fatooch	2010-0402	3626 016	1/10/2012	1/24/2012
Peter Fatooch	2010-0403	0804 002	1/10/2012	1/24/2012

Should you have any questions, please feel free to contact Matt Thomas at (415) 554-5613.

Thank you,

Example B:

Eric Ho  
Assessment Clerk

## SECTION 573

Example C:

Submitted by	AAB Number	Date rec'd	Hearing Date	Appraiser	Comps Ready on	Responded to Requestor on	Requestor Examined on:	1606 Sent on:
Peter Fatooh	2009-6133	9/5/2011	9/27/2011	Marol	9/22/2011	9/19/2011	9/26/2011	
Peter Fatooh	2009-4859	9/5/2011	9/27/2011	Carrie		9/19/2011		
Peter Fatooh	2009-5155	9/5/2011	9/27/2011	Carrie		9/19/2011		
Peter Fatooh	2009-4308	9/5/2011	10/17/2011	Joan	10/14/2011	9/19/2011		
Peter Fatooh	2009-0236	9/5/2011	10/17/2011	Julie Ford	10/14/2011	9/19/2011		
Peter Fatooh	2009-4583	9/5/2011	10/17/2011	Dan	10/14/2011	9/19/2011		10/19/2011
Peter Fatooh	2009-3047	9/5/2011	10/17/2011	Dan	10/14/2011	9/19/2011		10/19/2011
Peter Fatooh	2010-2175	n/a	10/3/2011	Connie	9/30/2011	9/30/2011	10/5/2011	
Peter Fatooh	2010-2176	n/a	10/3/2011	Connie	9/30/2011	9/30/2011	10/5/2011	
Peter Fatooh	2010-2177	n/a	10/3/2011	Connie	9/30/2011	9/30/2011	10/5/2011	
Peter Fatooh	2010-2178	n/a	10/3/2011	Connie	9/30/2011	9/30/2011	10/5/2011	
Peter Fatooh	2009-6395	n/a	10/11/2011	Carrie				
Peter Fatooh	2009-6396	n/a	10/11/2011	Carrie				
Peter Fatooh	2009-6456	n/a	10/11/2011	Carrie				
Peter Fatooh	2009-6457	n/a	10/11/2011	Carrie				
Peter Fatooh	2009-6458	n/a	10/11/2011	Carrie				
Peter Fatooh	2009-6459	n/a	10/11/2011	Carrie				
Peter Fatooh	2010-1636	n/a	10/11/2011	Carrie				
Peter Fatooh	2010-1637	n/a	10/11/2011	Carrie				
Peter Fatooh	2010-0881	no formal notice	10/17/2011	Liz	10/14/2011	10/14/2011		12/12/2011
Peter Fatooh	2010-0882	no formal notice	10/17/2011	Liz	10/14/2011	10/14/2011		12/12/2011
Peter Fatooh	2010-0883	no formal notice	10/18/2011	Joan				
Peter Fatooh	2010-0942	no formal notice	10/25/2011	Michael	10/14/2011			
David Kilgore	2010-0557	10/24/2011	12/7/2011	Tim				
Peter Fatooh	2009-6228	11/15/2011	12/1/2011	Dan	11/29/2011	11/15/2011	11/29/2011	



Example D:

## AAB Comp Summary for 408 Requests

### Subject Property

AAB Application: 2010-0402  
APN: 3628-016  
Address: 3832-3836 23<sup>rd</sup> Street

### Comp 1

APN: 6603-009  
Address: 1494-1498 Noe St  
Sale Date: 7/17/09  
Sale Price: \$1,335,000.00

### Comp 2

APN: 3619-008  
Address: 834-838 Dolores St  
Sale Date: 9/25/09  
Sale Price: \$1,425,000.00

### Comp 3

APN: 3538-059  
Address: 14-18 Walter St  
Sale Date: 7/8/09  
Sale Price: \$1,345,000.00

SECTION 573

Example E:

From: Eric Ho/ASRREC/SFGOV  
To: pfatooh@sbcglobal.net  
Cc: Ricky Lee/ASRREC/SFGOV@SFGOV, Matthew Thomas/ASRREC/SFGOV@SFGOV  
Date: 01/13/2012 10:56 AM  
Subject: 408 request - comps ready

---

Dear Mr.Fatooh,

The comps for the following cases are ready for viewing:

2010-0402 3628-016

Please let me know when you would like to come in.

Thanks,

Eric Ho

Example F:

From: peter fatooh <pfatooh@sbcglobal.net>  
To: Eric.Ho@sfgov.org  
Cc: Ricky.Lee@sfgov.org, Matthew.Thomas@SFGOV.ORG  
Date: 01/20/2012 04:23 PM  
Subject: Re: 408 request - comps ready

---

Mr. Ho:

I would like to come to your office this coming Monday morning at 8:30a.m. to receive the comparables for this property. Would you please confirm.

Thank you,

Peter J. Fatooh  
Taxpayer's Agent

SECTION 573

Example G:

From: Eric Ho/ASRREC/SFGOV  
To: peter fatooh <pfatooh@sbcglobal.net>  
Cc: Ricky Lee/ASRREC/SFGOV@SFGOV, Matthew Thomas/ASRREC/SFGOV@SFGOV  
Date: 01/23/2012 08:08 AM  
Subject: Re: 408 request - comps ready

---

Mr. Fatooh,

I will be here Monday morning at 8:30 for your viewing of the comparables for this property.

Thank you,  
Eric Ho

# ATTACHMENTS

## ITEM 9



**ASSESSMENT APPEALS BOARD**  
**2011/2012 Activity Report**  
for period ending April 30, 2012

<b>BOARD DECISIONS</b>	April 2012	Fiscal Year 2011/2012	<i>Same Time Last Year</i>	
			Month	YTD
Assessed Value Increased by the Assessor	0	0	0	0
Assessed Value Increased by the Board	0	0	0	0
Assessed Value Lowered to Assr Recommendation	130	701	63	211
Assessed Value Lowered by the Board	112	995	79	425
Lowered by Board, but Higher than Assessor Value	3	22	1	2
Assessment Canceled by the Board	1	8	0	2
Appeals Denied by the Board	27	159	10	58
Appeals Denied for Lack of Appearance	66	414	57	281
Appeals Denied for Lack of Jurisdiction	0	0	0	4
Verbal Stipulations Approved by the Board	67	640	24	336
Written Stipulations Approved by the Board	4	43	72	642
Stipulations Denied by the Board	0	0	0	29
Penalty Abated	0	4	0	0
Admin Rejected – Invalid Applications	12	195	12	221
<b>SUBTOTAL</b>	<b>422</b>	<b>3,181</b>	<b>318</b>	<b>2,211</b>
Applications Withdrawn by the Taxpayer	196	1,154	138	1,265
<b>NUMBER OF CLOSED APPEALS</b>	<b>618</b>	<b>4,335</b>	<b>456</b>	<b>3,476</b>

<b>OPEN APPLICATIONS</b>	2011/2012 Year-to-Date	<i>Same Time Last Year</i>
Applications with Deadlines by September 30, 2012	1,274	665
Appeals to decide per month (5 months) = 255		
Number of Open Applications - Waived Deadlines	926	770
Number of Open Applications with Deadlines	6,505	5,870
(Total New Applications filed in 11/12 = 6,014)	(New = 6,014)	(New = 5,553)
(CY 11/12 = 5,290 / Previous Years = 724)		
<b>TOTAL NUMBER OF OPEN APPLICATIONS</b>	<b>8,705</b>	<b>7,305</b>

**POTENTIAL PROPERTY TAX IMPACT from OPEN APPLICATIONS**

	Current 11/12 Tax Year	Prior Tax Years	2011/12 FY TOTAL	Total - Same Time Last Year
Value Appealed (Secured & Unsecured)	\$32,023,883,469	\$45,811,934,671	\$77,835,818,140	\$83,344,249,832
Taxpayer Opinion of Value	\$18,255,172,271	\$23,026,163,868	\$41,281,336,139	\$46,559,269,334
Net Difference	\$13,768,711,198	\$22,785,770,803	\$36,554,482,001	\$36,784,980,498
<b>POTENTIAL PROPERTY TAX IMPACT</b>	<b>\$159,584,378</b>	<b>\$263,963,311</b>	<b>\$423,547,690</b>	<b>\$426,115,013</b>

<b>REVENUE</b>	April 2012	2011/2012 Year-to-Date	<i>Same Time Last Year</i>	
			Month	YTD
Filing Fees (including adjustments for returned checks)	\$9,360	\$357,480	\$2,220	\$318,720
Hearing Fees	\$16,309	\$65,634	\$7,000	\$39,600
Finding of Fact Fees	\$150	\$850	\$0	\$1,575
Miscellaneous Fees	\$126	\$678	\$1	\$731
Refunded Fees	\$0	(\$600)	(\$200)	(\$7,170)
<b>TOTAL REVENUE</b>	<b>\$25,945</b>	<b>\$424,042</b>	<b>\$9,021</b>	<b>\$353,456</b>



