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Executive Director

December 8, 1997

Mr. Bruce McDonald
Recreational Property Consultants
13856 Royal Dornoch Square
San Diego, CA 92128

Re: Exchange of information pursuant to Revenue & Taxation Code §1606

Dear Mr. McDonald:

This is in reply to your letter of October 9, 1997 addressed to Assistant Chief Counsel Larry Augusta in which you request the Board legal staff's opinion on the response by the Nevada County Assessor's office to your request for an exchange of information pursuant to Revenue and Taxation Code section 1606 and to your request for information and records pursuant to section 408. I have reviewed the facts presented in your letter and the enclosed documents which include letters from you to Nevada County Assessor Richard Allen, Chief Appraiser Chris Jarvis, and the clerk of the Nevada County Board of Supervisors, a letter from the assessor's office to you and three notices from the Clerk of the Board advising of scheduled dates of hearing. Recently, I also received a copy of a letter dated November 5, 1997 from Assessor Allen to your attorney, Lawrence Hoffman, in which Mr. Allen responds to the information disclosure issues raised in your letter.

Based on our telephone conversations and the referenced correspondence, the following is a summary of the facts presented:

On August 5, 1995 a corporate change in control of your client, Boreal Ridge Corporation, resulted in a change in ownership of real property owned by the corporation comprised of two ski resort operations and a ski lodge. Based on that change in ownership, the Nevada County Assessor's Office reappraised those properties and for assessment year 1995/96 established a total value of \$9,770,028 for Boreal Ridge Corporation's real and personal property located in Nevada County. The total value of that property for the 1996/97 assessment year was \$9,034,776. You disagreed with those values and timely filed applications for appeal. Subsequent to the filing of the applications, the assessor's staff conducted an audit of Boreal Ridge Corporation's books and records. You have also had extensive discussions with the assessor's staff in an attempt to resolve the dispute.

On May 20, 1997, you submitted to the assessor's office a report entitled Ski Industry Market and Demographic Analysis and the Historical Income Analysis for the Boreal Ridge Corporation Property Assessments which you state establishes a Net Assessable Full Cash Value of \$6,341,504 as of August 9, 1995 for Boreal Ridge Corporation's real and personal property in

Nevada County. By letter dated June 27, 1997, addressed to Chief Appraiser Chris Jarvis, you referenced the analysis report and requested a written confirmation as to whether the assessor's staff was in agreement with its value conclusions. Alternatively, if the assessor did not agree with the value conclusions, you requested an exchange of information pursuant to Revenue and Taxation Code section 1606 and Property Tax Rule 305.1. On August 1, 1997 a member of the assessor's staff verbally informed you that the assessor's office had reduced the total value for the property being appealed to \$8,700,000. The Assessor replied thereafter by letter dated August 5, 1997 in which he acknowledged your request for an exchange of information on the subject appeals and stated, in relevant part, that "[i]nformation provided by you at various times in the past is the only data in the Assessor's possession that will be utilized in the Assessment Appeals Board Hearing. . . ." The letter also references pages of appraisal reports prepared by Ken Hammerle and Thomas Lithgow and states that copies of those pages and copies of Boreal Ridge Corporation's financial statements were enclosed with the letter. You informed me over the phone that these appraisal reports were prepared for your client and had previously been submitted to the assessor's office.

You continued to discuss the value differences with the assessor's staff as shown by the letter dated September 18, 1997 from you to Mr. Jarvis in which you conclude that the value difference is attributable to the use of different capitalization rates. Thereafter, you renewed your request for a section 1606 exchange of information and for assessor's records relating to the appraisal and assessment of your client's property pursuant to section 408 by letter dated October 4, 1997 to Assessor Allen, with a duplicate to the clerk of the Board of Supervisors. In that letter you assert that the assessor has failed to comply with section 1606 by refusing to provide copies of all information, including all market data, and all analyses relating to the assessor's appraisals of the subject properties. You also assert that the assessor has failed to comply with section 408 by refusing your requests for records relating to the appraisal and assessment of your client's property.

As you and I discussed over the telephone, in his letter to Mr. Hoffman the Assessor has stated that he will comply with sections 408 and 1606 and, therefore, your original question as to whether the assessor has violated those sections is moot. Rather than withdraw your request, you have instead asked for the Board staff's interpretation as to the nature of the information required by section 1606.

Law and Analysis

Property Tax Rule 305.1 and the statute which it interprets, Revenue and Taxation Code section 1606, provide for the pre-hearing production of evidence by both sides during the course of an assessment appeal as a means of limited discovery to prevent any surprise during the hearing. Specifically, both the statute and the rule permit the applicant or, if the value of the property is greater than \$100,000, either the applicant or the assessor to file a written request for an exchange of information with the application for appeal or at any time prior to 20 days before the appeal hearing. Although both the statute and the rule enumerate the types of information required according to the appraisal method employed, neither elaborates on the specific detail of the information required.

In *Bank of America v. County of Fresno* (1981) 127 Cal. App. 3d 295, the court of appeal interpreted subdivision (b) of Section 1606 to require that the information exchanged must put the

opposing party on "reasonable notice" concerning the subject matter to be presented at the hearing through evidence and testimony. In that case, during the course of the exchange of information the applicant informed the assessor's staff that his experts would testify with respect to all phases of applicant's vineyard operations including, without limitation, soil and water conditions, viticulture practices, crop yields, revenues, pre-harvest and harvest expenses, market conditions for applicant's crop and long-term contracts for those crops. When the applicant's experts attempted to testify on the soil, water and related conditions of the subject property, the appeals board sustained the objection to the testimony by the assessor's counsel because the applicant had not provided sufficient evidence such as detailed analyses of those conditions made by the experts.

The court of appeal characterized the assessor's interpretation of subdivision (b) of section 1606 as unduly restrictive and violative of the legislative purpose behind the statute and held that the details of the evidence to be introduced need not be exchanged. Rather, the court held that information exchanged must only provide the opposing party with reasonable notice concerning the subject matter to be presented at the hearing through the testimony of witnesses and evidence. Thus, the applicant had complied with subdivision (b) by advising the assessor that the applicant would offer evidence as to the poor soil, water and related conditions of the property.

In your case, both you and the assessor have based your opinions of value on income studies and, therefore, subdivisions (a) and (b) of section 1606 require that you each exchange "information relating to income, expenses and the capitalization method." The specific items of information exchanged, as stated above, comply with section 1606 if those items give the other party "reasonable notice" of the evidence to be presented at the hearing. Although we cannot advise with certainty as to information that would adequately provide "reasonable notice", the *Bank of America* decision suggests that conclusory evidence of income, expenses and capitalization rates would be sufficient, while more comprehensive data and other valuation evidence could thereafter be presented at the hearing.

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Very truly yours,



Louis Ambrose

Tax Counsel

LA:ba

cc: Hon. Richard Allen, Nevada County Assessor
Mr. Dick Johnson, MIC:63
Policy, Planning, and Standards Division, MIC:64
Ms. Jennifer Willis, MIC:70