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TO COUNTY ASSESSORS AND INTERESTED PARTIES:

POSSESSORY INTERESTS ANNUAL USAGE REPORT

On May ___, 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.
6. The terms of each transaction described in number 3.

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.

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 "Public 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 Revenue and Taxation Code confidentiality statutes that could potentially apply to *Usage Reports*—sections 481, 451, and 408—were reviewed in a manner consistent with article I, section 3, subdivision (b)(2) of the California Constitution,⁷ which requires a statute to be "narrowly construed if it limits the [peoples] right of access" to public records. Section 481 provides:

All information requested by the assessor or the board pursuant to this article or furnished in the change in ownership statement shall be held secret by the assessor and the board. All information furnished in either the preliminary change in ownership statement or the change in ownership statement shall be held secret by those authorized by law to receive or have access to this information. These statements are not public documents and are not open to inspection, except as provided in Section 408.

The Board's Legal Department considered whether the express terms of section 481 require county assessors to keep confidential *Usage Reports* required to be filed with county assessors pursuant to section 480.6. Since the *Usage Report* is (1) required to be filed pursuant to section 480.6, (2) does not contain information requested by the county assessor, and (3) is neither a *Preliminary Change in Ownership Report* (PCOR) nor a *Change in Ownership*

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 Added in 2004 as part of Proposition 59.

Statement (COS), the Legal Department concluded that the express provisions of section 481 do not require county assessors to keep *Usage Reports* secret. The fact that a county assessor may send a reminder, and even provide a form, to a public entity so that it may fulfill its statutory duty to report taxable possessory interest information does not categorize the reminder as "information requested by a county assessor" pursuant to section 481.

Section 451 provides:

All information requested by the assessor or furnished in the property statement shall be held secret by the assessor. The statement is not a public document and is not open to inspection, except as provided in Section 408.

The Legal Department considered whether the express terms of section 451 require county assessors to keep confidential *Usage Reports*. The Legal Department concluded that the express terms of section 451 only apply to information requested by an assessor or furnished in a property statement, and do not apply to *Usage Reports* because the reports are (1) required by section 480.6, (2) they are not requested by county assessors, and (3) they are not property statements.

The general provisions of section 408, subdivision (a), were reviewed, which provide in part:

...any information and records in the assessor's office that are not required by law to be kept or prepared by the assessor, disabled veterans' exemption claims, and homeowners' exemption claims, are not public documents and shall not be open to public inspections.

The Legal Department concluded that the provisions in section 408 that require county assessors to keep specific documents confidential do not apply to *Usage Reports* because county assessors are required to keep *Usage Reports*. That is, *Usage Reports* are (1) required to be filed with county assessors, (2) they provide county assessors with important information regarding the assessment of taxable possessory interests, and (3) county assessors have a general duty to keep *Usage Reports* as part of their records regarding the assessment of these properties.⁸

Furthermore, the Legal Department concluded that *Usage Reports* do not need to be held confidential by county assessors pursuant to section 408, subdivisions (d) and (e)(3), as non-disclosable "business affairs of another." This is because *Usage Reports* are (1) public records, (2) they are not excluded from being public records by section 408, subdivision (a), and (3) the public may request *Usage Reports* under the provisions of Government Code section 6253 (CPRA), rather than under the more narrow provisions of section 408, subdivisions (d) and (e), regarding an assessee's request for market data and other documents pertaining to the appraisal and assessment of the assessee's property.

⁸ Section 465.

The Legal Department has 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 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.

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 ____, 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

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Enclosure