**ASSESSMENT APPEALS REPORT**  
**OPEN and/or PENDING APPLICATIONS**  
**2011/2012 Activity Report**  
**for period ending April 30, 2012**

Type of Appeal	With 2-Year Deadlines to Meet		Waived 2-Year Deadlines		TOTAL NUMBER OF OPEN APPLICATIONS	
	Bd 1	Bd 2	Bd 1	Bd 2	Bd 1	Bd 2
Secured Real Estate	3,012	4,416	590	192		
Personal Property	19	301	11	124		
Possessory Interest	31	0	9	0		
<b>TOTAL NUMBER OF OPEN APPLICATIONS</b>	<b>3,062</b>	<b>4,717</b>	<b>610</b>	<b>316</b>	<b>3,672</b>	<b>5,033</b>
# of Cases Pending Findings	0	0	1	3	1	3

7,779

926

<b>TOTAL NUMBER OF AAB OPEN APPLICATIONS = 8,705</b> <b>APPLICATIONS PENDING FOR THE HEARING OFFICER PROGRAM = 4,312 (49.5%)</b>
---

**FOOTNOTES for all Board 1 applications:**

- (1) Board 1 application that is pending Findings is Baker Hamilton
- (2) Includes applications requested for Hearing Officer program located within block/lot area of Board 1

**FOOTNOTES for all Board 2 applications:**

- (1) Board 2 applications that are pending Findings are Donald Woo (legal issue only), Myrtle Brown (09-6133) and John-Paul Whelan (10-3060)
- (2) Includes applications requested for Hearing Officer program located within block/lot area of Board 2

**ASSESSMENT APPEALS BOARD**  
**2011/2012 Fiscal Year Hearing Activity Summary**  
for period ending December 31, 2011

	Number of Hearing Sessions Scheduled	Number of Appeals Scheduled	%	Number of Appeals Withdrawn	%	Number of Appeals Postponed	%	Number of Appeals Decided	%
<b>July-11</b>									
Board 1	13	120		13		63		44	
Board 2	7	88		29		25		34	
Board 3	1	1		0		0		1	
Hearing Officer	15	252		34		67		151	
<b>Total</b>	<b>36</b>	<b>461</b>	<b>100%</b>	<b>76</b>	<b>16%</b>	<b>155</b>	<b>34%</b>	<b>230</b>	<b>50%</b>
<b>August-11</b>									
Board 1	6	57		9		28		20	
Board 2	9	151		13		82		56	
Board 3	0	0		0		0		0	
Hearing Officer	16	273		40		34		199	
<b>Total</b>	<b>31</b>	<b>481</b>	<b>100%</b>	<b>62</b>	<b>13%</b>	<b>144</b>	<b>30%</b>	<b>275</b>	<b>57%</b>
<b>September-11</b>									
Board 1	3	28		3		17		9	
Board 2	4	72		23		19		32	
Board 3	0	0		0		0		0	
Hearing Officer	22	380		50		43		287	
<b>Total</b>	<b>29</b>	<b>480</b>	<b>100%</b>	<b>76</b>	<b>16%</b>	<b>79</b>	<b>16%</b>	<b>328</b>	<b>67%</b>
<b>October-11</b>									
Board 1	6	89		43		32		14	
Board 2	10	121		18		25		78	
Board 3	0	0		0		0		0	
Hearing Officer	20	343		33		24		286	
<b>Total</b>	<b>36</b>	<b>553</b>	<b>100%</b>	<b>94</b>	<b>17%</b>	<b>81</b>	<b>15%</b>	<b>378</b>	<b>68%</b>
<b>November-11</b>									
Board 1	5	58		9		23		26	
Board 2	7	82		9		22		51	
Board 3	0	0		0		0		0	
Hearing Officer	14	269		34		36		199	
<b>Total</b>	<b>26</b>	<b>409</b>	<b>100%</b>	<b>52</b>	<b>13%</b>	<b>81</b>	<b>20%</b>	<b>276</b>	<b>67%</b>
<b>December-11</b>									
Board 1	5	69		5		15		49	
Board 2	7	82		8		14		60	
Board 3	0	0		0		0		0	
Hearing Officer	14	256		32		21		203	
<b>Total</b>	<b>26</b>	<b>407</b>	<b>100%</b>	<b>45</b>	<b>11%</b>	<b>50</b>	<b>12%</b>	<b>312</b>	<b>77%</b>
<b>Subtotal YTD</b>	<b>184</b>	<b>2,791</b>	<b>100%</b>	<b>405</b>	<b>15%</b>	<b>590</b>	<b>21%</b>	<b>1799</b>	<b>64%</b>

**ASSESSMENT APPEALS BOARD**  
**2011/2012 Fiscal Year-End Hearing Activity Report**  
for period ending April 30, 2012

	Number of Hearing Sessions Scheduled	Number of Appeals Scheduled	%	Number of Appeals Withdrawn	%	Number of Appeals Postponed	%	Number of Appeals Decided	%
<b>January-12</b>									
Board 1	7	102		12		62		28	
Board 2	5	61		10		12		39	
Board 3	0	0		0		0		0	
Hearing Officer	15	268		22		21		225	
<b>Total</b>	<b>27</b>	<b>431</b>	<b>100%</b>	<b>44</b>	<b>10.21%</b>	<b>95</b>	<b>22.04%</b>	<b>292</b>	<b>67.75%</b>
<b>February-12</b>									
Board 1	12	112		16		35		61	
Board 2	12	153		48		25		80	
Board 3	0	0		0		0		0	
Hearing Officer	21	379		35		27		317	
<b>Total</b>	<b>45</b>	<b>644</b>	<b>100%</b>	<b>99</b>	<b>15.37%</b>	<b>87</b>	<b>13.51%</b>	<b>458</b>	<b>71.12%</b>
<b>March-12</b>									
Board 1	15	199		52		76		71	
Board 2	13	168		52		59		57	
Board 3	0	0		0		0		0	
Hearing Officer	23	454		32		32		390	
<b>Total</b>	<b>51</b>	<b>821</b>	<b>100%</b>	<b>136</b>	<b>16.57%</b>	<b>167</b>	<b>20.34%</b>	<b>518</b>	<b>63.09%</b>
<b>April-12</b>									
Board 1	15	181		94		54		33	
Board 2	13	163		46		73		44	
Board 3	0	0		0		0		0	
Hearing Officer	19	371		41		29		301	
<b>Total</b>	<b>47</b>	<b>715</b>	<b>100%</b>	<b>181</b>	<b>25.31%</b>	<b>156</b>	<b>21.82%</b>	<b>378</b>	<b>52.87%</b>
<b>May-12</b>									
Board 1		0							
Board 2		0							
Board 3		0							
Hearing Officer		0							
<b>Total</b>	<b>0</b>	<b>0</b>	<b>100%</b>	<b>0</b>	<b>#DIV/0!</b>	<b>0</b>	<b>#DIV/0!</b>	<b>0</b>	<b>#DIV/0!</b>
<b>June-12</b>									
Board 1		0							
Board 2		0							
Board 3		0							
Hearing Officer		0							
<b>Total</b>	<b>0</b>	<b>0</b>	<b>100%</b>	<b>0</b>	<b>#DIV/0!</b>	<b>0</b>	<b>#DIV/0!</b>	<b>0</b>	<b>#DIV/0!</b>
<b>2011/2012 FY</b>	<b>354</b>	<b>5,402</b>	<b>100%</b>	<b>865</b>	<b>16%</b>	<b>1,095</b>	<b>20%</b>	<b>3,445</b>	<b>64%</b>



# ATTACHMENTS

## ITEM 11

1 [Assessment Appeals Board: Increasing administrative processing fees, adding certain  
2 waivers; and changing to an hourly rate for findings of fact fees.]

3 Ordinance amending Administrative Code Chapter 2B "Assessment Appeals Boards,"  
4 by amending Section 2B.9 to increase the administrative processing fee per application  
5 from \$30 to \$45 ~~\$90~~ ~~\$60~~, by adding a fee waiver for any property assessed on the roll at  
6 a value of \$7,500 or less, and by adding a fee waiver for any property where there is a  
7 difference of \$7,500 or less between the taxpayer's opinion of value on the application  
8 and the subject property's assessed value on the roll; by amending Section 2B.11 to  
9 change the findings of fact fees from a sliding scale of \$100 to \$1,000, to an hourly rate  
10 of \$215 with a maximum of 30 hours billed; and a technical change.

11 NOTE: Additions are *single-underline italics Times New Roman*;  
12 deletions are *strike-through italics Times New Roman*.  
13 Board amendment additions are double-underlined;  
Board amendment deletions are ~~strikethrough-normal~~.

