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May 18, 2001

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TO INTERESTED PARTIES:

PROPOSED NEW PROPERTY TAX RULE 29
POSSESSORY INTERESTS IN TAXABLE GOVERNMENT-OWNED REAL PROPERTY

Letter To Assessors 2001/005 announced a Board project to draft a new Property Tax Rule, which clarifies the assessment of taxable possessory interests in government-owned property taxable pursuant to section 11 of article XIII of the California Constitution. A subsequent letter, dated March 16, 2001, transmitted staff's draft of the proposed new rule to interested parties. Interested parties were asked to provide changes, in the form of alternative text, to the draft rule. Staff reviewed those changes and incorporated those that were deemed appropriate.

Enclosed are (1) a matrix summarizing proposed changes to the draft rule and (2) a revised version of the draft rule. These two documents will form the basis of discussion at the interested parties meeting. The matrix contains all proposed changes to the draft rule, originating from both interested parties and staff, together with staff's position in regard to each proposed change. The revised version of the draft rule shows in strikethrough-underline format, how the language in the draft rule would change if all changes acceptable to staff were made.

On June 1, 2001, staff will hold a meeting with interested parties to discuss proposed changes identified on the matrix. The purpose of the meeting is to reach agreement on rule language. The meeting is scheduled to start at 9:30 a.m. in Room 122, Board of Equalization, 450 N Street, Sacramento.

After the interested parties meeting, it is anticipated that the project will proceed as follows:

- Interested parties to submit final comments on pending issues by June 18, 2001.
- Staff to submit issue paper and other required material for the Property Tax Committee meeting by July 18, 2001.
- The Board's Property Tax Committee will hear discussion of any unresolved issues at its August 1, 2001 meeting.

If you have any questions, please contact Benjamin Tang at (916) 324-2720; fax: (916) 323-8765; e-mail: benjamin.tang@boe.ca.gov. All documents relating to this project are available on the Board's Web site (www.boe.ca.gov) and can be accessed through the Property Tax Committee Work Plans.

Sincerely,

Richard C. Johnson
Deputy Director
Property Taxes Department

RCJ:bt
Enclosures

PROPOSED RULE 29
POSSESSORY INTERESTS IN TAXABLE GOVERNMENT-OWNED REAL PROPERTY

Comments on March 16, 2001 Draft

(Note: Cal Tax = California Taxpayers' Association; CAA = California Assessors' Association; Staff = Board of Equalization Staff)

No.	REFERENCE PAGE/LINE		SOURCE	PROPOSED LANGUAGE	STAFF POSITION/COMMENTS
1.	1	10	CAA	(2) "Improvements" are defined in rule 122.	Not accepted. The term "improvements" is used in both staff's proposed rule and the CAA proposal. Thus, the definition is necessary and should be included in the rule.
2.	1	12	CAA	(3) "Real property" is the appraisal unit of real property, as defined in section 104 of the Revenue and Taxation Code, that persons in the marketplace commonly buy and sell as a unit or that is normally valued separately.	Not accepted. The appraisal unit concept is an integral part of the appraisal process and applies to the assessment of taxable possessory interests.
3.	1	18	CAA	(5) "Section 11" means section 11 of article XIII is defined in Article XIII, Section 11, of the California Constitution and calls for a special assessment valuation procedure that is applied to lands acquired by cities outside their boundaries. Subdivision (f) of this section allows for additional assessments, called taxable possessory interests, to be made on these types of lands.	Not accepted. "Section 11" is generally used to refer to section 11 of article XIII of the California Constitution as defined in staff's definition. However, "section 11" is not defined in section 11 of article XIII.

NO.	REFERENCE PAGE/LINE		SOURCE	PROPOSED LANGUAGE	STAFF POSITION/COMMENTS
4.	1	20	Staff	(6) "Taxable government-owned real property" <u>is means</u> real property owned by a local government outside of its boundaries that is taxable for property tax purposes pursuant to section 11(a) of article XIII of the California Constitution.	Definition revised to be more specific and accurate.
5.	1	23	Staff	(7) " <u>Taxable lands</u> " are lands owned by a local government outside its boundaries that are taxable for property tax purposes pursuant to section 11(a).	Definition added to provide more precise guidance.
6.	1	23	Staff	(8) " <u>Taxable replacement improvements</u> " are improvements owned by a local government outside of its boundaries that are taxable for property tax purposes pursuant to section 11(a) because they were constructed by the local government to replace improvements that were taxable when acquired.	Definition added to provide more precise guidance.
7.	1	23	Staff	(9) " <u>Other taxable improvements</u> " are improvements owned by a local government outside of its boundaries that are taxable for property tax purposes pursuant to section 11(a), excluding taxable replacement improvements.	Definition added to provide more precise guidance.
8.	1	24	Staff	(7) (10) "Assessed value" is defined in subdivision (a) of section 135 of the Revenue and Taxation Code.	Renumbered due to additional definitions listed above.
9.	1	27	CAA	(8) " Agriculture <u>Agricultural</u> " means the production of plants or animals, including gardening, horticulture, fruit growing, and the storage and marketing of agricultural products.	Accepted in concept with modified text. See item 10 for modified text.

