

Joint Hearing of the Assembly Local Government Committee and
Assembly Revenue and Taxation Committee

Oversight Hearing on Property Tax Agents and Interactions with Local Governments

Briefing Paper

Wednesday, June 20, 2012

2:30 pm, Room 444

I. Hearing Goal

The goal of this hearing is to gain information about the profession of local property tax agents (also referred to as property tax consultants, or property tax advocates) and the interactions between tax agents and local governments, including county assessors and staff.

II. What are Property Tax Agents?

Tax Agents

Generally speaking, property tax agents are those agents that aid clients in achieving a lower property tax bill by assisting in that county's property assessment process. Agents come from a variety of disciplines – some are attorneys, some are former employees of a county assessor's office, some have real estate backgrounds, some have finance backgrounds, or a combination of these backgrounds, and yet others lack experience in any of these fields.

There appears to be no definition in California law for "tax agents" or any other similar term. However, there is a definition in Business and Professions Code Section 17537.9 for an "assessment reduction filing service," which is defined to mean "any service performed or offered to be performed for compensation in connection with the preparation or completion of an application or request of any kind for reduction in assessment of residential property or in connection with the assistance in any manner of another person to either (A) prepare or complete an application or request of any kind for reduction in assessment of residential property or (B) provide comparable sales information in connection with an application or request for reduction in assessment of residential property."

There is no training or registration required in order to practice as a property tax agent in the state of California, and no continuing education requirements. Some property tax agents

possess licenses in real estate appraisal - for example, the California Office of Real Estate Appraisers issues several levels of real estate appraiser licenses.

Tax Agent Firms

There are many firms in California offering the services of tax agents, ranging from large firms that do business in most if not all counties in the state, to smaller tax agent businesses that only practice in one county. Some firms handle a mix of residential and commercial properties; others focus exclusively on one or the other.

Homeowners and businesses do not need to be represented by a tax agent in order to request that the county assessor lower their property taxes – individuals can represent themselves and even other family members. However, if a tax agent is retained for this purpose, the client is required by law to sign an affidavit or form specifying that that tax agent is representing that client.

For further information on the assessment process, please see Section III of this Briefing Paper.

Tax Agent Trade Association in California

The California Alliance of Taxpayer Advocates (CATA) was formed in May 2011 and is a non-profit trade association made up of tax consultants representing taxpayers before county assessors, the Franchise Tax Board (FTB), and the State Board of Equalization (BOE). CATA's purpose is "to protect the rights of state and local taxpayers by advancing the professional practice of state and local tax consulting through education, advocacy and high ethical standards." In the last year, CATA has engaged in a number of public policy issues including advocacy and outreach on several bills.

III. Property Tax Assessment at the Local Level

The following information was taken from a BOE publication entitled "California Property Tax – An Overview," published in August 2009. For further information, please visit www.boe.ca.gov which also contains links to the BOE's "Assessment Appeals Manual" – another helpful document on the appeals process.

The County Assessor

The position of county assessor, an elected official, is governed by the California Constitution, the laws passed by the Legislature, and the rules adopted by the BOE. An individual county government does not control the county assessor's tasks.

The county assessor must annually assess all taxable property in the county, except for state-assessed property, to the person, business, or legal entity owning, claiming, possessing, or

controlling the property on January 1. The duties of the county assessor are to discover all assessable property, to inventory and list all taxable property, to value the property, and to enroll the property on the local assessment roll. The assessor's primary responsibility is to annually determine the proper taxable value for each property so the owner is assured of paying the correct amount of property tax for the support of local government.

The Assessment Process

Annually, whoever owns taxable property on January 1 (the lien date) becomes liable for a tax calculated at 1% of the "taxable" value of the property. Article XIII A of the California Constitution (Proposition 13) also permits adding to the 1% tax rate a rate needed to pay interest and redemption charges for voter-approved indebtedness. Such additional rates will vary from area to area within a county.

The assessed value for most property taxed under Article XIII A is the prior year's assessed value adjusted for inflation up to 2%. However, if there has been a change of ownership or completed new construction, the new assessed value will be the market value of the property as of the date that it changed ownership or was newly constructed. That property will also be assessed on the supplemental roll.

