



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

LEGAL DIVISION (MIC:82)
450 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 323-7714

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January 14, 1994

Mr. James J. Rees, Deputy County Counsel
Office of Santa Clara County Counsel
County Government Center, East Wing
70 West Hedding Street
San Jose, CA 95110-1770

Re: Use of Information Relating to Third Parties as
Evidence in an Assessment Appeals Board Hearing

Dear Mr. Rees:

In your letter of December 16, 1993, you asked us to respond to several questions concerning an apparent conflict between the assessor's right to collect and process appraisal data and the ability to use that data to defend an assessment appeal. In **Chanslor-Western Oil & Dev. Co. v. Cook, 101 Cal. App. 3d 407 (1980)**, the plaintiff prevented the assessor from disclosing its business records in his defense of an assessment of Chevron even though it seemed clear that the data in question (although technically not market data) was vital for a valid calculation of the income approach to value.

In **Trailer Train Co. v. State Bd. of Equalization, 180 Cal. App. 3d 565 (1986)** we were faced with a similar but not identical problem. Since our board is both the constitutionally assigned assessor and the statutorily designated appeals board, it was in theory already privy to the secret business records which were submitted to the board via the property statements of the various assessees. Our staff had extracted from the statements the general and administrative expenses and the maintenance costs for our eight major private rail car assessees. It had then averaged these figures to produce an "industry-wide" factor which was used in the calculation of Trailer Train's income indicator of value. At the hearing Trailer Train (not one of the eight submitters) challenged the factors as invalid and demanded that the staff reveal the method of derivation. In response the staff arrayed the numbers as being submitted by assessees A, B, C, D, E, F, G and H, then went on to demonstrate that the derived average was

mathematically correct. Trailer Train then moved that this calculation and the final income indicator be stricken on the ground that refusal to identify the assessee denied it the right to cross-examine the witnesses against it. In response the staff offered to produce copies of the eight property statements with the names of the submitters blanked out in order to meet the minimum requirements of Revenue and Taxation Code, subsection 11655(a), and it requested Trailer Train to make an offer of proof to demonstrate how the identity of the submitters would either validate or invalidate the calculation. Trailer Train refused to respond, so the board accepted the calculations. Trailer Train also did not offer any alternative calculations, so the board concluded that its only purpose was to remove a valid indicator of value from board consideration. This same sequence was repeated at trial in superior court and upheld by Judge Robert W. Merrill. He (and the board) were sustained by the First District at 180 Cal. App. 3d 589.

In light of these facts and rulings we respond to your specific questions:

1. Can the assessor, or a consultant/appraiser acting on behalf of the assessor, properly use business information relating to property of third parties in appraising the property which is the subject of the Assessment Appeals Board hearing?

Yes, the assessor's duty is to find fair market value, and to do so the legislature has provided Revenue and Taxation Code, Sections 441, et. seq., so that he can collect the data necessary to make the proper and correct valuations. On appeal the board reviews the selection of data for comparability and the subsequent calculations for accuracy.

2. If so, how can such information be presented at the time of the hearing so as not to violate section 408 or any other section of the Revenue and Taxation Code?

The foregoing example of Trailer Train wherein our staff derived an industry-wide factor is the best way to present relevant data in a generic format. Often we are also able to find the same data that the taxpayers have made public via other non-confidential reports or company news releases. We have also used various commercial suppliers of data in conjunction with a testifying staff appraiser who merely verifies that the property statements support the commercially available material.

3. In light of the holding in Trailer Train are the taxpayer's rights of due process impaired by not disclosing the

identities of the third parties whose business information was used in making the appraisal?

Not as we presented the sequence in the actual hearing and at trial. Identification of the submitter goes only to convince the board that the data is comparable to the appellant and does not go to the accuracy of the subsequent calculations. Also, it should be noted that the appeals process requires the taxpayer to establish the value of his property by independent evidence, so he can always counter the assessor's data with his own as derived from his property and/or his industry study. Ultimately, if the scope of available data is so limited and if it is so crucial to the assessment, then the taxpayer has the statutory right to force disclosure before a court of competent jurisdiction. In Trailer Train we were prepared to identify the submitters to Judge Merrill in camera.

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,

James M. Williams
Staff Counsel III

JMW:ba

cc: Mr. John Hagerty - MIC:63
Mr. Verne Walton - MIC:64
Ms. Jennifer Willis - MIC:70

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