

Jeffrey Sinsheimer
Direct: 415.772.5740
Email: jsinsheimer@coblentzlaw.com

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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: Request that the Board Revisit the Conclusions in the Legal
Memorandum and Advise Assessors of Their Obligation to Disclose All
Possessory Interest Records Regardless of How They Receive Them from
Public Entities

Dear Ms. Kinkle:

On behalf of Time Warner Cable, we provide these comments on the Legal Memorandum from Bradley Heller to Dean Kinnee,¹ which detail the important legal and policy reasons why the State Board of Equalization's ("SBOE" or "Board") must advise the county assessors that all possessory interest records delivered by state and local governmental entities and kept by the assessors must be disclosed pursuant to a request under the Public Records Act ("PRA"),² regardless of whether their delivery is couched as Change in Ownership Statements ("COSs"), or how the county assessor comes to possess them. This advice from the Board can cure the inconsistent and incomplete nature of the Legal Memorandum and build upon its correct conclusion that the Possessory Interest Annual Usage Report ("Usage Report") is subject to disclosure.

EXECUTIVE SUMMARY

We urge the Board to act to avoid any unintended consequences that might stem from the flawed analysis in the Legal Memorandum and advise county assessors of their duty to disclose all possessory interest information supplied to them by state and local government entities because:

¹ "Confidentiality of Possessory Interest Annual Usage Report, Assignment 10-297" Memorandum from Bradley Heller to Dean Kinnee, February 9, 2011 ("Legal Memorandum" or "Memo").

² Government Code § 6250 *et seq.*

- Possessory interest documents are public records that must be disclosed pursuant to a request under the PRA.
- The PRA guarantees the public a right of access to public records, unless expressly exempt by federal or state law.
- The PRA broadly 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.” This definition of “public records” includes any possessory interest document transmitted by a state or local governmental entity to an assessor.
- An assessor is a “public agency” that must comply with the PRA.
- The PRA’s express statutory exemptions do not apply to possessory interest documents transmitted by a state or local governmental entity to an assessor.
- The PRA’s catchall exemption - which allows a state or local agency to withhold a public record if the public interest served by nondisclosure clearly outweighs the public interest served by disclosure - does not apply because there is no public policy justification for keeping the reports of the state and local agencies “secret”.
- The Constitution requires a narrow reading of the confidentiality requirement in Revenue and Taxation Code sections 451 and 481 and a broad interpretation of Section 408.³
- When strictly and narrowly construed, Sections 451 and 481 do not apply to possessory interest documents transmitted *by a state or local governmental entity* to an assessor because the documents are not specifically enumerated in the statutes and are not “requested” by the assessor. Instead, they are “required” by Section 480.6.
- Under Section 408(a), the exception to an assessor’s secrecy obligation in Sections 451 and 481, possessory interest documents transmitted by a state or local governmental entity to an assessor are not protected from disclosure because (a) they are not “prepared by” county assessors but are “required” to be filed with county assessors by the Legislature and (b) assessors have a general duty to “keep” Usage Reports as part of the county assessors’ records regarding the assessment of possessory interests. And,

³ All “Section” references are to the California Revenue and Taxation Code, unless otherwise indicated.

- Under the standards set forth by the California Supreme Court, Section 481 should not be read literally if a literal reading leads to an absurd result frustrating access to possessory interest documents transmitted by a state or local governmental entity because of how they label the records, or how the assessor requested or keeps them.⁴

In addition to filing comments⁵ and a matrix of legal issues⁶ demonstrating that no secrecy provision with which assessors must comply covers possessory interest records transmitted to assessors by state and local governmental entities, Time Warner Cable also appeared at the interested parties meeting on December 1, 2010. At that time, Time Warner Cable made it clear that it wanted access to these public records in order to discover comparable possessory interests for the purposes of litigation before assessment appeals boards (“AABs”). Time Warner Cable has been denied such information by at least one assessor. In this environment, Time Warner Cable asserted that county assessors have information about all possessory interests within a county. This gives assessors an unfair advantage in litigation because they can choose which comparables to put before an AAB as evidence of comparable value. Lack of access to the possessory interest data provided to the assessors by state and local governmental entities because of a claim that those records come under the assessors’ secrecy obligation thereby deprives the valuation process of transparency.

Moreover, consistent with the request in the LTA that the interested parties present “any other relevant issues”,⁷ Time Warner Cable expressed its concerns in its filings and at the interested parties meeting that the Board render advice about matters beyond the Usage Report – including forms mentioned in statute (i.e., the COS or Preliminary Change in Ownership Report (“PCOR”)) or other means that assessors use to request possessory information from government entities. The Board’s documents indicate the Usage Report may be the least used method. Thus, Time Warner Cable wanted to ensure that the Board did not simply act to fix the problem with the Usage Report form, but that it dealt with all relevant issues concerning an assessor’s responsibility under the PRA to disclose possessory interest documents. Given the resistance that Time Warner Cable has had in getting these public records, it has an interest in making sure that the Board advises the assessors of their responsibility under the PRA to disclose all

⁴ Ironically, much of this analysis tracks the correct conclusion in the Legal Memorandum that the “Usage Report” is subject to disclosure and the legal analysis suggested by the Letter from David Gau, Deputy Director of the Property and Special Taxes Department of the State Board of Equalization, to County Assessors, County Counsels and interested Parties entitled “Possessory Interests Annual Usage Report” (No. 2010/049) dated September 29, 2010 (“LTA”).

⁵ Letter from Jeffrey Sinsheimer to Sherrie Kinkle entitled, “Comments of Time Warner Cable in Interested Parties Process Supporting the Conclusion that Any Data Provided to County Assessors by State and Local Governmental Entities in Compliance with Section 480.6 are Public Documents that Must be Disclosed by Assessors Subject to the Public Records Act” dated October 22, 2010. (“Time Warner Comments.”)

⁶ http://www.boe.ca.gov/proptaxes/pdf/cpia_handout.pdf.

⁷ LTA, p.2.

possessory interest records no matter how they are provided by state and local government entities or, whether they are requested by the assessor, or how they are kept by the assessor.

The Legal Memorandum correctly concludes that Usage Reports are public records that must be disclosed by county assessors when presented with request under the PRA. However,

- The conclusion in the Legal Memorandum that “any possessory interest information provided by a public agency on a COS is not subject to public disclosure” must be reconciled with the fundamental right that the people have under the Constitution and the PRA, which give the people access to public records.⁸ Neither the Constitution, nor the Revenue and Taxation or Government Codes nor the decisions of the Supreme Court or Court of Appeal support the conclusion that public records can be labeled a certain way to avoid disclosure that would otherwise take place. The Supreme Court’s precedent in this area suggests that Section 481 must be construed to avoid the “absurd” conclusion in the Legal Memorandum.⁹ The Board must affirmatively advise the assessors that they not hold possessory interest records “secret” if an agency labels the information a COS or in any other manner.
- Moreover, the Legal Memorandum is incomplete. As demonstrated by the Board’s analysis dating back to 2000,¹⁰ state and local governmental entities use various means beyond those specifically outlined in Section 480.6 to share possessory interest information with county assessors. In fact, the Usage Report and the COS may be rarely used. It is conceivable that, as an unintended consequence of the Legal Memorandum, these other means by which public records are being shared could be susceptible to the same flawed analysis in the Legal Memorandum that applies to COSs. County assessors are public agencies which must comply with requests under the PRA.¹¹ Their obligations to hold taxpayer records “secret” are defined in sections 451 and 481. However, the Legislature never intended those secrecy provisions, generally, or Section 481, specifically, to apply to possessory interest records received from state and local governmental agencies and kept by assessors.

