



STATE BOARD OF EQUALIZATION
PROPERTY AND SPECIAL TAXES DEPARTMENT
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0064
916 274-3350 • FAX 916 285-0134
www.boe.ca.gov

BETTY T. YEE
First District, San Francisco

SEN. GEORGE RUNNER (RET.)
Second District, Lancaster

MICHELLE STEEL
Third District, Rolling Hills Estates

JEROME E. HORTON
Fourth District, Los Angeles

JOHN CHIANG
State Controller

KRISTINE CAZADD
Interim Executive Director

No. 2011/019

May 26, 2011

TO COUNTY ASSESSORS:

POSSESSORY INTERESTS ANNUAL USAGE REPORT

On May 25, 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.

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.

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.

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 "[p]ublic 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 Legal Department reviewed the Revenue and Taxation Code's confidentiality statutes that could potentially apply to annual *Usage Reports* provided by public entities⁷ in the manner prescribed by article I, section 3, subdivision (b)(2) of the California Constitution (added in 2004 as part of Proposition 59), which provides in relevant part that:

A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access.

In other words, the 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. In view of this mandate, and based on its review, the Legal Department has further concluded that there is no statute authorizing county assessors to

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 See sections 401 through 409 (concerning general requirements) and 480 through 487 (concerning change in ownership reporting). Please note sections 441 through 470 are not directly applicable to this issue because they reside in an article of the Revenue and Taxation Code concerning information from taxpayers, not the public entities in question.

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.

To the extent specific questions arise with regard to disclosure of the information required by section 480.6, subdivision (a)(1) through (6), county assessors should consult with their county counsel to receive further guidance as to how best to comply with the constitutional mandate in favor of disclosure.

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 25, 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,

/s/ David J. Gau

David J. Gau
Deputy Director
Property and Special Taxes Department

DJG:sk
Enclosure

**POSSESSORY INTERESTS
ANNUAL USAGE REPORT**

NAME AND MAILING ADDRESS
(Make necessary corrections to the printed name and mailing address)

Revenue and Taxation Code section 480.6 requires every state or local governmental entity that is the fee owner of real property in which one or more taxable possessory interests have been created or renewed to provide the assessor of the county in which the property is located information identifying the holders of a taxable possessory interest, the property involved, and the terms and conditions of the agreement giving rise to the taxable possessory interests. If, as of January 1 this year, your agency owns any property with taxable possessory interests, you are required to complete and file this form with the county assessor by **February 15**.

PROPERTY USAGE

NAME OF HOLDER OF POSSESSORY INTEREST		MAILING ADDRESS	
LOCATION/DESCRIPTION OF SUBJECT PROPERTY		DATE OF TRANSACTION IN WHICH A TAXABLE POSSESSORY INTEREST WAS ACQUIRED	
TYPE OF TRANSACTION (check one) <input type="checkbox"/> CREATION <input type="checkbox"/> RENEWAL <input type="checkbox"/> SUBLEASE <input type="checkbox"/> ASSIGNMENT		AMOUNT AND TYPE OF CONSIDERATION (i.e. gross, full service, NNN, other)	
TERM OF POSSESSORY INTEREST (including renewal or extension options)		AGENCY PAID EXPENSES (if any, enter dollar amount)	
<input type="checkbox"/> SUBLEASE	ORIGINAL TERM	REMAINING TERM	CONSIDERATION PAID FOR MASTER LEASE
<input type="checkbox"/> ASSIGNMENTS	ORIGINAL TERM	REMAINING TERM	CONSIDERATION PAID FOR UNDERLYING LEASE

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CERTIFICATION

I certify (or declare) that I have examined this report, including accompanying schedules, statements or other attachments, and to the best of my knowledge and belief it is true, correct, and complete and covers any property required to be reported by the agency named in the statement. If prepared by a duly authorized person other than an agency official, the certification declaration is based on all the information of which the preparer has knowledge.

SIGNATURE OF AGENCY REPRESENTATIVE/PREPARER ▶	DATE
NAME OF AGENCY REPRESENTATIVE	TITLE
NAME OF PREPARER	TITLE
PREPARER'S EMAIL ADDRESS	DAYTIME TELEPHONE NUMBER ()