



STATE BOARD OF EQUALIZATION

BOARD PROCEEDINGS DIVISION (MIC:80)
450 N STREET, SACRAMENTO, CALIFORNIA
(P. O. BOX 942879, SACRAMENTO, CA 94279-0080)
Mr. Augusta (916) 445-6493

JOHAN KLEHS
First District, Hayward

DEAN F ANDAL
Second District, Stockton

ERNEST J DRONENBURG, JR
Third District, San Diego

KATHLEEN CONNELL
Controller, Sacramento

May 14, 1998

JOHN CHIANG
Acting Member
Fourth District, Los Angeles

E L SORENSEN, JR.
Executive Director

No. 98/29

TO COUNTY ASSESSORS,
COUNTY COUNSELS,
ASSESSMENT APPEALS BOARDS,
AND OTHER INTERESTED PARTIES:

**PROPERTY TAX RULES 20 AND 21
POSSESSORY INTERESTS**

Following a scheduled public hearing on January 22, 1998, the State Board of Equalization adopted Property Tax Rule 20, Taxable Possessory Interests. The rule became effective May 6, 1998.

Following a scheduled public hearing on June 25, 1997, the State Board of Equalization adopted amendments to Property Tax Rule 21, Possessory Interest Definitions. These rules as amended became effective May 6, 1998.

Enclosed for your information are final printed copies of the rules.

If you have any questions regarding the content of these rules, please contact Mr. Lawrence A. Augusta, Assistant Chief Counsel, at (916) 445-6493. If you wish extra copies of the rules, please write to State Board of Equalization, Supply Publications, 3920 West Capitol Avenue, West Sacramento, CA 95691.

Sincerely,

Janice Masterton, Chief
Board Proceedings Division

JM:MAS

State of California
BOARD OF EQUALIZATION

PROPERTY TAX RULES

Chapter 1. State Board of Equalization — Property Tax
Subchapter 1. Valuation Principles and Procedures

Rule 20. TAXABLE POSSESSORY INTERESTS.

Reference: Section 107, Revenue and Taxation Code
Section 15606, subdivision (c) Government Code

(a) Possessory Interests. "Possessory interests" are interests in real property that exist as a result of

(1) A possession of real property that is independent, durable, and exclusive of rights held by others in the real property, and that provides a private benefit to the possessor, except when coupled with ownership of a fee simple or life estate in the real property in the same person; or

(2) A right to the possession of real property, or a claim to a right to the possession of real property, that is independent, durable, and exclusive of rights held by others in the real property, and that provides a private benefit to the possessor, except when coupled with ownership of a fee simple or life estate in the real property in the same person; or

(3) Taxable improvements on tax-exempt land.

(b) Taxable Possessory Interests. "Taxable possessory interests" are possessory interests in publicly-owned real property. Excluded from the meaning of "taxable possessory interests", however, are any possessory interests in real property located within an area to which the United States has exclusive jurisdiction concerning taxation. Such areas are commonly referred to as federal enclaves.

(c) Definitions. For purposes of this regulation:

(1) "Real property" is defined in section 104 of the Revenue and Taxation Code and includes public waters such as tidelands and navigable waters and waterways.

(2) "Possession" of real property means actual physical occupation. "Possession" requires more than incidental benefit from the public property, but requires actual physical occupation of the property pursuant to rights not granted to the general public; thus, the use of property such as hallways, common areas, and access roads at airports, stadiums, convention centers, or other public facilities by customers or employees of those who may lease other public property at the public facility of which they have exclusive use does not constitute "possession" of those hallways, common areas, or access roads by the lessee of the public property.

