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August 29, 2012

TO: INTERESTED PARTIES

Enclosed is a copy of Current Legal Digest (CLD) number 2012-2 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, September 28, 2012**. These may be sent by e-mail using the "Comments Form" on the Board's website ([www.boe.ca.gov/proptaxes/cld.htm](http://www.boe.ca.gov/proptaxes/cld.htm)), fax or mail. Here is the mailing address:

Board of Equalization  
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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](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 Board's 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 our website ([www.boe.ca.gov/proptaxes/cld.htm](http://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. 2012-2

August 29, 2012

### 200.0300(b) BASE YEAR VALUE TRANSFER – GOVERNMENT ACQUISITION

[200.0363](#) **Replacement Property—Comparable in Size.** In 2007 Caltrans acquired a parcel of real property by eminent domain. Two years later, Caltrans acquired portions of two other parcels. One replacement property is being purchased to replace the three properties taken. The combined base year values of the taken properties may be transferred to the replacement property as long as the full cash value of the replacement property is less than 120 percent of the combined awards for the properties taken. C 3/24/2011. **[POSTED]**

### 220.0000 CHANGE IN OWNERSHIP

~~220.0042 **Community Property.** If a married couple owning a joint tenancy interest in real property wishes to transfer that interest to an entity in which one of them has an ownership interest, the couple may avoid reappraisal by converting the joint tenancy interest to community property prior to transferring the interest to the entity. C 10/24/1986. **[DELETED]**~~

*Delete – The backup correspondence does not explain how a transfer of community property to a partnership interest held by one spouse is proportional.*

[220.0361](#) **Leasehold Improvements.** To determine whether there has been a change in ownership of tenant-constructed improvements when the land owner (lessor) undergoes a change in ownership, it is necessary to determine who owns the improvements. According to *Auerbach v. Assessment Appeals Board* (2006) 39 Cal.4th 153 and *Phelps v. Orange County Assessment Appeals Board No. 1* (2010) 187 Cal.App.4th 653, the key factor in determining whether tenant-constructed improvements belong to a lessor for property tax purposes is whether the improvements must be surrendered to the lessor upon lease termination. In a situation where the lease requires any buildings or structures owned by the lessee be removed prior to termination of the lease, then the improvements would be considered owned by the lessee and not by the lessor. Thus, a change in control in the lessor would not result in a change in ownership of the improvements owned by the lessee. C 1/11/2011. **[POSTED]**

~~220.0392 **Limited Partnership.** When a limited partnership dissolves upon the death of a partner (whether general or limited), but the remaining partner or partners carry on the partnership's business in the form of a new partnership, there is a change in ownership of the partnership's real property. However, no change in ownership results when a partner dies and the remaining partners agree in writing to continue the limited partnership pursuant to the provisions of Corporations Code section 15681(c), thus avoiding the dissolution of a limited partnership. C 5/28/2002. **[DELETED]**~~

*Delete – The application of the step transaction doctrine is incorrect in a situation involving the dissolution of a partnership due to the death of a partner. The normal steps followed in liquidating a legal entity that by law has dissolved do not appear to be extra steps as required by the step transaction doctrine.*

220.0447 Options. Civil Code section 885.010(b) states that a power of termination is an interest in real property; however, until exercised, the power of termination is a future, contingent interest in the property. Therefore, the creation or transfer of such an interest is not a change in ownership. However, if and when the Grantor does exercise the power of termination and the beneficial interest in the property is transferred to the Grantor, a change in ownership will result. C 1/25/2011. **[POSTED]**

~~220.0510 Partnership.~~ Where a partnership agreement does not provide for continuation of the partnership, the death of a partner results in a dissolution of the partnership. In a two-person partnership in which each partner holds a 50 percent partnership interest, if an heir succeeds to the partnership interest of a deceased partner, there is an immediate transfer of the deceased partner's partnership interest upon his or her death but the heir does not become a partner. The transfer of the deceased partner's partnership interest constitutes a transfer of 50 percent or less of the total partnership interest, and there is no change in ownership pursuant to Revenue and Taxation Code section 64(a). Additionally, if the heir is a spouse, such a transfer would also be excluded by Revenue and Taxation Code section 63.