14 Be it ordained by the People of the City and County of San Francisco:

15  
16 Section 1. The San Francisco Administrative Code is hereby amended by amending  
17 Section 2B.9, to read as follows:

18 Sec. 2B.9 - ~~FILING FEE~~ ADMINISTRATIVE PROCESSING FEE.

19 An applicant for a refund shall pay a ~~\$30~~ ~~\$45.00~~ ~~\$90.00~~ ~~\$60.00~~ nonrefundable  
20 administrative processing fee to the Assessment Appeals Board at the time of filing an  
21 application with the Board, for all applications filed on or after July 1, 2010. An applicant shall  
22 pay a separate filing administrative processing fee for each application filed. The filing  
23 administrative processing fee shall be waived where:

24 (a) The applicant would qualify for a waiver of court fees and costs pursuant to  
25 California Government Code Section ~~68511.3~~ 68632; or

1 (b)(1) The application is accompanied by a stipulation pursuant to Revenue and  
2 Taxation Code Section 1607 signed by the Assessor, the applicant, and the City Attorney,

3 (2) The applicant requests a reduction for the tax year following a tax year for which  
4 the Assessment Appeals Board has reduced the assessed value at the time of filing the  
5 application for the subsequent tax year, and

6 (3) The applicant's opinion of value is not less than the value determined by the Board  
7 for the prior year plus any automatic increases allowed by law.

8 (c) The subject property is enrolled on the property tax roll at an assessed value of \$7,500 or  
9 less, for the time period that is the subject of the application.

10 (d) There is a difference in value of \$7,500 or less, between the taxpayer's opinion of value as  
11 stated on the application, and the assessed value of the subject property on the property tax roll for the  
12 time period that is the subject of the application.

13  
14 Section 2. The San Francisco Administrative Code is hereby amended by amending  
15 Section 2B.11, to read as follows:

16 SEC. 2B.11 - FEE FOR FINDINGS OF FACT.

17 (a) The fee payable to the Assessment Appeals Board ~~(AAB)~~ to prepare findings of fact  
18 pursuant to California Revenue and Taxation Code Section 1611.5 shall be \$215.00 per hour  
19 for the time spent by the County with a total maximum of 30 hours billed, for all applications filed on or  
20 after July 1, 2010, in accordance with the following schedule:

<u>Where the property affected by the application is valued on the current assessment roll at:</u>	<u>Fee</u>
<u>\$ 0 - \$1,000,000</u>	<u>\$ 100.00</u>
<u>1,000,001 - 2,000,000</u>	<u>125.00</u>
<u>2,000,001 - 5,000,000</u>	<u>150.00</u>
<u>5,000,001 - 10,000,000</u>	<u>500.00</u>
<u>10,000,001 - 20,000,000</u>	<u>750.00</u>
<u>More than \$20,000,000</u>	<u>1,000.00</u>

21  
22  
23  
24  
25  
SUPERVISOR AVALOS  
BOARD OF SUPERVISORS

Page 2

Attachment: Item 11-A, pg 2

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1 (b) Where an applicant files two or more applications at the same time affecting the  
2 same appraisal unit for the same tax year, the applicant shall be liable for a single findings of  
3 fact fee based on the sum of the current assessment roll values of all property contained in  
4 the appraisal unit.

5 (c) Revenues generated by the findings fees shall be used exclusively to pay *the*  
6 *Assessment Appeals Boards' operating costs expenses incurred by the County for producing the*  
7 *findings of fact and conclusions of law. Where the City Attorney assists a Board in preparing findings*  
8 *of fact, the revenues from the findings fee shall be paid to the City Attorney based on the actual amount*  
9 *of time expended by the City Attorney in advising the Board with respect to the findings.*

10  
11  
12  
13  
14 APPROVED AS TO FORM:  
DENNIS J. HERRERA, City Attorney

15  
16 By:

  
17 MARIE CORLETT BLITS  
Deputy City Attorney

18  
19  
20  
21  
22  
23  
24  
25  
SUPERVISOR AVALOS  
BOARD OF SUPERVISORS

**\*\* CONFIDENTIAL WORK PRODUCT FOR THE CITY ATTORNEY \*\***  
**ASSESSMENT APPEALS BOARD**

**FINDINGS WORKSHEET - OFFICE**

<b>1. Application Number(s):</b>	
<b>2. Name of Applicant &amp; Agent:</b>	
<b>3. APN / Address-Name of Party:</b>	
<b>4. For Fiscal Year &amp; Roll Type:</b>	
<b>5. Hearing Date(s):</b>	
<b>6. Chair &amp; Board Members:</b>	
<b>7. Assessor Representative(s):</b>	
<b>8. Date of Filing:</b>	
<b>9. Final Date for AAB Notification of Decision:<sup>1</sup></b>	

**ASSESSED VALUES**

	<b>Roll Value</b>	<b>Applicant's Value at Hearing</b>	<b>Assessor's Value at Hearing</b>
8. Land	\$	\$	\$
9. Improv./Structure	\$	\$	\$
10 Improv./Fixtures	\$	\$	\$
11. Personal Property	\$	\$	\$
<b>12. Total</b>	\$	\$	\$
13. Penalties	\$	\$	\$

**FACTORS DISCUSSED**

<b>14. Approach to Appraisal Used</b>	<b>Applicant</b>	<b>Assessor</b>
A. Market / Comparable Sales		
B. Income Approach		
C. Cost Approach		
D. Board Notes / Comments:		

<sup>1</sup> Final decision date = 120 days after conclusion of the hearing or 180 days if Findings of Fact are requested.

**\*\* CONFIDENTIAL WORK PRODUCT FOR THE CITY ATTORNEY \*\***  
**ASSESSMENT APPEALS BOARD**

15. [Areas of Disagreement] [Evaluation of Approaches]	Applicant	Assessor	Board Notes <sup>2</sup>
<b>A. Income Approach</b>			
(1) Lease Rate(s) Used			
(2) Leases Relied Upon			
(3) Vacancy Rate			
(4) Net Operating Income			
(a.) Sq. Footage			
(b.) Price/sq. ft.			
(c.) Expenses			
(5) Cap Rate & Method			
(6) Other			
(7) Comments			

<b>B. Comparable Sales Approach</b>	Applicant	Assessor	Board Notes
(1) Locations			
(2) Cash Equivalent			
(3) Highest and Best Use			
(4) Appraisal Units			
(5) Leased Fee/Fee Simple			
(6) Size			
(7) Class (quality)			
(8) Age			
(9) Date of Sale			
(10) Use			
(11) Improper Approach			
(12) Other			
(13) Comments			

<sup>2</sup>In cases where the Board's [tentative] Decision is not the same as either the Applicant's Value Estimate at the hearing or the Assessor's recommendation at the hearing, this column should be filled out for the assistance in identifying the basis for the Board's Decision.

**\*\* CONFIDENTIAL WORK PRODUCT FOR THE CITY ATTORNEY \*\***  
**ASSESSMENT APPEALS BOARD**

C. Cost Approach	Applicant	Assessor	Board Notes
(1) "New" Cost			
(2) Adjustments			
(a) Obsolescence			
(b) Other			
(3) Seismic			
(4) ADA			
(5) Fire & Safety			
(6) Environmental			
(7) Comments			

**[Tentative] DECISION**

16. Principal Factors \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

17. Result                      VALUE FOR LIEN DATE \_\_\_\_\_, 20\_\_\_\_

Land	\$ _____
Improvement/Structures	\$ _____
Improvement/Fixtures	\$ _____
Personal Property	\$ _____
Total	\$ _____
Penalties	\$ _____

18. Is the Decision Tentative Until Findings are Prepared?                      Yes \_\_\_\_\_ No \_\_\_\_\_

19. Board Members

A. \_\_\_\_\_,                      Concur \_\_\_\_\_                      Dissent \_\_\_\_\_  
 Chairperson

B. \_\_\_\_\_,                      Concur \_\_\_\_\_                      Dissent \_\_\_\_\_

C. \_\_\_\_\_,                      Concur \_\_\_\_\_                      Dissent \_\_\_\_\_

20. Date of Worksheet: \_\_\_\_\_

**\*\* CONFIDENTIAL WORK PRODUCT FOR THE CITY ATTORNEY \*\***  
**ASSESSMENT APPEALS BOARD**

**FINDINGS WORKSHEET - HOTELS**

<b>1. Application Number(s):</b>	
<b>2. Name of Applicant &amp; Agent:</b>	
<b>3. APN / Address-Name of Party:</b>	
<b>4. For Fiscal Year &amp; Roll Type:</b>	
<b>5. Hearing Date(s):</b>	
<b>6. Chair &amp; Board Members:</b>	
<b>7. Assessor Representative(s):</b>	
<b>8. Date of Filing:</b>	
<b>9. Final Date for AAB Notification of Decision:<sup>1</sup></b>	

**ASSESSED VALUES**

	<b>Roll Value</b>	<b>Applicant's Value at Hearing</b>	<b>Assessor's Value at Hearing</b>
8. Land	\$	\$	\$
9. Improv./Structure	\$	\$	\$
10 Improv./Fixtures	\$	\$	\$
11. Personal Property	\$	\$	\$
<b>12. Total</b>	\$	\$	\$
13. Penalties	\$	\$	\$

**FACTORS DISCUSSED**

<b>14. Approach to Appraisal Used</b>	<b>Applicant</b>	<b>Assessor</b>
A. Market / Comparable Sales		
B. Income Approach		
C. Cost Approach		
D. Board Notes / Comments:		

<sup>1</sup> Final decision date = 120 days after conclusion of the hearing or 180 days if Findings of Fact are requested.



