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May 13, 2024

TO: INTERESTED PARTIES

Enclosed is a copy of Current Legal Digest (CLD) number 2024-1 for your information and review. The annotations included in this CLD are new proposed annotations (in italics) and/or suggested revisions or deletion of existing annotations (indicated by ~~strikeout~~ and italics). After review, please submit any questions, comments, or suggestions for changes *in writing* by **Wednesday, June 12, 2024**. These may be sent by email using the "Comments Form" on the State Board of Equalization's (BOE) website (www.boe.ca.gov/proptaxes/ptemail.htm), fax, or mail. The fax number is 1-916-285-0134. The mailing address is:

State 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 BOE'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 are taken into consideration. After approval of the final version by the BOE's Legal Department, the changes will be posted to the BOE website under "[Annotations/Advisory Opinions](#)." After all proposed changes have been resolved, the CLD will become obsolete. A final version of the CLD will be posted under the "Archives" heading on the CLD webpage.

This CLD is posted on the BOE 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 the BOE website. If you have any questions, please contact Alexander Fries at 1-916-274-3380.

Sincerely,

/s/ David Yeung

David Yeung,
Deputy Director
Property Tax Department

DY:af
Enclosure

PROPERTY TAX DEPARTMENT

PROPERTY TAX CURRENT LEGAL DIGEST NO. 2024-1

May 13, 2024

105.0000 AIRCRAFT OF HISTORICAL SIGNIFICANCE EXEMPTION

105.0060 **Newly Constructed Kit Aircraft.** *The exemption for aircraft of historical significance would not apply to a newly constructed kit aircraft based solely on the fact that there are fewer than five known to exist worldwide. To be exempt, an aircraft must relate to history or be based on history, or have existed in the past. In addition, the aircraft's continued existence must be threatened or at risk of extinction. Therefore, a newly constructed kit aircraft that has not been in existence and does not relate to history cannot be at risk of becoming extinct and thereby would not fit within the scope of the historical aircraft exemption even if fewer than five were known to exist worldwide. The requirement that there be fewer than five in the world did not stand alone from the requirement that the aircraft also be one that is historically significant. C 4/20/2016.*

180.0000 ASSESSMENT APPEALS

180.0072.500 **Findings of Fact.** *Revenue and Taxation Code section 1611.5 provides that written findings of fact of the county board shall be made if requested in writing by a party up to or at the commencement of the hearing, and if payment of any fee or deposit which may be required to cover the expense of preparing the findings is made by the party prior to the conclusion of the hearing. Because section 1611.5 expressly provides that written findings of fact shall be made if the taxpayer requests such findings in writing and pays a required fee to cover the expense of preparing such findings, it follows that a taxpayer's failure to request written findings from the local board constitutes an implied waiver of written findings. The court, in *Westlake Farms, Inc. v. County of Kings* (1974) 39 Cal.App.3d 179, held that by failing to raise the issue of the lack of written findings requested under section 1611.5, the appellants' request for findings was abandoned by implication. C 11/28/2016.*

200.0300(B) BASE YEAR VALUE TRANSFER – GOVERNMENT ACQUISITION

200.0303 **Agency.** *An "ostensible agency" is created, "when the principal intentionally, or by want of ordinary care, causes a third person to believe another to be his agent who is not really employed by him" (Civil Code section 2300). An agent, whether actual or ostensible, has such authority as the principal, actually or ostensibly, confers upon him (Civil Code section 2315). Similarly, an agent, whether actual or ostensible, represents his principal for all purposes within the scope of his actual or ostensible authority, and all the rights and liabilities which would accrue to the agent from transactions within such limit, if they had been entered into on his own account, accrue to the principal (Civil Code section 2330).*

As an agent's authority to represent the principal and ability to bind the principal are identical in both actual and ostensible agency (see Civil Code sections 2315 and 2330). Where the ostensible agent acts within the scope of such ostensible authority, the acquisition of property by the ostensible agent of such a public entity is deemed to be an "acquisition by a public entity" within the meaning of Revenue and Taxation Code section 68, in the same way that an acquisition by an actual agent of a public entity can be regarded as an "acquisition by a public entity." C 9/1/2016.

