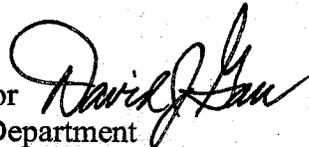


M e m o r a n d u m

To: Mr. Ramon J. Hirsig
Executive Director

Date: September 3, 2010

From: David J. Gau, Deputy Director 
Property and Special Taxes Department

Subject: **Board Meeting – September 14-16, 2010**

Item P**Property and Special Taxes Deputy Director's Report
Confidentiality of Information Provided on Possessory Interests Annual Usage Report**

The Property and Special Taxes Department requests that the following item be placed on the Board's September 2010 Sacramento meeting calendar under "P. Other Administrative Matters."

Confidentiality of Information Provided on Possessory Interests Annual Usage Report

An issue has arisen as to whether or not information a public entity is required to report on its *Possessory Interests Annual Usage Report*, form BOE-502-P (copy attached), must be held in confidence by county assessors.¹ Currently, the language on form BOE-502-P indicates that the information provided thereon is confidential. There is, however, legal authority that calls into question whether information provided on form BOE-502-P should be considered confidential under existing confidentiality provisions governing property taxation, as well as California Constitution, article I, section 3, subdivision (b)(2).² (See Rev. & Tax. Code, §§ 408, 451, 481; see also *Gallagher v. Boller* (1964) 231 Cal.App.2d 482.)

County-Assessed Properties Division (CAPD) staff asked county assessors to discuss the removal of the statement of confidentiality from form BOE-502-P at the Northern California Assessors' Association Conference held this past month. Following a discussion of the item, the California Assessors' Association took a position that form BOE-502-P should not be changed until county assessors and their counsels have an opportunity to discuss the application of the relevant statutes with regard to the contemplated public disclosure of the form.

Therefore, in order to provide county assessors and county counsels more time to study the issues and ramifications of deleting the confidentiality language, CAPD believes that an interested parties process should be commenced. Staff also believes that an interested parties process will offer public entities and private taxpayers the opportunity to be heard regarding any concerns they may have with the possible disclosure of their data reported on form BOE-502-P.

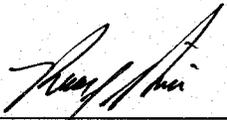
¹ Form BOE-502-P is required to be filed pursuant to Revenue and Taxation Code section 480.6.

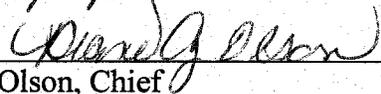
² Article I, section 3, subdivision (b)(2) was added to the California Constitution by the passage of Proposition 59 in 2004. Proposition 59 added to the Constitution the public's right of access to meetings of government bodies and writings of governmental officials while preserving specified constitutional rights and retaining existing exclusions for certain meetings and records.

For these reasons, CAPD will begin an interested parties process to discuss the confidentiality of the information provided on form BOE-502-P.

DJG:sk
Attachment

cc: Ms. Diane Olson

Approved: 
Ramon J. Hirsig, Executive Director

BOARD APPROVED
At the 9/15/2010 Board Meeting

Diane Olson, Chief
Board Proceedings

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|--|--|
| NAME OF HOLDER OF POSSESSORY INTEREST | MAILING ADDRESS |
| LOCATION/DESCRIPTION OF SUBJECT PROPERTY | DATE OF TRANSACTION IN WHICH A TAXABLE POSSESSORY INTEREST WAS ACQUIRED |
| TYPE OF TRANSACTION <i>(check one)</i> <input type="checkbox"/> Creation <input type="checkbox"/> Renewal <input type="checkbox"/> Sublease <input type="checkbox"/> Assignment | AMOUNT AND TYPE OF CONSIDERATION <i>(i.e. gross, full service, NNN, other)</i> |
| TERM OF POSSESSORY INTEREST <i>(including renewal or extension options)</i> | AGENCY PAID EXPENSES <i>(if any):</i> \$ |

Sublease:

Original Term and Remaining Term _____

Consideration Paid for Master Lease _____

Assignments:

Original Term and Remaining Term _____

Consideration Paid for Underlying Lease _____

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|--|--|
| NAME OF HOLDER OF POSSESSORY INTEREST | MAILING ADDRESS |
| LOCATION/DESCRIPTION OF SUBJECT PROPERTY | DATE OF TRANSACTION IN WHICH A TAXABLE POSSESSORY INTEREST WAS ACQUIRED |
| TYPE OF TRANSACTION <i>(check one)</i> <input type="checkbox"/> Creation <input type="checkbox"/> Renewal <input type="checkbox"/> Sublease <input type="checkbox"/> Assignment | AMOUNT AND TYPE OF CONSIDERATION <i>(i.e. gross, full service, NNN, other)</i> |
| TERM OF POSSESSORY INTEREST <i>(including renewal or extension options)</i> | AGENCY PAID EXPENSES <i>(if any):</i> \$ |

Sublease:

Original Term and Remaining Term _____

Consideration Paid for Master Lease _____

Assignments:

Original Term and Remaining Term _____

Consideration Paid for Underlying Lease _____

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| TERM OF POSSESSORY INTEREST <i>(including renewal or extension options)</i> | AGENCY PAID EXPENSES <i>(if any):</i> \$ |

Sublease:

Original Term and Remaining Term _____

Consideration Paid for Master Lease _____

Assignments:

Original Term and Remaining Term _____

Consideration Paid for Underlying Lease _____

CERTIFICATION

I certify (or declare) under penalty of perjury under the laws of the State of California that I have examined this report, including any accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete and covers any property required to be reported by the agency named in the statement. If prepared by a duly authorized person other than an agency official, the certification declaration is based on all the information of which the preparer has knowledge. This certification statement must be signed.

| | | |
|---|--------------------------|------|
| SIGNATURE OF AGENCY REPRESENTATIVE | TITLE | DATE |
| NAME OF PREPARER <i>(print or type)</i> | DAYTIME TELEPHONE NUMBER | () |