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June 1, 2011

TO: INTERESTED PARTIES

Enclosed is a copy of Current Legal Digest (CLD) number 2011-2 for your information and review. The annotations included in this CLD are new proposed annotations (underlined) and/or suggested revisions or deletion of existing annotations (indicated by ~~strikeout~~ and underline). After review, please submit any questions, comments, or suggestions for changes *in writing* by **Friday, July 1, 2011**. These may be sent by e-mail using the "Comments Form" on the Board's website ([www.boe.ca.gov/proptaxes/cld.htm](http://www.boe.ca.gov/proptaxes/cld.htm)), fax or mail. Here is the mailing address:

Board of Equalization  
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Please note, the new annotations and/or suggested revisions of existing annotations contained in the enclosed CLD are *drafts* and may not accurately reflect the Board's official position on certain issues nor reflect the language that will be used in the final annotation, if formally adopted.

CLDs are circulated for 30 days, at which time any questions are addressed and/or suggested modifications taken into consideration. After approval of the final version by the Board's Legal Department, the changes will be posted to the Board's website under "Annotations" ([www.boe.ca.gov/proptaxes/annocont.htm](http://www.boe.ca.gov/proptaxes/annocont.htm)). After all proposed changes have been resolved, the CLD will become obsolete and deleted from the website.

This CLD is posted on the Board's website at [www.boe.ca.gov/proptaxes/cld.htm](http://www.boe.ca.gov/proptaxes/cld.htm). Copies of the backup correspondence are linked to each annotation via the annotation number. If a link does not work, please let us know by using the "Comments Form" on our website ([www.boe.ca.gov/proptaxes/cld.htm](http://www.boe.ca.gov/proptaxes/cld.htm)). If you have any questions, please contact Glenna Schultz at 916-274-3362.

Sincerely,

/s/ David J. Gau

David J. Gau  
Deputy Director  
Property and Special Taxes Department

DJG/grs  
Enclosure

# PROPERTY AND SPECIAL TAXES DEPARTMENT

## PROPERTY TAXES CURRENT LEGAL DIGEST NO. 2011-2

June 1, 2011

### 200.0300 BASE YEAR VALUE TRANSFER—GOVERNMENT ACQUISITION

200.0346 **Ownership.** A commercial strip center that was owned by a family trust was taken by eminent domain. A few months later, a limited liability company (LLC) that was owned 100 percent by the trust purchased a replacement property. A year later, the LLC transferred the replacement property to the trust.

Pursuant to Revenue and Taxation Code section 68 and Property Tax Rule 462.500(e), only the owner or owners of the property taken, whether one or more individuals, partnerships, corporations, other legal entities, or a combination thereof, can receive property tax relief. Since the family trust owned the original property, the trust must acquire the replacement property to obtain relief under section 68. Thus, the purchase of the property by the LLC will not qualify for relief. For property tax purposes, the separate identity of a legal entity is respected. Therefore, despite the fact that the trust owned 100 percent of the interests in the LLC, the acquisition of the replacement property by the LLC is not considered an acquisition by the trust. However, the subsequent transfer of the property from the LLC to the trust does qualify as an acquisition of property by a person displaced from property by eminent domain since the trust was displaced from the original property and also acquired the replacement property. C 7/27/2010.

### 220.0000 CHANGE IN OWNERSHIP

220.0341 **Leases.** Privately owned land leased to a governmental agency for 35 years or more results in a change in ownership for reappraisal purposes but does not result in tax exemption unless the use of the land by the agency qualifies it for exemption. C 12/18/1981; C 6/15/95 11/9/1992; C 1/10/1994.

220.0399 **Massachusetts Trust/Business Trust.** If a trust is a business trust, instead of an ordinary trust for the conservation of assets, it is to be treated as a legal entity for property tax purposes. Determining whether a trust is a business or traditional trust requires a factual analysis of the evident trust purposes and trust documents. The parties are not at liberty to say that their purpose was other or narrower than that which they formally set forth in the instrument under which their activities were conducted. Given the broad powers provided to the trustee, if the property is capable of being rented, subdivided, developed, converted to business purposes, or otherwise being used as or in a business, the trust must be considered a business trust and, therefore, a legal entity for property tax purposes and subject to the provisions of Revenue and Taxation Code sections 61, subdivision (j), and 64. C 1/13/1998; 8/24/2010.

