

**Memorandum**

To: Mr. [REDACTED]
Chief, Assessment Standards Division

Date: April 11, 1994

From: Eric Eisenlauer
Staff Counsel III

Subject: Letter from the IRS Dated December 23, 1993

This is in response to your memo to Mr. F [REDACTED] of January 5, 1994, in which you ask whether the Board's agreement to exchange information with the IRS permits or prohibits our disclosure of the parent-child \$1 million exclusion database to the IRS for federal estate and gift tax purposes. Your concern is that the database contains the social security numbers of the transferors obtained under the expectation of confidentiality. The database also includes the transferor's name, the date of each transfer, the county where the transferred real property is located, the assessor's parcel number and the full cash value for each parcel.

The Board's agreement to exchange information with the IRS is based on specific statutory authority, e.g., Revenue and Taxation Code section 7056, under which the Governor may, by order, authorize examination by the federal government of certain business taxes information if a reciprocal agreement exists. The agreement does not extend to property tax matters and thus does not permit disclosure of the information sought here. Since the agreement does not permit disclosure of the information sought, the question remains whether such information can be disclosed upon some other basis.

Under the California Public Records Act (Gov. Code, §6250 et seq.), members of the public are given the right to inspect any public record¹ except one exempt from disclosure by the provisions of section 6254 or where "the public interest served

¹Public records are broadly defined 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." (Gov. Code, §6252, subd. (d).)

by not making the record public clearly outweighs the public interest served by disclosure of the record." (Gov. Code §6255.)

Subdivision (c) of section 6254, subject to exceptions not here relevant, exempts from disclosure "[p]ersonnel, medical or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy." In *Braun v. City of Taft* (1984) 154 Cal.App.3d 332, the Court of Appeal held that whether the disclosure of a salary card of a city firefighter which contained certain personal information, including the firefighter's social security number, was warranted or unwarranted under subdivision (c) of section 6254 was a question of fact for the trial court to determine. The court further held that the trial court was within its discretion in finding such disclosure to be warranted under the circumstances of the case.

For purposes of the Public Records Act, however, "members of the public" do not include "a member, agent, officer, or employee of a federal...agency acting within the scope of his or her membership, agency, office, or employment." (Gov. Code §6252, subd. (f).) Thus, disclosure to representatives of the IRS is not permitted by the Public Records Act even if such disclosure were determined not to be "an unwarranted invasion of personal privacy."

Similar provisions to protect the privacy of individuals are found in the Information Practices Act (Civil Code §1798 et seq.) which was enacted to limit the dissemination of personal information. (Civil Code §§1798, 1798.1.)

The Information Practices Act provides that, subject to certain enumerated exceptions, "[n]o agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains...." (Civil Code §1798.24)

Subdivision (a) of section 1798.3 provides that "[t]he term 'personal information' means any information that is maintained by an agency that identifies or describes an individual, including, but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history...."

The information sought here clearly includes "personal information" the disclosure of which is prohibited by the Information Practices Act unless an exception applies.

A key exception to the general rule of Civil Code section 1798.24 is subdivision (f) of that section which permits disclosure of personal information "[t]o a governmental entity when required by state or federal law." The act defines "governmental entity" to mean "any branch of the federal government or of the local government." (Civil Code §1798.3, subd. (i).) The IRS would clearly fall within the definition of a "governmental entity" for purposes of the act.

We are not aware of any state law which requires the information in question to be disclosed to the IRS. In considering whether any federal law requires such disclosure, we first consider whether such disclosure is prohibited by federal law.

Social security numbers originated with the Social Security Act which is found at Title 42 U.S.C.A. section 301 et seq. Title 42 U.S.C.A. section 405 (c)(2)(C)(i) provides:

It is the policy of the United States that any State (or political subdivision thereof) may, in the administration of any tax, general public assistance, driver's license, or motor vehicle registration law within its jurisdiction, utilize the social security account numbers issued by the Secretary for the purpose of establishing the identification of individuals affected by such law, and may require any individual who is or appears to be so affected to furnish to such State (or political subdivision thereof) or any agency thereof having administrative responsibility for the law involved, the social security account number (or numbers, if he has more than one such number) issued to him by the Secretary.

Subparagraph (c)(2)(C)(vii) provides in part:

(vii)(I) Social security account numbers and related records that are obtained or maintained by authorized persons pursuant to any provision of law, enacted on or after October 1, 1990, shall be confidential, and no authorized person shall disclose any such social security account number or related record.

(III) For purposes of this clause, the term "authorized person" means an officer or employee of

the United States, an officer or employee of any State, political subdivision of a State, or agency of a State or political subdivision of a State, and any other person (or officer or employee thereof), who has or had access to social security account numbers or related records pursuant to any provision of law enacted on or after October 1, 1990. For purposes of this subclause, the term "officer or employee" includes a former officer or employee.

(IV) For purposes of this clause, the term "related record" means any record, list or compilation that indicates, directly or indirectly, the identity of any individual with respect to whom a social security account number is maintained pursuant to this clause.

Under the foregoing provisions, social security account numbers and related records are confidential and cannot be disclosed by the Board if they "are obtained or maintained by authorized persons pursuant to any provision of law, enacted on or after October 1, 1990...." Thus, if social security account numbers and related records are obtained or maintained by authorized persons pursuant to a provision of law enacted before October 1, 1990, such information is not confidential and its disclosure is not prohibited under the Social Security Act.

The claim for the exclusion from change in ownership for transfers between parents and children of real property other than the transferor's principal residence is required to include the transferor's social security number under Revenue and Taxation Code section 63.1. Section 63.1 also requires county assessors to include these social security numbers in quarterly reports to the Board for purposes of monitoring the \$1 million limitation on the exclusion. These requirements were added to section 63.1 by Stats. 1990, Chapter 126 (SB 124) which become effective as an urgency measure June 11, 1990. Thus, since the social security numbers at issue here are obtained or maintained pursuant to an amendment to section 63.1 enacted prior to October 1, 1990, the disclosure of the information sought here is not prohibited by the Social Security Act. Moreover, such disclosure is not prohibited by the federal Freedom of Information Act (5 U.S.C.A. §552) or the federal Privacy Act (5 U.S.C.A. §552a) because those acts apply only to disclosure by federal agencies. We know of no other provision of federal law which would prohibit the disclosure of the information sought here.

Internal Revenue Code, section 7602, subdivision (a), however, provides as follows:

Mr. Verne Walton

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a governmental entity, only pursuant to a legally sufficient
IRS summons because doing so in that instance would be
"required by...federal law."



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