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July 29, 2016

TO: INTERESTED PARTIES

Enclosed is a copy of Current Legal Digest (CLD) number 2016-2 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 **Monday, August 29, 2016**. 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
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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/ David Yeung

David Yeung, Chief
County-Assessed Properties Division

DY:gs
Enclosure

PROPERTY TAX DEPARTMENT

PROPERTY TAX CURRENT LEGAL DIGEST NO. 2016-2

July 29, 2016

100.0000 AIRCRAFT

100.0002 *Appeal—Classification of Aircraft.* Property Tax Rule 302(a)(4) authorizes an assessment appeals board to determine the classification of the property that is the subject of the hearing, including classifications that may result in the property so classified being exempt from property taxation. Thus, an assessment appeals board has the jurisdiction to determine whether aircraft subject to appeal was properly classified as inventory, even though that determination would result in the aircraft being qualified for the business inventory exemption from property taxation. C 10/24/2013; C 4/7/2014. [HOLD – COMMENT RECEIVED (LITIGATION IN PROCESS)]

100.0003 *Air Taxis.* Pursuant to Revenue and Taxation Code section 1154(c), in general, county assessors should not apportion the value of nonscheduled air taxi aircraft, and instead should assess nonscheduled air taxi aircraft as general aircraft according to its situs. More specifically, county assessors cannot apportion the values of nonscheduled air taxi aircraft **domiciled in California** for any of the aircraft's out-of-state activity without a showing by the taxpayer that the nonscheduled air taxi aircraft has established tax situs in another state, and cannot apportion the values of nonscheduled air taxi aircraft **domiciled outside California** without first showing that the nonscheduled air taxi aircraft has established tax situs within California.

The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) ensures that air carrier transportation property is not assessed at a higher ratio to market value than other commercial and industrial property. In making this comparison, it is the ratio to fair market value between aircraft and other commercial property that is compared, not the ratio of apportionment between aircraft types. Therefore, it is not a violation of TEFRA for California to assess unscheduled air taxi aircraft 100 percent to California and apportion the value of scheduled air taxi aircraft for activity outside of California. C 7/11/2014. [POSTED]

170.0000 ASSESSMENT

170.0039.005 *Fixtures.* Under Revenue and Taxation Code section 110 and Property Tax Rule 2, the purchase price is rebuttably presumed to be the full cash value or fair market value if the terms of the transaction were negotiated at arms length between a knowledgeable transferor and transferee neither of which could take advantage of the exigencies of the other. Neither Section 110(b) nor Rule 2 states that the purchase price presumption applies to an allocation of a purchase price applied to individual assets purchased as a group of assets. Therefore, where the total assets of an entity are sold and the aggregate purchase price includes many different assets, there is no assurance that the allocation to any individual asset is an accurate indication of fair market value, and the purchase price presumption does not apply. However, the assessor may consider the allocated purchase

price of personal property as **one factor** in determining its full cash value for property tax purposes. C 3/19/2014. [POSTED]

180.0000 ASSESSMENT APPEALS

180.0026 **Appeal After Audit.** Upon completion of an audit, assessor issued escape assessments. Taxpayer filed an appeal. In response to an exchange of information pursuant to Revenue and Taxation Code section 1606, the assessor issued a notice of higher assessed value than placed on the roll, pursuant to section 1609.4. If the notice was issued within the agree-upon time frame of the assessment appeal process, it does not constitute a replacement of or a new round of escape assessments. Additionally, the statute of limitations periods governing escape assessments are not applicable to an assessment appeals board's valuation decision because a valuation decision made by an assessment appeals board is not an escape assessment. C 4/29/2014. [POSTED]

180.0063 **Burden of Proof.** Upon completion of an audit, assessor issued escape assessments. Taxpayer filed an appeal. In response to an exchange of information pursuant to Revenue and Taxation Code section 1606, the assessor issued a notice of proposed escape assessment that included new valuations on the subject property. If the taxpayer has provided all required information, a consequence of this notice is that the assessor bears the burden of proof, must present evidence first, and is required to adequately explain why the original assessment was incorrect and provide a reasonable description of how the escape assessment was made. However, if the applicant failed to supply all the information required by law to the assessor, the assessor maintains the presumption of correctness. C 4/29/2014. [POSTED]

