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TO COUNTY ASSESSORS AND INTERESTED PARTIES:

Board Action

POSSESSORY INTERESTS ANNUAL USAGE REPORT

On May ____, 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 allow 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 "Public 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, despite the fact that they are clearly public records within the meaning of the CPRA.**

In addition to the CPRA provisions, the Revenue and Taxation Code confidentiality statutes that could potentially apply to *Usage Reports*—sections 481, 451, and 408—were reviewed in a manner consistent with article I, section 3, subdivision (b)(2) of the California Constitution.⁷ Section 481 provides:

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.

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 Added in 2004 as part of Proposition 59.

The Board's Legal Department considered whether the express terms of section 481 require county assessors to keep confidential *Usage Reports* required to be filed with county assessors pursuant to section 480.6. Since the *Usage Report* is (1) required to be filed pursuant to section 480.6, (2) does not contain information requested by the county assessor, and (3) is neither a *Preliminary Change in Ownership Report* (PCOR) nor a *Change in Ownership Statement* (COS), the express provisions of section 481 do not require county assessors to keep *Usage Reports* secret. **The fact that a county assessor may send a reminder, and even provide a form, to a public entity so that it may fulfill its statutory duty to report taxable possessory interests information does not categorize the reminder as "information requested by a county assessor" pursuant to section 481.**

Section 451 provides:

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.

The Legal Department considered whether the express terms of section 451 require county assessors to keep confidential *Usage Reports*. The Legal Department believes that the express terms of section 451 only apply to information requested by an assessor or furnished in a property statement, and do not apply to *Usage Reports* because the reports are (1) required by section 480.6, (2) they are not requested by county assessors, and (3) they are not property statements.

The general provisions of section 408, subdivision (a), were reviewed, which provide in part:

...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 inspections.

The Legal Department concluded that **the provisions in section 408 does that require county assessors to keep specific documents confidential do** not apply to *Usage Reports* because county assessors are required to keep *Usage Reports*.⁸ That is, *Usage Reports* are (1) required to

⁸ See **In *Gallagher v. Boller* (1964) 231 Cal.App.2d 482, the Second District Court of Appeal (for Los Angeles and Ventura Counties) ~~concluding~~ concluded** that all of the records possessed by a county assessor with regard to a claim for a Welfare Exemption, the inspection of **a the subject** property, and the county assessor's approval or rejection of **a the** claim are "required to be kept" by a county assessor, and a county assessor may not refuse to disclose them under section 408, subdivision (a). **The Legal Department is also aware that in *Statewide Homeowners, Inc. v. Eldon C. Williams* (1973) 30 Cal.App.3d 567, the Fourth District Court of Appeal (for Imperial, Inyo, Orange, Riverside, San Bernardino, and San Diego Counties) concluded that certain deeds in the county assessor's possession, which did not contain confidential information, were nonetheless exempt from disclosure under section 408, subdivision (a) because no statute expressly required the county assessor**

be filed with county assessors, (2) they provide county assessors with important information regarding the assessment of taxable possessory interests, and (3) county assessors have a general duty to keep *Usage Reports* as part of their records regarding the assessment of these properties.

Furthermore, the Legal Department concluded that *Usage Reports* do not need to be held confidential by county assessors pursuant to section 408, subdivisions (d) and (e)(3), as non-disclosable "business affairs of another." This is because *Usage Reports* are (1) public records, (2) they are not excluded from being public records by section 408, subdivision (a), and (3) the public may request *Usage Reports* under the provisions of Government Code section 6253 (CPRA), rather than under the more narrow provisions of section 408, subdivisions (d) and (e), regarding an assessee's request for market data and other documents pertaining to the appraisal and assessment of the assessee's property.

Finally, there was considerable discussion during the interested parties process pertaining to the possibility of a public entity using a PCOR or a COS to report taxable possessory interest information, and the situation where a public entity reports the required information using a format other than the form BOE-502-P (*Usage Report*).⁹ Several county assessors indicated that, in their experience, public entities do not use either the PCOR or COS to report information regarding taxable possessory interests for a number of reasons. The main reason for this is the convenience of filing one *Usage Report* by February 15 each year, rather than filing PCORs concurrent with the filing of documents evidencing a change in ownership and filing COSs generally within 45 days after the date of each change in ownership. The county assessors also indicated that, in their experience, it is common for public entities to report the required information in a format other than the *Usage Report*.

With regard to these discussions, the Legal Department has concluded that there is no statute authorizing county assessors to 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 the 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**

to "prepare and keep" the deeds. However, the Legal Department believes that the Second District Court of Appeal's narrow construction of the exemption provided by section 408, subdivision (a) is more applicable to *Usage Reports* than the Fourth District Court of Appeal's broad construction in light of the Legislature's intent (discussed above) and the provisions of section 3(b)(2) of article 1 of the California Constitution (added by Proposition 59) providing 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."

⁹ When an express exemption from the CPRA exists, public entities have the statutory option under section 481 to file PCORs and COSs to report taxable possessory interest information that is exempt from disclosure pursuant to a CPRA request in order to preserve the confidential nature of the information. However, to the extent staffing resources are available, county assessors should generally encourage public entities to report their taxable possessory interests on a *Usage Report*.

format (e.g., printout, letter, copy of leases, **electronically, etc.**) ~~the such~~ information should be considered public information by the county assessor.

~~Furthermore, public entities have the statutory option to file PCORs and COSs to report taxable possessory interest information that is exempt from disclosure pursuant to a CPRA request in order to preserve the confidential nature of the information.⁴⁰ However, it would be improper for a public entity to report information on a PCOR or COS that it would otherwise be required to disclose pursuant to a CPRA request if it was done solely for the purpose of limiting the public's access to public information. Therefore, county assessors should encourage state and local governmental entities to report their taxable possessory interests on *Usage Reports* or in another format that complies with the provisions of section 480.6. Where governmental and local entities submit taxable possessory interests information to county assessors on PCORs and COSs, the county assessor should notify the public entity that such information should be filed on a *Usage Report* (or in another appropriate format) unless these public entities can establish that the information is exempt from disclosure pursuant to an express statutory provision.~~

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 ____, 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,

David J. Gau
Deputy Director
Property and Special Taxes Department

DJG:sk

⁴⁰ ~~Section 481.~~