(3) A "right," or a "claim to a right," to the possession of real property means the right, or claim to a right, to actual physical occupation of real property. For purposes of this subdivision, a right, or a claim to a right, to the possession of real property may exist as a result of the possessor having or claiming to have: (i) a leasehold estate, an easement, a profit a prendre, or any other legal or equitable interest in real property of less than fee simple or life estate, regardless of how the interest may be identified in a deed, lease, or other document; or (ii) a use permit or agreement, such as a federal grazing permit, a permit to use a berth at a harbor, or a county use permit authorizing professional rafting outfitters to commercially operate on a river, that creates a legal or equitable interest in real property of less than fee simple or life estate.

(4) "Possessor" means the party or parties who hold the possessory interest, and any successors or assigns to such party or parties.

RULE 20. *(Continued)*

(5) "Independent" means a possession, or a right or claim to possession, if the possession or operation of the real property is sufficiently autonomous to constitute more than a mere agency. To be "sufficiently autonomous" to constitute more than a mere agency, the possessor must have the right and ability to exercise significant authority and control over the management or operation of the real property, separate and apart from the policies, statutes, ordinances, rules and regulations of the public owner of the real property. For example, the control of an airport runway or taxiway by the Federal Aviation Administration (FAA) or another government agency or its agent is so complete that it precludes the airlines from exercising sufficient authority and control over the management or operation of the runways or taxiway and does not constitute sufficient "independence" to support a possessory interest.

(6) "Durable" means for a determinable period with a reasonable certainty that the possession of the real property by the possessor, or the possessor's right or claim with respect to the possession of the real property, will continue for that period.

(7) "Exclusive of rights held by others in the real property" means the enjoyment of an exclusive use of real property, or a right or claim to the enjoyment of an exclusive use together with the ability to exclude from possession by means of legal process others who may interfere with that enjoyment.

(A) For purposes of this subdivision, "exclusive uses" include the following types of uses of real property, as well as rights and claims to such types of uses of real property:

(1) The sole possession, occupancy, or use of real property.

(2) The possession, occupancy, or use of real property by co-tenants or co-owners as to leaseholds, easements, profits a prendre, or any other legal or equitable interests in real property of less than fee simple or life estate, where the uses constitute but a single use jointly enjoyed.

(3) The concurrent use of real property, not amounting to co-tenancy or co-ownership under subdivision (A)(2) above, by a person who has a primary or prevailing right to use the real property and/or to have its designees use the real property. For example, a public marina leases boat slips with a lease provision that allows the marina to rent a leased boat slip to a short-term user if the primary lessee is away; subject to the primary lessee's right to exclude the short-term user on the primary lessee's return. Under these facts, the primary lessee has a primary and prevailing right to use the leased boat slip. For purposes of this subdivision, concurrent use of real property demonstrating a primary or prevailing right also includes alternating uses of the same real property by more than one party, such as the case when certain premises are used by a professional basketball team on certain days of each week while a professional hockey team uses the same premises on certain other days.

(4) Concurrent uses of real property, not amounting to co-tenancy or co-ownership under subdivision (A)(2) above, by persons making qualitatively different uses of the real property. For purposes of this subdivision, qualitatively different uses of real property include: (i) those by persons making different kinds of uses of the same real property, such as the case when one person is developing mineral resources on real property while others are concurrently enjoying recreational uses on the same real property; and (ii) those where different persons have the right to concurrently enter onto and take different things from the same real property.

(5) Concurrent uses of real property, not amounting to co-tenancy or co-ownership under subdivision (A)(2) above, by persons engaged in qualitatively similar uses that diminish the quantity or quality of the real property. For purposes of this subdivision, uses that diminish the quantity and/or quality of the real property include: (i) grazing cattle; (ii) mining; (iii) the extraction of oil or gas; and (iv) the extraction of geothermal energy.

(6) Concurrent uses of real property, not amounting to co-tenancy or co-ownership under subdivision (A)(2) above, by persons engaged in qualitatively similar uses that do not diminish the quantity or quality of the real property, provided that the number of concurrent use grants is restricted. For purposes of this subdivision: "concurrent use grants" includes grants, permits, deeds, agreements, and other documents providing rights to the concurrent use of real property; and the number of concurrent use grants is "restricted" when the number of concurrent use grants is restricted either by law or pursuant to the policies or management decisions of the public owner of the real property or other public agency.