**\*\* CONFIDENTIAL WORK PRODUCT FOR THE CITY ATTORNEY \*\***  
**ASSESSMENT APPEALS BOARD**

15. [Areas of Disagreement] [Evaluation of Approaches]	Applicant	Assessor	Board Notes <sup>2</sup>
<b>A. Income Approach</b>			
(1) Average Room Rate			
(2) Hotel Occupancy			
(3) RevPAR			
(4) Gross Revenue			
(a) Gross Room Sales			
(b) Food and Beverage			
(c) Telephone			
(d) Other			
(5) Hotel Expenses			
(a) Rooms			
(b) Food and Beverage			
(c) Telephone			
(d) Other Expenses			
(e) Undistributed Expenses			
(f) Fixed Expenses			
(6) FF & E Reserve			
(7) Intangible/Business Value			
(8) Cap Rate & Method			
(9) Other			
(10) Comments			

<b>B. Comparable Sales Approach</b>	Applicant	Assessor	Board Notes
(1) Locations			
(2) Cash Equivalent			
(3) Highest and Best Use			
(4) Appraisal Units			
(5) Size			
(6) Class (quality)			
(7) Age			
(8) Date of Sale			
(9) Use			
(10) Improper Approach			
(11) Other			
(12) Comments			

<sup>2</sup> In cases where the Board's [tentative] Decision is not the same as either the Applicant's Value Estimate at the hearing or the Assessor's recommendation at the hearing, this column should be filled out for the assistance in identifying the basis for the Board's Decision.

**\*\* CONFIDENTIAL WORK PRODUCT FOR THE CITY ATTORNEY \*\***  
**ASSESSMENT APPEALS BOARD**

C. Cost Approach	Applicant	Assessor	Board Notes
(1) "New" Cost			
(2) Adjustments			
(a) Obsolescence			
(b) Other			
(3) Seismic			
(4) ADA			
(5) Fire & Safety			
(6) Environmental			
(7) Comments			

**[Tentative] DECISION**

16. Principal Factors \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

17. Result                      VALUE FOR LIEN DATE \_\_\_\_\_, 20\_\_\_\_

Land	\$	_____
Improvement/Structures	\$	_____
Improvement/Fixtures	\$	_____
Personal Property	\$	_____
Total	\$	_____
Penalties	\$	_____

18. Is the Decision Tentative Until Findings are Prepared?                      Yes \_\_\_\_\_ No \_\_\_\_\_

19. Board Members

A. _____, Chairperson	Concur _____	Dissent _____
B. _____,	Concur _____	Dissent _____
C. _____,	Concur _____	Dissent _____

20. Date of Worksheet: \_\_\_\_\_

# ATTACHMENTS

## ITEM 12



STATE BOARD OF EQUALIZATION  
PROPERTY AND SPECIAL TAXES DEPARTMENT  
450 N STREET, SACRAMENTO, CALIFORNIA  
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0064  
916 274-3350 • FAX 916 285-0134  
www.boe.ca.gov

BETTY T. YEE  
First District, San Francisco  
SEN. GEORGE RUNNER (RET.)  
Second District, Lancaster  
MICHELLE STEEL  
Third District, Rolling Hills Estates  
JEROME E. HORTON  
Fourth District, Los Angeles  
JOHN CHIANG  
State Controller  
KRISTINE CAZADD  
Executive Director

February 7, 2012

No. 2012/010

TO COUNTY ASSESSORS:

SUMMARY OF 2011 PROPERTY TAXES LEGISLATION

This is a summary of 2011 legislation affecting property taxes. All bills are effective January 1, 2012 unless otherwise specified.

**ABx1 15, Chapter 3 of the 2011-12 First Extraordinary Session, Effective June 28, 2011**  
*Amends section 73 of the Revenue and Taxation Code.*

**Active Solar Energy System New Construction Exclusion.** Clarifies that the exclusion applies only until the property undergoes a subsequent change in ownership. Clarifies that qualified systems completed prior to sunset date remain excluded after the sunset date until there is a subsequent change in ownership. Provides, via uncodified legislative findings and declarations, that the exclusion includes systems constructed as freestanding or parking lot canopies. Provides, via uncodified legislative findings and declarations, that in cases where a newly constructed active solar energy system is sold in a sale-leaseback arrangement or partnership flip structure arrangement, the new construction exclusion applies if (1) the system is newly constructed or added and (2) no other taxpayer has received the exclusion for the same system.<sup>1</sup>

**AB 75, Chapter 269**  
*Amends sections 17533.6 and 17537.9 of the Business and Professions Code; amends section 1195 of the Civil Code; amends section 3505 of the Commercial Code; and amends sections 8205, 8208, 8211, and 27287 of, and adds section 12181 to, the Government Code.*

**Deceptive Business Solicitations.** Prohibits the use of the term "assessor" in the title, trade, or brand name of any solicitation that reasonably could be interpreted or construed as implying a governmental connection. Prohibits additional business names from being used by assessment reduction filing service firms and modifies font size requirements on disclosures printed on advertisements.

**AB 188, Chapter 202**  
*Amends sections 205.5 and 279 of the Revenue and Taxation Code.*

**Disabled Veterans' Exemption.** Provides that an unmarried surviving spouse receiving the disabled veterans' exemption on their home will continue to be eligible for the exemption if he or she is confined to a hospital or care facility, provided the home is not rented or leased.

<sup>1</sup> See Letter To Assessors 2011/039 for proposed guidelines on the new construction exclusion for active solar energy systems.

- Specifies the address to use when mailing the request.
- Specifies the address to use when mailing a penalty notice for failure to file.
- Requires penalty notices to identify the parcel or parcels for which the penalty is assessed.
- Specifies that the date of the mailing, not the date of the written request, begins the 90 day period within which to file the statement.
- Specifies that the postmark date will serve as the date the property owner files the statement.

***Legal Entity Ownership Interest Transfers.*** Related to the legal entity change in control and ownership statement that must be filed with the State Board of Equalization (Board):

- Increases from 45 to 90 the number of days a legal entity has to report a change in ownership or change in control to the Board.
- Increases from 45 to 90 the number of days a legal entity has to file a statement with the Board before a penalty will be levied for failure to file a statement after a written request.
- Clarifies that the penalty for failure to file the statement with the Board is to be levied by the assessor.

***Penalty Abatement Appeals.*** Expressly provides that either the county board of equalization or the assessment appeals board will hear penalty abatement appeals for late-filed or failure-to-file penalty issues, rather than the county board of supervisors.

***Penalty Abatement by Assessor.*** Relating only to legal entity change in control and ownership statements required to be filed with the Board, requires the assessor to abate the penalty if the assessor determines that a written request by the Board to file a statement was based on erroneous information.

A separate Letter To Assessors on this legislation will be forthcoming.

#### **SB 618, Chapter 596**

*Amends sections 2805, 2835, 3511, 4700, 5050, and 5515 of the Fish and Game Code; adds section 51255.1 to, and adds Chapter 6.9 (commencing with section 51190) to Part 1 of Division 1 of Title 5 of the Government Code; and amends section 402.1 of the Revenue and Taxation Code.*

***Williamson Act – Solar Use Easement.*** Allows property owners and counties or cities that are currently parties to a Williamson Act contract to mutually agree to rescind the contract on parcels of land meeting certain criteria and simultaneously enter into a "solar-use easement." Provides that a solar-use easement is an enforceable land use restriction and that parcels subject to a solar-use easement are to be assessed pursuant to Revenue and Taxation Code section 402.1 during the term of the easement. Requires the assessor to determine the fair market value of land as though free of the easement restriction for purposes of the rescission fee (6.25 percent for property in the Williamson Act; 12.5 percent for property in a farmland security zone). Requires the assessor to determine the fair market value of a parcel as though free of the easement restriction—should the landowner subsequently seek to terminate the easement—in order to determine a solar-use easement termination fee (12.5 percent of the property's then fair market value). A separate Letter To Assessors on this legislation will be forthcoming.

**SB 668, Chapter 254**

*Adds section 51257.5 to the Government Code.*

***Williamson Act.*** Allows a city or county to accept contributions from a nonprofit land-trust organization, a nonprofit entity, or a public agency for specific land that is under a Williamson Act contract to supplement the city or county's foregone property tax revenues, if the state fails to make all or part of its subvention payments to the city or county. A separate Letter To Assessors on this legislation will be forthcoming.