The assessor must reassess real property to current market value whenever there is a change in ownership or completed new construction. In addition, the assessor may change the assessed value of a property to recognize a decrease in value, to correct an error, or to enroll an escaped assessment (one overlooked previously). Except for changes in assessment due to annual adjustment for inflation, assessors must notify property owners whenever their assessments of real property are increased. The notifications are sent on or before the date the assessment roll is completed, generally July 1.

Appeal Rights

Property owners can appeal the value of the property appearing on the regular assessment roll by filing an application for changed assessment during the regular assessment filing period with the clerk of the board of supervisors (sitting as a local board of equalization) or the assessment appeals board. The regular assessment filing period is July 2 through either September 15 or November 30, depending on the type of notice mailed by the assessor.

Informal Discussion with the Assessor

Often, a taxpayer's first step in challenging an assessment is simply to discuss the matter informally with the assessor's office. The taxpayer should request an explanation of how the assessment was determined and inform the assessor of any facts that may affect the value of the property.

Administrative Hearing

The first formal level of appeal is to the board of supervisors, sitting as a county board of equalization, or to the assessment appeals board if the county has created one. Taxpayers may obtain applications for a changed assessment from the clerk of the board or the county assessor's office. Some counties use hearing officers for certain appeals.

The hearing before the board is an administrative hearing. The property owner can choose to be represented by a lawyer, or other representative. As a general rule, the property owner has the burden of proving that the assessor has improperly valued the property. However, when the property is an owner-occupied, single-family dwelling, the burden falls on the assessor to prove that the property was valued correctly.

If the taxpayer wants a written explanation of the board's or hearing officer's decision, the taxpayer must request a "Findings of Fact" document before the beginning of the hearing.

Court Appeal

If the county board denies the appeal, the taxpayer may file an action in superior court, but only under certain circumstances. Generally, the court will hear a case only for the following reasons: arbitrariness, lack of due process, abuse of discretion, failure to follow standards prescribed by law, or other questions of law. The court will not receive new evidence of value; it will only review the record of the hearing before the county board. If it finds that the county board's decision is supported by credible evidence, it will uphold the board's decision.

IV. State Oversight of Assessment Practices

BOE's Assessment Practices Survey and Special Topic Surveys

The Government Code requires the BOE to review each county assessor's office at least once every five years through what is known as the "assessment practices survey program" – which is one of the state's major efforts to promote uniformity, fairness, equity and integrity in the property tax assessment process. The purpose of the survey is to determine the adequacy of the procedures and practices the county assessor uses in valuing property and to evaluate the assessor's performance of mandated duties. The BOE publishes a report of its findings of its periodic surveys of the 58 county assessors' offices throughout the state.

Current law also allows the BOE to conduct special surveys related to the assessment of property and the collection of property taxes, as necessary. Surveys have been conducted on Williamson Act properties, oil and gas properties, new construction, changes in ownership, mobilehomes, possessory interests, assessment appeals, audit procedures, confidentiality of

assessors' records, depreciation factors, coordination on tenant improvements, and Section 11 and PERS properties.

V. Regulation of Other Tax Disciplines

Tax agents who practice before the Internal Revenue Service (IRS) are regulated as "enrolled agents" (EAs) at the federal level. EAs are discussed in further detail in Section VI below.

California has licensing and education requirements for income tax preparers through the California Tax Education Council (CTEC), which was established by the Legislature to promote competent tax preparation within the state of California. CTEC was founded under the legislative authority included in Business and Professions Code Sections 22250-22259. Individuals who prepare federal or state tax returns in California, or assist in the preparation, must comply with these sections in the Business and Professions Code by completing the required education, maintaining a \$5000 tax preparer bond, and annually registering with the CTEC. Any individual who prepares tax returns (or assists in their preparation) for a fee in California must register through the CTEC.

VI. Enrolled Agents at the Federal Level

EAs as a profession began in 1884 with an act of Congress, which authorized certain individuals to advocate before the Federal Government on behalf of citizens seeking compensation for property lost during the Civil War. This act was intended to discourage the filing of frivolous and fraudulent claims by giving the Treasury Department authority to regulate claimants and take disciplinary action against incompetents and scofflaws who had been abusing the claims process.

