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October 7, 2014

TO: INTERESTED PARTIES

Enclosed is a copy of Current Legal Digest (CLD) number 2014-2 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 **Friday, November 7, 2014**. These may be sent by email using the "Comments Form" on the Board of Equalization's (BOE) website ([www.boe.ca.gov/proptaxes/ptemail.htm](http://www.boe.ca.gov/proptaxes/ptemail.htm)), fax or mail. The mailing address is:

State Board of Equalization  
County-Assessed Properties Division  
ATTN: Annotation Coordinator  
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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" ([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 BOE 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 the BOE website ([www.boe.ca.gov/proptaxes/ptemail.htm](http://www.boe.ca.gov/proptaxes/ptemail.htm)). If you have any questions, please contact Glenna Schultz at 1-916-274-3362.

Sincerely,

/s/ Dean R. Kinnee

Dean R. Kinnee  
Acting Deputy Director  
Property Tax Department

DRK/grs  
Enclosure

# PROPERTY AND SPECIAL TAXES DEPARTMENT

## PROPERTY TAXES CURRENT LEGAL DIGEST NO. 2014-2

October 7, 2014

### 210.0000 CALIFORNIA LAND CONSERVATION ACT

210.0029 **Valuation.** *Property which is subject to a contract under the California Land Conservation Act, restricts its use in exchange for a reduced valuation for property tax purposes. Property is also subject to a Warranty Easement Deed in favor of the United States (the Easement). The easement is a wetlands reserve program easement pursuant to the federal Wetlands Reserve Program (WRP) administered by the United States Department of Agriculture, Natural Resources Conservation Services. The WRP provides payments and cost sharing to farmers in exchange for restoring farmed wetlands.*

*Under Revenue and Taxation Code section 423, an assessor is prohibited from using the comparative sales method of valuation except as provided under sections 423.7 and 423.8. Section 423.7 provides that when valuing open-space land subject to a wildlife habitat contract, as defined by section 421(f), all assessors and the county board must value that land pursuant to the special comparative sales valuation method contained in that section. The purpose of enacting the special comparative sales valuation method was to give relief to taxpayers whose property was eligible for inclusion under the Land Conservation Act but where the local government had not implemented the Land Conservation Act or the assessee chose not to enter into a Land Conservation Act contract with the local government to restrict the property.*

*Since the Property is Land Conservation Act property, the Property qualifies for valuation under section 423. Section 423.7 is merely an alternative valuation method to be used where valuation under section 423 is unavailable to a taxpayer. Thus, section 423.7 is not to be used by an assessor merely because it is subject to a wildlife habitat contract if that property may also qualify for relief under section 423. C 8/30/2012.[POSTED]*

### 220.0000 CHANGE IN OWNERSHIP

~~220.0148 **Deed Correctness Presumption.** Evidence Code section 662 and Property Tax Rule 462.200(b) provide authority for the assessor to rebut the presumption that deeds are correct and valid. For properties under the Williamson Act, Government Code provisions condition conveyance on termination of the contract, approval of subdivision parcel maps, and minimum acreage requirements for the property remaining under contract. Where deeds or contracts of sale that purport to convey portions of a larger property that is subject to a Williamson Act contract provide evidence that these conditions have not been met, such documents are sufficient to rebut the presumption. Under these circumstances, the assessor is within his or her authority not to recognize the purported transfers for assessment purposes. C 12/9/2002. [DELETED]~~

**Delete** – Depublication has been requested. Although the law is well settled that the presumption that fee simple title is held by the parties listed on a deed may be rebutted by evidence sufficient to meet the clear and convince evidentiary standard, some errors were found in the legal analysis contained in the back-up correspondence upon which the annotation was based. Thus, the request to depublish was approved.

**220.0660 Statement Filing Requirements.** ~~Whenever there is a change of control or a change in ownership of a legal entity, Revenue and Taxation Code sections 480.1 and 480.2 require that a "Statement" of such change be filed, whether or not a change in the ownership of real property has occurred. Failure to file a completed statement after a written request has been made by the State Board of Equalization may result in penalty as provided in Revenue and Taxation Code section 482(b). C 4/14/1988. [DELETED]~~

**Delete** – The 2009 and 2011 amendments to Revenue and Taxation Code sections 480.1, 480.2 and 482 that changed the filing requirements have rendered this opinion obsolete. Under current law, to avoid a penalty, a completed statement must be filed within 90 days of the event or a request from the BOE, whichever is earlier.

