



March 3, 2011

Ms. Sherrie Kinkle
State Board of Equalization
Property and Special Taxes Department
450 N Street
PO Box 942879
Sacramento, CA 94279-0064

**SUBJECT: POSSESSORY INTERESTS ANNUAL USAGE REPORT FORM BOE-502-P:
SUPPORT FOR DISCLOSURE OF DOCUMENTS PROVIDED BY STATE AND LOCAL
GOVERNMENTAL ENTITIES TO ASSESSORS ABOUT POSSESSORY INTERESTS**

Dear Ms. Kinkle:

The CalChamber supports an interpretation of the Constitution and the Public Records Act that all possessory interest documents provided by governmental agencies and held by assessors are subject to disclosure.

Our 15,000 members are a diverse group, including many companies that hold possessory interests and pay property taxes consistent with the law. Many of the Chamber's members compete with one another in the same government property – rental car companies at airports and vendors at public stadiums are but two examples.

It was in this context that the Chamber attended the December 1, 2010 interested parties meeting at the Board of Equalization (Board) to express our preference that the Board staff advise the assessors that all possessory interest records supplied to the assessors by government agencies are subject to disclosure. After all, these are not records of individual taxpayers that require protection. These documents are public records which can be used to make sure that business taxes are fair and that government leasing policies promote competition.

The Legal Memorandum posted on the Board's website on February 9, 2011 is a good first step towards making sure that these public records are made readily available to the public. However, we are concerned by the implication in the Memorandum that public agencies or assessors can label public records specifically to avoid disclosure. On page 4, it states that, "any possessory interest information provided by a public agency on a change of ownership statement is not subject to public disclosure." This suggests that an assessor could avoid making the information available merely by changing the form on which he or she receives that information on from the reporting local government entities. Further, footnote 4 notes this potential inconsistency and suggests that, if that were to happen, the assessor would indeed not have to turn over the information, and the public would need to request that information instead from the originating public agency. We believe this interpretation undermines the spirit of the California Public Records Act, and thus, needs to be corrected.

Beyond this, we note with some interest that the leading case in this area expresses concerns that government avoid unreasonably interfering with fair competition. The Gallagher case cited in the Legal Memorandum sustained the right of a competitive business to gain access to the welfare exemption that an assessor refused to disclose.

Businesses must have access under the Public Records Act to government leases for two reasons. First, access to government records provides for transparency to ensure that the government is not giving competitive advantages to one business over another. Second, access can ensure that property taxes treat similarly-situated businesses fairly. Thus, transparency with respect to possessory interest public records can ensure that markets operate rationally and fairly, free from distortion by government leasing policies or practices, or inconsistent taxation of possessory interests.

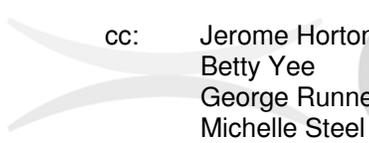
We respectfully request that the Board and its staff build upon the sound analysis in the Legal Memorandum and correct the admitted inconsistency to make it clear that the Constitution and the Public Records Act require that assessors disclose possessory information provided to them by state and local agencies.

Sincerely,



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