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PROPERTY AND SPECIAL TAXES DEPARTMENT
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Executive Director

December 22, 2014

TO: INTERESTED PARTIES

Enclosed is a copy of Current Legal Digest (CLD) number 2014-3 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 **Thursday, January 22, 2015**. 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), 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). 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. 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). If you have any questions, please contact Glenna Schultz at 1-916-274-3362.

Sincerely,

/s/ Benjamin Tang

Benjamin Tang, Acting Chief
County-Assessed Properties Division

BT/gs
Enclosure

PROPERTY AND SPECIAL TAXES DEPARTMENT

PROPERTY TAXES CURRENT LEGAL DIGEST NO. 2014-3

January 22, 2014

220.0000 CHANGE IN OWNERSHIP

[220.0252](#) **Holding Agreements.** *A limited liability company (LLC) owned real property. The LLC entered into a holding agreement with one of its members that legal title to the property would be conveyed to the member solely for the purpose of refinancing the loan on the property and that upon completion of the refinance, the member was to immediately reconvey the property back to the LLC. Subsequently, the LLC transferred the property to the member and his wife as joint tenants. Upon completion of the refinance, another grant deed was prepared to reconvey the property from the member and his wife back to the LLC.*

Under Property Tax Rule 462.200, the owner of legal title is presumed to also be the owner of beneficial title to the property. This deed presumption may be rebutted by clear and convincing evidence. The holding agreement constitutes clear and convincing evidence, in conformity with the requirements of Rule 462.200(c), of a rebuttal to the deed presumption, such that the transfers from LLC to the member and back to the LLC are not changes in ownership. However, when husband and wife take title to property as joint tenants, the ownership interest of a spouse is the separate property of the spouse. Therefore, in the absence of any documents that constitute clear and convincing evidence that at all times wife was also subject to the terms of a holding agreement and permitted to hold record title only and that all beneficial use and control remained in LLC, a reassessable change in ownership occurred as to wife's 50 percent ownership of the property, and will occur again if she transfers the property back to LLC. C 3/12/2013. [POSTED]

[220.0660.005](#) **Statement Filing Requirements.** *A change in control of a legal entity as defined in section 64(c)(1), or a change in ownership of a legal entity as defined in section 64(d), requires the filing of Form 100-B with the Board of Equalization within 90 days from the date of the change in control or change in ownership, even when the transfer is excluded from reassessment. The section 482 penalty for failure to file Form 100-B applies whether or not a reassessment actually occurs.*

Since transfers to qualifying trusts cannot, by definition, trigger either subdivision (c)(1) or (d) of section 64, Form 100-B is not required to be filed in these cases. This is to be distinguished from interspousal, registered domestic partner, and proportional transfers, which can trigger subdivisions (c)(1) and (d) of section 64, but are excluded from reassessment. C 12/23/2011. [ON HOLD – COMMENT RECEIVED]

535.0000 LAND USE RESTRICTIONS

[535.0018.005](#) **Federal Housing Projects.** *The contractual limitations placed on Department of Housing and Urban Development (HUD) Section 8 Project-Based Family properties (project-based properties) are enforceable restrictions for purposes of Revenue and Taxation Code section 402.1 since the regulatory agreement imposes several significant restrictions upon the owner as to the property's use and operations, including determining the amount of*

rent which may be charged to the tenants of the project (thereby restricting the maximum rent). Thus, comparable sales and income and expense data derived from market transactions of unrestricted property should not be used when valuing HUD project-based properties.

