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May 6, 2011

VIA EMAIL: sherrie.kinkle@boe.ca.gov

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

Re: Possessory Interests Annual Usage Report (Form BOE-502-P) Interested Parties Process: Comments on Draft Letter to Assessors Released May 2, 2011

Dear Ms. Kinkle:

On behalf of Time Warner Cable, I am writing to endorse the Draft Letter to Assessors posted by the Board's staff on May 2, 2011. Two concepts articulated in the new draft further clarify the obligation of an assessor to disclose the Possessory Interest Annual Usage Report ("Usage Report") form or any other documents sent by state and local governmental entities to assessors in compliance with their statutory obligation under Section 480.6 in response to a request under the California Public Records Act ("CPRA"):

1. The conclusion that: "[T]he 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"; and,
2. The advice based on that conclusion that: "[W]hether 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."

Article I, Section 3 of the California Constitution gives the people a fundamental right of access to public records of public agencies. Both the documents creating possessory interests and documents prepared by state and local governmental agencies to comply with Section 480.6 are "public records" under the Constitution and the CPRA.

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As we noted in our letter of April 22 and in our previous filings, the California Supreme Court articulated in *Commission on Peace Officer Standards and Training v. Superior Court*¹ the rationale for harmonizing Section 480.6 and 481 to avoid the “absurd result” that these public records could become confidential based on the form which they are provided to the assessor, whether they are requested by an assessor, or how an assessor keeps them.

Thus, the advice in the May 2 Draft LTA is consistent with settled law embodied in the Constitution, the CPRA and the pronouncements of the California Supreme Court, and with the policies of transparency and open government that the law is designed to promote. Moreover, the advice also is consistent with the general conclusion that the Usage Report or any other communication transmitted by a state and local governmental entity to a county assessor to comply with Section 480.6 is a “public record” and must be disclosed by an assessor in response to a CPRA request no matter how it is transmitted or labeled by a state or local governmental entity, or how it is kept by the assessor, or regardless of whether the assessor requests the information from the state or local governmental entity. Finally, by relying on “the supreme law of California,” the advice is consistent with the specific conclusion that documents delivered by state and local agencies at the request of an assessor or filed by a public agency in a Change in Ownership Statement are “public information” and should be disclosed by an assessor.

Respectfully submitted,



Jeffrey Sinsheimer

JS:nxs

¹ *Commission on Peace Officer Standards and Training v. Superior Court* (2007) 42 Cal. 4th 278, 290-294.