



**MALIA M. COHEN**

CHAIR  
STATE BOARD OF EQUALIZATION

September 23, 2019

TO: Members of the Board of Equalization

FROM: Malia M. Cohen, Chairperson

RE: Board of Equalization Board Meeting, September 24, 2019

Item L.1. Documents and Forms for Reporting Taxable Possessory Interests  
in Publicly-Owned Real Property

## **Overview**

This issue is presented for discussion and possible action regarding whether [Board of Equalization \(BOE\) Form 502-P](#) should be amended to identify taxable possessory interests on public land for private benefit other than “subleases” and “assignments,” and whether additional relevant reporting instructions should be included on BOE Form 502-P.

The goal is to ensure that taxable possessory interests are identified and enrolled, and that the BOE form for identifying taxable possessory interests contains clear information and instructions for the layperson users of the form.

## **Possessory Interests – Government Code and Property Tax Rules**

Under Government Code section 15606(g) the Board of Equalization (BOE) shall “Prescribe rules and regulations to govern local boards of equalization when equalizing and assessors when assessing with respect to the assessment and equalization of possessory interests”; and, under Revenue and Taxation Code section 15606(d) the BOE shall “Prescribe and enforce the use of all forms for the assessment of property for taxation, including forms to be used for the application for reduction in assessment.”

[Property Tax Rule 20\(b\)](#) defines taxable possessory interests as “possessory interests in publicly owned real property.” [BOE Assessor’s Handbook 510 “Assessment of Taxable Possessory Interests”](#) (referencing the definition of a possessory interest in Property Tax Rule 20) defines a possessory interest as “an interest in real property that results from the possession, a right to the possession, or a claim to a right to the possession of land and improvements that is independent, durable, exclusive of the rights held by others in the property and that provides a private benefit to the possessor.” (Note: A county board of supervisors may exempt from taxation, by local ordinance or resolution, all real property

with a base year value so low that the total taxes, special assessments, and applicable subventions on the property are less than the cost of assessing and collecting them.)<sup>1</sup>

## **BOE Form 502-P – Possessory Interests Annual Usage Report**

On May 25, 2011, the Board of Equalization adopted a revised form BOE-502-P, Possessory Interests Annual Usage Report (Usage Report), for use beginning with the 2012 lien date. On May 26, 2011 a [Letter to Assessors \(LTA\)](#) was issued attaching form BOE 502-P, referencing [Revenue and Taxation Code section 480.6](#), which provides that state and local governments file annual property usage reports.

A different code section, Rev. & Tax. Code section 480.5(a) provides “Every owner of tax-exempt real property shall report to the local assessor the creation, renewal, sublease, or assignment of any lease, sublease, license, use permit, or other document which conveys the right to use that real property within 60 days of the transaction.

Under Rev. & Tax section 480.5(b), this reporting requirement only applies to counties that have made this section applicable to their counties. The BOE has not prescribed a form for Section 480.5.

As stated in the subject LTA, form BOE 502-P, or a substitute format other than form BOE-502-P, may be used by counties to fulfill the reporting requirements of [Rev. and Tax. Code section 480.6](#), provided the public entity has reported all of the information required by that section. However, there is no BOE form for reporting possessory interests arising under [Rev. & Tax Code section 480.5](#), which has reporting requirements similar to Rev. & Tax. Code section 480.6.

BOE Form 502-P does contain queries asking for the term of possessory interests for “sublease” and “assignments.” However, the subject form does not provide a space for generally identifying possessory interests other than those which (to the layperson reader) intuitively fall under categories of either a sublease or an assignment.

This leaves open the possibility that some taxable possessory interests may not be identified and assessed.

## **Possessory Interests – Definitions beyond “Subleases” or “Assignments”**

For example, a 2000 Special Topic Survey entitled “Assessment of Taxable Possessory Interests, (Survey), based upon a survey including the responses of 51 County Assessors, noted that many counties were not assessing certain possessory interests such as concessionaires, joint uses at airports, government-owned parking lots or garages operated by third parties, sports arenas, civic auditoriums uses, gaming facilities on Indian lands, etc.

[Assessors’ Handbook 510, Assessment of Taxable Possessory Interests](#), provides a “non-inclusive” list of types of private interests in publicly owned real property that have been

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<sup>1</sup> Under the provisions of [Revenue and Taxation Code section 155.20](#), the current base year value limit for most properties is \$10,000. Section 155.20 was amended in 2019 ([AB 608, Petrie-Norris](#)) to raise the base year limit for most properties to \$50,000 for lien dates on or after January 1, 2020 and before January 1, 2025. AB 608 passed both houses of the Legislature without a dissenting vote. According the AB 608 bill analysis, “22 counties have enacted a low value ordinance for possessory interests, of which 13 are at the maximum value.”

found, under certain factual circumstances, to constitute taxable possessory interests. This list includes:

- Airport car rental counter space and other leased areas of car rental companies.
- Amusement machine concession.
- Berthing and use of related facilities at public harbors and marinas.
- Commercial rafting operation.
- Convention facilities used on a short-term, recurrent (two or more times) basis.
- Employee-occupied residence on national forest lands.
- Federal shipyard for the construction of ships.
- Food and drink concession at stadium.
- Ground leases provided to faculty for residential purposes on land owned by a state university.
- Grazing of livestock on national forest lands.
- Lease held by a non-Indian in real property held in trust by the federal government for the benefit of reservation Indians.
- Leased land that is improved, then leased back to a city in a lease-leaseback transaction.
- Rental of television sets to patients in a county hospital.
- Rights in real property associated with a cable television franchise.
- Single-family residence owned by an irrigation district and occupied by a district employee.
- Snack bar at a golf course clubhouse.
- Stationary vessel permanently affixed and used as a restaurant.

### **Requested Actions**

Given the fact that the Board of Equalization (and [relevant court cases](#)) have described taxable possessory interests to include items other than those described simply as a “sublease” or an “assignments,” request that the Executive Director direct BOE staff to amend BOE Form 502-P.

The amendments to BOE Form 502-P should:

(1) Provide for a more expansive description of taxable possessory interests to include “uses in publicly-owned real estate for private benefit”.

(2) Provide clear instructions to laypersons in government agencies filing out the form describing the uses which could constitute taxable possessory interests (other than just “sublease” and “assignments”).

Further, request that the Executive Director work with staff to prescribe forms that could be used for reporting taxable possessory interests under Rev. and Tax. Code section 480.6 (currently prescribed); or for reporting taxable possessory interests under Rev. and Tax. Code section 480.5 (not currently prescribed); work with the California Assessors' Association on these changes; and determine if a Letter to Assessors could issue timely prior to January 2020.