NO.	REFERENCE PAGE/LINE		SOURCE	PROPOSED LANGUAGE	STAFF POSITION/COMMENTS
10.	1	27	Staff	<p>(8)(11) A “<u>Agriculture lease for agricultural purposes</u>” means <u>is a lease for the purpose of the production or husbandry of plants or animals, including gardening, horticulture, fruit growing, and the storage and marketing of agricultural products.</u></p>	Modified text in response to CAA's proposal in item 9.
11.	1	30	CAA	<p>(9) The "section 11 value of the taxable government-owned real property" means the sum of the assessment amount for the taxable land included in the real property on the lien date, determined pursuant to subdivision (b) and (c) of section 11 of article XIII of the California Constitution, and the assessment amount for the taxable improvements included in the real property on the lien date, determined pursuant to subdivision (d) of section 11 of article XIII of the California Constitution.</p>	See staff's revision and comments in item 12.
12.	1	30	Staff	<p>(9)(12) The “section 11 value of taxable government-owned real property” means the sum of: <u>(i) the section 11 assessment amount for the taxable lands included in the real property on the lien date, determined computed pursuant to subdivisions (b) and (c) of section 11 of article XIII of the California Constitution;</u> (ii) and the section 11 assessment amount for any taxable replacement improvements included in the real property on the lien date, determined computed pursuant to the provisions of subdivision (d) of section 11 of article XIII of the California Constitution; <u>and (iii) the fair market value of other taxable improvements included in the real property on the lien date, if any.</u></p>	Revised to provide more precise guidance.

NO.	REFERENCE PAGE/LINE		SOURCE	PROPOSED LANGUAGE	STAFF POSITION/COMMENTS
13.	1	37	CAA	(10) The "section 11 taxable possessory interest limitation amount" means the fair market value of the taxable government-owned real property on the lien date less the section 11 value of the taxable government-owned real property on the lien date.	Not accepted. This definition is an integral part of staff's proposed draft.
14.	1	37	Cal-Tax	(10) The "section 11 taxable possessory interest limitation amount" means the fair market <u>full cash</u> value of the taxable government-owned real property on the lien date, <u>as determined in Section 110.1 of the Revenue and Taxation Code</u> less the section 11 value of the taxable government-owned real property on the lien date.	Not accepted. This proposed provision is in conflict with the language of section 11. <i>San Francisco v. San Mateo</i> did not address possessory interests or contemplate the application of article XIII A on taxable possessory interests in taxable government-owned property. Rather, it addressed the application of article XIII A to the government owner's fee interest. Furthermore, there is no authority indicating that a government landowner's article XIII A limitation amount should be applied to a completely different taxpayer with a separate and distinct real property interest.
15.	1	37	Staff	(10) (13) The "section 11 taxable possessory interest limitation amount" means the fair market value of the taxable government-owned real property on the lien date less the section 11 value of the taxable government-owned real property on the lien date.	Renumbered due to additional definitions listed above.
16.	1	41	CAA	(11) The "total assessed value of all taxable possessory interests" means the aggregate assessed values of all taxable possessory interests in an appraisal unit of taxable government-owned real property on the lien date.	Not accepted. This definition follows from the language of section 11 and is an integral part of staff's proposed draft.