To aid the Board in its evaluation of the legal issues, we have attached three items that are relevant to the Board’s consideration:

⁸ See Gov. Code § 6253 (a).

⁹ *Commission on Peace Officer Standards and Training v. Superior Court* (“*Commission on Peace Officer Standards and Training*”) (2007) 42 Cal. 4th 278, 290-294.

¹⁰ See Board’s Special Topics Survey dated April 2000, www.boe.ca.gov/proptaxes/pdf/picts/pdf, pp. 20-21.

¹¹ See Gov. Code § 6252.

1. Previous Legal Advice from the Board that is Inconsistent with the Legal Memorandum: A 1996 letter from the Legal Department concludes that Section 481 requires assessors to hold secret information on the PCOR and COS “*which is not otherwise disclosed, known, or published and available from sources other than the PCOR and the COS.*”¹² Although the Legal Memorandum concludes that an assessor must keep secret possessory interest information in the form of a COS “secret”, the same information is “available” from the state or local governmental entity that prepares it.
2. An Example of How Assessors Are Directly Requesting Possessory Interest Information from Government Entities: On January 26, 2011, the Riverside County Assessor’s office requested the City of Murrieta to provide information about cable television possessory interests (“Riverside County Assessor Request Form”).¹³ The form demonstrates what the Board already knows – that county assessors and state and local government entities use methods outside of those anticipated in Section 480.6 to request and receive possessory interest information. It also demonstrates the need for the Board to advise the assessors in more global terms about their responsibility to disclose these records under the PRA.
3. The Legislative History of Both Sections 480.6 and 481 Demonstrating the Legislature’s Intent that Assessors Hold Taxpayer-Provided Records “Secret”, Not Records Provided by Government Entities: Time Warner has prepared a timeline of the legislative histories of Sections 480.6 and 481 entitled “Legislative History of Revenue & Taxation Code sections 481 and 480.6.”¹⁴ The legislative history of Sections 481 and 480.6 suggest that the secrecy provisions in Section 481 apply to documents that *taxpayers* provide to assessors as opposed to documents that *state or local agencies* are required to provide to under Section 480.6.

Consequently, Time Warner Cable respectfully requests that the Board revisit the conclusions in the Legal Memorandum and advise county assessors that all possessory interest records supplied to them in any form by state and local governmental entities must be disclosed under the PRA.

¹² Appendix A (Letter from Kristine Cazadd dated December 13, 1996) (“Cazadd Letter”), p. 5. (Emphasis added).

¹³ See Appendix B (“Riverside County Assessor Request Form”).

¹⁴ See Appendix C (Memo from Katherine Z. Dulany to Jeffrey Sinsheimer dated February 25, 2011).

DISCUSSION

1. The Legal Memorandum Correctly Concludes that Assessors Must Disclose Possessory Interest Information Contained in Usage Reports in Response to a Request Under the PRA.

The Legal Memorandum concludes that the Usage Reports filed with county assessors are “subject to public inspection” under the PRA and that Sections 408, 451, and 481 “do not require county assessors to hold secret or keep confidential annual usage reports.”¹⁵ In reaching this correct conclusion, the Legal Memorandum employed the following analysis.

- Possessory interest documents are public records that must be disclosed pursuant to a request under the PRA.¹⁶
- The PRA guarantees the public a right of access to public records, unless expressly exempt by federal or state law.¹⁷
- The PRA broadly 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.” This definition of “public records” includes Usage Reports.¹⁸
- The PRA’s express statutory exemptions do not apply to Usage Reports.¹⁹
- The PRA’s catchall exemption - which allows a state or local agency to withhold a public record if the public interest served by nondisclosure clearly outweighs the public interest served by disclosure - does not apply to Usage Reports. This is because there is no public policy justification for keeping the reports of the state and local agencies “secret”.²⁰
- The Constitution requires a narrow reading of the confidentiality requirement in Sections 451 and 481 and a broad interpretation of Section 408.²¹

¹⁵ Memo, p. 7.

¹⁶ Footnote 23 *infra*.

¹⁷ See Memo, p.2.

¹⁸ See Memo, p.2.

¹⁹ See Memo, p.2.

²⁰ See Memo, p.3.

²¹ See Memo, pp. 3-5. Section 451 provides that:

“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.” (Emphasis added).

(footnote continued)

- When strictly and narrowly construed, Sections 451 and 481 do not apply to Usage Reports, because the reports are not specifically enumerated in the statutes and are not “requested” by the assessor. Instead, they are “required” by Section 480.6.²²
- Usage Reports are not protected from disclosure under Section 408 because (a) they are not “prepared by” county assessors but are “required” to be filed with county assessors and (b) assessors have a general duty to “keep” Usage Reports as part of the county assessors’ records regarding the assessment of the subject properties.²³

Thus, the Legal Memorandum employs an analysis that comports with the Constitution,²⁴ the PRA, the Revenue and Taxation Code, the legislative history of Section 480.6 and the relevant cases to conclude that the Possessory Interest Annual Usage Report (“Usage Report”) is subject to disclosure. The Legal Memorandum correctly advises the Board to amend the Usage Report so that it indicates that the form and its attachments are public records which an assessor cannot hold “secret.”

Section 481 provides that:

“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. (Emphasis added).”

Section 408(a) provides:

“Except as otherwise provided in subdivisions (b), (c), (d), and (e), 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 inspection. Property receiving the homeowners’ exemption shall be clearly identified on the assessment roll. The assessor shall maintain records which shall be open to public inspection to identify those claimants who have been granted the homeowners’ exemption.”
(Emphasis added).

²² See Memo, p.5.

²³ See Memo, p.6.

²⁴ Cal.Const., art.I, § 3, subd.(b), par.(1).

2. The Legal Memorandum Incorrectly Concludes that Assessors Must Hold the Same Possessory Interest Records Secret When Provided in a COS.

The Legal Memorandum's constitutional, statutory and case law analysis is logical and reasonable, but errs by concluding that "any possessory interest information provided by a public agency on a COS is not subject to public disclosure."²⁵ The footnote to this statement admits the inconsistent nature of the legal conclusion:

We recognize the potential inconsistency of the same data being confidential or not confidential depending on the form on which it is delivered to an assessor. However, the fact that section 481 provides that the change in ownership statement is confidential does not preclude the public from asserting its right to the information contained therein with the originating public agency. In fact, it is that public agency that is in the best position to assert and defend any claimed right to confidentiality, not the assessor.²⁶

The Legal Memorandum compounds the legal error in its inconsistent analysis by giving a roadmap to assessors and public agencies to avoid disclosure and maintain secrecy of otherwise disclosable public records:

To the extent that a public agency believes that possessory interest information is confidential under a specific statute outside of the CPRA, or under the CPRA catchall exemption, it should file its information with the assessor using a Change in Ownership statement under section 480.6, for which, as explained below, there is a specific confidentiality statute.²⁷

The Board should revisit these conclusions in Legal Memorandum as it is at odds with the Usage Report analysis and the Board's previous advice about Section 481. Moreover, the California Supreme Court has struck down "arbitrary results" when agencies have tried to shield otherwise public records from disclosure, even if a literal reading of a statute might insulate the records from disclosure.²⁸ Finally, the inconsistent advice frustrates the policy goal of transparency.

a. COSs are Subject to the Same Analysis that Led the Legal Memorandum to Conclude Usage Reports Must Not Be Held Secret.

