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TO COUNTY ASSESSORS:

No. 2000/055

NON-EMPLOYEE APPRAISERS PERFORMING APPRAISAL WORK FOR ASSESSORS

On July 26, 2000, the Board of Equalization instructed staff to issue a Letter To Assessors to: (1) convey the results of the recent survey regarding non-employee appraisers who contract to perform appraisal work for county assessors; (2) inform county assessors of Board-sponsored legislation, Senate Bill 2170, to amend Revenue and Taxation Code section 674 relative to the confidentiality of information acquired by non-employee appraisers pursuant to their contracts; and (3) recommend language to be incorporated into these contracts with respect to confidentiality of taxpayer information and records and suggest model contract provisions concerning fees.

Background

For many years, county assessors have contracted with non-employee appraisers ("contractors") to perform appraisal work, typically for specialized properties such as petroleum and mining properties. Recently, some taxpayers have expressed concern over the safeguarding of their confidential information and records. These taxpayers claim that some contractors have been able to compile, for their private benefit, significant databases from taxpayer-provided confidential data. In addition, taxpayers expressed concern that the payment structure of contracts provides an incentive for contractors to overvalue property, since some contracts provide additional compensation if the taxpayer appeals the value of the property and the contractor represents the county assessor in the appeal.

As a result of these concerns, the Construction Materials Association of California (CMAC) petitioned the Board to adopt a regulation specifying the minimum requirements of a contract between the county assessor and contractors. As part of its request for rulemaking, CMAC submitted a draft of a proposed regulation. Board legal staff reviewed the proposed rule and prepared Formal Issue Paper 00-008 for the Board's consideration at its March 16, 2000 meeting.

In response to the petition, The Board of Equalization directed staff to conduct a survey to collect factual information regarding county assessors' contracts with non-employee appraisers including information on confidentiality, control of records, appeals and fees. Additionally, the Board adopted a proposal to sponsor legislation, now contained in Senate Bill 2170, to amend section 674 of the Revenue and Taxation Code to establish specific confidentiality requirements for contractors concerning taxpayer information and records. The California Assessors' Association (CAA), CMAC and Board staff worked together to draft language for the proposed legislation.

On July 25, 2000, staff presented their analysis of the survey data to the Board's Property Tax Committee by Formal Issue Paper 00-028. Staff recommended that the Board postpone the rulemaking process pending adoption of the Board-sponsored legislation and issue a Letter To Assessors which conveys the survey results, informs county assessors of the pending legislation, and provides model contract provisions. On July 26, 2000, the Board formally adopted staff's recommendation.

Survey Results

With the cooperation of the CAA, staff sent questionnaires to all 58 county assessors. The questionnaires consisted of 23 questions that addressed confidential taxpayer information, control of records, appeals, and fee structures. Of the 58 county assessors in California, 35 participated in the survey. Of these, 20 indicated that they currently or have in the past contracted with non-employee appraisers. In the areas of confidentiality and fee structure, the results of the survey generally indicate the following:

Confidentiality

1. Of the 16 county assessors responding to the question regarding confidentiality clauses in their contracts with non-employee appraisers, 15 stated that their contracts included such clauses. The contracts that included confidentiality clauses did provide adequate language to ensure that taxpayer information obtained by these non-employee appraisers is "held secret."
2. All 16 county assessors responding to the question concerning non-employee appraisers removing taxpayer information from the county assessor's office stated that they allow this during the term of the contract. Out of 17 county assessors who answered the question concerning the retention of appraisal data gathered by non-employee appraisers, seven stated that they do retain possession. Based on the survey results, there does not appear to be adequate control of taxpayer information and appraisal records to ensure that all confidential information is "held secret."

Fee Structure

1. Of the 29 county assessors who responded to the question on competitive bidding, 14 stated that their contracts for non-employee appraisal services were put out to bid and include successive renewal options. The data indicates that to the extent that contracts are not put out to bid or are renewed successively without being subject to competitive bidding, there may be some noncompliance with Revenue and Taxation Code section 674. Section 674 prescribes that contracts for appraisal work between county assessors and non-employee appraisers are to be entered into only after obtaining at least two competitive bids.
2. Of the 15 county assessors *currently* using non-employee appraisers, eight provide for additional fees for work on assessment appeals. Of the 16 county assessors who responded to the question concerning the contractor's services for defending the appraised value being included in the contract's base fee, ten stated that this service is included. While there are provisions for additional fees in some instances, staff is of the opinion that the mere existence of a provision for additional compensation for the additional work connected with assessment

appeals is not evidence that an incentive exists to over-value the property. As a result, staff did not find evidence that an incentive exists in the contracts that were reviewed.

