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State of California

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OPINION	:	No. 01-901
	:	
of	:	July 25, 2002
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THE STATE BOARD OF EQUALIZATION has requested an opinion on the following question:

May the State Board of Equalization publicly disclose information that its staff has compiled regarding timber and log sales transactions if the information is provided in a source-neutral, summary fashion that does not identify or make ascertainable specific timber or log sales transactions or the parties involved in such transactions?

CONCLUSION

The State Board of Equalization may publicly disclose information that its staff has compiled regarding timber and log sales transactions if the information is provided in a source-neutral, summary fashion that does not identify or make ascertainable specific timber or log sales transactions or the parties involved in such transactions.

ANALYSIS

The State Board of Equalization (“Board”) is responsible for the administration and enforcement of the Timber Yield Tax Law (Rev. & Tax Code, §§ 38101-38908; see 61 Ops.Cal.Atty.Gen. 391 (1978)).¹ Under this statutory scheme, standing timber is subject to tax at the time of harvest based upon its “immediate harvest value,” defined as “the amount that each species or subclassification of timber would sell for on the stump at a voluntary sale made in the ordinary course of business for purposes of immediate harvest.” (§ 38109; Cal. Code Regs., tit. 21, § 1023.) In order to calculate the immediate harvest values, the Board is required to “estimate the immediate harvest values of each species or subclassification of timber” located within designated “timber value areas” every six months. (§ 38204, subd. (a).)

In preparing estimates of timber values, the Board’s staff first compiles statistical data based upon information it receives from timber owners and other knowledgeable persons regarding timber and log sales transactions. The question presented for analysis is whether the statistical schedules prepared by the Board’s staff, which do not identify or make ascertainable specific timber or log sales transactions or the parties involved in such transactions, may be disclosed to the public. We conclude that such data created by the staff may be disclosed.

The statute requiring our interpretation is section 38705, which provides:

“Except as provided in Sections 38402 and 38706, it is unlawful for the board or any person having an administrative duty under this part to make known in any manner whatever the business affairs, operations, or any other information pertaining to any timber owner or any other person required to report to the board or pay a tax pursuant to this part, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person. However, the Governor may, by general or special order, authorize examination by other state officers, by tax officers of another state, by the federal government, if a reciprocal arrangement exists, or by any other person of the records maintained by the board under this part. The information so obtained pursuant to the order of the Governor shall not be made public except

¹ All references hereafter to the Revenue and Taxation Code are by section number only.

to the extent and in the manner that the order may authorize that it be made public.”²

Examining the language of section 38705, we find that the Governor may authorize public disclosure of the information received by the Board from timber owners. Also, as we have previously pointed out (61 Ops.Cal.Atty.Gen., *supra*, at p. 393, fn. 2), the timber owners may waive the confidentiality provisions of section 38705 with respect to the information they furnish to the Board.

However, that is not the information which is the subject of our discussion. It is only statistical data developed by the Board’s staff that is proposed to be released to the public. The staff’s data does not identify or make ascertainable the timber owners or their timber sales transactions. Does the prohibition of section 38705 apply to such data created by the Board’s staff, or is it limited to information furnished by the timber owners concerning their business affairs?

To answer this question, we apply well recognized principles of statutory construction. “Our fundamental task in construing a statute is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. [Citation.]” (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272.) “ ‘We must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences.’ [Citation.]” (*People v. Coronado* (1995) 12 Cal.4th 145, 151.)

Applying these principles of construction, we find that in 61 Ops.Cal.Atty.Gen. 391, *supra*, the purposes of section 38705 were described as follows:

“The requirement for confidentiality under section 38705 fosters the complete and accurate reporting of information to the Board. (See *Sav-On Drugs, Inc. v. Superior Court* (1975) 15 Cal.3d 1, 6.) The Board’s ability to perform its responsibilities might be impaired if those supplying it with information were not assured that such information would be kept confidential from the public, particularly business competitors.” (*Id.* at pp. 392-393; fn. omitted.)

The prohibition of section 38705 is thus intended to protect the privacy rights of timber owners, preventing business competitors and others from obtaining information furnished

² Section 38402 authorizes the Board to furnish to county assessors copies of tax returns filed by timber owners. Section 38706 authorizes county assessors to examine the Board’s records.

to the Board concerning their business affairs and operations. The Board's administration of the Timber Yield Tax Law is thereby facilitated by making sure that the information it receives from timber owners is accurate due to the Legislature's confidentiality mandate. By not disclosing the information furnished by the timber owners concerning their business affairs, the prohibition of section 38705 is satisfied in light of its evident purpose. This purpose is protected when different information, statistical data created by the Board's staff, is disclosed to the public where the identities of the individual timber owners, their sales transactions, and business operations are not ascertainable.

We find support for our conclusion in the Legislature's general policy concerning the public disclosure of confidential information. Statutory prohibitions against the public disclosure of confidential information are generally not meant to apply to statistical data obtained or derived from confidential information (see, e.g., Health & Saf. Code, §§ 100330, 102460; Pen. Code, §§ 11144, 13012), including statistical data compiled from confidential taxpayer information (see, e.g., § 19563). Indeed, when the Legislature has intended to prevent public disclosure of compilations of confidential information, it has done so expressly (see, e.g., Pen. Code, § 832.7; 71 Ops.Cal.Atty.Gen. 247 (1988)), unlike the terms of section 38705. We limit the prohibition of section 38705 to its express language and consistent with its purpose.

We conclude that the Board may publicly disclose information that its staff has compiled regarding timber and log sales transactions if the information is provided in a source-neutral, summary fashion that does not identify or make ascertainable specific timber or log sales transactions or the parties involved in such transactions.
