

From: Peter Michaels <peter@pmichaelslaw.com>

Sent: Sunday, October 28, 2018 8:07 PM

To: Moon, Richard (Legal) <Richard.Moon@boe.ca.gov>; Berry, Angie <Angie.Berry@boe.ca.gov>

Cc: Yeung, David <David.Yeung@boe.ca.gov>; Nanjo, Henry <Henry.Nanjo@boe.ca.gov>; Kinnee, Dean <Dean.Kinnee@boe.ca.gov>

Subject: Interested Parties Meeting: Disclosure of Information on which Assessors Rely in Assessing Property of Individual Taxpayers (Wednesday, October 31, 2018)

Hi Angie and Richard ~ I plan to attend 'interested parties' meeting in Sacramento on Wednesday, October 31.

In anticipation of our upcoming discussion, ATTACHED find documents, previously sent to the Board, regarding non-disclosure of information by an assessor to a taxpayer that filed assessment appeals challenging the assessor's discount rate.

Specifically, ATTACHED find:

- an email message that I sent, on February 5, 2018, to David Yeung;
- three (3) "Discount Rate Derivation" summaries, showing only "Year Sold" and "Rate";
- correspondence, from in-house counsel for applicant taxpayer to county counsel, requesting additional information and data in support of discount rates on which county assessor relied; and,
- responsive correspondence, from county counsel to that in-house attorney, rejecting applicant taxpayer's request



I look forward to seeing you in Sacramento and discussing specifics on Wednesday.

Thanks ~ Peter

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From: Peter Michaels
To: [Yeung, David](#)
Cc: [Kinnee, Dean](#); [Berry, Angie](#); [Nisson, Mark](#)
Subject: Assessment Appeals Process/Disclosure of Redacted information and Data by Assessor to Taxpayer
Date: Monday, February 05, 2018 4:55:26 PM
Attachments: [Assessment Appeals Process Agenda 12-18-17.docx](#)
[IP.Assessment.Appeals.Process.discount.rate.derivation.summary.020518.PDF](#)
[IP.Assessment.Appeals.Process.taxpayer.request.020518d.PDF](#)
[IP.Assessment.Appeals.Process.county.counsel.reply.020518b.pdf](#)

Hi Dave ~ further to our recent face-to-face discussion in Sacramento, and our follow-up telephone conversation last week, this message identifies a specific issue that, we believe, warrants focused attention during the Interested Parties exchange on the Assessment Appeals Process.

As mentioned, the topic was considered, inconclusively, during a previous Interested Parties exchange (with which Dean Kinnee is well familiar). I'm guessing that a fair amount of research and writing was generated by that earlier proceeding. Assuming it is not outdated, that work product could be useful now.

Specifically, I represent a group of taxpayers that has filed assessment appeals with a local board. The assessor apparently used the same source information in valuing all taxpayers in our group. We have asked the assessor to provide data underlying the contested assessments. In response, the assessor's counsel has declined to produce the requested information and data, citing Revenue and Taxation Code Section 408(e) (3). Instead, the assessor has provided our group with a one-page "Discount Rate Derivation Summary", listing (unidentified) sales, "Year Sold", and "Rate".

Of course, we agree that proprietary and confidential business trade secret information and data must be safeguarded from disclosure. That interest must, however, be harmonized with a taxpayer's legal right to know exactly how an assessed value was determined and whether (or not) necessary adjustments were made by the assessor. We urge the Board to work with assessors and taxpayers to strike a balance between these competing interests.

ATTACHED, in addition to the agenda for the Board's (December 18, 2017) Pre-Interested Parties Meeting, please find:

1. "Discount Rate Derivation Summary", received from county assessor. It is impossible to validate or discredit the assessor's discount rate based on the scant information shown on this 'derivation summary'. Were the underlying transactions simple sales of comparable stand-alone property units? Or, were development rights, favorable agreements, distribution rights, or other tangible or intangible property interests included in the 'comparable' transactions? Were adjustments made, based on the comparative

size and output of the underlying assets? The taxpayer is obviously at a fatal disadvantage before an assessment appeals board if the taxpayer is categorically foreclosed from demonstrating with specificity that an assessment is incorrect.

2. Correspondence (redacted) from one member of our group to the assessor requesting specific underlying assessment data and information.
3. Reply correspondence (redacted) from county counsel to taxpayer, citing R&TC Section 408(e)(3), in declining to provide the requested information and data.

Thank you ~ Peter

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From: Yeung, David [mailto:David.Yeung@boe.ca.gov]

Sent: Wednesday, December 20, 2017 2:03 PM

To: Peter Michaels <peter@pmichaelslaw.com>

Cc: Kinnee, Dean <Dean.Kinnee@boe.ca.gov>; Berry, Angie <Angie.Berry@boe.ca.gov>; Nisson, Mark <Mark.Nisson@boe.ca.gov>

Subject: RE: REQUEST for attendee list/Pre-Interested Parties Meeting (Monday, December 18, 2017)

Hello Michael – Angie Berry and Mark Nisson are the contacts for this project. However both will be out for the holidays. In their absence, I will arrange to have attendance list sent to you and to have your name added to the attendee and distribution lists.