NO.	REFERENCE PAGE/LINE		SOURCE	PROPOSED LANGUAGE	STAFF POSITION/COMMENTS
17.	1	41	Staff	(11) (14) The “total assessed value of all taxable possessory interests” means the aggregate assessed values of all taxable possessory interests in an appraisal unit of taxable government-owned real property on the lien date.	Renumbered due to additional definitions listed above.
18.	1	44	CAA	<u>(#) Section 11 additional interest limitation is found in Section 11(f) and states that these additional interests must be valued like similar taxable property of a similar nature (see Rule 21 of California Property Tax Rules). However, the taxable land value of any local government (Section 11 value) must be subtracted from the total value of these additional interests. Any improvements on Section 11 properties valued in accordance with Prop 13 are assessed directly to the cities.</u>	Not accepted. This proposed provision is in conflict with the language of section 11. In addition, it does not appear rational to subtract the taxable land value assessed to the fee owner from the value of the possessory interest to determine the taxable possessory interest value.
19.	1	44	CAA	<u>(#) Section 11 land assessment is the current assessment determined and enrolled by the assessor for the assessment year in question.</u>	Not accepted. See comments for items 23 and 24.
20.	1	44	CAA	<u>(#) Section 11 improvement assessment is the current Prop 13 assessment determined and enrolled by the assessor for the assessment year in question.</u>	Not accepted. See comments for items 23 and 24.
21.	1	44	CAA	<u>(#) The "total value of the taxable possessory interest" means the total assessed value of a particular taxable possessory interest located on a specific Section 11 land parcel.</u>	Not accepted. See comments for items 23 and 24.

NO.	REFERENCE PAGE/LINE		SOURCE	PROPOSED LANGUAGE	STAFF POSITION/COMMENTS
22.	2	8	CAA	<p>(e) Limitation on the assessment of taxable possessory interests in taxable government-owned real property.</p> <p>On each lien date, the total assessed value of all taxable possessory interests in an appraisal unit of taxable government-owned real property shall be determined. If the total assessed value of all taxable possessory interests on the lien date exceeds the section 11 taxable possessory interest limitation amount on the lien date, then the assessed values of the taxable possessory interests shall be reduced as follows: (i) if there is only one taxable possessory interest in the appraisal unit of taxable government-owned real property on the lien date, then the assessed value of that taxable possessory interest shall be reduced so that it does not exceed the section 11 taxable possessory interest limitation amount; or (ii) if there is more than one taxable possessory interest in the appraisal unit of taxable government-owned real property on the lien date, then the assessed value of each such taxable possessory interest shall be ratably reduced in the proportion that it bears to the total assessed value of all taxable possessory interests until the total assessed value of all taxable possessory interests no longer exceeds the section 11 taxable possessory interest limitation amount.</p>	<p>Not accepted. The limitation presented in this subdivision is necessary to ensure that the sum of the value of multiple possessory interests in a taxable government-owned property do not exceed the assessment limitation prescribed by subdivision (f) of section 11.</p>

NO.	REFERENCE PAGE/LINE		SOURCE	PROPOSED LANGUAGE	STAFF POSITION/COMMENTS
23.	2	8	CAA	<p><u>(c) Limitation on the assessment of taxable possessory interest in taxable government-owned real property where all improvements were constructed after the city had acquired the lands.</u></p> <p><u>On each lien date or date of transfer, the total assessed value of a particular taxable possessory interest located on section 11 lands shall be determined. The assessor must deduct from this total assessed value, the total section 11 land assessment apportioned to this taxable possessory interest for the assessment year in question and the surplus, if any, enrolled for the possessory interest assessment.</u></p>	<p>Not accepted. This proposed provision is in conflict with the language of section 11. In addition, it does not appear rational to subtract the taxable land value assessed to the fee owner from the value of the possessory interest to determine the taxable possessory interest value. Furthermore, the requirement of apportioning the land assessment among concurrent possessory interests would present appraisal problems.</p>
24.	2	8	CAA	<p><u>(d) Limitation on the assessment of taxable possessory interest in taxable government-owned real property where some improvements existed and were assessed prior to city's acquisition.</u></p> <p><u>On each lien date or date of transfer, the total assessed value of the land and any exempt improvements for a particular taxable possessory interest located on section 11 lands shall be determined. The assessor must deduct from this total assessed value, the total section 11 land assessments apportioned to this taxable possessory interest for the assessment year in question and the surplus, if any, enrolled for the possessory interest assessment. Existing improvements, assessable when acquired by city, are assessed to the city following Prop 13 guidelines and need no possessory interest assessments.</u></p>	<p>Not accepted. This proposed provision is in conflict with the language of section 11. In addition, it does not appear rational to subtract the taxable land value assessed to the fee owner from the value of the possessory interest to determine the taxable possessory interest value. Furthermore, the requirement of apportioning land and exempt assessments among concurrent possessory interests would present appraisal problems.</p>

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1 **Rule 29. POSSESSORY INTERESTS IN TAXABLE GOVERNMENT-OWNED** 2 **REAL PROPERTY.**

3
4 *Reference:* Article XIII, Section 11, California Constitution.

