

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.

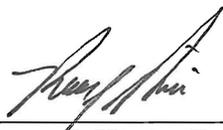
¹ Form BOE-502-P is required to be filed pursuant to Revenue and Taxation Code section 480.6.

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 _____ Board Meeting

Diane Olson, Chief
Board Proceedings

**POSSESSORY INTERESTS
ANNUAL USAGE REPORT**

Section 480.6 Revenue & Taxation Code
(Name and Mailing Address of Agency)

OFFICIAL REQUIREMENT

This is a written request made pursuant to Sec. 480.6 of the Revenue and Taxation Code. This report must be completed in detail by the agency and filed with the Assessor by February 15.

This report is not a public document. The information contained herein will be held secret by the Assessor (Sec. 451, Rev. & Tax. Code); it can only be disclosed to the district attorney, grand jury, and other agencies specified in Sec. 408 of the Rev. & Tax. Code. Attached schedules are considered to be part of the report.

California law requires every state or local governmental entity that is the fee owner of real property in which one or more taxable possessory interests have been created or renewed to provide the assessor of the county in which the property is located information identifying the holder(s) of a taxable possessory interest, the property involved, and the terms and conditions of the agreement giving rise to the taxable possessory interests. The agency may provide the county assessor the information on either (1) a preliminary change in ownership report or change in ownership statement, or, (2) an annual real property usage report. If, as of January 1 this year, your agency owns any property with taxable possessory interests that have not already been reported on a preliminary change in ownership report or on a change in ownership statement, you are required to complete and file this form with the county assessor by **February 15**.

PROPERTY USAGE

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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> \$ |
| <input type="checkbox"/> Sublease: Original Term and Remaining Term _____ Consideration Paid for Master Lease _____ | |
| <input type="checkbox"/> Assignments: Original Term and Remaining Term _____ Consideration Paid for Underlying Lease _____ | |

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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.

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