



STATE BOARD OF EQUALIZATION  
PROPERTY AND SPECIAL TAXES DEPARTMENT  
450 N STREET, SACRAMENTO, CALIFORNIA  
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Executive Director

No. 2010/049

September 29, 2010

TO COUNTY COUNSELS,  
COUNTY ASSESSORS, AND  
OTHER INTERESTED PARTIES

POSSESSORY INTERESTS ANNUAL USAGE REPORT

At its September 15, 2010 meeting, the State Board of Equalization (Board) instructed staff to initiate an interested parties process to solicit information regarding the *Possessory Interests Annual Usage Report*, form BOE-502-P (copy enclosed). You may listen to the discussion at the Board meeting at the following link:

[http://www.boe.ca.gov/meetings/pdf/091410\\_PAN\\_September\\_Sacramento.pdf](http://www.boe.ca.gov/meetings/pdf/091410_PAN_September_Sacramento.pdf)

Scan down and select "Webcast on Wednesday, September 15"

Select "Video and Slides"

From the dropdown menu, select agenda item "P4.1"

At issue is whether or not the data that a public entity is required to report pursuant to Revenue and Taxation Code section 480.6 must be held in confidence by county assessors in light of Proposition 59.<sup>1</sup> Proposition 59 requires, among other things, 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.

Currently, the language on the form indicates that the information provided thereon is confidential. Specifically, the form language provides:

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.

However, when section 451 is narrowly construed as required by Proposition 59, it appears that its express provisions do not apply to the possessory interest usage report since section 451

<sup>1</sup> Article I, section 3, subdivision (b)(2) was added to the California Constitution by the passage of Proposition 59 in 2004. Proposition 59 added to the Constitution the public's right of access to meetings of government bodies and writings of governmental officials while preserving specified constitutional rights and retaining existing exclusions for certain meetings and records.

specifically states that only information furnished on a property statement is to be held secret by the assessor, and the possessory interest usage report is not a property statement.

The interested parties process will discuss whether the express terms and legislative history of section 451, or other provisions of the Revenue and Taxation Code, specifically sections 481 and 408, as well as judicial decisions, including *Gallagher v. Boller* (1964) 231 Cal.App.2d 482, apply to information provided on the possessory interest usage report. We also plan to discuss the public interest in disclosure of information provided on the report and the public interest in nondisclosure of such information as required by Government Code section 6255.

Interested parties are requested to provide comments on these and any other relevant issues so that the Board can make a decision as to whether the above-quoted confidentiality language on form BOE-502-P should be removed. Comments regarding the legal issues and/or administrative concerns should be sent to Ms. Sherrie Kinkle at [sherrie.kinkle@boe.ca.gov](mailto:sherrie.kinkle@boe.ca.gov) or mailed to the above address by October 22, 2010.

After reviewing comments submitted by interested parties, it is anticipated that this project will proceed as follows:

- A matrix containing all comments received will be developed.
- Staff will meet with interested parties on December 1, 2010 at the Board's headquarters, 450 N Street, Sacramento, in Room 122, beginning at 9:30 a.m., to discuss the confidentiality issue for the form.
- The Board will hear presentations regarding the confidentiality issue.

All documents regarding this project will be posted on the Board's website at [www.boe.ca.gov/proptaxes/otherprojects10.htm](http://www.boe.ca.gov/proptaxes/otherprojects10.htm). If you have questions regarding this project, you may contact Ms. Kinkle at 916-322-2921.

Sincerely,

/s/ David J. Gau

David J. Gau  
Deputy Director  
Property and Special Taxes Department

DJG:sk  
Enclosure

**POSSESSORY INTERESTS  
ANNUAL USAGE REPORT**

Section 480.6 Revenue & Taxation Code  
(Name and Mailing Address of Agency)

*This is a written request made pursuant to Sec. 480.6 of the Revenue and Taxation Code. This report must be completed in detail by the agency and filed with the Assessor by February 15.*

*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.*

California law 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 holder(s) of a taxable possessory interest, the property involved, and the terms and conditions of the agreement giving rise to the taxable possessory interests. The agency may provide the county assessor the information on either (1) a preliminary change in ownership report or change in ownership statement, or, (2) an annual real property usage report. If, as of January 1 this year, your agency owns any property with taxable possessory interests that have not already been reported on a preliminary change in ownership report or on a change in ownership statement, 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 <i>(check one)</i> <input type="checkbox"/> Creation <input type="checkbox"/> Renewal <input type="checkbox"/> Sublease <input type="checkbox"/> Assignment	AMOUNT AND TYPE OF CONSIDERATION <i>(i.e. gross, full service, NNN, other)</i>
TERM OF POSSESSORY INTEREST <i>(including renewal or extension options)</i>	AGENCY PAID EXPENSES <i>(if any):</i> \$

Sublease:  
 Original Term and Remaining Term \_\_\_\_\_  
 Consideration Paid for Master Lease \_\_\_\_\_

Assignments:  
 Original Term and Remaining Term \_\_\_\_\_  
 Consideration Paid for Underlying Lease \_\_\_\_\_

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**CERTIFICATION**

*I certify (or declare) under penalty of perjury under the laws of the State of California that I have examined this report, including any accompanying schedules and statements, 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. This certification statement must be signed.*

SIGNATURE OF AGENCY REPRESENTATIVE	TITLE	DATE
NAME OF PREPARER <i>(print or type)</i>	DAYTIME TELEPHONE NUMBER (      )	