~~If the surviving partner and the heir become equal partners, they effectively form a new partnership in one of two ways, either of which is a change in ownership of the property involved. The first is by a transfer from the dissolved partnership with the surviving partner as sole partner to the new partnership with the surviving partner and heir as partners. The proportional ownership interests do not remain the same after the transfer. The second involves a transfer of the real property from the partnership to the surviving partner and to the heir in equal shares and subsequent transfers of the real property by the parties to the new partnership with themselves as equal partners. Although the parties would hold the same proportional interests before and after each transfer and the Revenue and Taxation Code section 62(a)(2) could be applicable, the transfers would result in changes in ownership under the step transaction doctrine.~~

~~If the partnership liquidates, there is a change in ownership of the real property, but the section 62(a)(2) exclusion is applicable. Upon dissolution, the surviving partner is empowered to wind up the partnership by statutory authority, but he or she receives no vested or beneficial interest in the deceased partner's share of the partnership or its assets. When the real property is distributed to the surviving partner and the heir, the proportional ownership interests in the real property transferred are the same. C 4/11/1997. **[DELETED]**~~

~~*Delete – The application of the step transaction doctrine is incorrect in a situation involving the dissolution of a partnership due to the death of a partner. The normal steps followed in liquidating a legal entity that by law has dissolved do not appear to be extra steps as required by the step transaction doctrine.*~~

~~220.0594 Rescission.~~ Civil Code section 1688 et seq. provides for rescission of contracts, including contracts for the transfer of real property. When a contract for the transfer of real property is rescinded based upon consent of the parties, rescission must be evidenced by a written notice of rescission signed by the parties to the contract, which should be provided to the assessor. At the same time that a rescission occurs, a rescission deed or a reconveyance of title should also be recorded with the county recorder's office. The provisions of the Civil Code do not require court approval or a court order for rescission to be valid when the parties to the contract mutually agree to rescind. Rescission of a transfer of real property relates back to the formation of a contract and dissolves it as though it had never been made. Thus, once a contract is rescinded by mutual consent, the parties are placed in the same position they were in before the contract was executed. The value of the real property reverts to its previous base year value with appropriate adjustment(s) for

~~inflation. However, in the context of property taxes, rescission has only prospective application; no refund of taxes is available to the parties for the period of time under which a conveyance is treated as a change in ownership, as the conveyance was effective for that period of time. C 5/31/2007. [DELETED]~~

*Delete – The backup correspondence is inaccurate in its analysis of the change in ownership situation. The transaction should have been excluded under section 62(a)(2).*

**220.0663 Statement Filing Requirements.** A state assessee that owns or leases only property that is state assessed is not required to file form BOE-100-B, *Statement of Change in Control and Ownership of Legal Entities* with the State Board of Equalization when an unrelated entity obtains a controlling interest in the assessee. However, where a state assessee either owns locally assessed property or has direct or indirect ownership control of any legal entity that owns locally assessed property, the person or entity obtaining ownership control of the state assessee would be required to file the *Statement of Change in Control and Ownership of Legal Entities* with the Board of Equalization. C 2/22/2011. [POSTED]

~~**220.0822 Trusts—Sprinkle/Spray Provisions.** If a trust provides that the trustee may exercise a sprinkle power to a group of beneficiaries that includes some persons to whom exclusions are available and some to whom no exclusions are available, then it is treated as though no exclusions are available. If the trust does not specify a fixed interest for each beneficiary, all beneficiaries are presumed to have equal interests in the property. C 1/4/2006. [DELETED]~~

*Delete – The backup correspondence incorrectly opines that there is a partial reassessment if a nonexcludable beneficiary comes into a class to which trust assets can be sprinkled/sprayed. At that point, there should be a 100 percent reassessment.*

## **260.0000 CONFIDENTIAL RECORDS OF TAXPAYERS**

**260.0070 Possessory Interests Annual Usage Report.** The *Possessory Interests Annual Usage Report* (form BOE-502-P), is a public record that is open to public inspection under the California Public Records Act (CPRA), and the information that a state or local governmental entity is required to report to a county assessor is public information. In *Commission on Peace Officer Standards and Training v. Superior Court of Sacramento* (2007) 42 Cal.4th 278, the California Supreme Court made it clear that the Court's concern was with the disclosability or confidentiality of the information itself, and not the location or manner in which the information is stored. For this reason, county assessors may not refuse disclosure of the information required to be reported by section 480.6, subdivisions (a)(1) through (6), if provided in a substitute format other than the *Usage Report*. C 12/1/2011. [POSTED]

## **360.0000 DISASTER RELIEF**

**360.0032 Ownership.** The new construction exclusion for property damaged or destroyed by misfortune or calamity is available to persons who owned the property when it was damaged or destroyed. If the damaged property is transferred to an eligible transferee for purposes of the parent-child exclusion, no new base year value will be established as a result of the parent-child transfer. However, if the child rebuilds the damaged house, the child will not receive the new construction exclusion. Thus, the new construction will be reassessed upon its completion pursuant to section 71 and section 110.1(a)(2)(B). C 1/24/2011. [POSTED]