RULE 20. *(Continued)*

Example 1: Commercial rafting outfitters have a county use permit to commercially operate on a river. While any private recreational user may raft on the river without limitation or regulation, only approximately 80 commercial rafting outfitters are presently allowed to operate under permit on the river. The commercial rafting outfitters' use of the river is exclusive for purposes of this regulation since the number of commercial use permits issued by the county to commercial rafting outfitters is restricted, regardless of whether or not the commercial rafting outfitters' use of the river diminishes its quantity or quality.

Example 2. X operates a shuttle van service, picking up passengers at their homes and other locations, and transporting them to the airport. When the shuttle van reaches the airport, it utilizes the public street which surrounds the airport to drop passengers off at the various terminals at the airport. The street around the airport is available to all licensed drivers, for commercial and noncommercial uses. Neither the traffic laws, nor the policies or management decisions of the public owner of the airport facility restrict the number of users of the public street. In addition, under the assumed facts of this hypothetical, X's use of the public street surrounding the airport does not diminish the quantity or quality of the real property.

Given that (i) the shuttle vans using the public street are making qualitatively similar uses of that real property; (ii) there are no facts indicating that the quality or quantity of the real property is being diminished; and (iii) the number of users of the real property is not restricted, X's right to use the public street surrounding the airport is not exclusive, and X does not have a possessory interest in the public street surrounding the airport.

(B) A use of real property, or a right or claim to a use of real property, that does not contain one of the elements in subdivisions (A)(1) to (6) above, inclusive, shall be rebuttably presumed to be nonexclusive.

(C) In no event shall the presence of occasional trespassers or occasional interfering uses be sufficient in and of itself to make nonexclusive a use, or a right or claim to a use, that is otherwise exclusive for purposes of this regulation.

(8) "Private benefit" means that the possessor has the opportunity to make a profit, or to use or be provided an amenity, or to pursue a private purpose in conjunction with its use of the possessory interest. The use should be of some private or economic benefit to the possessor that is not shared by the general public. The fact that a possession of real property is not for a business or commercial purpose or that the possessor is a non-profit corporation does not preclude the possessor from being found to have received a "private benefit" from that possession.

History Adopted January 22, 1998, effective May 6, 1998.

State of California
BOARD OF EQUALIZATION

PROPERTY TAX RULES

Chapter 1. State Board of Equalization — Property Tax
Subchapter 1. Valuation Principles and Procedures

Rule 21. POSSESSORY INTEREST DEFINITIONS.

Reference: Sections 107, 107.1, Revenue and Taxation Code.
Section 15606, subdivision (c), Government Code.

The following definitions govern the construction of these words in the rules pertaining to possessory interests.

(a) "Contract rent" means payments in money or in kind for the right to use real property as required by the terms of the possessory interest agreement. It includes royalty payments and other rights to share in production, the value that the public owner is expected to realize from improvements erected at the expense of the possessor which will remain when the possessory interest terminates, and any other form of compensation paid or payable for the right to occupy the property. It does not, however, include payments for services such as utilities and janitorial labor or for the use of property not subject to the possessory interest.

(b) "Economic rent" means the amount that would be paid in money or kind for the right to use real property if (1) the contract rent were currently negotiated under the conditions which exist in a free and competitive market and (2) the fee owner paid property taxes on the value of the fee.

(c) "Extended or renewed" means the lengthening of the term of possession of an agreement by mutual consent or by the exercise of an option by either party to the agreement.

(d) "Created" includes (1) the addition of land or improvements not previously subject to the agreement and (2) the addition of valuable permitted uses not previously permitted.

History Adopted January 6, 1971, effective February 18, 1971.
Amended December 17, 1975, effective January 25, 1976.
Amended January 22, 1998, effective May 6, 1998