Happy Holidays!

David Yeung, Chief
County-Assessed Properties Division
Property Tax Department

Discount Rate Derivation Summary - [REDACTED]

#1

	Year Sold	Rate
Sale 1	2011	11.10%
Sale 2	2011	11.82%
Sale 3	2011	12.54%
Sale 4	2011	12.21%
Sale 5	2011	11.57%
Sale 6	2012	8.87%
Sale 7	2012	8.85%
Sale 8	2012	8.47%
Sale 9	2012	8.64%
Sale 10	2014	8.11%
Sale 11	2014	7.97%
Sale 12	2014	7.99%
Sale 13	2014	8.18%
Sale 14	2014	8.16%

All rates include 1.1% for ad valorem taxes

#2

Discount Rate Derivation Summary - [REDACTED]

	Year Sold	Rate	
Sale 1	2011	11.10%	
Sale 2	2011	11.82%	
Sale 3	2011	13.88%	— *
Sale 4	2011	12.54%	
Sale 5	2011	14.74%	— *
Sale 6	2011	12.21%	
Sale 7	2011	11.57%	
Sale 8	2012	8.87%	
Sale 9	2012	8.85%	
Sale 10	2012	8.47%	
Sale 11	2012	8.64%	
Sale 12	2014	8.11%	
Sale 13	2014	7.97%	
Sale 14	2014	7.99%	
Sale 15	2014	8.18%	
Sale 16	2014	8.16%	

All rates include 1.1% for ad valorem taxes

Discount Rate Derivation Summary - ***

	Year Sold	Rate
Sale 1	2011	11.10%
Sale 2	2011	11.82%
Sale 3	2011	12.54%
Sale 4	2011	12.21%
Sale 5	2011	11.57%
Sale 6	2012	8.86%
Sale 7	2012	8.85%
Sale 8	2012	8.47%
Sale 9	2012	8.64%
Sale 10	2014	9.94%
Sale 11	2014	10.07%
Sale 12	2014	8.11%
Sale 13	2014	7.97%
Sale 14	2014	7.99%
Sale 15	2014	8.18%
Sale 16	2014	8.16%

#3

All rates include 1.1% for ad valorem taxes
Adjustments made for ***

[REDACTED]

July 17, 2017
VIA US MAIL, Certified Return Receipt

Re: [REDACTED]

Dear [REDACTED]

I am Property Tax Counsel for [REDACTED] which owns the [REDACTED]. As you know, we have filed appeals of our 2015/2016 assessments and are scheduled for hearings before the Assessment Appeals Board on October 11, 2017.

It appears as though a major point of contention is the pre-tax discount rate that was derived and used in the income approach valuation. Your office provided us with a document entitled "Discount Rate Derivation Summary - [REDACTED]", attached to this letter for your reference.

In preparation for the hearing and possible resolution of our 2015/2016 assessment, I am requesting any and all information that was used to arrive at the rates that are indicated on the document. Specifically, please provide the parties to each transaction, the date of the transaction, in-service date of the project, location, purchase price, [REDACTED], technology used, number [REDACTED] whether or not any [REDACTED] were involved and any other information your office used to derive the discount rate for each transaction. Additionally, in order for the data to be meaningful, we would like to see the calculations that were performed to arrive at the discount rate.

I appreciate that there may be issues of confidentiality involved and we are happy to supply you with a signed non-disclosure or confidentiality agreement that protects the information. I am sure you agree that as a matter of law and due process, we are entitled to know the data and information upon which your office relied in deriving this very important piece of the assessment conclusion.

[REDACTED]

I would appreciate your providing that information to me within 15 days of this request. Please feel free to contact me should you have any questions and thank you in advance for your cooperation.

Very truly yours,

A large black rectangular redaction box covering the signature area.A small black rectangular redaction box covering the name.

Enclosure

OFFICE OF THE
COUNTY COUNSEL

Administrative Center

July 31, 2017

RE:

Dear

Thank you for your request for the underlying data from our sales study of [REDACTED]. Unfortunately, this information is confidential, is not part of the public record, and cannot be released to another party without following the procedure outlined in California Revenue & Taxation Code section 408. The Assessor takes great care to protect the confidentiality of the information provided by taxpayers and will not release information relating to the property of another without following the appropriate legal standards. This protection is afforded to all the information provided by the taxpayers, including yours.

Specifically, California Revenue & Taxation Code section 408, subdivision (e)(3) provides:

Except as provided in Section 408.1, an assessee, or his or her designated representative, may not be permitted to inspect or copy information and records that also relate to the property or business affairs of another, unless that disclosure is ordered by a competent court in a proceeding initiated by a taxpayer seeking to challenge the legality of the assessment of his or her property.

For purposes of notification that your company is seeking this information, the Assessor will be happy to provide a list of property transfers. It appears to us that those property owners are parties of interest with respect to the data held by the Assessor and are thus entitled to notice of the court action and an opportunity to appear and protest the release of their

[Redacted]

July 31, 2017
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confidential data.

Please contact me should you wish to be provided with the list of transfers, or should you have any further questions.

Sincerely,

[Redacted]

By:

[Redacted]

[Redacted]