**220.0811 Trusts—Defective Grantor Trust.** *For federal income tax purposes, in exchange for an installment note, Grantor will transfer real property which is not used as his principal residence into an irrevocable intentionally defective grantor trust (IDGT). Once such property is transferred to the IDGT, Grantor would no longer have the power to sell or substitute the property. Grantor will not be a present or future beneficiary of the IDGT. Until the note to Grantor is repaid in full, although income may accumulate, no income may be paid out of the IDGT to any beneficiary. Once the IDGT has repaid the note, the IDGT trustee has discretion to distribute (or not distribute) income and/or principal to the beneficiary (or beneficiaries).*

*In this situation, Grantor proposes to transfer property to an IDGT of which he is not a beneficiary. Pursuant to Property Tax Rule 462.160(a), a transfer to the IDGT (an irrevocable trust) will result in a change in ownership unless an exclusion applies. For purposes of determining whether any exclusion(s) is available, the present beneficiaries of the IDGT will be regarded as the owner(s) of the property. A person may be the present beneficiary of a trust if current income may be paid to such beneficiary or accumulated in the trustee's discretion as long as no other person presently has a right to income or principal. If the present beneficiaries of the IDGT cannot receive distributions from the IDGT until the note has been repaid, they are nevertheless the present beneficiaries since no other person has the right to income or principal from the IDGT.*

*If Grantor's wife is the sole present beneficiary of the IDGT, then the interspousal exclusion would apply and no change in ownership would occur when the property is transferred to the IDGT. If Grantor has not used his \$1 million exclusion and Grantor's children become the present beneficiaries (upon the death of Grantor's wife or upon formation of the IDGT), by filing the appropriate claim forms the Grantor's children could utilize the parent-child exclusion. By contrast, if Grantor's nieces and nephews are the IDGT beneficiaries, no exclusion is available and a change in ownership would occur when Grantor transfers the property into the IDGT or when the nieces and nephews become the present beneficiaries of the trust or receive the remainder interest in the property upon wife's death. C 8/1/2012.[POSTED]*

**220.0816 Trusts—Massachusetts or Business Trust.** *Whether trusts fall into the business trust or the non-business (or "ordinary" or "traditional" trust) category is generally a question of fact. First, business trusts differ from the common-law (traditional) trust in that the purpose of the traditional trust is to conserve property, with incidental powers of sale and investment, while the acknowledged goal of the business trust is to carry on a business enterprise for profit. Without a business purpose, a Trust cannot qualify as a business trust. Additionally, a*

*business trust is formed by the voluntary, consensual act of the parties, and is based upon contract. In contrast, the beneficiaries of ordinary trusts do no more than accept the benefits thereof by gift from the settlor, and are not the voluntary planners or creators of the trust arrangement. Furthermore, the certificates representing shares of beneficial interest in a business trust resemble shares in a corporation and are issued and transferred in a similar manner. Holders are entitled to share ratably in the income of the trust and, upon termination of the trust, in the proceeds of the business. They also have the same right to examine the records of the trustee as do shareholders in a corporation. Further, a court will examine the "economic realities of the situation" to determine the validity of a business trust. If a trust is a valid business trust, it should be regarded as a legal entity for property tax law purposes. Therefore, the legal entity rules governing transfers of property to and from legal entities would apply. C 9/10/2012.[POSTED]*

## **260.0000 CONFIDENTIAL RECORDS OF TAXPAYER**

[260.0007](#) **Department of Motor Vehicles.** *The Department of Motor Vehicles (DMV) provides an assessor's office with the name and address of registered owners of vessels. To access online information, a requestor must complete a form which includes certain restrictions on the use of data provided by the DMV.*

*Revenue and Taxation Code section 602 and Property Tax Rule 252 require that the assessment roll show the name and mailing address of the assessee, a legal description that identifies the location of personal property, and the assessed value of personal property. Thus, any information an assessor obtains from the DMV that the assessor uses to populate the assessment roll must be shown on the roll and is therefore subject to public inspection pursuant to section 1602. All other information the assessor obtains from the DMV that is not specifically required to be shown on the assessment roll under section 602 or Rule 252 is confidential pursuant to section 408. C 10/12/2012.[POSTED]*

## **440.0000 FORMS**

[440.0090](#) **Signature under Penalty Perjury.** *Whenever a Revenue and Taxation Code section states that a claimant must make an affidavit, the claimant is subject to committing the offense of perjury under the Penal Code. An affidavit is a written declaration under oath, made without notice to the adverse party. C 4/25/2012.[POSTED]*

## **535.0000 LAND USE RESTRICTIONS**

[535.0018](#) **Federal Housing Projects.** *Rental limitations and other limitations and restrictions imposed upon owners of HUD 236 projects constitute land use restrictions within the meaning of Revenue and Taxation Code section 402.1. Such properties should be valued as provided in Property Tax Rule 4 if reliable market data, i.e., sales of similarly restricted properties, is available, otherwise as provided in Property Tax Rule 8. In either situation, non-cash consideration accruing to the seller's benefit must be converted to its equivalent cash value pursuant to the methodologies provided in the respective rules. C 2/14/1992; C 7/17/1998.[AMENDED]*

**Amend** - Annotation 535.0018 is still valid with regard to the interrelationship between Property Tax Rules 4 and 8 and their application to HUD section 236 projects (C 2/14/1992). However, backup letter C 7/17/1998 should be removed because it conflicts with Revenue and Taxation Code section 402.95.