**SB 947, Chapter 351**

*Amends sections 63.1, 69, 69.3, 69.5, 74.5, 74.6, 276.2, 278, 483, 531.1, 830, 862, 1150, 1154, 2821, 4831, 5303, 11551, and 11596 of, adds section 271.5 to, and repeals section 75.23 of the Revenue and Taxation Code.*

***Change in Ownership Exclusion: Parent-Child and Grandparent-Grandchild Transfers.*** Provides that the exclusion applies to a transfer of a unit or lot within a cooperative housing corporation. A separate Letter To Assessors on this topic will be forthcoming. §63.1

***Disaster Relief: Base Year Value Transfer.*** Clarifies that property is "substantially damaged or destroyed" if damage to either land or improvements meets the 50 percent threshold. §§69, 69.3, 69.5

***Change in Ownership Exclusion: Over 55/Disabled Base Year Value Transfer.*** Expands the period from 30 days to 6 months for taxpayers to request that additional new construction be included in the base year value that was previously transferred. A separate Letter To Assessors on this topic will be forthcoming. §69.5

***New Construction Exclusion: Seismic Safety.*** Updates the citations to reference the current model building codes used by industry. §74.5

***New Construction Exclusion: Disabled Access.*** Corrects the reference to the California Constitution as amended by Proposition 13 of 2010. §74.6

***Exemptions: College, Cemetery, Church, Religious, Exhibition, Veterans' Organization, Tribal Housing, and Welfare.*** Clarifies that a property tax exemption ceases as of the date of sale or transfer of the real property. A separate Letter To Assessors on this topic will be forthcoming. §§75.23, 271.5, 531.1

***Disabled Veterans' Exemption.*** A separate Letter To Assessors on this topic will be forthcoming.

- Extends the time a disabled veteran has to file a claim to receive the full amount of the exemption on a newly acquired property. §276.2
- Specifies that the annual notice is to be mailed prior to lien date to claimants who received the exemption in the immediately preceding year, similar to the annual notice requirements of other exemptions. §276.2

*Change in Ownership Statement Penalty Appeals.* Provides that an assessee must appeal a penalty for failure to timely file a change in ownership statement with the local board of equalization or assessment appeals board, rather than the county board of supervisors. §483 [These changes to section 483 were superseded by SB 507.]

*Aircraft.* Updates the federal law code references. Also updates the referenced federal agency to the Federal Aviation Administration and deletes the reference to the California Public Utilities Commission. A separate Letter To Assessors on this topic will be forthcoming. §§1150, 1154, 5303

*Separate Assessment Requests.* Provides that a board of supervisors may accept applications for requests for separate assessment between July 1 and March 31. §2821

*Roll Corrections: Decline in Value.* Extends the one-year period after the close of the roll that an assessor has to make corrections for a decline in value to floating homes and manufactured homes. A separate Letter To Assessors on this topic will be forthcoming. §4831

#### **SB 948, Chapter 352**

*Among others, amends sections 408 and 620 of the Revenue and Taxation Code.*

*Assessor Records.* Upon written request, allows county tax collector access to certain confidential assessor records for the purpose of collecting delinquent taxes. Specifies that the information provided does not become a public record and shall not be open to public inspection. Prohibits the assessor from disclosing social security numbers. Requires the tax collector to reimburse the assessor for costs incurred in disclosing, furnishing, or permitting access to this information. A separate Letter To Assessors on this topic will be forthcoming. §408

*Payment of Taxes Under Protest.* Provides that a protest is made by filing a petition for assessment reduction with the clerk of the county board of supervisors. Removes the requirement that a protest be filed together with the payment of the taxes or the first installment. §620

#### **Vetoed Bill**

#### **ABx1 34 -- Reinstatement of State Controller's Property Tax Postponement Program**

All bills are posted on the Legislative Counsel's website at [www.leginfo.ca.gov/bilinfo.html](http://www.leginfo.ca.gov/bilinfo.html). The Board of Equalization's bill analyses are posted at [www.boe.ca.gov/legdiv/legcont.htm](http://www.boe.ca.gov/legdiv/legcont.htm). If you have any questions regarding the application of these measures, please contact the County-Assessed Properties Division at 916-274-3350.

Sincerely,

/s/ David J. Gau

David J. Gau  
Deputy Director  
Property and Special Taxes Department

DJG:grs

California Association of Clerks and Election Officials

**Clerk of the Board Legislation Status Report**

**April 2012**

This report reflects the status of bills as of May 1, 2012. Bills of particular interest to clerks of the board are identified by an asterisk. *Changes since the most recent report are shown in italics.*)

**AB 360 (Brownley) Charter schools**

Amended 7/12/11

This bill would amend the Education Code to provide that charter schools are subject to several bodies of California law, including the Political Reform Act of 1974 (Government Code Section 81000, et seq.). Under the provisions of this bill, then, the county board of supervisors would become the conflict of interest code reviewing body for charter schools and the county filing officer would become the Form 700 filing officer for charter school officials unless the board of supervisors designates another person to be filing officer.

On June 15, the bill was amended to remove the portion of the bill that defined the jurisdiction of charter schools for purposes of the Political Reform Act. Los Angeles County opposed this part of the bill primarily because it would have resulted in the county board of supervisors being the code reviewing body for non-classroom charter schools with enrollment from more than one county, or even more than one state.

The provisions of the bill would become operative on July 1, 2012.

Status: Assembly Inactive File

CACEO Position: Watch

L.A. County Position: NEUTRAL

**AB 1253 (Davis) Counties: recommended budget**

Amended 1/4/12

This bill would amend Government Code Section 29064 of the Government Code to allow a board of supervisors to make additions to the recommended budget prior to final budget approval. Thus, the bill would re-establish a board's ability to make changes to the approved budget during the time prior to adopting the final annual budget.

Status: Awaiting hearing in Senate Governance and Finance Committee

CACEO Position: Watch



**AB 1656 (Fong) San Francisco Bay Restoration Authority**

*Amended 3/29/12*

The San Francisco Bay Restoration Authority Act establishes a governing board of the authority. The membership of the governing board includes one member who is an elected official of a bayside city or county in the East Bay, which is defined as consisting of the portion of Contra Costa County that is west of the City of Pittsburgh and a specified portion of Alameda County. This bill would revise the definition of the East Bay to provide that it consists of the whole of Contra Costa County, as well as the specified portion of Alameda County.

Status: *Passed Assembly Natural Resources and Local Government Committees; awaiting hearing in Assembly Appropriations Committee*

CACEO Position: Watch

**AB 1659 (Butler) Public Employee Relations Board: powers and duties**

Introduced 2/14/12

AB 1659 grants the employee relations commissions of County of Los Angeles and City of Los Angeles the authority to order elections, conduct any election, adopt rules, investigate an unfair labor practice charge, and to determine whether the charge is justified and to determine the appropriate remedy for the unfair practice only if the commissions and their staffs are independent of the county and city management and the commissions are not funded within the same budget item that funds any other public office, department or agency within the county or city.

Status: *Hearing in Assembly Public Employees, Retirement and Social Security Committee May 2*

CACEO Position: None (this bill is of interest to only the clerk of the board of Los Angeles County)

L.A. County Position: OPPOSE

**AB 1700 (Butler) Property taxation: change in ownership: exclusion: cotenancy interests**

*Amended 4/17/12*

This bill would provide that a transfer of a cotenancy interest in real property from one cotenant to the other that takes effect upon the death of the transferor cotenant and that occurs on or after 1/1/13 does not constitute a change of ownership for purposes of reassessment *provided that the transfer is solely by and between two individuals who together own 100 percent of the real property in joint tenancy or as tenants in common*

5/1/2012

Page 5

*and meets other requirements, as described in the bill. The bill would require the transferee cotenant to sign an affidavit under penalty of perjury.*

Status: *Passed Assembly Revenue and Taxation Committee; hearing in Assembly Public Employees, Retirement and Social Security Committee May 2*

CACEO Position: Watch

**AB 1736 (Smyth) Local government: open meetings**

*Amended 3/29/12*

*Current law permits a legislative body of a local agency to meet with the Attorney General, district attorney, agency counsel, sheriff, or chief of police, or their respective deputies, or a security consultant, or a security operations manager on various threats to public safety, etc. This bill would amend Section 54957 of the Government Code (Brown Act) to permit a legislative body of a local agency to hold closed session with the Governor for this purpose.*

Status: *Passed Assembly Local Government Committee; passed Assembly Floor; awaiting committee assignment in Senate*

CACEO Position: Watch

**\*AB 1902 (Jones) Publication: newspaper of general circulation: Internet Web site**  
Introduced 2/22/12

This bill would add Section 6009 to the Government Code to provide that a newspaper that is available on an Internet Web site may also qualify as a newspaper of general circulation provided that the newspaper meets the following criteria:

1. It provides local, national, or international news and intelligence of a general character on its Web site.
2. It has been established and updated at regular intervals of not less than weekly for at least three years prior to the date of adjudication.
3. It has a substantial regular readership in the city, district or judicial district in which the newspaper is seeking adjudication pursuant to Section 6020.
4. It has a bona fide list of subscribers that reside in the city, district, or judicial district in which the newspaper is seeking adjudication.
5. It has maintained a minimum coverage of local, national, or international news and intelligence of a general character on at least 25 percent of the space available on the homepage of the Web site of the newspaper.
6. It provides a link to public notices published in the newspaper on the homepage of the Web site of the newspaper that is readily accessible to any person visiting that Web site.