**535.0000 LAND USE RESTRICTIONS**

~~535.0011 **Conservation Easements.** The conveyance of an "Agricultural Conservation Easement" to a California nonprofit, public benefit corporation for the purpose of allowing the corporation to hold the property in trust perpetually as agricultural land does not constitute a restriction to be taken into account when valuing the property to which the easement applies for property tax purposes. However, the granting of such an easement to a governmental agency would constitute a restriction of the type referred to by Revenue and Taxation Code section 402.1. C 8/15/1989.~~

~~**Note:** Stats. 1993, Ch. 1002, in effect January 1, 1994, added subdivision (a)(8) to section 402.1 which provides that an enforceable restriction to which the use of land may be subjected and which an assessor must consider when assessing the land includes a recorded conservation easement, as described in section 815.1 of the Civil Code, granted in favor of a nonprofit corporation organized pursuant to section 501(c)(3) of the Internal Revenue Code that has as its primary purpose the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, or open-space condition or use. **[DELETED]**~~

~~*Delete – This annotation is obsolete due to the 1993 amendment that added subdivision (a)(8) to section 402.1. Neither the annotation nor the backup correspondence are helpful or relevant since the statute has been so substantially amended on this issue.*~~

**625.0000 PARENT-CHILD TRANSFER**

625.0059 **Damaged or Destroyed Property.** The new construction exclusion for property damaged or destroyed by misfortune or calamity is available to persons who owned the property when it was damaged or destroyed. If the damaged property is transferred to an eligible transferee for purposes of the parent-child exclusion, no new base year value will be established as a result of the parent-child transfer. However, if the child rebuilds the damaged house, the child will not receive the new construction exclusion. Thus, the new construction will be reassessed upon its completion pursuant to section 71 and section 110.1(a)(2)(B). C 1/24/2011. **[POSTED]**

**760.0000 STATE ASSESSEES**

760.0002 **Change in Ownership Statement.** A state assessee that owns or leases only property that is state assessed is not required to file form BOE-100-B, *Statement of Change in Control and Ownership of Legal Entities* with the State Board of Equalization when an unrelated entity obtains a controlling interest in the assessee. However, where a state assessee either owns locally assessed property or has direct or indirect ownership control of any legal entity that owns locally assessed property, the person or entity obtaining ownership control of the state assessee would be required to file the *Statement of Change in Control and Ownership of Legal Entities* with the Board of Equalization. C 2/22/2011. **[POSTED]**

**790.0000 SUPPLEMENTAL ASSESSMENT**

~~790.0091 **Fixtures.** As the result of the 1985 addition of Revenue and Taxation Code section 75.16, the value of fixtures removed on or after March 1, 1985, is to be included in any computation of fixture value whether or not the removal is associated with other new construction. Pursuant to sections 75.15 and 75.16, the values of fixture removals reported~~

~~for March 1, 1985, to February 28, 1986, will be considered as negative amounts, credits, when computing any supplemental assessment to be enrolled. If only fixture removals are reported, the taxpayer would get a refund, but only if the taxes had been previously paid; otherwise, the values become negative values that can offset positive values.~~

~~Fixtures are deemed to be removed when they are severed from realty; i.e., become personal property. The date of removal to be reported on AH 571D, the supplemental schedule for reporting monthly acquisitions and disposals of property, is the date on which the fixture is severed. LTA 3/31/1986 (No. 86/32). **[DELETED]**~~

*Delete – As the result of the 1987 amendments to Revenue and Taxation Code sections 75.5 and 75.15 and the repeal of Revenue and Taxation Code section 75.16, effective August 1, 1987, fixtures are no longer subject to supplemental assessments.*

790.0210 **Probated Property.** ~~Revenue and Taxation Code sections 75 and following place no time limits on the assessor and other county officials to determine a new base year value, issue a notice thereof to the assessee, compute the tax or issue a tax bill. These statutory provisions apply without regard to limitation periods applicable to the filing of claims with the probate court.~~

~~If an executor or administrator fails to file the notice of change in ownership as required by Revenue and Taxation Code section 480(b), the assessment for the change in ownership that occurred as of the date of death could be delayed until after the close of probate proceedings and could result in the attachment of a lien on the inherited property. C 7/8/1988. **[DELETED]**~~

*Delete – The statute of limitation period for supplemental assessment has been changed since the letter was written in 1988. See Letter To Assessors 2002/014.*