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PROPERTY AND SPECIAL TAXES DEPARTMENT
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March 7, 2012

TO: INTERESTED PARTIES

Enclosed is a copy of Current Legal Digest (CLD) number 2012-1 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, April 6, 2012**. 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
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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). 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. 2012-1

March 7, 2012

200.0400(c) BASE YEAR VALUE TRANSFER – DISASTER RELIEF

~~200.0430 **Replacement Property.** Revenue and Taxation Code section 69 permits the base year value of property which is substantially damaged or destroyed by a disaster to be transferred to comparable property which is acquired or newly constructed as a replacement for the substantially damaged or destroyed property if the property is damaged by a major misfortune or calamity and located in an area declared to be in a state of disaster by the Governor; if the damaged property sustains physical damages amounting to more than 50 percent of its full cash value immediately prior to the disaster; if the replacement property is located in the same county as the damaged property and is acquired or newly constructed within two years after the disaster; if the replacement property is comparable to the damaged property in size, utility, and function; and if the buyer of the replacement property was the owner of the damaged property at the time of damage. When the base year value is transferred to the replacement property, the damaged property is reassessed at its current full cash value.~~

~~Only if the replacement property was acquired or newly constructed on or after July 1, 1985, can the adjusted base year value be transferred from damaged property to replacement property. "Property" means the appraisal unit as defined in Revenue and Taxation Code section 51(e), the unit people in the market typically buy and sell. Thus, if the \$200,000 full cash value of a residential property consisted of a land value of \$110,000 and an improvement value of \$90,000, and only the improvement was destroyed by a disaster, the owner could not transfer the base year value because the appraisal unit did not sustain damages amounting to more than 50 percent of its full cash value prior to the disaster. Finally, in the event the damaged property is reconstructed, that reconstruction is not eligible for property tax relief under section 70(c) but rather, it is deemed to be new construction. LTA 3/10/1987 (No. 87/23). **[DELETED]**~~

~~Delete – The definition of the 50 percent test in section 69(c)(1) was amended effective January 1, 2010 (Stats. 2009, ch. 67).~~

220.0000 CHANGE IN OWNERSHIP

220.0044 **Community Property.** The form of title presumption overrules the general community property presumption such that property that is acquired by a married person during the marriage in the name of one spouse is presumed to be the separate property of that spouse. The separate property presumption can be rebutted by clear and convincing evidence that there was an agreement or understanding between the spouses that the property was to be held as community property. C 10/27/2010. **[POSTED]**

220.0166 **Easement.** In 1997, owners of Property (servient tenement) entered into an agreement with the city to provide an off-site parking area of at least 76 parking spaces for the tenants of Adjacent Property (dominant tenement). The agreement provided that it would run with the land; be binding on future owners, encumbrancers, successors, heirs or assignees; and would continue until released by the city. Thus, the agreement created an appurtenant easement for a minimum of 76 parking spaces for exclusive use by tenants of

Adjacent Property. Because the easement is perpetual in nature, for a minimum of a fixed number of spaces, and exclusive, its value is substantially equal to the value of the fee interest. The grant of the easement satisfied all three prongs of Revenue and Taxation Code section 60, and there was a change in ownership of 76 parking spaces in 1997 when the agreement was entered into. As a result, 76 spaces of the total parking spaces on Property are a component of Adjacent Property's appraisal unit, and must be assessed to Adjacent Property. Because those 76 parking spaces are not a component of Property's appraisal unit, they did not undergo a change in ownership when Property was sold in 2007 and should not be assessed to Property's owners. C 10/22/2010. [POSTED]

220.0458 Original Transferor. In 1996 two persons as tenants in common transferred property to themselves as joint tenants. Because this was prior to the November 13, 2003 change to Property Tax Rule 462.040(b)(1), neither person became an "original transferor." Upon the death of one joint tenant in 2008, the surviving joint tenant acquired the decedent's 50 percent interest and became the sole owner of the property, resulting in a change in ownership of that 50 percent interest in the property. However, if the property had been transferred on or after November 13, 2003, both persons would be considered "original transferors" and there would not be a change in ownership of a 50 percent interest in the property upon the death of one joint tenant. C 10/20/2010. [POSTED]