200.0326.005 **Easement.** *Government acquisition of an easement may constitute "property taken" for purposes of Revenue and Taxation Code section 68 and Rule 462.500 when the value of the easement is substantially equal to the value of the fee interest. Factors determining value equivalence include whether the easement is exclusive, perpetual in nature, and over a specific area of land, and whether the taking displaces the property owner from the underlying property. A property owner may be considered "displaced" if the underlying property of the easement is becoming a public roadway which permanently eliminates the taxpayer's existing parking spaces, because the underlying property owner will be removed from and will not retain any practical utility in the portion of the property subject to easement. Such an easement is distinguishable from a public utility or temporary easement, which gives the public entity limited use while the underlying property owner retains some utility in the area (such as landscaping or a driveway). C 3/29/2016.*

220.0000 CHANGE IN OWNERSHIP

220.0448 **Option.** *The date of change in ownership is generally the date the option is exercised, unless economic compulsion exists at the time the option is created, in which case both parties are, in effect, mutually obligated to complete the contract, similar to a sales agreement. If an option agreement is actually a form of a sales contract, a change in ownership will result at the time the option is created. Economic compulsion may be a test for determining whether an option to purchase actually constitutes a sales contract. An initial, non-refundable deposit, equivalent to less than ten percent of the purchase prices, alone does not rise to the level of economic compulsion. A purchaser's defined stream of non-refundable payments toward the property's equity during the option period is also not a sale from the outset when the seller retains possession of the property throughout the option period, and thus retains beneficial ownership. C 11/7/2016.*

220.0700 **Tax Exempt Property.** ~~The transfer by a tax exempt government entity of its owner/lessor interest in property subject to a lease of more than 35 years does not result in a change in ownership for reappraisal purposes. C 10/16/1989.~~

DELETE ANNOTATION: The backup correspondence mistakenly applies the fee equivalence concept to taxable possessory interests in government owned property.

220.0761 **Trusts.** ~~The general rule is that there is only one change in ownership for property transferred in trust. This occurs either upon transfer into trust or upon distribution to the beneficiaries. Following this rule, the owners of the property are construed to be the trustor, when there is no change in ownership, or the equitable beneficiaries, when there is a change in ownership. The trustee is never viewed as the owner of the trust property. This is so even if the trustee has legal title and the power to sell. C 7/14/1980.~~

Note: Civil Code section 869a is now Probate Code 18104.

DELETE ANNOTATION: The backup correspondence applies the wrong analysis and conclusion as to whether the section 62(d) exclusion is available for transfer of property to trusts.

220.0870 **Void Contract.** A contract of sale ~~which~~ *that* is void from the inception ~~under Civil Code section 1041~~ does not result in a change in ownership and may not be the basis for reappraisal. ~~C 7/16/1980; C 1/21/2009.~~

Note: Amended to remove the C 7/16/1980 correspondence which refers to Civil Code section 1041, which no longer exists.

493.0000 GRANDPARENT-GRANDCHILD TRANSFER

493.0140 **Trusts—Sprinkle/Spray.** ~~A Trust contains a sprinkle power that gives the Trustee total discretion to distribute trust property to a number of potential beneficiaries. The beneficiaries are the Settlor (H), the Settlor's spouse (W), and the granddaughter of W. In addition to the named beneficiaries, the Trustee is given authority to designate any members of a class of persons or any qualified charitable organization as beneficiaries. However, no additional beneficiaries had yet been named. Because a change in ownership requires a transfer of a *present* interest in real property and future interests in real property are not assessed, only the beneficiaries originally named by the Settlor are the present beneficiaries of the Trust. Therefore, the Trustee could potentially distribute all or a portion or none of the Property to H or to W or to Granddaughter.~~

~~When a trust contains a sprinkle power, all of the persons included as beneficiaries must be eligible for an exclusion. If even one person is not excludable, a change in ownership of all real property owned by the Trust will occur. Since there is no exclusion available if the Trustee distributes any portion of the Property to Granddaughter, a non-excludable beneficiary (since the granddaughter's parents were both living on the date the Property was transferred to the Trust), a change in ownership of the Property occurred at the time the Property was transferred to the Trust. C 6/12/2012.~~

DELETE ANNOTATION: Annotation 493.0140 states that, for sprinkle/spray situations, "only beneficiaries originally named by the Settlor are the present beneficiaries of the Trust." This conflicts with Annotation 220.0821, which states that a change in ownership occurs when the trustee may distribute in his or her discretion to "one or more unidentified beneficiaries." In our view, Annotation 220.00821 is more accurate.

