



Memorandum

To: Mr. Richard C. Johnson
Chief, Assessment Standards Division

Date: June 2, 1995

From: James M. Williams

Subject: Proprietary Information Submitted in Confidence

In your memo of April 28, 1995 you stated your intent to prepare a public report on 1996 computer depreciation factors. You intend to solicit information from various producers on a nationwide but voluntary basis and then combine and filter it in such a fashion as to make it impossible to discern the data from any specific company. It appears that the producers are reluctantly, semi-cooperative. They recognize the need for a quality report but do not want their proprietary information to be divulged to a competitor. In order to assuage their fears you are requesting our opinion as to whether or not confidentiality can be maintained and if so can we provide a sample nondisclosure statement.

We can do that! In pertinent part California Government Code, Section 15619 provides: ... [State Board of Equalization], or any agent employed by it, ... , shall not divulge or make known in any manner not provided by law, any of the following items of information concerning the business affairs of companies reporting to the board:

(a) Any information concerning the business affairs of any company which is gained during an examination of its books and accounts or **in any other manner**, which information is **not required by law** to be reported to the State Board of Equalization.

Following these provisions are two standard paragraphs, the first of which permits other authorized governmental agencies to examine such records. The second permits the Governor not only to examine but to direct that any of the information be made public. The final paragraph states: Any violation of this section is a misdemeanor and punishable by a fine not to exceed one thousand dollars (\$1,000), or by imprisonment not to exceed six months, or both, at the discretion of the court.

As a cautionary note, be advised that the terms "companies reporting to the board" have not been defined within this chapter of the Government Code. In general it is our view that Section 15619 would apply to a company that makes any required (by statute or rule) report to the Board for any of the tax programs administered by the Board and would not be restricted to reporting for only property tax purposes.

I have discussed this code section with two members of our Special Taxes Section that specialize in matters of confidentiality and we agreed that you should take an additional step when you are immediately finished with the raw data. You should either return it to the originator in exchange for the executed nondisclosure statement (which I would prefer) or you could destroy the data and exchange a certification therefore in return for the nondisclosure statement.

We would recommend several significant elements during your processing of the data. Most important - **no copies** should be made of the original submissions. The number of people processing the information should be minimized and specifically identified. The data should be processed and returned as soon as possible. Attached is a sample nondisclosure statement.

 JMW:jd
precednt/confinfo/95001.jmw

Attachment

cc: Mr. John Hagerty, MIC:63
Ms. Jennifer Willis, MIC:70