



STATE BOARD OF EQUALIZATION

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February 24, 2015

**Re: Taxable Possessory Interest
 Assignment No. 14-309**

Dear Mr. _____ :

This is in response to your letter requesting our opinion as to your obligation to pay property taxes for fiscal year 2014–2015 on a hangar you leased from the _____ Airport District (Airport) where you terminated your lease prior to the end of the 2013–2014 fiscal year. As explained below, it is our opinion that under current law, the assessments were made correctly.

Facts

You indicate in your letter that you paid property taxes in the amount of \$164.31 on the hangar you leased from the Airport for the 2013–2014 fiscal year, which as you know runs from July 1, 2013 through June 30, 2014. You terminated the lease on March 24, 2014, approximately three months prior to the end of the fiscal year, and received a refund of lease payments from the Airport for the terminated portion of the lease. Later in the year, you received a property tax bill for your taxable possessory interest in the leased hangar in the amount of \$194.80 for the 2014–2015 fiscal year, which runs from July 1, 2014 through June 30, 2015. You paid the 2014–2015 tax under protest, and state in your letter that you believe you are entitled to a refund of tax for the final three months in the 2013–2014 fiscal year, and for the entire 2014–2015 fiscal year, since you did not occupy the hangar during that 15 month period.

You ask why you should be required to pay property taxes for the period in question if the Airport leases the hangar to another lessee during that time, and if the hangar is not leased, you ask if the Airport would be required to pay the property taxes since the Airport owns the property.

Law & Analysis

Unless otherwise provided, all property in the state is taxable, and all tax liens attach on the January 1 preceding the fiscal year for which the taxes are levied. (Cal. Const., art. XIII, subd. (a); Rev. & Tax. Code, § 2192.) Annually, the assessor shall assess all taxable property in the county to the persons owning, claiming, possessing, or controlling it on the lien date.

(Rev. & Tax. Code, § 405.) Section 104 of the Revenue and Taxation Code¹ classifies the possession of property or the *right* to possession of property as an interest in real property, while section 107 provides that a possessory interest is the possession of, claim to, or right to the possession of land or improvements that is independent, durable, and exclusive of rights held by others in the property. Generally, a taxable possessory interest can be defined as the taxable interest of the private right to the possession of publicly owned real property. (Assessors' Handbook Section 510, *Assessment of Taxable Possessory Interests* (December 2002) (AH 510), pp. 1-2; see also Property Tax Rule² 20.) Since the underlying fee simple interest held by the public owner is almost always tax exempt, it is necessary to separately value and assess the interest held by the private possessor, i.e. the possessory interest. (AH 510, *supra*, at p. 1.)

In this case, you owned a possessory interest because you held a private right to occupy and possess publicly owned real property, exclusive of the rights held by others. Thus, although you state that you never owned the property (the fee simple interest), you did own a taxable possessory interest in real property, and as stated above the assessor is required to assess all taxable property to the persons owning a real property interest on the lien date.³

The State Board of Equalization has previously provided guidance to assessors under facts very similar to yours. In Letter to Assessors (LTA) 86/12, a lessee owned a taxable possessory interest in publicly owned real property on the lien date. The lessor terminated the lease midway through the assessment year (after the lien date), and a second taxable possessory interest lease commenced on the same property. The LTA concluded that where the original taxable possessory interest lease is terminated midway through the assessment year and a new lease is entered into with a new lessee for the same property, creating another taxable possessory interest, then (1) the supplemental assessment on the second taxable possessory interest should reflect its full cash value from the commencement date and (2) the tax on the first taxable possessory interest should not be cancelled, despite the fact that the term of possession ended early. (See LTA 86/12 (January 28, 1986); see also Property Tax Annotation⁴ 660.0320 (September 11, 1985) and backup letter.)

The LTA and Annotation are based on the legal principle that a taxable possessory interest assessment is not made against the government owned property, but rather against the right to possess publicly owned property held by the private citizen, and it is the private citizen's usufructuary⁵ interest alone that is being taxed. (*United States v. County of Fresno* (1975) 50 Cal. App. 3d 633, 640.) In such cases, each respective taxpayer's possessory rights are subject to separate assessment and taxation as real property. Thus, in the above example, since both the first and second lessees held a right to possess the property (even though the first lessee's right to possession terminated early), both real property interests were held to be subject to taxation. The Board of Equalization staff has further previously stated that this does not constitute double taxation, since double taxation occurs only when two taxes of the same

¹ All further statutory references are to the Revenue and Taxation Code unless otherwise indicated.

² Cal. Code Regs., tit. 18, §20, subd. (b).

³ Taxation of possessory interests is rooted in the belief that the holder of a valuable use of public property that is tax exempt should contribute taxes to the public entity which makes its possession possible. *City of San Jose v. Carlson* (1997) 57 Cal. App. 4th 1348.

⁴ Property Tax Annotations are summaries of the conclusions reached in selected legal rulings of Board legal counsel published in the Board's Property Tax Law Guide and on the Board's website. See Cal. Code Regs., tit. 18, §5700 for more information regarding annotations.

⁵ A usufructuary interest is the interest of one who has the use or enjoyment of something.

character are imposed on the same property, for the same purpose, by the same taxing authority within the same jurisdiction during the same taxing period. (AH 510, *supra*, at p. 60, citing *Russ Building Partnership v. San Francisco* (1987) 199 Cal.App.3d 1496, 1509.) The same property was not being taxed since, as explained above, the tax is against the property rights held by the private citizen, and the separate rights of each were being assessed.

In this case, you held a taxable possessory interest in the hangar on the lien date for the 2013-2014 fiscal year. In accordance with the above guidance, your interest is subject to taxation for the entire 2013-2014 fiscal year, without offset for the three month period you did not occupy the hangar that fiscal year. Similarly, in accordance with the above, your property tax liability for fiscal year 2014-2015 is based on the rights you held in the property as of the January 1, 2014, lien date, and would not be prorated despite the fact that your lease terminated even before the fiscal year began. If the hangar is leased by the Airport to a new lessee subsequent to the date your lease terminated, a different taxable possessory interest held by the new lessee would exist in the 2014-2015 fiscal year. Because a taxable possessory interest assessment is made against the private citizen and his or her right to possess and use publicly owned real property and not the public owner's underlying fee interest in the property, your tax liability for the entire fiscal year would not be canceled or prorated, and the supplemental assessment on the subsequent new taxable possessory interest should reflect its full cash value from the commencement date of the new lease without offset. Finally, if the hangar is not leased to a private user during fiscal year 2014-2015, then no taxable possessory interest would exist in that fiscal year. As a public entity, the Airport is exempt from property taxation on its property pursuant to California Constitution article XIII, section 3.

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.

Sincerely,

/s/ Susan Galbraith

Susan Galbraith
Tax Counsel

SG:yg

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cc: Honorable Marc C. Tonnesen
President, California Assessors' Association
Solano County Assessor/Recorder

Mr. Dean Kinnee MIC:64
Mr. Benjamin Tang MIC:64
Mr. Todd Gilman MIC:70