505.0000 HOMEOWNERS' EXEMPTION

505.0019 **Disaster Impact.** ~~Temporary absence from a dwelling for repairs made necessary by a natural disaster, such as a flood or fire, will not result in the loss of the homeowners' exemption, provided the owner demonstrates that he or she returned to the dwelling when possible to do so. When a dwelling has been totally destroyed, however, the exemption is not applicable until the structure has been replaced and is occupied as a dwelling, except as provided in subdivisions (d), (e), and (f) of Revenue and Taxation Code section 218. There is no federal or state law that exempts privately owned dwellings in the course of construction from property taxation. C 3/20/1992; LTA 11/24/2004 (No. 2004/069).~~

DELETE ANNOTATION: Revenue and Taxation Code section 218 was amended by Senate Bill 1494 (Stats. 2010 ch. 654) to specifically provide for disaster relief. Thus, this annotation is in conflict with current statute. See Letter To Assessors No. 2011/004.

625.0000 PARENT-CHILD TRANSFER

625.0201 Trusts. A trust distribution is within the parent-child exclusion where a trustee's statutory powers are not limited by the trust instrument, the trust instrument requires distribution to children in equal shares, and the trustee encumbers the trust real property after the trustor's death for purposes of distributing the real property to one child subject to the encumbrance and cash in an amount equal to the equity in the real property to the other child. C 9/10/1996; ~~C 3/14/2000.~~

Note: Amended to remove the C 3/14/2000 correspondence. Valuation should be done at date of death (i.e., when the trust becomes irrevocable). The 3/14/2000 letter isn't focused on that and does not address the discrepancy between the date of death value and the date of distribution value. While this discrepancy could be reconciled, it is confusing exactly what it is saying.

625.0205 Trusts. ~~The transfer date for the application of the parent/child exclusion to property held in a husband/wife revocable trust is the date that the trust becomes irrevocable because of the death of the last parent trustor. The value to be used in determining whether the \$1,000,000 exclusion amount has been reached is the taxable value of the property shown on the roll for the assessment year in which the transfer occurred. C 7/30/1996.~~

DELETE ANNOTATION: Revenue and Taxation Code section 110.1(f) applies factoring as of the lien date.

625.0206 Trusts. The transfer by a decedent spouse to an irrevocable trust in which the survivor spouse (Wife) is the sole present beneficiary with a limited or special power of appointment of the trust assets enables the children receiving the remainder interests to claim the exclusion on the basis that both parents were transferors (via the trust) upon Wife's death. If the children timely file claims, Husband's \$1 million exclusion could be applied to his property, and Wife's \$1 million exclusion could be applied to her property, with neither exclusion amount being reduced because of the special power of appointment held by Wife. ~~C 2/4/1988; C 8/22/1996.~~

Note: Amended to remove the C 2/4/1988 correspondence which relies on language in section 63.1 that has been amended.

625.0235 Trusts – Share and Share Alike. When a parent transfers property to a trust which provides that the children are to receive the trust assets on a share and share alike basis, unless the trust instrument specifies otherwise, the trustee has the power to distribute the property on a pro rata or non-pro rata basis. The distribution of sole ownership of a single asset to one child would qualify for the parent-child exclusion, except to the extent the value of the asset exceeds the value of that child's interest in the total trust estate. Such excess must be considered a non-excludable transfer from the other beneficiaries pursuant to a sale of their interests to the recipient. C 8/6/1990; C 9/10/1996; C 10/28/1999; ~~C 3/14/2000.~~

Note: Amended to remove the C 3/14/2000 correspondence. Valuation should be done at date of death (i.e., when the trust becomes irrevocable). The 3/14/2000 letter isn't focused on that and does not address the discrepancy between the date of death value and the date of distribution value. While this discrepancy could be reconciled, it is confusing exactly what it is saying.