250.0000 COLLEGE EXEMPTION

250.0005 Exclusive Use. To qualify for exemption, property must be used exclusively for educational purposes. This purpose includes facilities that are reasonably necessary to further the primary educational purpose of a university or college, such as college- or university-provided faculty and student housing. However, the mere fact that apartments are located near campus and that most of its tenants are students does not make the units eligible for the college or public schools exemption. C 12/14/2010. [POSTED]

340.0000 DELINQUENT TAXES

340.0005 Foreclosure. When the California Housing Finance Agency obtains a property through foreclosure, the county auditor must transfer to the unsecured roll any delinquent taxes for tax years prior to the foreclosure that have become a lien on the property. C 11/2/2010. [POSTED]

610.0000 NEWLY CONSTRUCTED PROPERTY

~~610.0080 Seismic Safety Exclusion. Article XIII A, section 2(a) of the California Constitution and Revenue and Taxation Code section 70(d) provide that locally mandated building improvement or reconstruction related to seismic safety and required for unreinforced masonry-walled structures will be excluded from new construction for 15 years following the commencement or completion of the reconstruction. This means that qualifying reconstruction will be exempted from assessment in the first tax year in which it exists, whether as construction in progress or as completed work, and the following 14 tax years. The assessor shall enroll the excluded property at its current full cash value in the sixteenth tax year following the tax year in which the reconstruction or improvement was begun.~~

It is important that the property owner establish to the assessor's satisfaction that the work in progress is in fact required to comply with a local seismic safety ordinance, since only such work can be excluded. If the governing body will not issue a certificate of compliance to the property owner until the reconstruction is complete, he or she can still provide evidence to the assessor that the work is required by showing the original order to comply sent to him or

~~her by the local agency and also a copy of the building permit authorizing the reconstruction or improvement of the building. This interim documentation would meet the statutory requirement.~~

~~If the property changes ownership during the 15-year period, a new base year value must be established and enrolled for the entire property, including the previously excluded portion of new construction, as of the date of the change in ownership, and a supplemental assessment must be enrolled. LTA 12/17/2001 (No. 2001/089). **[DELETED]**~~

~~Delete – Proposition 13 (2010), approved by the voters in 2010, removed the 15-year exclusion period for unreinforced masonry buildings.~~

630.0000 PERSONAL PROPERTY

630.0009 Conditional Sales Agreement. Conditional sales leases are agreements whereby the seller accepts periodic payments for the purchase price while retaining title to the property for security purposes. Revenue and Taxation Code section 405 gives the assessor the authority to assess persons owning, claiming, possessing, or controlling property. With regard to leased property, because the lessor is the owner but the property is in the possession and control of the lessee, either the lessor or the lessee may be the assessee. We have advised that property subject to a true lease should typically be assessed to the lessor, while property subject to a conditional sales contract should usually be assessed to the lessee since the lessee is considered the owner of the property. It is our opinion that this method of assessment helps to avoid double taxation, to ensure correct application of property tax exemptions, and to allow for the proper valuation of the property subject to lease. Should a county choose to assess the lessor instead, then precautions should be taken to ensure that property is not subject to double taxation. C 12/21/2010. **[POSTED]**

690.0000 PUBLIC SCHOOLS EXEMPTION

690.0006 Exclusive Use. To qualify for exemption, property must be used exclusively for educational purposes. This purpose includes facilities that are reasonably necessary to further the primary educational purpose of a university or college, such as college- or university-provided faculty and student housing. However, the mere fact that apartments are located near campus and that most of its tenants are students does not make the units eligible for the college or public schools exemption. C 12/14/2010. **[POSTED]**

735.0000 RETIREMENT SYSTEMS (PUBLIC) PROPERTY

735.0009 Limited Liability Company. Ownership of a limited liability company (LLC) that owns real property is not equivalent to direct ownership of that real property. The separate entity theory is equally applicable to limited liability companies as it is to corporations. Under Corporations Code section 17300, members of an LLC hold no direct ownership interest in an LLC's assets. Thus, real property that is owned by an LLC that is owned by a retirement system is not exempt from property tax. C 12/14/2010. **[POSTED]**