COSs, as well as PCORs and other possessory interest information provided by public entities to assessors under Section 480.6, are "public records" within the meaning of the PRA, just as Usage Reports are public records. They do not fall within any express exemptions under the PRA. Nor do they fall within the PRA's "catchall" exemption.

²⁵ Memo, p.4.

²⁶ Memo, fn. 4.

²⁷ Memo, p. 2.

²⁸ See *Commission on Peace Officer Standards and Training*, *supra*, 42 Cal.4th at 290-294.

Using the Legal Memorandum's own analysis, there is no public policy justification for keeping secret COSs and PCORs that *state and local agencies* provide to county assessors.²⁹ COSs and PCORs are mentioned in Section 481. However, the statute should be strictly interpreted as to whether the confidentiality requirements apply to COSs and PCORs that *public agencies* are required to provide to assessors under Section 480.6, as opposed to statements prepared by *taxpayers*.³⁰ Indeed, as discussed below, legislative history suggests that the confidentiality requirements of Section 481 apply only to COSs and PCORs provided by *taxpayers*.

b. The Legal Memorandum Is Contrary to the Legal Department's Prior Conclusion that an Assessor Must Disclose Information in a COS which Is "Otherwise Disclosed, Known, or Published" and Available from Other Sources

In a 1996 letter from Kristine Cazadd ("Cazadd Letter"), the Legal Department addressed whether Section 481's confidentiality requirements over information furnished in COSs and PCORs conflicted with the requirement in Section 408.1 that assessors maintain and open to public inspection a list of transfer of property which have occurred with a certain period of time.³¹

As explained in the Cazadd Letter, statutes "may be read to be consistent with each other, rather in conflict."³² According to the Cazadd Letter, the Legislature acknowledged that some of the information shown on COSs and PCORs were already disclosed and available as public. The Legal Department, therefore, concluded that Section 481 requires assessors to hold secret information on COSs and PCORs which are "*not otherwise disclosed, known, or published and available from sources other than the PCOR and the COS.*"³³

The context of the Cazadd Letter is somewhat different than the case at hand. It deals, however, with the harder policy question of whether taxpayer-delivered records are

²⁹ The Legal Memorandum does not specifically address whether it interprets PCORs provided by public agencies to assessors under section 480.6 as being confidential. However, the nomenclature does not lead to a different result: the possessory interest records transmitted from one public agency to another – in this case assessors – do not become "secret" and may not be held "secret."

³⁰ See *Gallagher v. Boller* (1964) 231 Cal.App.2d 482, 489-490. The situation in *Gallagher* posed an even greater challenge to the public disclosure of records than the situation at hand. In that case, the plaintiff/respondent sought access to a competitor's application for welfare exemption and the assessor's ruling on the claim. The documents requested concerned *taxpayer* information. Nonetheless, the Court strictly interpreted Section 451 as allowing for the public inspection of those taxpayer documents, because the Legislature did not specifically provide that such information was confidential. Here, we are not concerned about taxpayer information; rather we are concerned about information provided by one *public agency to another* - over which there is less of a public policy concern about encouraging full disclosure of tax information.

³¹ See Appendix A.

³² Appendix A, p. 1.

³³ Appendix A, p. 5. (Emphasis added).

protected in the form of a COS once they have been disclosed, are known or published, and are available from other sources. In the case of records that the Legislature requires state and local agencies transmit to assessors under Section 480.6, the records are already public because information related to leases and licenses of public lands that create possessory interests constitute public records.³⁴

Thus, in the hands of the state or local government entity creating the possessory interest, the possessory interest information that the Legislature requires it to give to the county assessors is otherwise “known.” Under the PRA, those agencies have the duty to make that information “available” to the public. The Board should act to make sure its analysis of public records generated by state and local entities about possessory interests is consistent with the conclusion in the Cazadd Letter – public records must be disclosed by county assessors even if a public agency delivers them to an assessor in the form of a COS.

c. The Inconsistent Conclusion that COSs are “Secret” but Usage Reports Must be Disclosed Leads to Inconsistent and Absurd Results.

The inconsistent conclusion that, by giving a specific label for otherwise disclosable public records, an agency can ensure that the same information must be held secret leads to the type of “arbitrary and anomalous” result that the Supreme Court will not condone, even if the label is found in statute.

In *Commission on Peace Officer Standards and Training v. Superior Court*, the Court made it clear that statutes should not be given their literal meaning if this would lead to an absurd result frustrating access to public records.³⁵ In that case, the Court held that the names of peace officers are public records, because the names do not fall within any of the exemptions under the PRA or any confidentiality statutes. The Court rejected the argument that they should be deemed confidential simply because they may be contained in personnel files, which are specifically protected from disclosure under Penal Code Section 832.8. That Court held that to conclude otherwise would lead to absurd results.

³⁴ See *Cal. State Univ. v. Superior Court* (2001) 90 Cal.App.4th 810. In *California State University*, a state university leased luxury boxes in a new arena to anonymous donors; the university argued that disclosure of the leases and the identities of the donors would harm the public interest because the university would lose donors. The trial court, affirmed by the Court of Appeal, held that the information was public record, in part because the leases created “a significant and valuable benefit from the possessory interests . . . in the luxury suites . . .” *Id.* at 821 (emphasis added). In addition, the licenses were disclosable because they “relate[d] to the conduct of the public’s business,” and the arena was “a public facility on land owned by a public university.” *Id.* at 824. See also *San Gabriel Tribune* (1983) 143 Cal.App.3d 762 (financial data supplied by private company to agency, where agency and company had a contract, was “public record,” even though company had been assured of the records’ confidentiality).

³⁵ *Commission on Peace Officer Standards and Training, supra*, 42 Cal. 4th at 290. (“It is a settled principle of statutory interpretation that language of a statute should not be given a literal meaning if doing so would result in absurd consequences which the Legislature did not intend.”)

To extend [a confidentiality] statute's protection to information not included within any of the enumerated [statutory] categories merely because that information is contained in a file that also includes the type of confidential information specified in the statute would serve no legitimate purpose and would lead to arbitrary results.³⁶

The Court's guidance on how to construe confidentiality statutes was not followed in the Legal Memorandum – particularly when it concluded that the public information could be shielded from disclosure by simply labeling it a “COS.” To this end, the Court states:

[O]ur task is to select the construction that comports most closely with the Legislature's apparent intent, with a view to promoting rather than defeating the statutes' general purpose, and to avoid a construction that would lead to unreasonable, impractical, or arbitrary results.³⁷

Thus, the Legal Memorandum appears to follow the path for statutory construction outlined in *Commission on Peace Officer Standards and Training* when it concluded that Usage Reports must be disclosed.³⁸ After all, it could have concluded that the Usage Reports are included in the first sentence of Section 481 as “information requested by the board pursuant to this article” (given that the Board propounds the Usage Report form) that “shall be held secret by the assessor.” But, the analysis in the Legal Memorandum concerning the Usage Reports chose not to read the first sentence literally.

However, the Legal Memorandum did not come to the same conclusion with respect to the second sentence of Section 481 in its analysis of COSs:

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.³⁹

The admitted inconsistency in the Legal Memorandum based on this reading of Section 481 – “the same data being confidential or not confidential depending on the form on which it is delivered to an assessor” – is unreasonable and arbitrary.

