



(916) 445-8485

March 25, 1977

Mr. A

Dear Mr. A :

This is in response to your February 9, 1977, letter to Mr. James J. Delaney wherein you ask whether information pertaining to documentary transfer taxes paid should be treated by you as confidential or should be provided to assessees upon requests made pursuant to sections 408 and/or 408.1 of the Revenue and Taxation Code. As hereinafter explained, we believe that such information in the hands of the assessor is not confidential but rather, is subject to disclosure.

Per your letter, upon the transfer of real property a documentary transfer tax must be paid, and such tax indicates somewhat the sales price of the property. The amounts paid, of course, are known to the county recorder, but in many instances deeds to property are being recorded only with the notation "tax paid", not with any indication thereon of the amounts paid. Although the county recorder treats the amounts paid in such instances as confidential, she does inform you of such amounts, and you use the information in arriving at market values.

Stats. 1976, Ch. 671 (AB 2766) added section 408.1 to the Code and amended section 408(b) thereof in recognition of the exception provided by the new section. Those sections provide, in part:

408 "(b) The assessor...shall provide any market data in his possession to an assessee of property or his designated representative upon request. The assessor shall permit an assessee of property or his designated representative to inspect at the assessor's office any information and records, whether or not required to be kept or prepared by the assessor, relating

to the appraisal and the assessment of his property. Except as provided in Section 408.1, an assessee or his designated representative, however, shall not be provided or permitted to inspect information and records, other than market data, which also relate to the property or business affairs of another person, unless such disclosure is ordered by a competent court in a proceeding initiated by a taxpayer seeking to challenge the legality of his assessment.

408 "(d) For purposes of this section, "market data" means any information in the assessor's possession, whether or not required to be prepared or kept by him, relating to the sale of any property comparable to the property of the assessee, if the assessor bases his assessment of the assessee's property, in whole or in part, on such comparable sale or sales. The assessor shall provide the names of the seller and buyer of each property on which the comparison is based, the location of such property, the date of the sale, and the consideration paid for the property, whether paid in money or otherwise, but for purposes of providing such market data, the assessor shall not display any document relating to the business affairs or property of another.

408.1 "(a) The assessor shall maintain a list of transfers of any interest in property, other than undivided interests, within the county, which have occurred within the preceding two-year period.

408.1 "(c) The list shall contain the following information:

- (1) Transferor and transferee, if available;
- (2) Assessor's parcel number;
- (3) Address of the sales property;
- (4) Date of transfer;
- (5) Date of recording and recording reference number;
- (6) Where it is known by the assessor, the

- consideration paid for such property;
and
(7) Additional information which the
assessor in his discretion may
wish to add to carry out the purpose
and intent of this section.

Other than sales information, the assessor shall not include information on the list which relates to the business or business affairs of the owner of the property, information concerning the business carried on upon the subject property, or the income or income stream generated by the property.

408.1 "(d) The list shall be open to inspection by any assessee who has filed a timely application for reduction of his assessment before the local board of equalization or assessment appeals board at the assessor's office,...."

As indicated in section 408, the assessor shall provide any market data in his possession to an assessee, and "market data" means any information in the assessor's possession relating to the sale of any property comparable to the property of the assessee, if the assessor bases his assessment of the assessee's property, in whole or in part, on such comparable sale or sales. Among other things, the assessor is to provide the consideration paid for the property, whether paid in money or otherwise.

Since you use amounts of documentary transfer taxes paid in arriving at market values, we believe that this information is "market data" as defined in section 408 which must be provided to an assessee. Such information pertains to the sales of comparable properties and provides a basis for a determination of the considerations paid for such properties.

As indicated in section 408.1, the list maintained by the assessor must contain the date of recording and recording reference number, and where it is known by the assessor, the consideration paid for the property. Accordingly, in those instances in which you know of the consideration paid for property includible on the list, it seems clear that the amounts thereof must also be included on the list.

Although the August 26, 1969, Opinion of the Los

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Angeles County Counsel, copy enclosed, is to the effect that separate tax statements permitted by section 11932 of the Revenue and Taxation Code and the internal records of the Los Angeles County Recorder as to the amount of tax collected thereby need not be disclosed to the public, as indicated therein, Opinion of the Attorney General 68/12, 51 Ops. Atty. Gen. 62, copy also enclosed, is to the effect that such statements are subject to public inspection. Of import for purposes of your inquiry concerning such information in the hands of the assessor, however, is that the Los Angeles County Counsel's opinion is based, in large part, upon an interpretation of the California Public Records Act, Sections 6250 through 6261 of the Government Code, and particularly sections 6250, 6253, and 6254 of the Code. On the other hand, sections 408 and 408.1 pertain specifically to the inspection of assessors' records, and we believe that these sections take precedence over any general legislation such as the Public Records Act:

"It is the general rule that where the general statute standing alone would include the same matter as the special act, and thus conflict with it, the special act will be considered as an exception to the general statute whether it was passed before or after such general enactment." (In re Williamson (1954) 43 Cal. 2d 651, 654 [276 P. 2d 593], quoted with approval in People v. Gilbert (1969) 1 Cal. 3d 475, 479 [82 Cal. Repr. 724, 462 P. 2d 580].) Younger v. Berkeley City Council, 45 Cal. App. 3d 825 (1975).

Very truly yours,

J. Kenneth McManigal
Tax Counsel

JKM:fp
Enclosures
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