

March 3, 2011

Ms. Sherrie Kinkle  
STATE BOARD OF EQUALIZATION  
PROPERTY AND SPECIAL TAXES DEPARTMENT  
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RE: California Restaurant Association Filing in Interested Parties  
Process on Possessory Interests Annual Usage Report Form BOE-502-P  
Concerning the Legal Memorandum

Dear Ms. Kinkle:

The California Restaurant Association (CRA) represents members with more than 22,000 eating and drinking establishments currently operating in California. An estimated \$56.7 billion in food and drink sales in 2009 generate over \$4.5 billion in California sales tax per year. Restaurants are indisputably a driving force in both the state employment and revenue sectors. More than 1.4 million food industry jobs are currently in existence and there will be 1.6 million jobs in this field by 2020.

Many restaurants have leases with public entities to operate restaurants and cafés on public lands, including at airports, in local or state government buildings, in county hospitals and on public education campuses. This means that, in addition to sales and employment taxes, some food service entities pay property taxes on their possessory interests (PIs).

Although CRA's members are not subject to the jurisdiction of the State Board of Equalization, its members are interested in making sure that the Board gives assessors advice consistent with the law. This is particularly true with access to public records under the California Public Records Act (CPRA) because access to this information can be used not only to make sure that similarly-situated restaurants pay comparable property taxes, but also to ensure that similarly-situated restaurants pay comparable rents on public lands. This is good public policy because it keeps costs low and promotes expansion and competition in this vital area of our economy.

As we have just become aware of this interested parties process, we applaud the efforts of the Board to make sure that public records about PIs are available to all. The Board should not do anything that diminishes the ability of CRA's members to discover public records from assessors using the CPRA.

Our concern is that the Legal Memorandum issued on February 9, 2011 may inhibit the ability of CRA's members to get PI records by allowing public agencies or assessors to label public documents "change in ownership statements." The Legal Memorandum reached the correct conclusion on the Annual PI Usage Report that these are public records. The Board should review the logic in the Legal Memorandum closely to determine if the same result should be true for change in ownership statements or any other device.

Sound advice from the Board to the assessors here can help CRA's members. It will give them a tool to access to PI information using the CPRA to keep lease costs low and PI assessments reasonable. In a small but important way, this direction to the assessors can help maintain this vital part of California's economy.

Please feel free to contact me with any questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Sutton". The signature is fluid and cursive, with the first name "Matt" being more prominent than the last name "Sutton".

Matt Sutton  
Senior Legislative Director