5
6 **(a) Definitions.** For purposes of this rule:

7
8 (1) "Land" is defined in rule 121.

9
10 (2) "Improvements" are defined in rule 122.

11
12 (3) "Real property" is the appraisal unit of real property, as defined in section 104 of
13 the Revenue and Taxation Code, that persons in the marketplace commonly buy and
14 sell as a unit or that is normally valued separately.

15
16 (4) "Taxable possessory interest" is defined in rule 20.

17
18 (5) "Section 11" means section 11 of article XIII of the California Constitution.

19
20 (6) "Taxable government-owned real property" ~~is means~~ real property owned by a local
21 government outside of its boundaries that is taxable for property tax purposes
22 pursuant to section 11(a) ~~of article XIII of the California Constitution.~~

23
24 (7) "Taxable lands" are lands owned by a local government outside of its boundaries
25 that are taxable for property tax purposes pursuant to section 11(a).

26
27 (8) "Taxable replacement improvements" are improvements owned by a local
28 government outside of its boundaries that are taxable for property tax purposes
29 pursuant to section 11(a) because they were constructed by the local government to
30 replace improvements that were taxable when acquired.

31
32 (9) "Other taxable improvements" are improvements owned by a local government
33 outside of its boundaries that are taxable for property tax purposes pursuant to
34 section 11(a), excluding taxable replacement improvements.

35
36
37 ~~(7)~~(10) "Assessed value" is defined in subdivision (a) of section 135 of the Revenue
38 and Taxation Code.

39
40 ~~(8)~~(11) A "Agriculture lease for agricultural purposes" means is a lease for the purpose
41 of the production or husbandry of plants or animals, including gardening,
42 horticulture, fruit growing, and the storage and marketing of agricultural
43 products.

44
45 ~~(9)~~(12) The "section 11 value of taxable government-owned real property" means the
46 sum of: (i) the section 11 assessment amount for the taxable lands included in

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1 the real property on the lien date, ~~determined~~ computed pursuant to subdivisions
2 (b) and (c) of section 11 ~~of article XIII of the California Constitution;~~ (ii) and
3 the section 11 assessment amount for any taxable replacement improvements
4 included in the real property on the lien date, ~~determined~~ computed pursuant to
5 the provisions of subdivision (d) of section 11 ~~of article XIII of the California~~
6 ~~Constitution;~~ and (iii) the fair market value of other taxable improvements
7 included in the real property on the lien date, if any.
8

9 ~~(10)~~(13) The “section 11 taxable possessory interest limitation amount” means the fair
10 market value of the taxable government-owned real property on the lien date
11 less the section 11 value of the taxable government-owned real property on the
12 lien date.

13
14 ~~(11)~~(14) The “total assessed value of all taxable possessory interests” means the
15 aggregate assessed values of all taxable possessory interests in an appraisal unit
16 of taxable government-owned real property on the lien date.

17 18 **(b) Taxable possessory interests in taxable government-owned real property.**

19
20 Except as set forth below in subsection (c) of this regulation, taxable possessory interests
21 in taxable government-owned real property, excluding those created as a result of the
22 possessor having a lease for agricultural purposes, shall be assessed and taxed for
23 purposes of property taxation in the same manner as other taxable possessory interests.
24

25 **(c) Limitation on the assessment of taxable possessory interests in taxable** 26 **government-owned real property.**

27
28 On each lien date, the total assessed value of all taxable possessory interests in an
29 appraisal unit of taxable government-owned real property shall be determined. If the
30 total assessed value of all taxable possessory interests on the lien date exceeds the section
31 11 taxable possessory interest limitation amount on the lien date, then the assessed values
32 of the taxable possessory interests shall be reduced as follows: (i) if there is only one
33 taxable possessory interest in the appraisal unit of taxable government-owned real
34 property on the lien date, then the assessed value of that taxable possessory interest shall
35 be reduced so that it does not exceed the section 11 taxable possessory interest limitation
36 amount; or (ii) if there is more than one taxable possessory interest in the appraisal unit of
37 taxable government-owned real property on the lien date, then the assessed value of each
38 such taxable possessory interest shall be ratably reduced in the proportion that it bears to
39 the total assessed value of all taxable possessory interests until the total assessed value of
40 all taxable possessory interests no longer exceeds the section 11 taxable possessory
41 interest limitation amount.