With respect to a COS from a public agency about public possessory interest information, this construction of Section 481 is inconsistent with standards that the Supreme Court has delineated to construe statutes to ensure that public records remain public, regardless of whether transferred to a different agency or labeled with a different name. It makes no sense that publicly available possessory interest information

³⁶ *Id.* at 293.

³⁷ *Id.* at 290.

³⁸ See more complete analysis of legislative histories for Section 460.6 and 481, below.

³⁹ See Memo, p.4.

contained in a COS should be shielded from disclosure whereas the same information contained in Usage Reports are not.

Thus, the Legal Memorandum's interpretation that public possessory interest information would become secret when a public agency simply submits it on a COS to an assessor – another public agency – leads to an absurd result. A public agency may not shield from public disclosure records related to leases and licenses of public lands that create possessory interests simply by relocating them into certain files and labeling them "secret." In other words, public information does not lose its public nature depending on the form in which it is contained. The substance of the records should control whether they must be disclosed, not the form in which they are delivered. The inconsistent advice in the Legal Memorandum must be revisited and corrected.

3. The Conclusion in the Legal Memorandum Is Incomplete and Misleading Because By Not Making Clear that All Possessory Interest Data Supplied to County Assessors Is Subject to Disclosure, the Statutory Analysis Would Lead One to Conclude the Assessor Must Hold Such Data Secret.

As noted in Time Warner Comments, county assessors collect possessory interest information through means other than through a Usage Report, COS or PCOR. We noted that the Board's Possessory Interest Handbook acknowledges that public agencies and assessors can and do exchange possessory interest information required by Section 480.6, both in writing and electronically.⁴⁰ Research since that time brings us to conclude that, not only are assessors requesting possessory interest data in forms other than those delineated in Section 480.6, but also that the Board is aware that use of the statutory forms – including the Usage Report – may be the exception, not the rule.

Given that the information is being "requested" by the assessor, the question arises whether Section 481 requires that the assessor keep secret public records about possessory interests that they request.

The Legal Memorandum's analysis of the legislative history only deals with Section 480.6:

Finally, the Legal Department looked at the legislative history regarding the enactment of RTC section 480.6 in 1995 (Stats. 1995, ch. 489 (Sen. Bill No. 1995-96 Reg. Sess.), § 10) and we could not find any discussion regarding the confidentiality of annual usage reports. Further, RTC section 481 was enacted prior to 1995; however, when the Legislature enacted section 480.6 in 1995, the Legislature did not amend section 481 to expressly make annual usage reports confidential, and the Legislature has not amended section 481 since enacting section 480.6. Thus, there

⁴⁰ See Assessment of Taxable Possessory Interests, Assessors' Handbook Section 510, December 2002, pp. 63-64.

does not appear to be any indication that the Legislature intended for RTC section 481 to apply to annual usage reports. Furthermore, the Legislature did make unrelated amendments to RTC section 408's confidentiality provisions as part of the same 1995 bill that contained section 480.6, and the Legislature did not feel prompted to amend section 408 to expressly make annual usage reports confidential. Therefore, the Legal Department could not find any legislative history indicating that the Legislature intended for county assessors to keep annual usage reports secret or that the Legislature failed to amend RTC sections 408 or 481 to exempt annual usage reports from disclosure as a result of oversight.⁴¹

A detailed analysis of the legislative histories of Sections 480.6 and 481 reveals that the Legislature provided confidentiality to taxpayer records provided to assessors to encourage compliance when it passed Section 481. The Legislature gave no specific indication that it intended an assessor to keep secret possessory interest documents provided by state and local government agencies when it passed Section 480.6.⁴²

As is the case with the COS inconsistency, the Board should act with this knowledge to clarify that all documents provided by a state or local government entity about possessory interests must be disclosed by an assessor regardless of how they are requested or kept.

a. State and Local Government Entities Use Means of Gathering Possessory Interest Information Other Than In COSs, PCORs and Usage Reports.

According to the Board's Special Topics Survey dated April 2000,⁴³ several assessors use county-provided forms, agency-generated reports and copies of contracts/leases to obtain from public entities information required under Section 480.6. Many assessors also utilize other methods to discover taxable possessory interests (e.g., field discovery and telephonic communications).

Assessors currently request information and ask that it be provided electronically. For example, on January 26, 2011, the Riverside County Assessor's office requested the City of Murrieta to provide information about cable television possessory interests ("Riverside County Assessor Request Form").⁴⁴

To properly review the status of each cable television possessory interest as of January 1, (property tax lien date), we are asking that you review the enclosed form for

⁴¹ Memo, p. 6.

⁴² See Memo, p.5.

⁴³ www.boe.ca.gov/proptaxes/pdf/picts/pdf, pp. 20-21.

⁴⁴ See Appendix B.

accuracy, revise or add the requested data, and return it to us as soon as possible.

The Assessors Office has also created a database that we would like to have all the reporting agencies use. We suggest you select the option of filing using the Database, you ID and Password are located above, but you may also file using the enclosed form.

Please include a copy of any franchise agreements, which were new or revised since January 1, 2011.

The Riverside County Assessor Request Form not only seeks information about the effective dates of any franchise changes, it also seeks the total amounts of total reported gross revenues earned from the possessory interests. Most significantly, the Riverside County Assessor Request Form makes it clear that assessors: (1) are directly requesting information from government entities in forms not covered by Section 480.6, and arguably covered by the literal reading of Section 481's secrecy provision; and (2) are keeping possessory information documents in written and electronic forms.⁴⁵

The Possessory Interest Handbook⁴⁶ and Board Special Topics Survey, as well as the specific example of the Riverside County Assessor Request Form, demonstrate the incomplete nature of the Legal Memorandum. Under these circumstances, the Board should make sure that county assessors keeping possessory interest records are aware that such information is subject to disclosure under the PRA no matter how it was requested or delivered.

b. Legislative History Supports the Conclusion that Any Data Provided to County Assessors by State and Local Government Entities in Compliance with Section 480.6 are Public Documents.

As discussed in the attached memorandum entitled "Legislative History of Revenue & Taxation Code sections 481 and 480.6", the legislative history of Sections 481 and 480.6 suggest that the secrecy provisions in Section 481 apply to documents that

⁴⁵ Under Section 408(a), records that are required by law to be kept by the assessor are public documents and must be disclosed to a PRA Request. See *Gallagher, supra*, 231 Cal.App.2d at 489 ("Records required by law to be kept or prepared by the assessor are inferentially available to the public for inspection under Section 408.") (citing to Board's Assessors' Handbook). Here, Riverside County's reference to a database containing possessory interest information provided by public agencies pursuant to Section 481 indicates that they are "keeping" records required by law. As such, the records must be kept public and are subject to the exception to the secrecy obligation in Section 408(a). They must also be kept by an assessor to ensure that the valuation of the possessory interest complies with Property Tax Rule 21.

⁴⁶ See California State Board of Equalization, Assessors' Handbook Section 510, Assessment of Taxable Possessory Interests (December 2002), pp. 63-64; see also Time Warner Comments, pp. 4-5, 12.

taxpayers provide to assessors as opposed to documents that *state or local agencies* are required to provide to assessors and that assessors keep under Section 480.6.