190.0000 ASSESSMENT APPEALS BOARD

190.0037.005 **Evidence.** The prohibition against disclosure of a taxpayer's information requested by the assessor does not apply when the taxpayer is a party to an assessment appeal proceeding. The court in Chanslor-Western Oil & Dev. Co. v. Cook (1980) 101 Cal.App.3d 407 noted that Revenue and Taxation Code section 1609.4 provides that an assessor may introduce new evidence of full cash value of a parcel of property at the hearing and may also introduce information obtained pursuant to section 441. The court confirmed that this section allows the assessor to use at the appeals hearing information obtained pursuant to section 441 that is limited to either market data or information obtained from the taxpayer seeking the reduction. Thus, the Assessor is required to present evidence of information supporting its assessment at the hearing, but the taxpayer and assessor are entitled to protect from public disclosure any information that derives value from not being publicly known and that is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Either the taxpayer or assessor may request that certain data be presented at a hearing that is closed to the public. C 4/29/2014. [POSTED]

190.0049 **Jurisdiction—Classification of Aircraft.** Property Tax Rule 302(a)(4) authorizes an assessment appeals board to determine the classification of the property that is the subject of the hearing, including classifications that may result in the property so classified being exempt from property taxation. Thus, an assessment appeals board has the jurisdiction to determine whether aircraft subject to appeal was properly classified as inventory, even though that determination would result in the aircraft being qualified for the business inventory exemption from property taxation. C 10/24/2013; C 4/7/2014. [HOLD – COMMENT RECEIVED (LITIGATION IN PROCESS)]

200.0300(b) BASE YEAR VALUE TRANSFER – GOVERNMENT ACQUISITION

200.0315 ~~**Claim.**—The filing requirements of Revenue and Taxation Code section 68 are mandatory. A failure to timely file a request for a transfer of the assessed value of a property taken by governmental action to a replacement property is jurisdictional and prevents the value transfer. C 12/22/1988. [DELETED]~~

Delete – The California court of appeal in *Olive Lane Industrial Park v. County of San Diego* (2014) 227 Cal.App.4th 1480 held that section 68 does not expressly preclude prospective relief in the event a claim is filed after the four-year timeline, and section 68 could be interpreted to permit prospective relief when a taxpayer acquires replacement property within the four-year period but misses the four-year filing deadline. Subsequently, Revenue and Taxation Code section 68 was subsequently amended to allow four years of retroactive relief for late-filed claims

200.0316 ~~**Claim.**—A failure to file a timely claim for transfer of value from a property taken by governmental action to a replacement property prevents transfer of the assessed value of the replaced property and the refund of any difference in taxes paid on the replacement property. The time limitation of Revenue and Taxation Code section 68 is not a statute of limitation within which a right must be enforced and cannot be waived. The limitation is one that if not met prevents the right of transfer from arising. Without a right, no tax overpayment occurs and no refund is possible. C 12/22/1988. [DELETED]~~

Delete – The California court of appeal in *Olive Lane Industrial Park v. County of San Diego* (2014) 227 Cal.App.4th 1480 held that section 68 does not expressly preclude prospective relief in the event a claim is filed after the four-year timeline, and section 68 could be interpreted to permit prospective relief when a taxpayer acquires replacement property within the four-year period but misses the four-year filing deadline. Subsequently, Revenue and Taxation Code section 68 was subsequently amended to allow four years of retroactive relief for late-filed claims

205.0000 BUSINESS INVENTORY EXEMPTION

205.0280 *Space Transportation Equipment.* *Space transportation equipment fabricated and used to transport satellites and cargo to locations in outer space, which is not operationally reusable and over which ultimate control is relinquished at launch, qualifies for the business inventory exemption. C 12/24/2013. [POSTED]*