220.0454.010 **Original Co-owners.** Real property is owned by a limited liability company (LLC). Member A proposes to redeem its membership interest in exchange for an undivided interest in the real property equal to Member A's percentage membership interest in the LLC. The LLC will continue to own the remaining undivided interest as a tenant in common with Member A, and the remaining members of the LLC will indirectly own interests in the real property in the same respective proportions that they owned prior to the transaction through their continued ownership of LLC membership interests.

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The transfer of an interest in real property from the LLC to Member A in exchange for Member A's interest in the LLC is excluded from change in ownership under Revenue and Taxation Code section 62(a)(2). As a result of Member A's complete withdrawal from the LLC, each remaining member's membership interest increased. For property tax purposes, this is deemed a transfer to each member of an additional percentage of LLC capital and profits. Because no member will obtain control of the LLC, these transfers are excluded under section 64(a). Additionally, because there is no change in control, there is no need to use the proportional ownership interest transfer exclusion with respect to the increase of the remaining members' membership interests and thus, the remaining members do not become original co-owners under section 64(d). C 7/8/2010.

**220.0662 Statement Filing Requirements.** A Preliminary Change in Ownership Report (PCOR) and a Change of Ownership Statement (COS) are two separate statements governed by two separate statutory provisions. Revenue and Taxation Code section 480.3 allows the filing of a PCOR at the time of recording a document that evidences a change in ownership. This section does not provide for the filing of a PCOR at any other time. If a PCOR is not filed at the time of recording, the only penalty that may be applied is an additional \$20 recording fee. If a PCOR is not filed, an assessor should send a COS to obtain change in ownership information. If a COS is not filed by the transferee within 45 days of the assessor's request, the section 482 penalty will apply.

Compliance with one form does not waive the requirement to comply with the other. If an assessee completes the information on the PCOR and the county subsequently mails out a COS, the penalty for failure to file can be applied if the assessee fails to return or files an incomplete COS. C 3/23/2010.

#### **493.0000 GRANDPARENT-GRANDCHILD TRANSFER**

**493.0070 In-Law Child.** A family trust became irrevocable upon the death of the trustor. The trust provides that upon the death of the trustor the property is to be distributed in equal shares to the trustor's daughter and son. In the event a child predeceases the trustor, the trust provides that such child's share shall be distributed to the child's issue by right of representation. Son predeceased the trustor and has one surviving son (grandson). Son and his ex-wife were divorced prior to the death of the trustor.

Revenue and Taxation Code section 63.1 excludes certain transfers between grandparents and their grandchildren from change in ownership if all children of the grandparents who qualify as parents of the grandchildren are deceased. In this case, Grandson's father is deceased, but his mother is not. As a daughter-in-law of the trustor, she was considered the trustor's "child" for purposes of section 63.1. However, this relationship only existed until their divorce. After the divorce, the only person who qualified both as child of the trustor and parent of Grandson was the Son. Since Son was deceased at the time of the trustor's death, the grandparent-grandchild exclusion may apply to the trustor's transfer to Grandson. C 9/23/2010.

#### **505.0000 HOMEOWNERS' EXEMPTION**

**505.0121 Trust.** A Massachusetts trust, or business trust, is the name given to a business organization wherein property is conveyed to trustees and managed for the benefit of holders of certificates like corporate stock certificates. Thus, they are treated as legal entities for property tax purposes. Being legal entities, Massachusetts trusts or business

trusts do not qualify for the homeowners' exemption, and properties owned by such trusts are not eligible for the exemption. C 8/24/2010.