Section 481 was enacted in 1979 as a response to the passage of Proposition 13 in 1978. The bills that enacted Section 481 – AB 1488 and its predecessor AB 156 – responded to the needs of assessors to have notice of change in ownership events requiring reappraisal, particularly those that were not recorded or made public.⁴⁷

Throughout the legislative history of Section 481, discussions about confidentiality pertained only to *taxpayer* reporting of change of ownership events and preliminary change of ownership events. The main thrust behind Section 481 was to develop a scheme of confidential *taxpayer* reporting to preserve the property tax base.⁴⁸

In enacting Section 480.6 in 1995, the Legislature's main focus was on shifting reporting responsibilities for public records relating to possessory interests from individual taxpayers to *state and local governmental entities* to preserve the property tax base. Legislative history was silent as to the confidentiality of reports generated by state and local governmental entities, particularly the Usage Report, COSs and PCORs concerning possessory interests leased from those entities.⁴⁹ The Legislature's silence about the confidentiality of those records does not imply that Legislature intended to extend the confidentiality provisions of Sections 481 or 451 to records provided by the public entities pursuant to Section 480.6. To the contrary, the silence reiterates that there is no public policy justification for keeping the reports of the state and local agencies "secret". Therefore, in passing Section 480.6, the Legislature did not require that assessors hold the documents "confidential." The Legislature simply required all

⁴⁷ As indicated in a letter from the California Assessors' Association dated January 12, 1979 (page 122 of the Report of the Task Force on Property Tax Administration, January 22, 1979) the Legislature was being urged to adopt:

"[a] mandatory reporting [system] so that the [assessors] can accomplish their task of identifying those partners continuing in a transfer of title or change of ownership through instruments that are not recorded or made public. The key issue the assessor must face is the identification of those documents if they are private contracts and are known only to the concerned parties. We urge legislation that will recognize reporting to the assessor this type of information so that he may judge as required under Proposition 13 those documents that require action and revaluation. The recorded material is readily available to the assessor at this point in time." (Emphasis added)

⁴⁸ See page 78 of the Report of Task Force on Property Tax Administration dated January 22, 1979:

"After extensive discussion, the Task Force agreed upon, and recommends the following scheme of taxpayer reporting: At the time of recording any real property transfer, the person seeking to record will be provided a questionnaire on a form prescribed by the State Board of Equalization. The questionnaire will be confidential and will elicit information necessary to determine whether the transfer is or is not a change in ownership or purchase and may seek other information necessary for valuation purposes, if the transaction is a purchase or ownership change. The transferee's failure to file the completed questionnaire with the recorder at the time of recording or with the assessor within 45 days after the recordation date or receipt of the form. . . would result in a penalty. . ." (Emphasis added)

⁴⁹ See Appendix C.

state and local governmental entities to report possessory interest data to the assessors – a command that those entities must comply with.⁵⁰

c. Consistency Requires Disclosure of Possessory Interest Documents Kept By Assessors No Matter Whether County Assessors Request Them or How the Government Agencies Provide Them.

Just as the Cazadd Letter reads Sections 408.1 and 481 to be consistent with each rather than in conflict, the confidentiality provisions of Sections 451 and 481 and the reporting requirements of Section 480.6 can be easily harmonized. Courts do not construe statutes in isolation, and in situations where there are seeming inconsistencies between statutes, courts will try to harmonize interpretation of them.⁵¹

Consistent with *Commission on Peace Officer Standards and Training*, the statutes can be harmonized. Sections 451 and 481 require that assessors keep nonpublic taxpayer COSs, PCORs and property statements confidential. However, possessory interest information that public entities are required to provide to assessors under Section 480.6 are public records to begin with and they do not lose their public nature simply because they are turned over to the assessor.

The Legal Memorandum's interpretation of Section 481 could lead assessors to incorrectly believe that even the above-described information can be held "secret" so long as an assessor is "requesting" the possessory interest information from state and local governmental entities. In other words, even though documents received by other means do not fall within any of the express exemptions under the PRA, or the PRA's "catchall" exemption or any confidentiality statutes, they can be "confidential" if requested by the assessor. Such interpretation undermines the basic principles of the PRA and leads to absurd results.

Given that the Board is aware that many government entities are fulfilling their statutory obligation under Section 480.6 by responding to a request for possessory interest information from assessors, the Board should revisit this Legal Memorandum to make sure that it is complete. In the interest of fulfilling its obligation to advise assessors about the law⁵² and to promote policies that promote government transparency, the Board should make it clear that an assessor has an obligation to disclose this information in response to a request under the PRA.

⁵⁰ See Time Warner Cable Comments at p. 4, fn. 12.

⁵¹ See *Troy Gold Industries, LTD v. OSHA Appeals Board* (1986) 187 Cal.App.3d 379, 389 ("A court must, where reasonably possible, harmonize statutes by reconciling seeming inconsistencies in them, giving effect to all their provisions."); *People v. the Superior Court of San Joaquin County (Zamudio)* (2000) 23 Cal.4th 183, 194 ("we do not construe statutes in isolation, but rather read every statute with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness.").

⁵² See Gov't Code Section 15608.

CONCLUSION

In passing Section 480.6, the Legislature imposed an obligation on state and local agencies to disclose public information about possessory interests to county assessors. There are many ways that these public agencies accomplish this. The documents are public records. The Legislature did not specifically exempt their disclosure under the PRA. Given the public nature of possessory interest information, it would be contrary to the Constitution and the Supreme Court's precedent in this area to construe the relevant statutes to extend the county assessors' secrecy obligation for taxpayer-delivered documents to these public records.

In this context, Time Warner Cable respectfully requests that the Board revisit the conclusions in the Legal Memorandum and advise county assessors that all possessory interest records supplied to them in any form by state and local governmental entities must be disclosed under the PRA.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jeffrey Sinsheimer", with a long horizontal flourish extending to the right.

Jeffrey Sinsheimer

cc: Jerome Horton
Betty Yee
George Runner
Michelle Steel
Marcy Jo Mandel
Regina Evans
Robert Thomas
Alan Lofaso
Sean Wallentine
Elizabeth Maeng
Neil Shah
Tim Treichelt
David Gau
Dean Kinnee

APPENDIX A

Statutory Authority for Information and Records Kept or Prepared by Assessors.

The authority for the disclosure of all information and records held by state and local government agencies is the California Public Records Act (Government Code Sections 6250 et seq.) This law establishes the right of the public to inspect 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 form or characteristics." (Government Code Section 6252(d).) Certain records, however, are exempted from disclosure, specifically, records that are exempted or prohibited under other provisions of law, federal or state.

Revenue and Taxation Code Section 481 is such a provision of state law which describes two county documents to be exempted from public disclosure. The section provides as follows:

"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."

Exceptions to Section 481 Are Set Forth in Section 408, 408.1, 408.2 and 408.3.

Section 408 is the general provision dealing with the confidentiality of "any information and records in the assessor's office which are not required by law to be kept or prepared by the assessor" and homeowners' exemption claims. The documents described in Section 481, the PCOR and the COS, are in addition to the documents required to be kept confidential by Section 408(a). Exceptions in subdivisions of Section 408, in particular subdivisions (c), (d), (e), and (f), and in Section 408.1, Section 408.2, and Section 408.3 authorize the assessor to furnish specific information to designated persons, including assessees, their representatives, and in some cases, the public.

The relevant provisions of Section 408.1 state in pertinent part as follows:

(a) The assessor shall maintain a list of transfers of any interest in property, other than undivided interests, within the county, which have occurred within the preceding two-year period.

(b) The list shall be divided into geographical areas and shall be revised on the 30th day of each calendar quarter to include all such transactions which are recorded as of the preceding quarter.