210.0000 CALIFORNIA LAND CONSERVATION ACT

210.0028 *Valuation.* *Revenue and Taxation Code section 423.3 allows counties the option of further limiting the values of restricted properties, by allowing but not requiring cities or counties to assess the four land types in section 423.3 at a percentage of the property's factored base year value under section 110.1 rather than at its full factored base year value under section 110.1. Sections 423(d) and 423.3 provide for a value comparison requiring the assessor to value enforceably restricted open-space land at the lower of the property's section 423 value (capitalized income value), its section 110 value (fair market value), its section 110.1 value (factored base year value), or, if authorized by the county, its value as calculated under section 423.3. If a county has adopted the provisions of Section 423.3, the assessor should not value restricted properties **below** 70 percent, 80 percent, or 90 percent of the factored base year value. Whatever percentage is chosen, when multiplied by the factored*

base year value, serves as the maximum value that may be assessed on the property. C 1/31/2014. [POSTED]

220.0000 CHANGE IN OWNERSHIP

~~220.0111 **Corporate Stock Transfers.** Generally, transfers of corporate stock do not trigger a change in ownership of a corporation's property. There are two exceptions, i.e., (1) if a single owner obtains direct or indirect ownership or control of more than 50 percent of the corporate voting stock; e.g., if Mr. Jones purchases 40 percent of corporation X stock and is already majority owner of Y corporation which, in turn, owns 20 percent of X corporation stock; or (2) if owners transfer property to a corporation but the transfer is excluded from "change in ownership" as a change in the method of holding title, then the owners become "original co-owners" under Revenue and Taxation Code section 64(d), and subsequent transfers by any of them in one or more transfers that result in a transfer of more than 50 percent of the total interests in the corporation constitute a change in ownership. C 8/11/1986; C 1/22/1999. [DELETED]~~

Delete – Control is measured differently by the Court in *Ocean Ave. v. County of Los Angeles* (2014) 227 Cal.App.4th 344 than is described in the annotation and back-up letters.

220.0312 **Joint Tenancy.** *Husband, Wife, and Son 1 owned a parcel of California real property as joint tenants. On March 31, 1987 Husband, Wife, and Son 1 recorded a deed conveying title to the Property to Husband, Wife, Son 1, and Son 2, all as joint tenants. Husband died in 2007, and Wife died in 2010, leaving Son 1 and Son 2 as the surviving joint tenants. In 2012, Son 1 and Son 2 recorded a deed granting their interest to themselves as tenants in common.*

In 1987, as a result of the creation of the joint tenancy, Husband, Wife, and Son 1 became "original transferors" for purposes of determining the property to be reappraised on subsequent transfers, and Son 2 became an "other than original transferor." The 2007 and 2010 transfers were excluded from change in ownership as the decedents' interest vested, in part, in a remaining original transferor. However, the 2012 transfer terminated the joint tenancy and created a tenancy in common with Son 1 and Son 2. Pursuant to Revenue and Taxation Code section 65(c), any interest that vests in an original transferor is not reassessed. Pursuant to section 65(d), any interest that vests in an other than original transferor is reassessed. Thus, since Son 2 was an other than original transferor, the property that transferred to him as a result of the termination must be reassessed. C 12/24/2013. [POSTED]

220.0376.015 **Limited Liability Company.** *Trust B, an irrevocable trust, owns real property. The transfer of the real property by the beneficiaries of Trust B to a limited liability company (LLC) whose sole member will be the same trust, Trust B, is excluded from change in ownership under Revenue and Taxation Code section 62(a)(2). As a result, the trust beneficiaries become the "original co-owners" of the LLC pursuant to section 64(d). Thereafter, all transfers of LLC interests must be counted and cumulated. When more than 50 percent original co-owner shares are transferred, the property will undergo a change in ownership. Because transfers between parents and children are not excepted from cumulating to determine a change in ownership under section 64(d) and the parent-child exclusion does not apply to transfers of legal entity interests, a transfer of more than 50 percent of original co-owner shares in the LLC from the beneficiaries to their children will result in a change in ownership. C 11/7/2013. [POSTED]*