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KRISTINE CAZADD  
Interim Executive Director  
No. 2011/002

January 13, 2011

TO COUNTY ASSESSORS:

BASE YEAR VALUE TRANSFER – OVER 55/DISABLED;  
ELIGIBLE CLAIMANT

Generally, Revenue and Taxation Code section 69.5 provides that any person over the age of 55 years, or any severely and permanently disabled person, who resides in property that is eligible for the homeowners' exemption may transfer the base year value of that property to a replacement dwelling of equal or lesser value that is purchased or newly constructed within two years of the sale of the original property. Property owned by a trust is not expressly addressed in section 69.5 and, as a result, questions have been asked whether a base year value can be transferred if either the original property or the replacement dwelling is held in trust.

Effective January 1, 2011, Senate Bill 1494 (Stats. 2010, ch. 654) amends section 69.5 to expressly provide that the base year value transfer relief applies to property that is held in trust. Specifically, sections 69.5(d) and (g)(11) are amended to read:

(d) The property tax relief provided by this section shall be available to a claimant who is the coowner of the original property, as a joint tenant, a tenant in common, or a community property owner, *or a present beneficiary of a trust* subject to the following limitations:...

\*\*\*

(g) (11) "Person" means any individual, but does not include any firm, partnership, association, corporation, company, or other legal entity or organization of any kind. *"Person" includes an individual who is the present beneficiary of a trust.*

For property tax purposes, the property owner is the person who has the present beneficial interest of trust property (with the exception of a Massachusetts or business trust, which is regarded as a legal entity). The trustee holds legal title to the trust property, but does not have a present beneficial ownership interest unless the trustee is also the trustor of a revocable trust or a named beneficiary of an irrevocable trust. Therefore, an individual who is the present beneficial owner of trust property is considered the claimant for purposes of section 69.5 and should receive the base year value transfer benefit if all of the requirements of the section are met.

TO COUNTY ASSESSORS

2

January 13, 2011

If you have any questions regarding these changes to section 69.5, please contact the Assessment Services Unit at 916-274-3350.

Sincerely,

/s/ David J. Gau

David J. Gau  
Deputy Director  
Property and Special Taxes Department

DJG:grs



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Interim Executive Director

April 27, 2011

No. 2011/016

TO COUNTY ASSESSORS:

LEGAL ENTITIES CHANGE IN OWNERSHIP – OVERVIEW

Due to continued inquiries, this letter provides a brief overview of the applicable change in ownership laws that affect real property owned by legal entities.

A *legal entity* is any business organization with an existence separate from its owners. Legal entities are permitted to enter into contracts, including contracts for the purchase, sale, or lease of real property. Some of the most common legal entities holding title to real property in California include corporations, partnerships, and limited liability companies (LLC). The term "legal entity" or "entity," as used in this letter, does not include a trust (unless it is a business trust) or a cooperative housing corporation as these types of entities are not treated as legal entities for property tax change in ownership purposes.

There are two types of transfers involving legal entities that may trigger a change in ownership of real property. The first type is a transfer of real property between an individual and an entity or between entities. The second type is a transfer of an ownership interest in an entity that owns real property.

**TRANSFER OF REAL PROPERTY**

Generally, a transfer of any interest in real property from an individual to a legal entity, from a legal entity to an individual, or between legal entities is a change in ownership under Revenue and Taxation Code<sup>1</sup> section 61(j) and Property Tax Rule 462.180.<sup>2</sup> Reassessment is limited to the percentage interest in real property transferred, unless an exclusion from change in ownership is applicable.

The most common exclusion available is under section 62(a)(2). This section excludes from change in ownership transfers of real property where the proportional ownership interests in the real property are identical before and after the transfer. Specifically, section 62(a)(2) provides that any transfer of real property between an individual or individuals and a legal entity, or between legal entities, that results solely in a change in the method of holding title to the real property, and in which the proportional ownership interests of the transferors and transferees in each and every piece of real property transferred remain the same after the transfer, is excluded from a change in ownership. This is known as the *proportional ownership interest transfer exclusion*.

<sup>1</sup> All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

<sup>2</sup> Title 18, Public Revenues, California Code of Regulations.

If a transfer of real property to a legal entity is excluded under section 62(a)(2), those persons holding ownership interests in the legal entity immediately after the transaction are deemed the "original co-owners." This term does not apply to the reverse situation; if real property is transferred from a legal entity to individuals, the individuals do not become original co-owners. When a legal entity is involved in a transfer of real property and the ownership interests are not identical, then the entire real property interest transferred is subject to reassessment, not merely the disproportionate interest.

#### TRANSFER OF INTEREST IN A LEGAL ENTITY

Section 64 sets forth the change in ownership provisions related to the purchase or transfer of ownership interests in legal entities that own real property. Section 64(a) provides the general rule that transfers of interests in legal entities do not constitute changes in ownership of the real property owned by those legal entities. Thus, purchases or transfers of corporate voting stock, partnership ownership interests, LLC membership interests, or ownership interests in other legal entities are not changes in ownership of the real property owned by the legal entity.

However, there are two exceptions to this general rule. The first exception is when a *change in control* of the legal entity occurs, all real property owned by the entity will be reassessed. The second exception is when a legal entity's *original co-owners* cumulatively transfer more than 50 percent of their ownership interests in that legal entity, the real property previously excluded from change in ownership under section 62(a)(2) will be reassessed.

#### Change in Control

Section 64(c)(1) provides that when any person or entity obtains control through direct or indirect ownership or control of more than 50 percent of the voting stock of a corporation, or of more than a 50 percent ownership interest in any other type of legal entity, a reassessment of all the real property owned by the acquired legal entity (and any entity under its control) as of the date of the change in control occurs.

A person or entity obtains *direct control* of an entity when that person or entity acquires:

- (1) Ownership or control of more than 50 percent of the voting stock of a corporation;
- (2) more than 50 percent of the total interest in any partnership or LLC capital and profits; or
- (3) more than 50 percent of the total ownership interest in any other entity.

A person or entity may obtain *indirect control* of an entity by acquiring direct control of another entity that, in turn, directly or indirectly controls such entity.

#### Transfers by "Original Co-Owners"

On or after March 1, 1975, when real property or an interest in an entity is transferred to a legal entity or between entities in a transaction qualifying for the proportional ownership interest transfer exclusion (ownership interests are the same before and after), then those person(s) or entities holding ownership interests in that legal entity immediately after the transaction are deemed the "original co-owners." If an excluded transaction to a legal entity is made by a trust, the present beneficial owners of the trust property are considered the original co-owners.

Section 64(d) provides that when voting stock or other ownership interests representing cumulatively more than 50 percent of the total interests in a legal entity are transferred by any of the original co-owners in one or more transactions, the real property that was previously excluded from change in ownership under section 62(a)(2) will be reassessed. If the transfer by original co-owners also results in a person or entity acquiring control, then all the real property owned by the entity would be reassessed under section 64(c)(1), not just the real property previously excluded under section 62(a)(2). Any real property acquired by the legal entity for which no section 62(a)(2) exclusion was applied would not be affected by any original co-owner transfers as it was reassessed upon the acquisition.

#### REPORTING REQUIREMENTS

Reporting a change in control or change in ownership of a legal entity is to be distinguished from reporting a transfer of real property to or from a legal entity or between legal entities. Transfers of real property are to be reported to the county assessor via a *Preliminary Change of Ownership Report* or *Change in Ownership Statement* when a document or deed effecting a change in ownership is recorded. These forms are available from the county assessor or county recorder.

Whenever there is a change in control or a change in ownership of a legal entity that owns<sup>3</sup> California real property, the person or legal entity acquiring control or ownership must file a *Statement of Change in Control and Ownership of Legal Entities*<sup>4</sup> with the State Board of Equalization (Board) within 45 days of the date of the change in control or change in ownership. When the death of a partner or shareholder results in a change in control or change in ownership, the legal entity must file within 45 days of the date of death.<sup>5</sup> This form, filing requirements, and additional information on legal entity transfers are available from the Board's website at [www.boe.ca.gov/proptaxes/leop.htm](http://www.boe.ca.gov/proptaxes/leop.htm).

Furthermore, additional information regarding change in ownership is contained in Assessors' Handbook Section 401, *Change in Ownership*, which is posted on the Board's website at [www.boe.ca.gov/proptaxes/pdf/ah401.pdf](http://www.boe.ca.gov/proptaxes/pdf/ah401.pdf). If you have any questions regarding a change in control or ownership of a legal entity, please contact our County-Assessed Properties Division at 916-274-3350.