(c) The list shall contain the following information:

- (1) Transferor and transferee, if available;
- (2) Assessor's parcel number;
- (3) Address of the sales property;
- (4) Date of transfer;
- (5) Date of recording and recording reference number;
- (6) Where it is known by the assessor, the consideration paid for such property; and
- (7) Additional information which the assessor in his discretion may wish to add to carry out the purpose and intent of this section. Other than sales information, the assessor shall not include information on this list which relates to the business or business affairs of the owner of the property, information concerning the business carried on upon the subject property, or the income or income stream generated by the property.

(d) The list shall be open to inspection by any person. The assessor may require the payment of a nonrefundable fee equal to an amount which would reimburse local agencies for their actual administrative costs incurred in such inspections or ten dollars (\$10), whichever is the lesser amount.

* * *

(f) Pursuant to Section 481, the assessor shall not include information on the list which was furnished in the change in ownership statement by

the transferee and is not otherwise public information.

Legislative history indicates that there was no conflict between Section 408.1 and Section 481. It was recognized at the time that the bill containing Section 408.1 was proposed and ultimately adopted (AB 2777, Imbrecht) that while the assessor was required to maintain confidentiality of the PCOR and COS, some of the information shown on these documents was, in fact, already disclosed or available as "public" information. The logical result was that the assessor could use the PCOR and COS as sources for information already available to the public. Thus, Section 408.1, subdivision (c) and Section 481, subdivision (f) were to be applied consistent with each other, allowing the assessor to include on the transfer list only information from the PCOR or COS that was otherwise "public" information.

Shortly after Section 408.1 took effect, the Board's staff informed assessors and others that the sole modification to the provisions of Section 408.1 (under AB 2777, Imbrecht) was the addition of subdivision (f), the purpose being to remove any doubts regarding possible conflict between the confidentiality requirement in Section 481 and the disclosure requirement in Section 408.1. In Letter to Assessors No. 80/181, December 9, 1980, page 2, we stated as follows:

"The only amendment to this section is the addition of subdivision (f) which, pursuant to Section 481, prohibits the assessor from including on the list any information furnished by the transferee on a change in ownership statement other than public information."

Several years later, in Assessment Practices Survey, "A Report on the Confidentiality of County Assessors' Records," 1989, we addressed the meaning of the phrase "other than public information" in subdivision (f) by explaining that Section 408.1

"...has in effect declassified transfer data and directed that it be released to the public."
(Emphasis added.) (See p.5, copy enclosed.)

Based on the foregoing, we conclude that the items of "public information" expressly indicated in Section 408.1 may be resourced by the assessor from either the PCOR or the COS,

providing that such information is "public" information. The term "public" applied in this context means information concerning real property transfers that is already disclosed, known, or published and available from sources other than the PCOR or the COS. For example, the name of the transferor and transferee, the assessor's parcel number, the property address, date of transfer, and date of recording and recording number generally constitute information that is known and/or available to the public at the recorder's office. The consideration paid for the property may or may not be disclosed. If the amount of documentary transfer tax shown on the recorded deed represents the approximate amount of consideration paid, or if the loan balance is shown on the deed of trust, then the information is "public". In some cases, newspapers or real estate publications disclose information to the public concerning the sales price or liabilities assumed.

In summary, the proper application of subdivision (c) and subdivision (f) of Section 408.1 requires the assessor under the authority of Section 481 to hold secret the information on the PCOR and the COS which is not otherwise disclosed, known, or published and available from sources other than the PCOR and the COS. In particular, the information on the transfer record in the recorder's office is public.

KEC:ba

Attachments

cc: Mr. Jim Speed, MIC:63

Mr. Richard Johnson, MIC:64

Ms. Jennifer Willis, MIC:71

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APPENDIX B

COUNTY OF RIVERSIDE
Assessor – County Clerk Recorder

County Administrative Center
4080 Lemon Street, 6th Floor
P.O. Box 12004
Riverside, California 92502
(951) 955-6220



Box Springs District Office
6221 Box Springs Blvd.
Riverside, California 92507
(951) 486-6786 Telephone
(951) 486-6791 Fax

January 26, 2011

City of Murrieta
ATTN: Al Vollbrecht
26442 Beckman Court
Murrieta, CA 92562

Website: <http://riverside.asrclrec.com/extranet/pidb>
ID # 1034 Password D5037YBEZ6

RE: Cable Television Franchises

Dear Ladies and/or Gentlemen:

Under California property tax law the right to lay cable television cables in public right-of-ways, granted by franchise to a cable company, is a taxable possessory interest. The acquisition, creation, extension, or renewal of this right may be a re-appraisable event for assessment purposes.

To properly review the status of each cable television possessory interest as of January 01, (property tax lien date), we are asking that you review the enclosed form for accuracy, revise or add the requested data, and return it to us as soon as possible.

The Assessors Office has also created a database that we would like to have all the reporting agencies use. We suggest you select the option of filing using the Database, your ID and Password are located above, but you may also file using the enclosed form.

Please include a copy of any franchise agreements, which were new or revised since January 1, 2011. If there are any questions concerning this request, you may reach me at the telephone number listed below.

Very truly yours,
Larry W. Ward
Assessor-County Clerk-Recorder

Michelle Davis
Appraiser Technician
Total Property Division
(951) 486-6785

APPENDIX C

MEMORANDUM

TO: Jeffrey Sinsheimer
FROM: Katherine Zarate Dulany
RE: Legislative History of Revenue & Taxation Code sections 481 and 480.6
DATE: February 25, 2011

You asked me to review the legislative history of Revenue & Taxation Code ("RTC") sections 481 and 480.6. In reviewing the history, I paid particular attention to any discussions or proposals regarding the confidentiality of assessors' records, taxpayer reporting, and public agency reporting of possessory interests, including preliminary change of ownership statements, change of ownership statements, and annual usage reports. Below is a timeline containing quotes of key excerpts from the legislative history that provide guidance as to (a) what assessor records the legislature wanted to keep confidential pursuant to RTC section 481 and (b) whether the legislature intended the documents provided to the assessor under RTC section 408.6 to be confidential. Based on my reading of the legislative history, it appears to me that the legislature was only concerned about keeping nonpublic taxpayer information on preliminary change of ownership statements and change of ownership statements confidential.

Rev. & Tax. Code §§ 481 and 480.6 Timeline and Excerpts from Legislative History

Proposition 13	Eff., July 1, 1978
AB 156 Introduced in Assembly	December 21, 1978
Letter from California Assessors' Association	January 12, 1979

"The California Assessors' Association urges the adoption of mandatory reporting so that they can accomplish their task of identifying those partners continuing in a transfer of title or change of ownership through instruments that are not recorded or made public. The key issue the assessor must face is the identification of those documents if they are private contracts and are known only to the concerned parties. We urge legislation that will recognize reporting to the assessor this type of information so that he may judge as required under Proposition 13 those documents that require action and revaluation. The recorded material is readily available to the assessor at this point in time." (Emphasis added)

Report of Task Force on Property Tax Administration, p.78

January 22, 1979

“Various reporting systems were proposed and studied. Burden on taxpayers was weighed against the assessors’ needs for additional information and the cost of obtaining it. The Assessors’ Association was particularly concerned with the cost of mailing new questionnaires and processing them.