~~220.0386 **Limited Partnership.** In determining whether there has been a change in the proportional ownership interest of a partner following a transfer of property to or from a partnership, distinctions between general and limited partnership law must be observed. In limited partnerships, the right to profits is more indicative of a particular partner's ownership interest than is that partner's contribution of capital. The opposite applies as regards ownership interests in general partnerships. C 5/5/1983. [DELETED]~~

Delete - various sections of the Corporations Code that have all been repealed that distinguish between measuring ownership interests in general partnerships as opposed to limited partnerships. This is contrary to Rule 462.180(d), and nothing in the statutes or regulations says that ownership in different types of partnerships should be measured differently.

220.0396 **Lot Line Adjustments-Merger.** *A couple purchased a lot adjacent to their residence. The residential property has a low base year value, and the new lot has a high base year value. The couple wants to adjust the lot line so that the residential property and the new lot are one property. Revenue and Taxation Code section 65.1(a) provides that when an interest in a portion of real property changes ownership, only the interest or portion transferred is to be reappraised. Thus, if a partial change in ownership occurs, only that portion that changes ownership is given a new base year value based upon its full cash value on the change in ownership date, and the remaining portion of the property that did not change ownership retains its existing adjusted base year value. In this situation, the same persons own both the residential property and the new lot. A lot line adjustment affecting only these two parcels would not result in a transfer of a present interest or beneficial use of either lot. As such, the lot line adjustment would not result in a change in ownership, and each part of the property would maintain its separate base year value. C 7/24/2014. [AMENDED AND POSTED]*

220.0450.005 **Original Co-Owners.** *Trust B, an irrevocable trust, owns real property. The transfer of the real property by the beneficiaries of Trust B to a limited liability company (LLC) whose sole member will be the same trust, Trust B, is excluded from change in ownership under Revenue and Taxation Code section 62(a)(2). As a result, the trust beneficiaries become the "original co-owners" of the LLC pursuant to section 64(d). Thereafter, all transfers of LLC interests must be counted and cumulated. When more than 50 percent original co-owner shares are transferred, the property will undergo a change in ownership. Because transfers between parents and children are not excepted from cumulating to determine a change in ownership under section 64(d) and the parent-child exclusion does not apply to transfers of legal entity interests, a transfer of more than 50 percent of original co-owner shares in the LLC from the beneficiaries to their children will result in a change in ownership. C 11/7/2013. [POSTED]*

~~220.0501 **Partnership.** "A" owns 50 percent of Partnership one. Partnership two owns the other 50 percent. Partnership two is, in turn, owned 25 percent by Partnership three and 75 percent by unrelated third parties. If "A" obtains an 8.5 percent interest in Partnership two from Partnership three, he/she would not gain control of Partnership one, so no change in ownership would occur. For such a change to occur, "A" would have to obtain an ownership interest in Partnership one directly from Partnership two or indirectly by acquiring a more than 50 percent interest in the capital and profits of Partnership two. C 5/3/1989; C 1/22/1999. [DELETED]~~

Delete – Control is measured differently by the Court in *Ocean Ave. v. County of Los Angeles* (2014) 227 Cal.App.4th 344 than is described in the annotation and back-up letters.

~~220.0525 **Partnership/Control.** The ABC Partnership is owned by the XY Partnership (64 percent), X as an individual (20 percent), and X and his wife as co-owners (16 percent). X and Y each have a 50 percent interest in the XY Partnership.~~

~~The XY Partnership is terminated by Y's death, and X receives his 50 percent interest (32 percent interest in ABC Partnership) which, when combined with his individual 20 percent interest and 8 percent interest (half of the 16 percent owned with his wife), increases his ownership interest in the ABC Partnership to 60 percent. A change in control has occurred under Revenue and Taxation Code section 64(c), resulting in a change in ownership of the property owned by the ABC Partnership. The result would be different if X had already acquired control of ABC Partnership by owning more than 50 percent of the XY Partnership at the time of Y's death. C 5/18/1989; C 1/22/1999. [DELETED]~~

Delete – Control is measured differently by the Court in *Ocean Ave. v. County of Los Angeles* (2014) 227 Cal.App.4th 344 than is described in the annotation and back-up letters.

