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RE: Disclosure of Possessory Interest Annual Usage Report Data
(Form BOE-502-P)

Dear Ms. Kinkle:

We are writing in response to the Board’s request for comments on the legal opinion issued February 8, 2011 by Tax Counsel Bradley Heller (“Opinion”) regarding the confidentiality of the Possessory Interest Annual Usage Report (“AUR”) data. We generally agree with the Opinion’s conclusion that AURs must be disclosed by the County Assessor under the Public Records Act (“PRA”).

The Opinion, however, falls short in two crucial respects: First, the information required to be disclosed in the AUR does not become confidential merely based on the manner in which the public entity chooses to provide it to the County Assessor. Such a result would permit the manipulation of the availability of this information which is contrary to both the intent and express language of the PRA. Second, we believe that it is important for the Board to emphasize that the required disclosure of the information reportable in the AUR is not premised on a “strict and narrow construction” of statutes which protect the confidentiality of *taxpayer* records and information but on the nature of the information at issue here and the document itself which is supplied by a *public* entity.

COST is a nonprofit trade association based in Washington, DC. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce and today has an independent membership of nearly 600 major corporations engaged in interstate and international business. COST’s objective is to preserve and promote the equitable and nondiscriminatory state and local taxation of multijurisdictional business entities.

As noted in the Opinion, the California Constitution is clear that the people have a right to access information concerning the conduct of the people's business "and, therefore, the meetings of public bodies and the *writings of public officials* and agencies shall be open to public scrutiny." (Emphasis added.) (Cal. Const. art. I, sec.3(b)).

Similarly, the California Public Records Act (CPRA) provides that state and local agencies' public records are open to public inspection, unless expressly exempt by federal or state law. (Gov. Code, § 6253.) "Public records" 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." (Gov. Code § 6252(e).)

The AUR is required to be filed by *state and local entities* holding possessory interests in real property as an alternative to filing a change in ownership statement or preliminary change in ownership report. (Gov. Code § 480.6.) In contrast, *taxpayer provided* information is not a "public record." (Gov. Code §6254(i).)

What concerns us about the Opinion is that it relies on a broad application of strictly construing statutes which protect *taxpayer provided* information. Such a construction is not necessary or warranted in this matter.

Gallaher v. Boller, (1964) 231 Cal. App. 2d 482, is certainly instructive, but involved a document required to be filed by a *taxpayer*, not a local government entity. Moreover, *Gallaher* only discussed strictly construing sections 1881 of the Civil Code and Section 451 of the Revenue and Taxation Code. The Opinion's citation to *Gallaher*, however, suggests that the Court applied a strict and narrow construction to all Revenue and Taxation Code sections which might be found to protect the disclosure of *taxpayer provided* information. We do not believe *Gallaher* went so far.

Whether the Board views various sections of the Revenue and Taxation Code which require the Assessor to treat taxpayer provided information confidential as warranting a strict and narrow construction in light of the Public Records Act may be a matter of debate. It is not necessary, however, for that discussion to take place in the context of whether the AUR or the information required to be contained in the AUR is a public record subject to disclosure. As written, the Opinion could be construed as support for the view that any statute protecting the disclosure of *taxpayer* records should be strictly and narrowly construed. We do not believe such a construction is accurate or warranted in the context of the question presented.

By all accounts, the AUR and the information contained therein in the hands of the local entity required to supply it is a public record. It seems absurd to suggest that once submitted to the County Assessor the report transmogrifies into a non-disclosable document absent an express statute making it so.

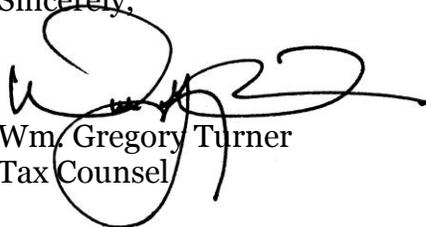
March 4, 2011

It seems similarly absurd that the same information required to be disclosed under the PRA becomes confidential, merely based on the manner or form the information is provided to the Assessor. The PRA clearly contemplates that when disclosable and non-disclosable information is comingled, the non-disclosable information should be redacted but the disclosable information must nevertheless be disclosed. (*American Federation of State, etc. Employees v. Regents of University of California* (1978) 80 Cal.App.3d 913, 919.)

As others have pointed out, the consequence of Assessors keeping PI information confidential is that taxpayers are at an unfair disadvantage in seeking the fair and accurate assessment of their property.

We appreciate the opportunity to express our views on the Opinion and look forward to working with the Board to provide a workable solution to this problem.

Sincerely,



Wm. Gregory Turner
Tax Counsel