755.0000 STATE-ASSESSED PROPERTY

755.0089.005 **Solar Energy System.** *A solar electric generating facility, restricted by a power purchase agreement to sell 100 percent of its energy output to a single corporate customer, and which was developed from its outset to serve only that single, select, pre-determined customer for that customer's own use, is not dedicated to public use. Therefore, the facility is not a public utility subject to state assessment under article XIII, section 19 of the California Constitution. Accordingly, the property is properly assessed by the local county assessor. C 12/13/2016.*

880.0000(A) WELFARE EXEMPTION – IN GENERAL

880.0072 **Co-ownership.** ~~Real property transferred by will to a welfare organization and a college as joint owners is not eligible for the welfare exemption or the college exemption. Both of these exemptions are exclusive use exemptions; ownership alone is not sufficient. While the welfare exemption does require ownership, it also requires use for exempt purposes and activities and may not be applied in a manner that would result in enlarging the college exemption. C 10/29/1986.~~

DELETE ANNOTATION: Revenue and Taxation Code section 214(e) permits a college to receive the welfare exemption on property it owns.

880.0129 **Lease—Grazing.** ~~Property that is subject to a cattle grazing lease does not qualify for the welfare exemption because the property is not exclusively used for an exempt purpose. C 1/17/2007.~~

DELETE ANNOTATION: This annotation is no longer valid, based on the amendment to Revenue and Taxation Code section 214.02 by Assembly Bill 2207 (Stats. 2012, ch. 863), effective September 30, 2012.

880.0170 **Maximum Tax, Penalty, or Interest of \$250.** ~~Application of the \$250 maximum tax, penalty, or interest provisions of Revenue and Taxation Code sections 270(b) and 271(c) when the owner and the operator are separate entities and the owner files timely but the operator files late is as follows: 1. The operator is entitled to relief under section 270 or 271, as applicable, and in no case shall any tax or penalty or interest on the operator's property exceed \$250 in total amount. Usually the operator's property consists solely of its personal property. 2. The owner, who has filed timely but who is not eligible for 100 percent exemption on the portion of the property used by the operator who filed late, is entitled to relief under section 270 or 271, as applicable, and in no case shall any tax or penalty or interest on the owner's property exceed \$250. LTA 2/29/1980 (No. 80/31).~~

DELETE ANNOTATION: This annotation is contrary to the Court's holding in *Jewish Community Center Development Corporation v. County of Los Angeles* (2016) 243 Cal.App.4th 700.

~~**880.0176 Multiple Users.** If an outside organization makes use of exempt property on a frequent and regular basis, it is an operator of the property, and is required to file its own exemption claim and to meet all the requirements for exemption in order for the property to remain exempt. An exception is that if the use is a "meeting" no more than once per week and the organization qualifies under Revenue and Taxation Code section 214(a)(3)(D), that use is excluded from consideration. Occasional activities and events by others do not constitute "operation" of the property should be analyzed for incidental use, or under the fundraising or meeting provisions of section 214. C 9/2/1999.~~

DELETE ANNOTATION: This annotation is contrary to the Court's holding in *Jewish Community Center Development Corporation v. County of Los Angeles* (2016) 243 Cal.App.4th 700.

~~**880.0200 Owner and Operator.** Where property owned by a qualifying organization is also used by other organizations, all of such other organizations must be qualifying organizations, and all of such other organizations which use the property on a regular basis must file claims as operators of the property in order for the property to retain its exempt status. C 2/1/1978.~~

DELETE ANNOTATION: This annotation is contrary to the Court's holding in *Jewish Community Center Development Corporation v. County of Los Angeles* (2016) 243 Cal.App.4th 700.

~~**880.0202 Owner and Operator.** As a result of Revenue and Taxation Code section 214(e), for the 1986-87 fiscal year and fiscal years thereafter, property owned by a college and used by a church for religious purposes or used by a hospital for hospital purposes or used by a charitable organization for charitable purposes can qualify for the welfare exemption. But property owned by a qualifying religious, hospital, scientific, or charitable organization and used by a college for educational purposes of collegiate grade continues to be ineligible for the welfare exemption since educational purposes of collegiate grade are not religious, hospital, scientific or charitable purposes. LTA 6/13/1986 (No. 86/45).~~

DELETE ANNOTATION: This annotation is contrary to the Court's holding in *Jewish Community Center Development Corporation v. County of Los Angeles* (2016) 243 Cal.App.4th 700.