220.0704 **Tenancy in Common.** *Husband, Wife, and Son 1 owned a parcel of California real property as joint tenants. On March 31, 1987 Husband, Wife, and Son 1 recorded a deed conveying title to the Property to Husband, Wife, Son 1, and Son 2, all as joint tenants. Husband died in 2007, and Wife died in 2010, leaving Son 1 and Son 2 as the surviving joint tenants. In 2012, Son 1 and Son 2 recorded a deed granting their interest to themselves as tenants in common.*

In 1987, as a result of the creation of the joint tenancy, Husband, Wife, and Son 1 became "original transferors" for purposes of determining the property to be reappraised on subsequent transfers, and Son 2 became an "other than original transferor." The 2007 and 2010 transfers were excluded from change in ownership as the decedents' interest vested, in part, in a remaining original transferor. However, the 2012 transfer terminated the joint tenancy and created a tenancy in common with Son 1 and Son 2. Pursuant to Revenue and Taxation Code section 65(c), any interest that vests in an original transferor is not reassessed. Pursuant to section 65(d), any interest that vests in an other than original transferor is reassessed. Thus, since Son 2 was an other than original transferor, the property that transferred to him as a result of the termination must be reassessed. C 12/24/2013. [POSTED]

250.0000 COLLEGE EXEMPTION

250.0002 **Housing.** *Accommodations leased by a college and provided to visiting students and non-student guests during the annual summer break do not disqualify the college from exemption. Renting student housing units to visiting students is within the college exemption, as student housing is reasonably necessary for fulfillment of the college's function and visiting students, while temporary, are enrolled in educational programs. In addition, renting student housing units to non-student guests is incidental to the college's functions since the non-student guests are there for the purpose of gaining familiarity with the college and the local arts community. Thus, the use is incidental and reasonably necessary for the fulfillment of the college's exempt purpose. C 4/7/2014. [POSTED]*

610.0000 NEWLY CONSTRUCTED PROPERTY

610.0091 Solar Energy System Exclusion. *Residentially hosted rooftop distributed photovoltaic electric generation systems are classified as fixtures if they are physically annexed to real property and intended to remain physically annexed indefinitely. The outward appearance of the system – panels of substantial size and weight, designed to accommodate a specific customer's needs and to physically fit that customer's residential rooftop, and which are actually attached to a customer's roof by steel lag bolts – indicates that the parties to these transactions intend to annex the systems to the real property indefinitely. Under the intent test, such a system should be classified as real property. This system, which uses solar devices in the form of photovoltaic modules to generate, transmit, and convert electricity for residential use and consumption, qualifies for the new construction exclusion under Revenue and Taxation Code section 73. C 1/13/2014. [POSTED]*

610.0092 Solar Energy System Exclusion. *Company constructs and sells completed solar energy systems to customers through the sale of its interests in a special purpose entity, typically a limited liability company (LLC), which owns the solar energy system upon completion of construction. Before the sale to the purchaser, the LLC is owned 100 percent by the company. At some point after the completion of construction, the company transfers 100 percent of the ownership interests in the LLC to the purchaser. This causes a reassessment of all property owned by the LLC pursuant to Revenue and Taxation Code section 64(c)(1). However, the Legislature has declared that purchasers of a solar energy system may still receive the new construction exclusion even if the solar energy systems are transferred in "sale-leaseback arrangements, partnership flip structures, or other transactions to purchasers," as long as the active solar energy system is newly constructed or added and another taxpayer has not received an exclusion for the same active solar energy system. Therefore, where 100 percent of the interests in an LLC owning a newly constructed solar energy system are transferred to a purchaser, the solar energy system may be excluded from reassessment as long as no other taxpayer has received an exclusion for the same active solar energy system. C 2/20/2014. [POSTED]*