*After extensive discussion, the Task Force agreed upon, and recommends the following scheme of **taxpayer** reporting: At the time of recording any real property transfer, the person seeking to record will be provided a questionnaire on a form prescribed by the State Board of Equalization. **The questionnaire will be confidential and will elicit information necessary to determine whether the transfer is or is not a change in ownership or purchase and may seek other information necessary for valuation purposes, if the transaction is a purchase or ownership change.** The transferee’s failure to file the completed questionnaire with the recorder at the time of recording or with the assessor within 45 days after the recordation date or receipt of the form. . . would result in a penalty. . . (Emphasis added)*

In an effort to reach the comparatively smaller number of persons who do not record their property transfers, the Task Force recommends that assessors be given the authority to send a notice to taxpayers requesting that acquired property through an unrecorded transfer to file a change of ownership statement with the assessor. . . .”

AB 156 Amended in Assembly

February 22, 1979

To Add § 481 as follows: *“All information requested by the assessor pursuant to this article or furnished in the change in ownership 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.”*

AB 156 Analysis by Finance Department

March 1, 1979

“AB 156 contains comprehensive legislation in order to implement Article XIII A of the Constitution.

[P] This bill established procedures for assessee appeals and taxpayer reporting. This bill also specifies the language to be used in the change of ownership statement.”

AB 156 Analysis by Assembly Revenue & Taxation Committee, p.7 March 5, 1979

"The purpose of this bill is to provide for the on-going implementation of assessment changes necessitated by Article XIII A of the California Constitution."

Bill addresses: base year values; declines in value, "change in ownership" definition, "newly constructed" definition, disaster relief, assessment appeals, taxpayer reporting (must file COS within 45 days); reassessment upon zoning changes, effective date.

AB 156 Passed in Assembly and read in Senate for 1st time March 15, 1979

AB 156 Amended by Senate March-May

AB 1488 Introduced March 29, 1979

AB 1488 Analysis by Assembly Revenue and Taxation Committee May 14, 1979

This bill "makes various administrative and technical changes relating to property assessment and property tax collection. . . . This bill was developed by the County Tax Collectors Association in conjunction with the state Controller's office."

AB 1488 Amended in Assembly May 17, 1979

To Add § 481 as follows: *"All information requested by the assessor pursuant to this article or furnished in the change in ownership 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."*

AB 156 Passed in Senate May 18, 1979

AB 1488 Passed in Assembly May 25, 1970

AB 156 Vetoed by Governor May 29, 1979

AB 1488 Read in Senate for 1st time May 29, 1970

AB 1488 Analysis by Finance Department June 14, 1979

This bill is a combination of AB 1488, as amended May 17, and AB 156. AB 156 was a product of committee deliberations on the recommendations made by the Task Force on property tax administration. This bill was vetoed by the Governor, however, several of the provisions for which the Governor vetoed AB 156 have been deleted from this version of AB 1488.

Bill addresses: "change in ownership" definition, "newly construct" definition, disaster relief, assessment appeals, taxpayer reporting.

AB 1488 Analysis by Senate Committee on Rev.& Tax. June 20, 1979

"AB 1488 makes three changes from the enrolled bill version of AB 156: (1) it deletes the retroactivity of the change in ownership definition. . .(2) it reinstates an earlier provision of AB 156 making valuation of enforceability-restricted timberland. . .and (3) it deletes the provision which precluded the Board of Equalization from adopting rules and regulations relative to this act."

AB 1488 Analysis by Assembly and Taxation Committee

Re: *Taxpayer Reporting: "All persons recording a transfer must file a change in ownership statement with the assessor within 45 days or a penalty. . .will apply to the **taxpayer**. . .All transferees in an unrecorded transfer must file a statement with assessor. Failure to do so within 45 days of request by assessor results in same penalty."* (Emphasis added)

AB 1488 Passed in Senate June 28, 1979

AB 1488 Approved by Governor and chaptered July 10, 1979

AB 1488 Legislative History, Summary of Provisions July 16, 1979
Revenue and Taxation Committee

"At the close of the 1978 legislative session, Assemblyman Willie L. Brown, Jr., Chairman of the Committee on Revenue and Taxation, directed that a task force be formed to study existing property tax statutes in light of Proposition 13. . .Special attention was to be given to the issues of 1975 base values, change of ownership, new construction and declines in value under Proposition 8 of November 1978.

[P] As drafted, AB 156 was a comprehensive measure addressing all aspects of assessment practice under the new Article XIII A of the California Constitution, although the principal thrust of the bill was to re-define the critical definition of 'change of ownership' introduced by Proposition 13.

*[P] In addition to the change in ownership revision, AB 156 contained a definition of 'newly constructed' property, . . .**provided a taxpayer reporting system to flag changes in ownership, . . .**"* (Emphasis added)

Re: *Taxpayer Reporting: "All persons recording a transfer must file a change in ownership statement with the assessor within 45 days or a penalty. . .will apply to the **taxpayer**. . .All transferees in an unrecorded transfer must file a statement*

with assessor. Failure to do so within 45 days of request by assessor results in same penalty. Penalty may be waived by Board of Supervisors." (Emphasis added)

Implementation of Proposition 13, Vol. 1,
Property Tax Assessment, p. 35
Analysis of Provisions of Legislation Enacted in 1979
Assembly Revenue and Taxation Committee

October 29, 1979

Re: Taxpayer Reporting: *"All persons recording a transfer must file a change in ownership statement with the assessor within 45 days or a penalty. . .will apply to the taxpayer. The penalty may be waived by Board of Supervisors. The statement provides the assessor with enough information to determine whether or not the transfer is indeed a "change in ownership" and if so, what consideration was involved. Such statements are generally available from title companies, and may be filed in escrow. . .All transferees in an unrecorded transfer must file a statement with assessor. Failure to do so within 45 days of request by assessor results in same penalty. This is admittedly a more difficult situation which to identify the transfer, unless the transferor or transferee report the change . In order to reach possible transferees, it is envisioned that assessors will send a notice in each year's tax bill, which will constitute a general 'request' for all persons affected to file the statement. Information will also be available via Business Property Statements, and new construction data will be afforded by building permits, which are required to be provided by cities and counties to the assessor.*

AB 263 Introduced in Assembly

January 14, 1985

AB 263 Analysis by Franchise Tax Board

February 1, 1985

"This bill would. . .raise the dollar amount of refunds which may be allowed by the Franchise Tax Board without Board of Control approval. The dollar amounts are increased from \$10,000 to \$50,000."

Letter to/from [hard to tell] the Board of Equalization

February 15, 1985

"Section 480.4 prescribes the format of the preliminary change of ownership report and allows the Board to revise the report form as necessary for the purpose of maintaining statewide uniformity. The statute goes on to state that it is the Legislature's intent in enacting these provisions to establish an additional aid to assessors in expediting compliance with Rev.&Tax Code § 75.10 (relating to supplemental assessments) and providing the assessor with timely information needed to ascertain if a change in ownership has occurred and to determine the value of the property on the date of change in ownership.

You state that since the preliminary change of ownership reports are required to be filed with county recorders, those offices will use the information from the form to compute the required documentary transfer tax. You ask whether this will violate Rev.&Tax Code § 481. . .

After reviewing the cited statutory materials, we conclude that use of information contained in the preliminary change of ownership report by county recorders to compute documentary transfer taxes would not be a violation of Section 481. This conclusion is based on the fact that Section 481 does not appear to apply to preliminary change of ownership reports and also does not apply to county records.

Section 481 refers to two types of information. The first is 'information requested' by the assessor pursuant to the article and the second type is information 'furnished in the change in ownership statement'. Neither of these two categories of information appears to include the preliminary change of ownership report.