After the creation of the federal income tax in 1913, EAs (acting under a variety of titles) began representing taxpayers before the IRS. Over time, the role of the EA expanded to include tax form preparation and tax payer advocacy during IRS audits. In 1921, the IRS further professionalized the practice by requiring EAs to show that they were of good reputation and possessed appropriate qualifications to practice. The IRS also consolidated a number of different rules of practice into what has become the primary authority for law and regulations governing the representation of claimants before the IRS: Circular #230. That document contains provisions governing EA eligibility, affirmative duties, standards of practice and conduct, rules regarding covered opinions, and sanctions for violations.

For the period between the 1930s and 1950s, practice as an EA was limited to lawyers and certified public accountants. However, in 1959 the IRS recognized the need to expand the pool of individuals who could represent taxpayers, and opened up the practice to any individual who could pass a special enrollment exam covering all aspects of the tax code. In 1966, the IRS coined the term "enrolled agent" to describe those individuals who had earned

the title by passing the test, allowing those individuals to more easily market themselves to the public.

Today, enrolled agents are federally-authorized expert tax practitioners empowered to represent taxpayers before all administrative levels of the IRS for audits, collections and appeals. In addition to passing the special enrollment exam, EAs must complete 72 hours of continuing education every three years, pass a background check, and complete ethics training. There are roughly 48,000 enrolled agents in practice in the United States.

The California Society of Enrolled Agents (CSEA) is a nonprofit 501(c)(6) business league serving enrolled agents, associates and affiliates in California, totaling more than 4,100 members. CSEA provides members with education, professional insurance, practice management and advocacy services, while requiring members to abide by a code of ethics and annual continuing education requirements.

VII. Recent Legislation

- AB 992 (Lieu), Chapter 496, Statutes of 2009. This bill responded to a warning issued by then Attorney General Edmund G. Brown on February 12, 2009:

"Companies are sending deceptive mailers to homeowners offering help in reducing property tax assessments, if the homeowner pays the company hundreds of dollars in fees. The companies use official-sounding names such as "Tax Adjusters," "Tax Readjustment" or "Tax Review" to make victims believe the company is a government agency. Property tax reassessment is a free service provided by county tax assessors. If homeowners believe their property value has declined and they are paying too much in property taxes, the local tax assessor will review the property value for free for a possible downward assessment."

AB 992 revised the provisions that govern assessment services by strengthening those provisions, and eliminating an exception that was used as a loophole in order to capture, within the definition of "assessment reduction filing service", persons who actively advocate on behalf of a property owner.

The bill also required written authorization from a property owner before a request or application for reduction in assessment is filed, and required a copy of the authorization to be submitted with any request or application for reduction in assessment. The bill was sponsored by the Los Angeles County District Attorney's Office.

- SB 342 (Wolk, 2011). This bill would have prohibited a person from charging a contingency fee for services rendered in connection with any matter before the BOE, FTB, or assessment appeals board, or for any other tax imposed under state law. According to the author, the bill would have provided "a way to make the tax system more honest by taking away the

incentive for unregulated consultants to seek aggressive tax returns on a contingency fee basis."

SB 342 passed the Senate Governance and Finance Committee, but was never heard in the Senate Judiciary Committee and thus stalled in the Senate.

- AB 404 (Gatto, 2012). This bill would, in any county that regulates lobbying before the board of supervisors by ordinance, require the board to adopt amendments to the ordinance to apply its provisions to those who lobby before the county assessor, county assessor's staff, or the county assessment appeals board. AB 404 is scheduled to be heard in the Senate Governance and Finance Committee on June 20, 2012.
- AB 2183 (Smyth, 2012). This bill would, on and after January 1, 2014, require a tax agent, representing a taxpayer before the assessor, a county board of equalization, or an assessment appeals board, to register with the local jurisdiction prior to representing a taxpayer before that jurisdiction. AB 2183 would allow the local jurisdiction to set, charge, and collect a fee in an amount necessary to recover the costs of registration, and would prohibit tax agents from engaging in certain activities. AB 2183 is set to be heard on June 27, 2012 in the Senate Governance and Finance Committee.