620.0000 OPEN-SPACE LANDS

620.0016 Valuation. *Revenue and Taxation Code section 423.3 allows counties the option of further limiting the values of restricted properties, by allowing but not requiring cities or counties to assess the four land types in section 423.3 at a percentage of the property's factored base year value under section 110.1 rather than at its full factored base year value under section 110.1. Sections 423(d) and 423.3 provide for a value comparison requiring the assessor to value enforceably restricted open-space land at the lower of the property's section 423 value (capitalized income value), its section 110 value (fair market value), its section 110.1 value (factored base year value), or, if authorized by the county, its value as calculated under section 423.3. If a county has adopted the provisions of Section 423.3, the assessor should not value restricted properties **below** 70 percent, 80 percent, or 90 percent of the factored base year value. Whatever percentage is chosen, when multiplied by the factored base year value, serves as the maximum value that may be assessed on the property. C 1/31/2014. [POSTED]*

625.0000 PARENT-CHILD TRANSFER

625.0124 Limited Liability Company. *Trust B, an irrevocable trust, owns real property. The transfer of the real property by the beneficiaries of Trust B to a limited liability company (LLC) whose sole member will be the same trust, Trust B, is excluded from change in ownership under Revenue and Taxation Code section 62(a)(2). As a result, the trust beneficiaries become the "original co-owners" of the LLC pursuant to section 64(d). Thereafter, all transfers of LLC interests must be counted and cumulated. When more than 50 percent original co-owner shares are transferred, the property will undergo a change in ownership. Because transfers between parents and children are not excepted from cumulating to determine a change in ownership under section 64(d) and the parent-child exclusion does not apply to transfers of legal entity interests, a transfer of more than 50 percent of original co-owner shares in the LLC from the beneficiaries to their children will result in a change in ownership. C 11/7/2013. [POSTED]*

690.0000 PUBLIC SCHOOLS EXEMPTION

690.0003.005 Charter Schools. *A charter school that is eligible for the public schools exemption on property it uses for public school purposes may also be eligible for the welfare exemption on property owned and operated for an exempt purpose. C 4/7/2015. [POSTED]*

880.0001 WELFARE EXEMPTION – (a) IN GENERAL

880.0025 Charter School. *A charter school that is eligible for the public schools exemption on property it uses for public school purposes may also be eligible for the welfare exemption on property owned and operated for an exempt purpose. C 4/7/2015. [POSTED]*

880.0063 Construction in Progress. *Construction is not considered "abandoned" if delayed due to reasonable causes and circumstances beyond the assessee's control, that occur notwithstanding the exercise of ordinary care and the absence of willful neglect. A delay in obtaining financing from the United States Department of Housing and Urban Development may be considered a reasonable delay, because awaiting a governmental entity's processes, while diligently ensuring that the project meets all of the governmental entity's requirements for funding approval, can constitute circumstances that are outside of the assessee's control.*

Moreover, Revenue and Taxation Code sections 214.1 and 214.2 do not specify that property must be owned by the same legal entity during the entire course of construction in order for the underlying property to continue to qualify as property used exclusively for religious, hospital or charitable purposes. Rather, sections 214, 214.1 and 214.2 require that the facility itself be in the course of construction, owned and operated by eligible organizations that intend to use the property exclusively for religious, hospital, or charitable purposes. Therefore, it is the activity occurring on the property that is primarily at issue, not necessarily the continuity of ownership. As long as the lessee corporation is organized and operated for exempt purposes and has actually continued, and not abandoned or intentionally delayed any efforts in moving the project forward for exempt purposes, the construction of a facility to be used for exempt purposes is not considered abandoned upon assignment of the land lease that includes the requirement to construct and operate such a facility on the subject parcel. C 3/17/2014. [POSTED]