However, an assessor may use non-restricted comparables to value a HUD project-based property in two situations: (1) when the assessor can rebut the presumption in section 402.1(b) that the restriction will not be removed in the predictable future, or (2) by establishing that the restrictions have a demonstrably minimal effect upon value as provided in section 402.1(d). In rebutting the presumption that restricted properties should be treated as if the restrictions will remain, the assessor may use the past history of similar restrictions in the jurisdiction or the similarity of sales prices for restricted and unrestricted properties. Section 402.1(c), however, prohibits treating the expiration of a restriction at a certain time as conclusive evidence that the restriction will be removed at that time. The only exceptions to this prohibition are very specific and very narrow – when there is no opportunity or likelihood that the restriction will continue or if a necessary party has indicated an intention to allow the restriction to expire. C 2/27/2013. [POSTED]

565.0000 LEGAL ENTITIES

[610.0021](#) ***Change in Ownership Statement Filing Requirements.*** *A change in control of a legal entity as defined in section 64(c)(1), or a change in ownership of a legal entity as defined in section 64(d), requires the filing of Form 100-B with the Board of Equalization within 90 days from the date of the change in control or change in ownership, even when the transfer is excluded from reassessment. The section 482 penalty for failure to file Form 100-B applies whether or not a reassessment actually occurs.*

Since transfers to qualifying trusts cannot, by definition, trigger either subdivision (c)(1) or (d) of section 64, Form 100-B is not required to be filed in these cases. This is to be distinguished from interspousal, registered domestic partner, and proportional transfers, which can trigger subdivisions (c)(1) and (d) of section 64, but are excluded from reassessment. C 12/23/2011. [ON HOLD – COMMENT RECEIVED]

610.0000 NEWLY CONSTRUCTED PROPERTY

[610.0090](#) ***Solar Energy System Exclusion.*** *An Integrated Solar Farm consists of semi-transparent solar panels which also constitute the roof of a greenhouse. The primary design and function of the solar panels provides for the collection of solar energy in order to generate electricity. The primary functions of the sides of the greenhouse are to control the environment of the greenhouse and/or to provide a mounting point for the solar panels, rather than as storage devices, power conditioning equipment, or transfer equipment for solar energy. Unless the sides of the greenhouse were specifically designed primarily for the purpose of providing for the collection, storage, or distribution of solar energy, they should not be considered part of the active solar energy system. Thus, the solar panels and other parts of the active solar energy system whose primary function is to provide for the collection, storage, or distribution of solar energy should be excluded from assessment, while the sides of the greenhouse, and parts whose primary function are not to provide for such collection, storage, or distribution, do not qualify for the solar exclusion. C 2/5/2013. [POSTED]*

625.0000 PARENT-CHILD TRANSFER

625.0252 *Wills.* *Mother's will left her estate to three children. The estate is comprised of two parcels of real property and \$100,000 cash. Child A wishes to receive Property A; Child B wishes to receive Property B; and Child C wishes to receive cash and other assets. A court order pursuant to a petition by a personal representative under Probate Code section 11950 achieves the same result as if the will had contained a provision allowing non-pro rata distributions. Thus, if the distribution is pursuant to a petition filed by the personal representative under section 11950, then the parent-child exclusion may apply. C 3/27/2013. [POSTED]*

660.0000 POSSESSORY INTEREST

~~660.0351 **Valuation.** When applying the income approach, the direct income approach is not a preferred valuation method over the indirect income approach. The particular income method should be applied as circumstances permit. Additionally, the use of contract rent (e.g., rent to the lessor) should only be used for valuation purposes if the contract rent provides good evidence of economic rent. If contract rent is used as an indicator of economic rent, the lessor's gross rental income generally should be reduced by both a reasonable vacancy and loss factor and typical management and other operating expenses of the lessor to arrive at the income to be capitalized. Net rental income may be considered the same as gross rental income where a lessee is responsible for all expenses, such as with a "triple net" or "net" lease; however, in general, gross income must always be reduced by various types of expenses to arrive at net income, the income to be capitalized.~~

~~There should be a consistent application of the property tax component to the rent income capitalized. If an amount for property taxes is included in the income being capitalized, then a property tax component should be added to the capitalization rate. If, on the other hand, an amount for property taxes is not included in the income being capitalized, then a property tax component should not be added to the capitalization rate. C 7/31/2000. [DELETED]~~

Delete – This opinion letter was based on Property Tax Rule 25(b), which was repealed on March 26, 2002. While we do not disagree with deducting vacancy and collection loss when processing income for the indirect approach, we disagree with deducting vacancy and collection loss for the direct approach.