## **565.0000 LEGAL ENTITIES**

565.0020 **Change in Ownership Filing Requirements.** Effective January 1, 2010, Revenue and Taxation Code sections 480.1, 480.2, 482, and 483 were amended to establish a penalty for legal entities that do not file a change in control and ownership statement with the Board of Equalization within 45 days of a change in control or change in ownership pursuant to section 64(c) or (d). If legal entity ownership interests are transferred due to a death but it will not be known within 45 days of the date of death whether a change in control or ownership will occur because the allocation of interests to the beneficiaries is not determined, the change in control and ownership statement should still be filed with as much information as is known to avoid the penalty. The form should then be supplemented once a change in control or ownership determination is made. C 9/10/2010.

## **590.0000 MINES AND MINERALS**

590.0001 **Abandoned Mining Claim.** If the "Notice of Abandonment of Mining Claim" is not recorded prior to the lien date, the taxpayer is considered the owner of those claims on the lien date. Therefore, they are properly assessable. Since the taxpayer failed to timely file an appeal application, the taxpayer may not proceed with a claim for refund under the exhaustion of administrative remedies principle. C 5/26/2010.

## **610.0000 NEWLY CONSTRUCTED PROPERTY**

610.0064 **Ownership of New Construction.** Pursuant to Civil Code section 1013, the doctrine of accession provides that when a person affixes his property to the land of another, without an agreement permitting him to remove it, the thing affixed belongs to the owner of the land. Thus, absent lease provisions under which the lessee retains title to the improvements, title passes to the lessor upon the completion of the construction. C 6/16/2008.

## **660.0000 POSSESSORY INTEREST**

660.0155 **Low-Income Housing.** Low-income tenants residing in public housing projects should not be considered to hold a taxable possessory interest in their leaseholds under Revenue and Taxation Code section 107 on the grounds that the imposition of such a tax would frustrate the State's interest in providing affordable and low-cost public housing. C 6/29/2010.

660.0352 **Valuation.** A marina is owned by a local government agency. A for-profit entity (lessee) has leased 100 slips and 8 percent of the marina's waterway acreage. Lessee subleases boat slips on a monthly basis to boat and yacht owners. The government agency is responsible for repair and maintenance of certain common areas, including dredging the waters and providing safety personnel and administrative staff for the marina.

Expenses such as operating the harbor patrol, dredging, and keeping a harbor administrative staff may be deducted from the gross rent in arriving at the income to be capitalized when valuing the subject taxable possessory interest, but only for those expenses for which the agency is not reimbursed by the lessee. C 5/11/2010.

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**690.0000 PUBLIC SCHOOLS EXEMPTION**

690.0004 Charter Schools. A charter school operated by a nonprofit public benefit corporation is not a state or local government entity and, therefore, does not qualify for a property tax exemption as government-owned property under California Constitution article XIII, section 3(a) and (b). However, charter schools may qualify for the public schools property tax exemption pursuant to California Constitution article XIII, section 3(d) and Revenue and Taxation Code section 202(a)(3). Section 202(a)(3) exempts charter school property (whether owned or leased) if it is used exclusively for public school purposes. Thus, it is the use, not the ownership, of the property that determines its status as property exempt from taxation. C 12/18/2009; C 5/26/2010.

**820.0000 TAXES**

~~820.0022 **Special District/Tax Rate.** Article XIII A of the California Constitution placed limitations upon the amounts of new taxes imposed by special districts. It did not relate to pre-existing tax rates; nor does it prevent the spreading of existing debt to newly annexed areas, even if this results in increased taxes in the annexed areas. The increase in taxes for property owners within a newly annexed area is merely a sharing of the existing tax burden by the property owners in the annexed area. C 9/27/79.~~

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**850.0000 VALUE**

850.0024 **Development Impact Fee.** While the payment of a development impact fee does not constitute "new construction" and should not be assessed as newly constructed property upon payment by a developer, once a developer has paid such fees and the property changes ownership, the total consideration paid by the buyer constitutes the purchase price, regardless of whether the parties agree and designate a portion of the purchase price as "reimbursement" of the fees. Moreover, if a developer agrees to pay a local agency impact fees but does not pay them prior to selling the property, the cash equivalent of the unpaid fees outstanding should be added to the balance of any other cash or cash equivalent portion of the purchased property to derive the full cash value upon the change in ownership. C 7/8/2010.