

OFFICE OF ASSESSOR COUNTY OF ALAMEDA

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RON THOMSEN
ASSESSOR

December 5, 2018.

David Yeung, Chief
County-Assessed Properties Division
Board of Equalization
450 N Street, MIC 73
Sacramento, CA 95814

Re: Follow-Up Inquiry Regarding Confidential Third-Party Records

Dear Mr. Yeung:

Thank you for convening the interested parties meeting on October 31, 2018 permitting my staff and counsel to participate in discussions with you and the Board of Equalization staff regarding the use in assessment appeals hearings of confidential third-party records obtained pursuant Revenue and Taxation Code section 441(d).

My staff and I take very seriously our obligation to maintain the confidentiality of taxpayer records, but recognize that sometimes that obligation conflicts with my constitutional duty to assess properties at fair market value when that value is best supported by third-party records. While the use of third-party records obtained pursuant to Section 441(d) in assessment appeals hearings is not common, the issue does arise from time to time. My staff routinely redact information from these third party records when they are used in assessment appeals hearings, and would welcome guidance from the Board on the appropriate scope of redactions.

I have reviewed the proposed matrix of redaction and partial redaction from my colleague Mark Church, the San Mateo County Assessor, submitted to you on November 30, 2018. This proposal is broadly consistent with the approach used by my staff. I believe it appropriately balances the privacy interests of third parties while allowing my staff to support opinions of value presented in assessment appeals hearings. I recommend the Board adopt the San Mateo matrix as guidance for county assessors.

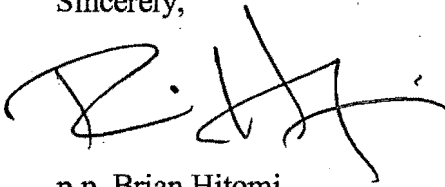
During the interested parties proceeding taxpayer advocates raised concerns with their ability to cross-examine the assessor when redacted confidential information is being used. I believe that with the proposed redactions taxpayers can effectively cross-examine my staff at hearings as the unredacted non-confidential information is typically the relevant information at issue.

But the issue is not so straightforward as the assessor having exclusive access to confidential third-party information derived from Section 441(d) requests. Taxpayers also have access to a broad range of information either through publicly-available information, or private information to which assessors may not be privy. Some of the information that assessors glean in the first instance from responses to Section 441(d) requests may also be available publicly – in which case it is not confidential – or otherwise available to taxpayers. And in some cases despite appropriate redaction, the universe of likely comparable properties is so small or the taxpayer is sophisticated such that the taxpayer can identify a property despite appropriate redaction.

It would be impossible to come up with a set of rules about cross-examination of assessor staff that would balance all of the above-described factors. Instead, taxpayers are able to argue to local boards of equalization that an assessor's use of redacted information, and any resulting constraint on the ability of the taxpayer to cross-examine effectively the assessor's staff, is a reflection on the weight of the assessor's proffered redacted evidence. Local boards of equalization can then, in turn, exercise discretion in the weighing of that evidence in light of the particular factors presented in a given appeal. In sum, I do not believe this is an area where the Board needs to issue rules or detailed guidance.

Thank you again for the opportunity to comment on these issues.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Hitomi", with a stylized flourish at the end.

p.p. Brian Hitomi
Chief Deputy Assessor

Ron Thomsen
Assessor