Sincerely,

/s/ David J. Gau

David J. Gau  
Deputy Director  
Property and Special Taxes Department

DJG:grs

<sup>3</sup> Ownership may include real property held under a lease with a term of 35 years or more, including any options. For further details, please see the Board of Equalization's website at [www.boe.ca.gov/proptaxes/leop.htm](http://www.boe.ca.gov/proptaxes/leop.htm).

<sup>4</sup> Form BOE-100-B.

<sup>5</sup> If, as of the date of death, it is unknown whether a change in control or ownership occurred, the entity should file a protective claim with as much information as is known within 45 days of the date of death. Another BOE-100-B should be filed once a change in control or ownership determination is made.



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Executive Director  
No. 2012/005

January 17, 2012

TO COUNTY ASSESSORS:

ASSESSMENT APPEALS

Effective January 1, 2012, Assembly Bill 711<sup>1</sup> adds subdivision (c) to Section 167 to clarify that an owner-occupied single-family dwelling means a single-family dwelling that is the owner's principal place of residence which qualifies for a homeowners' property tax exemption.

Section 167 currently provides that the assessor has the burden of proof in any assessment appeals hearing on an owner-occupied single-family dwelling or the appeal of an escape assessment. In these cases, the county assessor must affirmatively establish, by a preponderance of evidence, the correctness of his or her opinion of value or other assessment action. The term "owner-occupied single-family dwelling" was not previously defined in the statute.

AB 711 definitively shifts the burden of proof from the county assessor to the taxpayer when the property involves the taxpayer's vacation or secondary home. Thus, in a hearing before an assessment appeals board, the taxpayer with the burden of proof must present his or her evidence first. The assessor will then have an opportunity to present evidence and the appeals board or hearing officer will make a determination based on all evidence presented.

A copy of the amended section 167 is enclosed with changes denoted in strikeout/underscore format. The BOE Legislative analysis on this bill may be found at:

AB 711 - <http://www.boe.ca.gov/legdiv/pdf/0711abenrolledrnk.pdf>.

If you have any questions regarding assessment appeals, please contact the County-Assessed Properties Division at 916-274-3350.

Sincerely,

/s/ David J. Gau

David J. Gau  
Deputy Director  
Property and Special Taxes Department

DJG:mlw  
Enclosure

<sup>1</sup> Stats. 2011, ch. 220.



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Executive Director  
No. 2012/020

**CORRECTED\***

May 11, 2012

TO COUNTY ASSESSORS:

**REVENUE & TAXATION CODE SECTION 69.5:**  
**ADDITIONAL NEW CONSTRUCTION**

Effective January 1, 2012, Senate Bill 947 (Stats. 2011, ch. 351) amends Revenue and Taxation Code<sup>1</sup> section 69.5(h)(4) to give homeowners additional time to request that any new construction to the replacement dwelling that was completed after a claim for the base year value transfer was filed and approved be included in the transferred value. Section 69.5 implements Propositions 60, 90, and 110 to allow homeowners who are age 55 and over or permanently and physically disabled to sell their principal place of residence and transfer its base year value to a replacement property of equal or lesser value that is purchased within two years of the sale.

This law change supersedes the timing requirements discussed in Assessors' Handbook Section 401, *Change in Ownership* (September 2010), Letter To Assessors 91/31, and question D2 of Letter To Assessors 2006/010.

Where a claim to transfer the base year value has been timely filed and granted, and subsequent new construction is performed on the replacement dwelling, section 69.5(h)(4) previously provided that the new construction could be included in the base year value that was transferred as long as the following requirements were met:

- The new construction was completed within two years of the date of sale of the original property;
- The owner notified the county assessor in writing within 30 days after completion of the new construction; and
- The full cash value of the new construction on the date of completion, plus the full cash value of the replacement dwelling on the date of acquisition, was equal or less than the full cash value of the original property.

The timing and value requirements remain the same. However, SB 947 amends section 69.5(h)(4) to change the 30-day period to six months as follows:

(4) In the case where a claim under this section has been timely filed and granted, and new construction is performed upon the replacement dwelling subsequent to the transfer of base year value, the property tax relief provided by this section also shall apply to the

<sup>1</sup> All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

replacement dwelling, as improved, and thus there shall be no reassessment upon completion of the new construction if both of the following conditions are met:

(A) The new construction is completed within two years of the date of the sale of the original property and the owner notifies the assessor in writing of completion of the new construction within ~~30 days~~ six months after completion.

(B) The fair market value of the new construction on the date of completion, plus the full cash value of the replacement dwelling on the date of acquisition, is not more than the full cash value of the original property as determined pursuant to paragraph (7) of subdivision (g) for purposes of granting the original claim.

Where a claim to transfer the base year value has been filed and granted and subsequent new construction has been performed, the new construction must be completed within two years of the sale of the original property. Any construction completed after the two-year period will be treated as any other new construction, resulting in the assessment of the newly constructed portion.

In addition, the fair market value of the new construction plus the full cash value of the replacement dwelling on its date of purchase must be equal to or less than the full cash value of the original property on its date of sale. The "equal or lesser value" time adjustments in section 69.5(g)(5) (that is, the extra 5 and 10 percent allowances) are not to be applied to the original property when determining whether the combined value of the replacement dwelling and its new construction is equal to or less than the full cash value of the original property. Rather, section 69.5(h)(4) specifies that the value for comparison purposes is that found in section 69.5(g)(7), which provides that the "full cash value of the original property" is its new base year value adjusted by the inflation factor<sup>2</sup> for the period from the date of sale by the claimant to the date on which the replacement property was purchased or new construction was completed.

Example 1 – Factoring

Original Property:	Sold	7/1/2009	\$400,000
Replacement Dwelling:	Purchased	7/22/2009	\$355,000
Claim filed and granted:		11/1/2009	
Bedroom/bath added:	Completed	6/15/2011 *	\$47,000
Original Property's adjusted new base year value on date the new construction is complete:			\$403,012

The full cash value of the replacement dwelling plus the fair market value of the new construction (\$402,000) is not more than the original property's adjusted base year value (\$400,000 x 1.00753 2011 lien date factor). Therefore, the new construction would be excluded from assessment.

<sup>2</sup> The percentage change from October to October in the California Consumer Price Index, not to exceed 2 percent.

\* Date changed from 9/15/2011 to 6/15/2011.

Example 2 – Non-qualifying Construction

Original Property:	Sold	7/11/2011	\$400,000
Replacement Dwelling:	Purchased	7/28/2011	\$355,000
Claim Filed and granted:		9/1/2011	
Master bedroom/bath added:	Completed	12/1/2011	\$55,000

The full cash value of the replacement dwelling plus the fair market value of the new construction (\$410,000) is more than the original property's new base year value (\$400,000). Therefore, the new construction would be subject to assessment. Further, since section 69.5 does not provide for partial relief, 100 percent of the value of the new construction (\$55,000) would be given a new base year value.

After construction has been completed, the taxpayer must notify the assessor in writing within six months after the completion of construction that the taxpayer wants the construction to be included in the transferred base year value. While this may be done by filing another claim, section 69.5(h)(4) simply requires that the notification be in writing and, unlike the requirements for the initial base year value transfer, does not specifically require a claim be filed.

Once a base year value has been transferred and the county has reported that transfer to the State Board of Equalization for duplicate claim purposes, any excluded new construction should not be additionally reported as this will result in a duplicate listing for the claimant.

SB 947 also makes changes to the disaster relief provisions of section 69.5; however, these changes are discussed in Letter To Assessors 2012/012. If you have any questions regarding these changes to section 69.5, please contact the County-Assessed Properties Division at 916-274-3350.

Sincerely,

/s/ David J. Gau

David J. Gau  
Deputy Director  
Property and Special Taxes Department

DJG:grs

# PROPERTY AND SPECIAL TAXES DEPARTMENT

## PROPERTY TAXES CURRENT LEGAL DIGEST NO. 2012-1

March 7, 2012

### 200.0400(c) BASE YEAR VALUE TRANSFER – DISASTER RELIEF

200.0430 Replacement Property. Revenue and Taxation Code section 69 permits the base year value of property which is substantially damaged or destroyed by a disaster to be transferred to comparable property which is acquired or newly constructed as a replacement for the substantially damaged or destroyed property if the property is damaged by a major misfortune or calamity and located in an area declared to be in a state of disaster by the Governor; if the damaged property sustains physical damages amounting to more than 50 percent of its full cash value immediately prior to the disaster; if the replacement property is located in the same county as the damaged property and is acquired or newly constructed within two years after the disaster; if the replacement property is comparable to the damaged property in size, utility, and function; and if the buyer of the replacement property was the owner of the damaged property at the time of damage. When the base year value is transferred to the replacement property, the damaged property is reassessed at its current full cash value.

