



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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E. L. SORENSEN, JR.
Executive Director

March 25, 1999

Re: Confidentiality of welfare exemption claims and supporting documents

Dear Mr. _____ :

This letter is in response to your letter of December 15, 1998, in which you request confirmation that correspondence between the Board and a welfare exemption claimant or a claimant's attorney is not open to public inspection. Specifically, you have inquired as to whether certain information pertaining to the welfare exemption claims of the various nonprofit entities requested by Board staff would be held confidential. As will be discussed herein, the Board is required to disclose all information provided in support of the claims, including relevant documents and correspondence, pursuant to the Public Records Act, section 6250 et seq. of the Government Code.

The Board, as a state agency, is subject to the provisions of the Public Records Act. Public 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).) Under this definition, business records provided to the Board pertaining to the corporate structure of the numerous, interrelated legal entities would be considered public records.

Under the Public Records Act, members of the public have the right to inspect any public record unless it is expressly exempt from disclosure or "on the facts of the particular case, the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record." (Gov. Code §§ 6253, 6255.) A state agency may not require a subpoena when it is asked to provide access to public records. Section 6253, which sets the procedure for responding to a request under the Public Records Act, states "Public records are open to inspection at all times during the office hours of the state...." It goes on to say: "Each agency, upon request for copies of records shall...." Clearly a request is all that is required, not a subpoena.

One express exemption, found in Government Code section 6254(k), exempts from disclosure those records “disclosure of which is exempted or prohibited pursuant to federal or state law.” For example, many of the taxpayer records maintained by a state agency are exempt from disclosure because there are various statutes that provide that such records are confidential. However, under Revenue and Taxation Code section 214 et seq., including section 254.5, which pertain to the welfare exemption, there is no provision for confidentiality of the claim form or documents submitted in support of a claim for exemption. Government Code section 15619, the Board’s general confidential information statute, also does not provide that welfare exemption claims or information provided in support of such claims are confidential.

Under the balancing test of Government Code section 6255, the Board must justify the withholding of welfare exemption claims or information provided in support of such claims by demonstrating that on the facts of the particular case the public interest served by nondisclosure clearly outweighs the public interest served by disclosure. The Board, as a coadministrator of the welfare exemption,¹ is responsible for verifying that this exemption is granted only to qualified nonprofit organizations using their properties for qualifying purposes and activities. (Rev. & Tax. Code § 254.5) As such, the Board is accountable to the public for its decisions to exempt properties owned and operated by nonprofit organizations. Members of the public who have concerns about the qualification for exemption of the property of a particular nonprofit organization could inquire as to the basis for the Board’s decision. Should the Board have to justify its decision to a third party, it would be necessary to provide disclosure of the claimant’s affidavit, relevant documents and correspondence. Disclosure of information relevant to the Board’s finding that a claimant’s property qualifies for exemption under Revenue and Taxation Code section 214 clearly serves the public interest. While nondisclosure would serve Sutter Health’s interest in keeping its financial information confidential, there does not appear to be a public interest in nondisclosure that clearly outweighs the public interest in disclosure.

As to the records of an assessor, sections 408, 408.2 and 451 of the Revenue and Taxation Code prohibit the assessor from disclosing to the public or to another taxpayer, confidential information relating to the business affairs or property obtained by the assessor while discharging the duties of his or her office, unless a court so orders. Section 408, subdivision (a) provides the standard for disclosure to the public, however, it is stated in the negative. The standard is that information and records in the assessor’s office required by law to be kept or prepared by the assessor are public records open to public inspection. The assessor is required to keep welfare exemption claims within the meaning of section 408, with the result that the claims are open to public inspection. (Gallagher v. Boller (1964) 231 Cal.App.2d 482.)² In Gallagher, the court reasoned that:

¹The Board and the county assessors coadminister the welfare exemption per section 254.5 of the Revenue and Taxation Code.

²The case of *Gallagher v. Boller* (1964) 231 Cal. App. 2d 482, held that a welfare exemption claim is retained in the assessor’s records and therefore, is considered “kept” by the assessor for purposes of section 408, with the result that it is open to public inspection.

“...[a] statutory requirement of confidentiality as to a required property statement and a lack of such statutory requirement as to voluntary application for welfare tax exemption, indicate a legislative intent that information furnished by a welfare organization in seeking the special privilege or benefit of tax exemption should not be held confidential. Such circumstances also indicate a public policy that a welfare organization, which contemplates applying for such special privilege, must elect whether it will forego the matter of keeping its property affairs confidential in order to be classified as a nontaxpaying owner of property.” (Gallagher at page 492.)

Consistent with the Gallagher court’s rationale, Board staff construes the provisions of section 408 to require disclosure of all documents submitted in support of a welfare exemption claim, including correspondence and financial statements.

You referenced a statement on page 5 of a 1989 Board Assessment Practices Survey, “A Report On The Confidentiality of County Assessor’s Records,” in support of your position:

“...[a]n affidavit submitted to claim a welfare exemption which is retained in the assessor’s records is ‘kept’ by the assessor for the purposes of this section and is open to public inspection. ‘Open to the public’ does not include correspondence with the applicant or their attorneys.”

That advice, which pertained to an assessor’s records rather than Board records, has been modified since 1989. The Welfare Exemption claim form and the recently revised Assessor’s Handbook, AH267, Welfare, Church and Religious Exemptions, provide notice of the disclosure requirement. The claim form states, “This exemption claim is a public record and is subject to public inspection.” The Handbook provides on page 71:

“The exemption claim is a public record, and is subject to public review as stated on the claim form. Certified copies of financial statements may be required in some instances. A first-time claimant must attach copies of its articles of incorporation and tax-exempt letters. All such information submitted with exemption claims also is subject to public inspection.”

Should the assessor or the Board make an additional request to the claimant or his attorney for information, such information, reasonably, also would be subject to public disclosure.

In summary, since there is no specific provision of law that provides for confidentiality, and the public interest served by not making the record public does not clearly outweigh the public interest served by disclosure, correspondence between the Board and a welfare exemption claimant or a claimant's attorney are public records subject to disclosure pursuant to the Public Records Act.

Very truly yours,

/s/ Mary Ann Alonzo

Mary Ann Alonzo
Tax Counsel

MAA:jd

<h:/property/precednt/confinfo/1999/01maa.doc>

cc: Mr. Richard Johnson, MIC:63
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ANNOTATION

880.0000 WELFARE EXEMPTION

880.0000 (a) IN GENERAL

880.0095 **Document Disclosure.** Claim forms and documents submitted in support of the claims, including articles of incorporation, financial statements, income tax exemption letters, and correspondence between the Board and claimants or their attorneys, are public records subject to disclosure pursuant to the Public Records Act since there is no specific provision of law that provides for their confidentiality. Should the Board or the county assessor make an additional request for information, such information also would be subject to public disclosure.

C3/25/99.