

## Memorandum

**To:** Dean Kinnee, Chief  
County-Assessed Properties Division (MIC:64)

**Date:** December 1, 2011

**From:** Richard Moon  
Tax Counsel IV

**Subject:** Reporting Taxable Possessory Interests

As you know, Revenue and Taxation Code section<sup>1</sup> 480.6, requires a government entity to file reports (Form BOE-502-P, *Possessory Interests Annual Usage Report (Usage Report)*) regarding changes in ownerships of possessory interests, and relieves the holder of the possessory interest from that same obligation. As enacted in 1995, section 480.6 expressly required "the relevant governmental entity that owns the fee interest in the property in which the possessory interest has been created to file the required report or statement [a Preliminary Change in Ownership Report (PCOR) or Change of Ownership Statement (COS)] with respect to a transfer of that interest." (Legislative Counsel Digest for Stats. 1995, ch. 498 (Sen. Bill. No. 657), § 10 [adding Rev. & Tax. Code, § 480.6].) Section 480.6, as amended in 1996, now allows a governmental entity "to annually file with the county assessor a real property usage report, containing specified information" regarding each real property the governmental entity owns in which a possessory interest or interests have been created, "as an alternative to complying with" the PCOR and COS filing requirements enacted in 1995. (Legislative Counsel Digest for Stats. 1996, ch. 171 (S.B. No. 713), § 4 [amending Rev. & Tax. Code, § 480.6].)

The Board has advised in Letter To Assessors (LTA) 2011/19, *Possessory Interests Annual Usage Report*, that *Usage Reports* are public records that are open to public inspection under the California Public Records Act (CPRA) 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.

In *Commission on Peace Officer Standards and Training v. Superior Court of Sacramento* (2007) 42 Cal.4th 278, the California Supreme Court narrowly construed Penal Code section 832.8, an exemption from the CPRA for police officers' personnel records, holding that the exemption only applied to the specific types of information enumerated in that section. The Court further held that this exemption did not apply to all information contained in a personnel file merely because the information is stored in that file. The Court stated:

To extend the statute's protection to information not included within any of the enumerated categories merely because that information is contained in a file that

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<sup>1</sup> All statutory references are to the Revenue and Taxation Code unless otherwise noted.

also includes the type of confidential information specified in the statute would serve no legitimate purpose and would lead to arbitrary results.<sup>2</sup>

Thus, it is clear that the Court's concern was with the disclosability or confidentiality of the information itself, and not the location or manner in which the information is stored. Therefore, if it were ever litigated, we believe a court deciding the issue would most likely hold that otherwise public information required to be reported on a *Usage Report* would be disclosable even if that same information was filed in a different manner and regardless of what form, if any, was used to file the information with a county assessor. For this reason, LTA 2011/19 advises that county assessors may not refuse disclosure of 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.

To the extent any prior guidance from the Legal Department suggests that a different analysis might be applicable or such prior guidance is otherwise inconsistent with the opinion expressed herein, that prior guidance is superseded by this memorandum and should be completely disregarded. We also direct that this opinion be annotated. (See Cal. Code Regs., tit. 18, § 5700.)

RM:yg

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cc: Mr. David Gau (MIC:63)  
Mr. Todd Gilman (MIC:70)

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<sup>2</sup> *Commission on Peace Officer Standards and Training v. Superior Court of Sacramento*, *supra*, 42 Cal.4th at p. 293.