

Memorandum

To: Ms. Kristine Cazadd
Interim Executive Director

Date: May 13, 2011

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



Subject: **Board Meeting – May 24-25, 2011**
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 May 2011 Sacramento meeting calendar under "P. Other Administrative Matters."

Recommendation

The staff recommends that revised form BOE-502-P, *Possessory Interests Annual Usage Report* (copy attached) be adopted by the Board and approved for distribution.

Confidentiality of Information Provided on Possessory Interests Annual Usage Report

An issue emerged as to whether information a state or local governmental entity is required to report on its *Possessory Interests Annual Usage Report (Usage Report)*, form BOE-502-P, must be held in confidence by county assessors.¹ The current version of the *Usage Report* advises the filer of the report that information supplied will be held in confidence by the county assessor. In order to provide county assessors, county counsels, industry representatives, and other interested parties time to study the issues and ramifications of altering the confidentiality language on the form, the Board at its September 15, 2010 meeting directed staff to conduct an interested parties process to discuss the issues.

Interested Parties Process

Board staff initiated an interested parties process to explore the confidentiality issues for the *Usage Report* on September 29, 2010 via Letter To Assessors 2010/049. Three meetings were held with interested parties in Sacramento—on December 1, 2010, on March 14, 2011, and on April 20, 2011.

The December 1, 2010 meeting was well attended. At the conclusion of the meeting, it was decided that the Board's Legal staff should review the applicable statutes and issue an opinion regarding the confidentiality of the information contained on the *Usage Report*. The opinion was

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

issued on February 8, 2011; it was then distributed to interested parties on February 10, 2011 for comments.

In this opinion, the Board's Legal Department reviewed the California Public Records Act (CPRA) statutes² and the Revenue and Taxation Code confidentiality statutes that could potentially apply to the *Usage Report*. The review of the CPRA statutes resulted in the determination that *Usage Reports* are public records within the meaning of the CPRA. It was further opined that none of the potentially applicable Revenue and Taxation Code confidentiality statutes would preclude the information reported on a *Usage Report* from being released by a county assessor under a CPRA request. These legal conclusions also apply to any information required by the *Usage Report* that is provided to a county assessor in a substitute format.

The March 14, 2011 meeting was held to discuss the opinion issued by the Board's Legal staff. At the conclusion of the meeting, it was decided that Board staff would prepare (1) a draft of a revised *Usage Report*, and (2) a draft of a proposed Letter To Assessors (LTA) which would provide guidance to county assessors on the *Usage Report*. The draft *Usage Report* and an initial draft of the proposed LTA were distributed to interested parties on April 6, 2011 for comments.

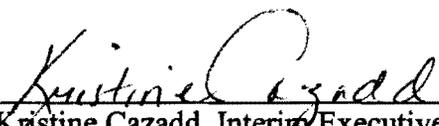
The April 20, 2011 meeting was held to discuss the draft *Usage Report* and the proposed LTA. Consensus was reached on the *Usage Report* (see copy attached). Considerable discussion regarding the language for the proposed LTA occurred, which resulted in additional drafts of the proposed LTA being circulated to interested parties for further comments. The final draft of the proposed LTA (copy attached) was disseminated on three-day review to Board Member's offices on May 9, 2011. The LTA will distribute the revised *Usage Report* which staff anticipates the Board will adopt on May 25, 2011.

For these reasons, Property and Special Taxes Department staff request that the attached revised form BOE-502-P be adopted by the Board.

DJG:sk
Attachments

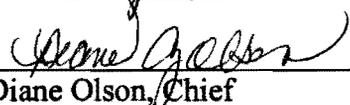
cc: Ms. Diane Olson

Approved: _____


Kristine Cazadd, Interim Executive Director

BOARD APPROVED

At the May 25, 2011 Board Meeting



Diane Olson, Chief
Board Proceedings

² Government Code section 6250 et. seq.

**POSSESSORY INTERESTS
ANNUAL USAGE REPORT**

NAME AND MAILING ADDRESS
(Make necessary corrections to the printed name and mailing address)

Revenue and Taxation Code section 480.6 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 holders of a taxable possessory interest, the property involved, and the terms and conditions of the agreement giving rise to the taxable possessory interests. If, as of January 1 this year, your agency owns any property with taxable possessory interests, you are required to complete and file this form with the county assessor by February 15.

PROPERTY USAGE

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 (check one) <input type="checkbox"/> CREATION <input type="checkbox"/> RENEWAL <input type="checkbox"/> SUBLEASE <input type="checkbox"/> ASSIGNMENT		AMOUNT AND TYPE OF CONSIDERATION (i.e. gross, full services, NNN, other)	
TERM OF POSSESSORY INTEREST (including renewal or extension options)		AGENCY PAID EXPENSES (if any, enter dollar amount)	
<input type="checkbox"/> SUBLEASE	ORIGINAL TERM	REMAINING TERM	CONSIDERATION PAID FOR MASTER LEASE
<input type="checkbox"/> ASSIGNMENTS	ORIGINAL TERM	REMAINING TERM	CONSIDERATION PAID FOR UNDERLYING LEASE

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DRAFT - FOR DISCUSSION PURPOSES ONLY

CERTIFICATION

I certify (or declare) that I have examined this report, including accompanying schedules, statements or other attachments, 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.