Board-Sponsored Legislation

The Board-sponsored legislation in Senate Bill 2170 to amend section 674 is intended to ensure the confidentiality of taxpayer information when assessors use contractors. The proposed legislation would:

1. Require a specific standard of confidentiality to be included in all contracts executed between county assessors and contractors, whether licensed or unlicensed.
2. Expressly provide that non-employee appraisers are subject to the same confidentiality requirements currently imposed on county assessors in sections 408, 451, and 481. While all appraisers contracting with counties to perform appraisals for property tax purposes are subject to the same confidentiality requirements as county assessors and their employees, there is apparently a lack of understanding and recognition of these requirements. Since the confidentiality statutes do not currently expressly address independent appraisal consultants under contract with county assessors, the Board-sponsored legislation would add such specific references to remove any doubt that exists. In its present form, section 674 only addresses the fee structure in appraisal consultant contracts and is silent on the confidentiality of taxpayer information and records. The proposal would fill that void, consistent with existing law.
3. Require that at the conclusion of the contract work, non-employee appraisers must return to the county assessor any assessee records provided by the county assessor or the taxpayer during the course of the contract. The proposal specifically prohibits consultants' retention of taxpayers' records.
4. Mandate that the Board of Equalization prescribe the confidentiality language to be included in all county assessor/non-employee appraiser contracts. This promotes statewide uniformity in the application of these confidentiality requirements. The Board alone will establish the performance standard/criteria for confidentiality in all such contracts, thereby eliminating any disparity among counties.

The Legislature recently approved the bill and it is pending in the Governor's office. Governor Davis has until September 30, 2000 to sign the bill into law, let it become law without his signature, or to veto it.

Model Contract Provision - Confidentiality

To promote statewide uniformity in the treatment of confidential taxpayer information, Board staff recommends the inclusion of the following contract provision in contracts between county assessors and non-employee appraisers:

Recommended Language for Confidentiality Provision.

Contractor shall maintain the confidentiality of all records, information and data of any form or description related to any assessee that is obtained in performance

of this contract, in accordance with the provisions of sections 408, 451, and 481 of the Revenue and Taxation Code. Contractor shall provide all appraisal services, advice and representation under this agreement exclusively to the county assessor. All records, information and data obtained by Contractor shall become the property of the County and shall be retained by the county assessor's office. The Contractor shall take all necessary steps to protect the confidentiality of all records, data and information relating to the assessee and made available to the Contractor in order to carry out this agreement, and shall not disclose or make accessible to any person or entity other than the county assessor any such records, data or information.

Contractor shall execute this protection and purge all confidential information by doing all of the following:

1. Make all requests for information and records from a taxpayer through the county assessor.
2. Never show, discuss or provide appraisal data or taxpayer information or records in contractor's possession to anyone other than a county assessor who is a party to the contract.
3. Purge and return to the assessor all information contained in, or derived from, the assessee's confidential information and records (whether electronically stored, provided by the county assessor or obtained from the taxpayer) within 30 days after the conclusion, termination, or nonrenewal of this agreement.
4. Provide a written declaration, under the penalty of perjury, to the county assessor that upon the conclusion, termination, or nonrenewal, the contractor has complied with the confidentiality provision of this agreement.

Violation of these confidentiality requirements by Contractor shall be considered a material breach of this agreement and shall be cause for immediate termination of this agreement.

Model Contract Provisions – Fees

For those interested in alternative fee provisions in contracts between assessors and non-employee appraisers, Board staff offers the following suggestions:

Suggested Language for Alternative Fee Provisions.

A. Compensation for Services-Fixed Fee

Pursuant to Revenue and Taxation Code section 674, County agrees to pay Contractor and Contractor agrees to accept the fixed fee stated below as full compensation for all services rendered and expenses incurred by Contractor in the performance of this agreement, including, upon request by the county assessor,

representation before the (insert "assessment appeals board" or "county board of equalization" as appropriate for your county) or before the California State Board of Equalization sample program, in defense of any appraisal made by Contractor.

B. Compensation for Services-Hourly Rate with a Maximum Dollar Amount

Pursuant to Revenue and Taxation Code section 674, County agrees to pay Contractor a fee for all services rendered by Contractor during the term of this agreement at the rate of \$_____ per hour. Total compensation to Contractor for services pursuant to this contract shall not exceed \$_____ which shall include, upon request by the county assessor, representation before the county assessment appeals board or before the California State Board of Equalization sample program in defense of any appraisal made by Contractor. Total compensation for services does not include any ordinary and necessary expenses incurred by the Contractor, not including any fees for services, which may be reimbursed by the County.

We hope the information conveyed in this Letter To Assessors is useful and wish to express our appreciation to all county assessors that participated in the survey. Specifically, we would like to thank the Honorable James W. Maples, Kern County Assessor, for his assistance in this project. If you have any questions, please contact Benjamin Tang at (916) 324-2720.

Sincerely,

/s/ Richard C. Johnson

Richard C. Johnson
Deputy Director
Property Taxes Department

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