## **610.0000 NEWLY CONSTRUCTED PROPERTY**

**610.0076 Relocation of Structure.** *Whether the relocation of a metal panel garage to another site on the parcel will result in reassessment depends on the extent of the alterations made to the structure. Improvements moved from one site to another on the same property retain their original base year value. The replacement of existing items such as foundation, concrete flat work, steps, etc., is not considered new construction. Moreover, the replacement of other materials may be considered normal maintenance and repair, depending on the extent of the repairs. However, if the new construction activity transforms the improvement into a state that is substantially equivalent to new, then it will constitute new construction and be subject to reassessment. Likewise, any additions at the new site not present at the old site should be considered new construction and valued as of the date of completion. Questions of whether alterations constitute repair and maintenance or new construction are highly fact-sensitive and must be made on a case-by-case basis by the assessor. C 9/26/2012. [POSTED]*

## **625.0000 PARENT-CHILD TRANSFER**

**625.0146 One Million Dollar Exclusion.** If parent-child claims are filed for multiple properties for which the adjusted base year values of the total properties cumulatively exceed the \$1 million limit, the transfer date determines which properties are to receive the exclusion. If the transfer date is the same for all properties, the transferees must decide which properties are to receive the exclusion. When competing claims are received and the combined adjusted base year values of the properties for which the claims are made exceed the available limit, the assessor's office should not grant any of the requested claims, but rather should notify the transferees that they must advise the assessor's office of the desired allocation between the claims. The transferees should agree upon an allocation of the available amount of the \$1 million exclusion before any of that amount is granted to any transferee. C 9/29/2011; C 11/26/2012. [AMENDED]

**Amend** - The 11/26/2012 letter inaccurately states that a transferor's signature is not required to establish the parent-child relationship for a section 63.1 claim. Section 63.1(d)(1)(A) requires a written certification by the transferor, the transferor's legal representative, the trustee of the transferor's trust, or the executor or administrator of the transferor's estate, signed and made under penalty of perjury.

**625.0234.005 Trusts—Powers of Appointment.** *A surviving trustor executed a notice of exercise of a general power of appointment and specifically granted real property 50 percent to her daughter and 50 percent to her granddaughter and grandson (children of trustor's predeceased child). The residue of the trust was to be distributed to daughter. After the death of the surviving trustor, the successor trustee entered into a distribution agreement with the beneficiaries that granted the entire real property to daughter and cash and securities to granddaughter and grandson. Because the document exercising the trustor's power of appointment states that a specific parcel of property was to be divided among the*

*three beneficiaries in specific percentages, this was a specific gift and not subject to discretionary non pro rata distribution. Once property becomes distributable pursuant to a power of appointment, the exercise of the power of appointment becomes irrevocable. Thus, daughter is eligible for the parent-child exclusion on the 50 percent interest that was granted to her pursuant to the power of appointment. The 50 percent interest that daughter received from the distribution agreement was subject to reassessment as there is no exclusion between aunt and niece and nephew. C 10/10/2012. [POSTED]*

## **770.0000 STATE BOARD OF EQUALIZATION**

[770.0040](#) **Board-Prescribed Forms.** *Whenever a Revenue and Taxation Code section states that a claimant must make an affidavit, the claimant is subject to committing the offense of perjury under the Penal Code. An affidavit is a written declaration under oath, made without notice to the adverse party. C 4/25/2012. [POSTED]*

## **860.0000 VESSELS**

[860.0030](#) **Information Obtained from DMV.** *The Department of Motor Vehicles (DMV) provides an assessor's office with the name and address of registered owners of vessels. To access online information, a requestor must complete a form which includes certain restrictions on the use of data provided by the DMV.*

*Revenue and Taxation Code section 602 and Property Tax Rule 252 require that the assessment roll show the name and mailing address of the assessee, a legal description that identifies the location of personal property, and the assessed value of personal property. Thus, any information an assessor obtains from the DMV that the assessor uses to populate the assessment roll must be shown on the roll and is therefore subject to public inspection pursuant to section 1602. All other information the assessor obtains from the DMV that is not specifically required to be shown on the assessment roll under section 602 or Rule 252 is confidential pursuant to section 408. C 10/12/2012. [POSTED]*

## **880.0350(b) WELFARE EXEMPTION – CHARITABLE PURPOSES**

[880.0590](#) **Works of Art.** *The promoting of contemporary art, the display of artwork, weekly art programs, and a free library of global art magazines are educational activities contemplated by Revenue and Taxation Code section 214(j). Thus, claimant qualifies for an organization clearance certificate. Once the claimant qualifies, the assessor is to consider the exemption claim on the real property and whether the use of the property as a museum, a library, and art programs and activities was sufficient use for purposes for the welfare exemption. The loan or display of works of art to persons other than qualifying museums or qualifying religious, hospital, scientific, or charitable organizations would disqualify such works of art from the welfare exemption. A qualifying museum's works of art, those on display at the museum, and those stored at the museum or at another qualifying organization's property awaiting exhibition space at the museum for display, are eligible for the welfare exemption. Works of art stored elsewhere would not be eligible for exemption. For such works of art to be eligible for exemption, the requirements of section 217 must be met. C 10/17/2012. [POSTED]*