SIGNATURE OF AGENCY REPRESENTATIVE/PREPARER	DATE
NAME OF AGENCY REPRESENTATIVE	TITLE
NAME OF PREPARER	TITLE
PREPARER'S EMAIL ADDRESS	DAYTIME TELEPHONE NUMBER ()



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Fourth District, Los Angeles

JOHN CHIANG
State Controller

KRISTINE CAZADD
Interim Executive Director
No. 2011/XXX

May 26, 2011

TO COUNTY ASSESSORS:

POSSESSORY INTERESTS ANNUAL USAGE REPORT

On May 25, 2011, the State Board of Equalization (Board) adopted a revised form BOE-502-P, *Possessory Interests Annual Usage Report (Usage Report)*, for use beginning with the 2012 lien date. There are several statutory provisions designed to help county assessors discover the existence of taxable possessory interests. Of those statutory provisions, Revenue and Taxation Code¹ section 480.6 is the most notable and comprehensive since the Legislature amended the section in 1996 to require state or local governmental entities to report taxable possessory interest information on a *Usage Report*. Enclosed is a copy of the Board-adopted form.

The primary revision to the *Usage Report* was the removal of the following language:

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.

Following an extensive interested parties process initiated by the Board at its meeting on September 15, 2010, it was determined that the *Usage Reports* are public records that are open to public inspection and that the information that a state or local governmental entity is required to report on a *Usage Report* to a county assessor is public information and need not be held in confidence by the county assessor.² Specifically, the information required to be reported to a county assessor regarding taxable possessory interests is:³

1. The name and address of the fee owner of the real property.
2. The name and address of each holder of a possessory interest in the real property.
3. The types of transactions in which the holders of the possessory interests acquired those interests, whether creations, renewals, subleases, or assignments.
4. The description of the subject real property.
5. The date of each transaction in which a holder of a possessory interest in the real property acquired that interest.

¹ All statutory references are to the Revenue and Taxation Code unless otherwise noted.

² All documents pertaining to the interested parties process for this project are posted on the Board's website at www.boe.ca.gov/proptaxes/cpia.htm.

³ Section 480.6.

6. The terms of each transaction described in number 3.

The California Public Records Act (CPRA)⁴ provides that state and local agencies' public records are open to public inspection, unless expressly exempt by federal or state law; and, when only a portion of a public record is exempt from disclosure, the CPRA requires the public record to be disclosed after the exempt portion is deleted.⁵ The CPRA defines *public records* broadly to include "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics."⁶ Therefore, the Board has determined that the *Usage Reports* are public records within the meaning of the CPRA. Moreover, the Board's Legal Department concluded that the Legislature intended for *Usage Reports* to be disclosable public records because:

- The CPRA expressly defines *public records* to include "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics";
- The CPRA expressly provides that "[p]ublic records are open to inspection at all times during the office hours of [a] state or local agency and every person has a right to inspect any public records," except as expressly provided; and
- The Legislature never enacted any statute expressly and unequivocally stating that *Usage Reports* are required to be held secret, or that they are exempt from disclosure under the CPRA.

In addition to the CPRA provisions, the Legal Department reviewed the Revenue and Taxation Code's confidentiality statutes that could potentially apply to annual *Usage Reports* provided by public entities⁷ in the manner prescribed by article I, section 3, subdivision (b)(2) of the California Constitution (added in 2004 as part of Proposition 59), which provides in relevant part that:

A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access.

In other words, the supreme law of California establishes a strong mandate that questions associated with interpreting Revenue and Taxation Code confidentiality statutes in light of the CPRA be resolved in favor of disclosure. In view of this mandate, and based on its review, the Legal Department has further concluded that there is no statute authorizing county assessors to refuse disclosure of a *Usage Report* or the information required to be reported therein by section 480.6, subdivisions (a)(1) through (6), if provided in a substitute format other than

⁴ Government Code section 6250 et seq.

⁵ Government Code section 6253, subdivisions (a) and (b); section 6254, subdivision (k).

⁶ Government Code section 6252, subdivision (e).

⁷ See sections 401 through 409 (concerning general requirements) and 480 through 487 (concerning change in ownership reporting). Please note sections 441 through 470 are not directly applicable to this issue because they reside in an article of the Revenue and Taxation Code concerning information from taxpayers, not the public entities in question.

form BOE-502-P. Therefore, if a public entity uses another format to report the required information, the county assessor may accept the filing as in compliance with the provisions of section 480.6, provided that the public entity has reported all of the information required by that section. However, whether the public entity reports the information required by section 480.6, subdivision (a)(1) through (6), on the *Usage Report* or in another substitute format, such information should be considered public information by the county assessor.

To the extent specific questions arise with regard to disclosure of the information required by section 480.6, subdivision (a)(1) through (6), county assessors should consult with their county counsel to receive further guidance as to how best to comply with the constitutional mandate in favor of disclosure.

Board staff will continue to review county assessors' procedures for the discovery of taxable possessory interests while conducting assessment practices surveys. County assessors will be required to begin using the revised form BOE-502-P adopted by the Board on May 25, 2011 for the 2012 lien date.

If you have questions regarding the *Usage Report*, please contact the Assessment Services Unit at 916-274-3350.

Sincerely,

David J. Gau
Deputy Director
Property and Special Taxes Department

DJG:sk
Enclosure