STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
PROPERTY AND SPECIAL TAXES DEPARTMENT
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December 21, 2012

TO: INTERESTED PARTIES

Enclosed is a copy of Current Legal Digest (CLD) number 2012-3 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 **Tuesday, January 22, 2013**. These may be sent by e-mail using the "Comments Form" on the Board's website (www.boe.ca.gov/proptaxes/cld.htm), fax or mail. Here is the mailing address:

Board of Equalization
County-Assessed Properties Division
ATTN: Annotation Coordinator
P. O Box 942879
Sacramento, CA 94279-0064

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). 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. 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). 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. 2012-3

December 21, 2012

170.0000 ASSESSMENT *[COMMENT RECEIVED – NOT ANNOTATED]*

170.0037 **Energy Tax Credit.** Based on program parameters, and because the stated purpose of cash grants authorized under section 1603 of the American Recovery and Reinvestment Act of 2009 (ARRA) is to "temporarily fill the gap created by the diminished investor demand for tax credits," there is no meaningful difference with respect to property tax valuation between receiving the IRC section 48 energy credit or receiving the ARRA section 1603 cash grant. Therefore, based on *May Department Stores v. Los Angeles* (1987) 196 Cal.App. 3d 755 and prior Board guidance, cash grants received under ARRA section 1603 of the American Recovery and Reinvestment Act of 2009 (ARRA) for qualified wind generation facilities should not be allowed as a deduction to original cost when utilizing the cost approach in valuing wind facilities. C 6/22/2011.

190.0000 ASSESSMENT APPEALS BOARD

190.0010 **Alternate Assessment Appeals Board.** The provisions to appoint an alternative assessment appeals board, pursuant to Revenue and Taxation Code section 1622.6 for persons listed in section 1612.7, may not be used to hear an application for a reduction in assessment when the applicant is also a current member of the county board of supervisors that sits as the county board of equalization because a member of a board of supervisors, which also sits as the county board of equalization, is not a person listed in section 1612.7. A member of a board of supervisors is not an "assessment hearing officer" as used in section 1612.7. An "assessment hearing officer" is a specific position appointed by a county board of supervisors and would not include any member of the board of supervisors unless so appointed. Thus, an appeal by a member of a county board of equalization may be heard by his/her fellow board of supervisors members sitting as the county board of equalization without his participation unless it is legally required. C 9/28/2011.

520.0000 IMPROVEMENTS VALUATION *[COMMENT RECEIVED – NOT ANNOTATED]*

520.0060 **Wind Facilities.** Based on program parameters, and because the stated purpose of cash grants authorized under section 1603 of the American Recovery and Reinvestment Act of 2009 (ARRA) is to "temporarily fill the gap created by the diminished investor demand for tax credits," there is no meaningful difference with respect to property tax valuation between receiving the IRC section 48 energy credit or receiving the ARRA section 1603 cash grant. Therefore, based on *May Department Stores v. Los Angeles* (1987) 196 Cal.App. 3d 755 and prior Board guidance, cash grants received under ARRA section 1603 of the American Recovery and Reinvestment Act of 2009 (ARRA) for qualified wind generation facilities should not be allowed as a deduction to original cost when utilizing the cost approach in valuing wind facilities. C 6/22/2011.

610.0000 NEWLY CONSTRUCTED PROPERTY

610.0116 **Valuation.** A neighborhood shopping center is constructed in phases, and valued using the Building Residual Technique as each section of the property was completed. This

technique determines the fair market value of the improvements by deducting the income imputable to the land from the fair market value of the total property. The fair market value, and not the base year value of the land is used during this process. If the assessor were to use the factored base year value of the land (which is greater than the fair market value), the resulting value of the new construction would be understated.

The taxpayer's assertion that the property will be valued in excess of market value on the lien date is immaterial because the base year value of new construction is established as of the date of completion and not the lien date. On the subsequent lien date, the property, including the improvements, may be subject to a decline in value adjustment pursuant to Revenue and Taxation Code section 51(b). However, this would not change the base year value of the pre-existing property, as previously established, or the initial base year value of the improvements. C 8/31/2011.

660.0000 CHANGE IN OWNERSHIP

660.0270 **Solar Energy Facility.** Under the terms of a lease, company received the right to build and operate a solar energy facility on county-owned property. Because the company's possession of the county-owned land subject to the lease is independent, durable, and exclusive of rights held by others in the real property, and provides a private benefit to the possessor, the creation of the possessory interest in the land was a change in ownership pursuant to Revenue and Taxation Code section 61(b). C 4/4/2011.

848.0000 VALUATION METHODOLOGY ***[COMMENT RECEIVED – NOT ANNOTATED]***

848.0020 **Cost Approach.** Based on program parameters, and because the stated purpose of cash grants authorized under section 1603 of the American Recovery and Reinvestment Act of 2009 (ARRA) is to "temporarily fill the gap created by the diminished investor demand for tax credits," there is no meaningful difference with respect to property tax valuation between receiving the IRC section 48 energy credit or receiving the ARRA section 1603 cash grant. Therefore, based on *May Department Stores v. Los Angeles* (1987) 196 Cal.App. 3d 755 and prior Board guidance, cash grants received under ARRA section 1603 of the American Recovery and Reinvestment Act of 2009 (ARRA) for qualified wind generation facilities should not be allowed as a deduction to original cost when utilizing the cost approach in valuing wind facilities. C 6/22/2011.