The preliminary report cannot be considered to be information 'requested' by the assessor. The report is provided for by statute. . . Nothing in the statute or prescribed form indicates that the report is 'requested' by the county assessor. It is, of course, clear that the information will be utilized by the county assessor even though there is no express provision which requires the county recorder to turn the reports over to the assessor. A requirement for the transfer of the information to the assessor must be implied from the intent section and language in the form itself which acknowledges that the information will be given to the assessor. This does not change our conclusion, however, that the report does not fall into the first category of information referred to in Section 481. . . ." (Emphasis added).

AB 263 Passed in Assembly and read for 1st time in Senate April 11, 1985

AB 263 Analysis by Franchise Tax Board May 22, 1985

"At this time there is some confusion among County Assessors as to the confidentiality of certain data elements on their records. The legislative proposal is intended to fulfill the legislative intent by allowing employees of the Franchise Tax Board access to County Assessor records.

Under current law not all agencies authorized to receive confidential information from the assessors or from the preliminary change of ownership or change of ownership documents are required to maintain the

confidentiality of such information. As proposed to be amended, this bill would assure that all recipients of the information must maintain its confidentiality." (Emphasis added)

AB 263 Amended

May 20, 1985

To amend 408 (c) by adding Franchise Tax Board to list agencies to whom assessors must disclose information.

To amend 481 by adding second sentence, "*All information furnished in either the preliminary change in ownership statement or change in ownership statement shall be held secret by those authorized by law to receive or have access to this information.*"

Also changed reference to "statement" and public documents from singular to plural.

AB 263 Analysis by Senate Revenue and Taxation Committee

June 5, 1985

"Certain county assessors are apparently uncertain about whether some data on their records are confidential."

AB 263 Senate Digest

June 20, 1985

"[The Senate amendments] make all information furnished in a 'preliminary change of ownership statement' confidential.

*[P] According to the Franchise Tax Board, which is the sponsor of this bill, the purpose is to speed up processing of refunds and save the state from paying interest on late refunds, to give FTB access to assessors' records, **and the make preliminary change of ownership statements confidential.**"*(Emphasis added).

AB 263 Passed in Senate

June 20, 1985

AB 263 Enrolled Bill Report

June 27, 1985

"In addition, this bill would amend the Revenue and Taxation Code to allow the Franchise Tax Board to access county assessors' records. The information obtained from the county assessors is to be used for tax administration purposes, is to be kept secret and is not open to public inspection.

*[P] Pro: [P] Under current law not all agencies authorized to receive **confidential** information from the assessors **or** from the preliminary change of ownership **or** change of ownership documents are required to maintain the confidentiality of*

such information. As proposed to be amended, this bill would assure that all recipients of the information must maintain its confidentiality.

*Con: Some county assessors fear that expansion of the availability of their data will increase **taxpayer reluctance** to report required information.” (Emphasis added).*

AB 263 Approved by Governor	July 9, 1985
AB 263 Chaptered	July 10, 1985
SB 657 Introduced	February 22, 1995
SB 657 Amended	April 6, 1995

To Add § 480.6

SB 657 Analysis by State Board of Equalization

Bill would: “Shift the burden of filing change of ownership information from the holder of a possessory interest to the state or local government entity that owns the property.”

SB 657 Digest	June 29, 1995
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“Existing property tax law requires the filing of preliminary change in ownership reports and change in ownership statements with respect to transfers of real property. This bill would exclude a holder of a possessory interest in property owned by a state or local governmental entity from this requirement with respect to any renewal of a possessory interest as so described. This bill would instead require the relevant governmental entity that owns the fee interest in the property in which the possessory interest has been created to file the required report or statement with respect to a transfer of that interest. By imposing new filing duties upon local government [entities, this bill] would impose a state-mandated local program.”

SB 657 Analysis by Committee on Revenue and Taxation	June 29, 1995
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“This bill would exclude a holder of a possessory interest in property owned by a state or local governmental entity from this requirement with respect to any renewal of a possessory interest as so described. This bill would instead require the relevant governmental entity that owns the fee interest in the property in which the possessory interest has been created to file the required report or statement with respect to a transfer of that interest.”

SB 657 Senate Rules Committee

June 30, 1995

“Existing law requires the filing of preliminary change in ownership reports and change in ownership statements with respect to transfers of real property.

This bill would exclude a holder of a possessory interest in property owned by a state or local government entity from this requirement with respect to any renewal of a possessory interest as so described. This bill would instead require the relevant governmental entity that owns the fee interest in the property in which the possessory interest has been created to file the required report or statement with respect to a transfer of that interest. By imposing new filing duties upon local governmental entities.[sic] This bill would impose a state-mandated local program.”

SB 657 Passed in Senate

July 3, 1995

SB 657 first read in Assembly

July 5, 1995

SB 657 Analysis by Committee on Appropriations

July 26, 1995

“[SB 657] [r]equires a government entity, in the case of a transfer of possessory interest, that owns the property in which the possessory interest exists to file a statement of transferred interest with the county assessor.”

SB 657 Passed in Assembly

September 15, 1995

SB 657 Governor's Office of Planning and Research

September 25, 1995

“Existing law requires property owners to file two types of change of ownership statements. The preliminary change of ownership statement is filed with the county recorder concurrent with the recordation of documents effecting a change in ownership. This document is then transmitted to the county assessor. Existing law also requires that property owners file a change in ownership statement with the county assessor.

[P] SB 657 would exclude a holder of a possessory interest in property owned by a State or local government entity from this requirement with respect to any renewal of a possessory interest as so described. This bill would also require the relevant governmental entity that owns the fee interest in the property in which the possessory interest has been created to file the required report or statement with respect to a transfer of that interest.

[P]. . . This provision would transfer the responsibility to the government entity when to notify the assessor of a change of ownership, thereby relieving the taxpayer of this burden."

SB 657 Approved by Governor and Chaptered	October 2, 1995
SB 713 Introduced	February 22, 1995
SB 713 Passed in Senate and read in Assembly 1 st time	April 27, 1995
SB 713 Amended in Assembly	September 8, 1995

Amend 480.6 by deleting: *"Any preliminary change in ownership report or change in ownership statement that is required to be filed with respect to a possessory interest as described in the preceding sentence shall be filed in accordance with this article by state or local government entity that is the fee owner of the property in which the relevant possessory interest has been created."*

And adding: *"Instead, every state or local government that is the fee owner of real property. . . shall either file any preliminary change of ownership report or change in ownership statement. . . or annually file with the county assessor. . . a real property usage report. . . ."*

SB 713 Analysis by Committee on Revenue & Taxation	June 17, 1996
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"[SB 713] [p]ermits state and local government entities to annually file with assessors rather than file certain documents upon each individual renewal of a possessory interest."

SB 713 Analysis by BOE

"This measure would give the state and local government entities the option of a one-time annual filing of specified information with assessors rather than filing change in ownership statements or preliminary change in ownership reports each and every time there is a renewal of a possessory interest."

SB 713 Senate Digest

"[SB 713] [p]ermits state and local government entities to annually file with assessors rather than file certain documents upon each individual renewal of a possessory interest."

SB 713 Analysis by Department of Finance

June 20, 1996

"We believe that [SB 713] would provide reporting relief and expand the options of the state and local government entities to provide the required information in a manner that could conform better to their current operating procedures and could be more cost effective and operationally efficient."

SB 713 Approved by Governor

July 16, 1996

SB 713 Chaptered

July 17, 1996