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TO COUNTY ASSESSORS AND INTERESTED PARTIES:

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 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.
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.

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.

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 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

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.

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 ____, 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
Enclosure