Only if the replacement property was acquired or newly constructed on or after July 1, 1985, can the adjusted base year value be transferred from damaged property to replacement property. "Property" means the appraisal unit as defined in Revenue and Taxation Code section 51(e), the unit people in the market typically buy and sell. Thus, if the \$200,000 full cash value of a residential property consisted of a land value of \$110,000 and an improvement value of \$90,000, and only the improvement was destroyed by a disaster, the owner could not transfer the base year value because the appraisal unit did not sustain damages amounting to more than 50 percent of its full cash value prior to the disaster. Finally, in the event the damaged property is reconstructed, that reconstruction is not eligible for property tax relief under section 70(c) but rather, it is deemed to be new construction. LTA 3/10/1987 (No. 87/23).

*Delete – The definition of the 50 percent test in section 69(c)(1) was amended effective January 1, 2010 (Stats. 2009, ch. 67).*

### 220.0000 CHANGE IN OWNERSHIP

220.0044 Community Property. The form of title presumption overrules the general community property presumption such that property that is acquired by a married person during the marriage in the name of one spouse is presumed to be the separate property of that spouse. The separate property presumption can be rebutted by clear and convincing evidence that there was an agreement or understanding between the spouses that the property was to be held as community property. C 10/27/2010.

220.0166 Easement. In 1977, owners of Property (servient tenement) entered into an agreement with the city to provide an off-site parking area of at least 76 parking spaces for the tenants of Adjacent Property (dominant tenement). The agreement provided that it would run with the land; be binding on future owners, encumbrancers, successors, heirs or assignees; and would continue until released by the city. Thus, the agreement created an appurtenant easement for a minimum of 76 parking spaces for exclusive use by tenants of

Adjacent Property. Because the easement is perpetual in nature, for a minimum of a fix number of spaces, and exclusive, its value is substantially equal to the value of the fee interest. The grant of the easement satisfied all three prongs of Revenue and Taxation Code section 60, and there was a change in ownership of 76 parking spaces in 1977 when the agreement was entered into. As a result, 76 spaces of the total parking spaces on Property are a component of Adjacent Property's appraisal unit, and must be assessed to Adjacent Property. Because those 76 parking spaces are not a component of Property's appraisal unit, they did not undergo a change in ownership when Property was sold in 2007 and should not be assessed to Property's owners. C 10/22/2010.

220.0458 Original Transferor. In 1996 two persons as tenants in common transferred property to themselves as joint tenants. Because this was prior to the November 13, 2003 change to Property Tax Rule 462.040(b)(1), neither person became an "original transferor." Upon the death of one joint tenant in 2008, the surviving joint tenant acquired the decedent's 50 percent interest and became the sole owner of the property, resulting in a change in ownership of that 50 percent interest in the property. However, if the property had been transferred on or after November 13, 2003, both persons would be considered "original transferors" and there would not be a change in ownership of a 50 percent interest in the property upon the death of one joint tenant. C 10/20/2010.

#### 250.0000 COLLEGE EXEMPTION

250.0005 Exclusive Use. To qualify for exemption, property must be used exclusively for educational purposes. This purpose includes facilities that are reasonably necessary to further the primary educational purpose of a university or college, such as college- or university-provided faculty and student housing. However, the mere fact that apartments are located near campus and that most of its tenants are students does not make the units eligible for the college or public schools exemption. C 12/14/2010.

#### 340.0000 DELINQUENT TAXES

340.0005 Foreclosure. When the California Housing Finance Agency obtains a property through foreclosure, the assessor must transfer to the unsecured roll any delinquent taxes for tax years prior to the foreclosure that have become a lien on the property. C 11/2/2010.

#### 610.0000 NEWLY CONSTRUCTED PROPERTY

610.0080 Seismic Safety Exclusion. Article XIII A, section 2(a) of the California Constitution and Revenue and Taxation Code section 70(d) provide that locally mandated building improvement or reconstruction related to seismic safety and required for unreinforced masonry-walled structures will be excluded from new construction for 15 years following the commencement or completion of the reconstruction. This means that qualifying reconstruction will be exempted from assessment in the first tax year in which it exists, whether as construction in progress or as completed work, and the following 14 tax years. The assessor shall enroll the excluded property at its current full cash value in the sixteenth tax year following the tax year in which the reconstruction or improvement was begun.

It is important that the property owner establish to the assessor's satisfaction that the work in progress is in fact required to comply with a local seismic safety ordinance, since only such work can be excluded. If the governing body will not issue a certificate of compliance to the property owner until the reconstruction is complete, he or she can still provide evidence to the assessor that the work is required by showing the original order to comply sent to him or her by the local agency and also a copy of the building permit authorizing the reconstruction

or improvement of the building. This interim documentation would meet the statutory requirement.

If the property changes ownership during the 15 year period, a new base year value must be established and enrolled for the entire property, including the previously excluded portion of new construction, as of the date of the change in ownership, and a supplemental assessment must be enrolled. LTA 12/17/2001 (No. 2001/088).

*Delete – Proposition 13 (2010), approved by the voters in 2010, removed the 15-year exclusion period for unreinforced masonry buildings.*

### 630.0000 PERSONAL PROPERTY

630.0009 Conditional Sales Agreement. Conditional sales leases are agreements whereby the seller accepts periodic payments for the purchase price while retaining title to the property for security purposes. Revenue and Taxation Code section 405 gives the assessor the authority to assess persons owning, claiming, possessing, or controlling property. With regard to leased property, because the lessor is the owner but the property is in the possession and control of the lessee, either the lessor or the lessee may be the assessee. We have advised that property subject to a true lease should typically be assessed to the lessor, while property subject to a conditional sales contract should usually be assessed to the lessee since the lessee is considered the owner of the property. It is our opinion that this method of assessment helps to avoid double taxation, to ensure correct application of property tax exemptions, and to allow for the proper valuation of the property subject to lease. Should a county choose to assess the lessor instead, then precautions should be taken to ensure that property is not subject to double taxation. C 12/21/2010.

### 690.0000 PUBLIC SCHOOLS EXEMPTION

690.0006 Exclusive Use. To qualify for exemption, property must be used exclusively for educational purposes. This purpose includes facilities that are reasonably necessary to further the primary educational purpose of a university or college, such as college- or university-provided faculty and student housing. However, the mere fact that apartments are located near campus and that most of its tenants are students does not make the units eligible for the college or public schools exemption. C 12/14/2010.

### 735.0000 RETIREMENT SYSTEMS (PUBLIC) PROPERTY

735.0009 Limited Liability Company. Ownership of a limited liability company (LLC) that owns real property is not equivalent to direct ownership of that real property. The separate entity theory is equally applicable to limited liability companies as it is to corporations. Under Corporations Code section 17300, members of an LLC hold no direct ownership interest in an LLC's assets. Thus, real property that is owned by an LLC that is owned by a retirement system is not exempt from property tax. C 12/14/2010.

# ATTACHMENTS

## ITEM 14

Good morning all:

There have been inquiries regarding training that may be available to assessment appeals board members. The following is provided to you in the hope that you will pass the information along to your members.

First, all newly appointed AAB members must take the training required pursuant to Revenue and Taxation Code section 1624.01. An individual may not serve on an appeals board until he/she has completed the statutorily required training. The self-study training session developed by State Board of Equalization (BOE) staff in consultation with the Clerks' Association meets the requirements of section 1624.01. All materials and instructions for this training session are posted on the BOE's website at:

<http://www.boe.ca.gov/proptaxes/pttraining.htm>

Similarly, BOE staff has developed 20 other self-study training sessions on issues relevant to property taxation and assessment in California. These training sessions may provide information to AAB members on topics such as the assessment of residential properties, manufactured homes, possessory interests, open-space properties, vessels, aircraft, etc. All materials and instructions for these training sessions are posted on the BOE's website at:

<http://www.boe.ca.gov/proptaxes/selfstudy.htm>

AAB members may also find it useful to take our first self-paced online learning session, "Time Value of Money—Six Functions of a Dollar." This is the first of such training, and we hope to have additional training available over the coming months. All materials and instructions for this training session are posted on the BOE's website at:

<http://www.boe.ca.gov/proptaxes/online.htm>

BOE staff also provide classroom instruction on various appraisal and property tax issues. AAB members may attend any of the sessions when space is available. The current schedule of classroom sessions is posted on the BOE's website at:

[http://www.boe.ca.gov/proptaxes/pdf/training\\_schedule.pdf](http://www.boe.ca.gov/proptaxes/pdf/training_schedule.pdf)

Finally, BOE staff in conjunction with American River College (ARC) have developed two online college courses relevant to property taxation. BOE staff are the facilitators of these training sessions. The sessions require individuals to enroll as students at ARC and pay a registration fee. The first course is "Introduction to Appraising for Property Tax Purposes." Information regarding this online college class is posted on the BOE's website at:

<http://www.boe.ca.gov/proptaxes/boetc.htm>

The second online college class is "Appraisal of Machinery and Equipment (Assessment of Personal Property and Fixtures)." Information regarding this online college class is posted on the BOE's website at:

<http://www.boe.ca.gov/proptaxes/obtc.htm>

I hope that these training opportunities will be of interest to your members. Additionally, please let me know if there is any additional training you think would benefit assessment appeals boards that has not been covered by that listed above.

Have a great day.

Sherrie Kinkle  
916-274-3363