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*Valuing People
and Property*

November 30, 2018

Mr. David Yeung, Chief
California State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0064

Dear Mr. Yeung:

ASSESSMENT APPEALS PROCESS

On behalf of the Los Angeles County Office of the Assessor (Assessor) I want to thank the Board of Equalization (Board) and your staff for working with all Interested Parties to address the concerns regarding confidential taxpayer information.

We understand that the current issue focuses on the objection by a select group of tax representatives to the use of redacted or aggregated confidential data of others that supports the Assessor's value during an assessment appeals hearing. As you know, Assessors rely on property valuation information from taxpayers to carry out their duty to assess all property in their counties. Revenue and Taxation Code (Code) section 441, subdivision (d) (hereafter section 441(d)) requires every person to make property information available to the Assessor. The Assessor has been granted the authority to collect and use confidential information from a taxpayer as described in the Board's Assessment Appeals Manual.¹ Although the authority to collect such confidential information is granted, limitations are set forth by other sections, as described in sections 408 and 451, "confidential information obtained by the assessor while discharging the duties of his or her office may not be disclosed to the public or competitors of the taxpayer unless a court so orders. However, if the confidential information relates to the applicant, it may be used in the course of the appeals hearing."²

You have requested that the parties provide written input answering the following questions generally, and specifically as they pertain to: **(1) lease data; (2) data needed for development of capitalization rates; and (3) construction costs:**

¹ Board of Equalization's Assessment Appeals Manual (May 2003, reprinted January 2005) at p. 102.

² Id. at p. 102.

1. What items or categories of data do applicants and assessors require to determine whether or not particular information that is deemed confidential by the other party is valid for use as a comparable to the property that is the subject of the appeal?
 - a. Can ranges of values or general categories (e.g., a range of square footage vs. an exact square footage, classifications by Standard Industrial Classification code vs. specific use, etc.) be acceptable?
2. What identifying information must the applicant or assessor redact or mask to ensure that they do not breach their duty (whatever the source of that duty [e.g., statute, ethics rules, etc.]) to hold information confidential?

In an effort to reduce duplication of efforts, we have reviewed and concur with the spreadsheet provided by San Mateo's Assessor's office to suggest guidelines as to what information the Assessor uses and what information from third party taxpayers would typically be acceptable to disclose. In summary, information utilized by the Assessor in these valuations is divided into three categories: (1) information that is permitted to be shared at the hearing; (2) information that is partially redacted; and (3) information that is not shared. Although we concur with San Mateo's categories of information, the redaction or disclosure of any information should be done on a case-by-case basis. We reiterate that any guidance resulting from this Interested Parties process should be consistent with statutory direction and Board regulations or advice. It is most important to understand that one size does not fit all, and that identifying categories of data to redact, aggregating data in ranges, or disclosing any information in one case may not work in all cases because the Assessor must evaluate each case differently so as not to permit disclosure of information and records that also relate to the property or business affairs of another.³

Additionally, to assist your understanding of the collection of confidential data from third parties and the subsequent use of such information, we provide an explanation of the use of the income approach to value and how this office redacts information to protect the privacy of taxpayers who provide confidential information.

Income Approach to Value

The most common information appraisers request is related to the income approach to value. This typically includes the complete rent roll, operating statement, and executed leases. Based on this information, an appraiser can derive an accurate rate of return for comparable properties as opposed to having to rely on partial information provided by outside sources with no detailed knowledge of the specifics included in those reported rates.

³ Revenue and Taxation Code Section 408(d) and (e)(3).

The rent roll is often used to establish an estimate of market rental rates as of the valuation date of the subject by analyzing comparable leases executed at a time frame relevant to the subject's valuation date that can then be attributed to the subject property. Actual rental rates obtained from rent rolls of comparable properties are more accurate than information obtained from commercially available data from companies that aggregate public and confidential data (i.e. Costar). They allow the appraiser to more thoroughly analyze the true rental rate that is associated with the transaction and know if the rate is triple net, modified gross or full service gross. The actual operating statement allows the appraiser to make a more detailed comparison of the line items of the expense categories and compare them with the subject to normalize any abnormalities or excessive deductions in any one category of expense items. The ratio of the expenses to the income can also be used to ensure the allowable expenses attributed to the subject are in line with the typical market expenses. If the expenses for the comparable and the subject are analyzed in the same way, the derived overall rate from the comparable would be the most relevant to use to derive an indicator of value for the subject.

Redacting Information to Protect Privacy

The Assessor takes its obligation to protect the privacy of taxpayer's information seriously and thus uses various ways to ensure confidentiality. Common ways of accomplishing this task are either through redacting the underlying data or masking the identification data of a third party, or through displaying value ranges rather than precise figures provided by other taxpayers. These strategies allow the Assessor to use all available data to support an accurate valuation estimate while preserving the confidentiality of the third-party taxpayer and allowing the applicant a meaningful opportunity to challenge the Assessor at the hearing. The applicant can therefore cross-examine all relevant issues in the Assessor's estimate such as the choice of valuation method used by the Assessor, the formula that was applied, and the resulting calculation.

The Court in *Trailer Train Co. v. State Board of Equalization (Trailer Train)* (1986) 180 Cal. App.3d 565, elaborated on a method to protect the identity of the contributors of confidential information by masking their identities and held that the "admission of evidence presented in a redacted format to protect confidentiality was not a violation of due process and did not prevent the cross examination of the witness against it. Implicit in this decision is that the disclosure of certain data not tied to a particular taxpayer is not a disclosure of confidential information."⁴ Since the *Trailer Train* case and subsequent opinions by the Board's Legal Department, the Assessor has used third party business information in a generic format, which as noted above does not violate the due process rights of the applicant and that, if necessary, the applicant can force

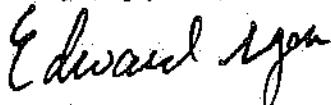
⁴ Id. at p. 6-7.

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disclosure under section 408, subdivision (e).⁵ Note this does not preclude the applicant nor their representative from asking probing questions at an appeal hearing that pertain to the specific reason the information was used. Examples of questions included, how did you reconstruct the operating statement and what expenses did you include in the deviation of the cap rate? The question of what the Assessor does with the data is more important than the question of the identity of the property. That has nothing to do with how data was analyzed. It is misleading to represent that one cannot adequately cross-examine the Assessor's expert due to the confidentiality of the data presented, since they are not precluded from asking pertinent questions during cross-examination. Consequently, we believe the legislature and the courts constructed protections for those providing confidential information collected under section 441(d) and yet also granted due process rights to the applicant by permitting challenges to assessments by allowing cross-examination to discredit the use of such redacted or aggregated confidential data.

Thank you for this opportunity to participate in the process. As explained above, the legislature and courts have afforded tools to the Assessor to collect and utilize any information from taxpayers to derive the fair market value of property. Moreover, applicants are also afforded due process rights to cross-examine the information used during assessment appeals hearings, subject to limitations on disclosure of the business affairs of another. Thus, this office requests that any additions to existing Board guidance are consistent with the Revenue and Taxation Code and Case Law concerning confidential information.

Very truly yours,



EDWARD YEN
General Counsel
Assessor Executive Office

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⁵ Annotation 260.0095