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Controller, Sacramento

DOUGLAS D. BELL  
Executive Secretary

No. 81/20

January 30, 1980

TO COUNTY ASSESSORS:

ASSESSOR'S SUBPOENA POWER PURSUANT TO  
SECTIONS 441 AND 454, REVENUE AND TAXATION  
CODE UPHELD IN SAN LUIS OBISPO COUNTY  
SUPERIOR COURT

On December 12, 1980, the Superior Court of the State of California in and for the county of San Luis Obispo ordered that the motion to quash subpoena duces tectum be and is denied; thus upholding the assessor's subpoena power pursuant to Sections 441 and 454, Revenue and Taxation Code.

The parties to this action are the assessor, requesting permission to inspect the books and records of a company holding a leasehold estate in a sand and gravel quarry located in San Luis Obispo County. Porter Enterprises is the owner (lessor) of the Land, and Alamo Rock Company is the operator (lessee) of the sand and gravel quarry.

In accordance with Revenue and Taxation Code, Section 441, the assessor requested that a state-prescribed "Mining and Quarrying Production Report" be filed with his office by the lessor and lessee.

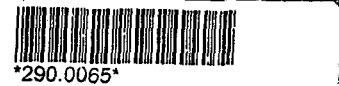
The lessor responded with a partially completed statement and a note directing that further information would have to come from Alamo Rock Company.

The agent for Alamo Rock Company responded by returning a bank statement and a letter which stated, in relevant part:

"We will make available the requested information at our principal place of business"

Subsequently, the assessor made repeated requests to inspect the books and records.

The company however, refused to produce, or permit the inspection of, any company books and records except for weighbills relating to material removed from subject quarry and depreciation schedules relating to equipment in use at subject quarry. The assessor believed that said company had in their possession records consisting of:



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1. Income statements
2. Expense
3. Records of royalty payments
4. Lease
5. Production records, and
6. Inventory records

In so far as these records are material to determining whether the subject quarry property has been correctly valued for property tax purposes, and the proper appraisal method to value mining and quarrying properties is the income approach value, the information contained in the records described above is essential to the application of this method of valuation.

For reasons relating to the examination of the records cited above, the assessor, on November 26, 1980, issued his subpoena for the production of the records noted above. Said subpoena duces tectum was served on the agent for Alamo Rock on December 3, 1980. On December 5, 1980, said agent for Alamo Rock Company filed a motion to quash the subpoena duces tectum issued by the assessor. In his motion to quash the subpoena duces tectum, the agent cites the following points:

- A. He has given to the assessor the figures of the royalty payments on the subject property and the average production figures and the terms of the lease on the subject property.
- B. They do not have production or inventory records on the subject property.
- C. The income and expense records of Alamo Rock Co. reflect the business activity of said company and do not reflect information as to the value of the Porter property except for the royalty payments to property which have heretofore been furnished by the undersigned to said assessor.
- D. The company records of income and expenses are voluminous and contain confidential information.

The assessor therein filed his memorandum in opposition to Alamo Rock Company's motion to quash subpoena duces tectum citing the following points - (summarized).

The statutory scheme for the assessment of property gives the assessor the right to information and records regarding taxable property and authorizes the assessor to subpoena and examine business records relating to such taxable property. (Revenue and Taxation Code Sections 454, 441, 442 and 470.)

- I. Under the laws of the State of California, an assessor may issue a subpoena for the production of records and other information regarding taxable property.

- II. A court order is not prerequisite to the issuance of an assessor's subpoena.

The assessor is not required to first make application to the court before his issuance of a subpoena. (Revenue and Taxation Code Section 454.) If the person subpoenaed fails to provide the information requested in the subpoena, the assessor may:

- A. Based upon the information in the assessors' possession, estimate the value of the property and, based upon this estimate, promptly assess the property. (Section 501, Revenue and Taxation Code. )
- B. Seek the assistance of the district attorney in the issuance of a misdemeanor complaint against the person refusing to provide the information. (Revenue and Taxation Code Section 462)
- C. Make application to the superior court for an order compelling the disclosure of the information. (Revenue and Taxation Code Section 468.)

- III. The assessor has a right to obtain confidential information relevant to the assessment of taxable property.

The assessment process requires the collection by the assessor of a great deal of information regarding all taxable property in the County. Of necessity, the main sources of such information are the business records of those who have interest in the taxable property.

For this reason, the law affords the assessor the right to examine records which, in other contexts, may be considered confidential and privileged.

#### Conclusion

The assessor is authorized under the provisions of the Revenue and Taxation Code to issue a subpoena to compel the production of records and other information pertaining to taxable property within the county of San Luis Obispo. The production of the records and documents described in the subpoena is necessary to provide information to the assessor so that he may properly appraise the subject property, including all interests therein.

Sincerely,



Verne Walton, Chief  
Assessment Standards Division

AD:bjb

AL-01-0358A