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PROPERTY AND SPECIAL TAXES DEPARTMENT  
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April 3, 2013

TO: INTERESTED PARTIES

Enclosed is a copy of Current Legal Digest (CLD) number 2013-1 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, May 3, 2013**. 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. The mailing address is:

State 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 are 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 the Board's 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 1-916-274-3362.

Sincerely,

/s/ Louie Feletto for

David J. Gau  
Deputy Director  
Property and Special Taxes Department

DJG/grs  
Enclosure

# PROPERTY AND SPECIAL TAXES DEPARTMENT

## PROPERTY TAXES CURRENT LEGAL DIGEST NO. 2013-1

April 3, 2013

### 100.0000 AIRCRAFT

[100.0008](#) **Business Inventory Exemption.** For consigned aircraft to be eligible for the business inventory exemption, they must be held for sale or lease in the ordinary course of business on the lien date, in accordance with the regular and usual practice and method of the business of the consignor, and all the other requirements of Revenue and Taxation Code section 129 and Property Tax Rule 133 must be met. When determining whether a property placed on consignment qualifies for the exemption, the assessor must ascertain the true intent of the owner. Factors that reflect that intent include the property's actual use before and after the lien date, the length of a consignment or lease, and the location of the property. The assessor should consider all evidence in determining whether or not the taxpayer has met the burden of showing that the property is held for sale or lease in the broker's ordinary course of business. C 11/3/2011.

### 205.0000 BUSINESS INVENTORY EXEMPTION

[205.0180](#) **Property Held on Consignment for Sale.** When a boat is consigned for sale, its eligibility for exemption depends on the true intent of the owner. Individual facts such as length of the consignment, inclusion of the lien date, and location of the boat tend to indicate the intent but are not singularly controlling. C 11/20/1996; C 11/3/2011.

### 220.0000 CHANGE IN OWNERSHIP

[220.0372.020](#) **Life Estate.** Pursuant to an agreement, W retained a life estate in Parcels A and B. The Agreement provided that the life estate in Parcel B was to terminate as soon as subdivision of the property was permitted by the relevant authorities. A life estate may provide for termination upon the occurrence of a certain event. This is known as a determinable life estate. Upon the happening of the event, the life estate terminates automatically without any further action by the holder of the remainder interest. Therefore, upon the approval of subdivision by the City, W's life estate in Parcel B terminated and the property passed to the holder of the remainder interest. This resulted in a change in ownership pursuant to Revenue and Taxation Code section 61(g). C 1/25/2012.

### 610.0000 NEWLY CONSTRUCTED PROPERTY

[610.0004.010](#) **Builder's Exclusion.** Revenue and Taxation Code section 75.12(a)(1)(B) requires that the builder/owner meet the requirements for the exclusion at the commencement of construction. There is no requirement that the builder/owner continue to meet the requirements throughout their ownership of the property. However, if the builder/owner occupies or uses the property in contradiction to section 75.12, then the exclusion is lost.

An "owner" for purposes of section 75.12(a) is presumed to be the holder of the legal title to the property. Thus, a person would be considered the owner of the lots he owns as an individual or as a joint tenant. However, that person would not be considered the owner of the lots owned by X Corporation even though he owns 100 percent of the interests in X

Corporation because the separate identity of legal entities is respected for property tax purposes. C 12/13/2011.

## **625.0000 PARENT-CHILD TRANSFER**

**625.0011 Adoption.** Revenue and Taxation Code section 63.1(a)(3)(D) provides that "child" includes any child adopted by the parent or parents pursuant to statute, other than an individual adopted after reaching the age of 18 years. The status of adoption as established by a foreign jurisdiction must be recognized in California under principles of comity and full faith and credit. Based on case law, a child adopted in another state or country before the age of 18 is considered to be an adopted child pursuant to statute under California law and is eligible for the parent-child exclusion on property received from the adopting parent. The assessor may require that the taxpayer provide documentation proving the validity of the adoption. C 1/25/2012.

## **880.0001(a) WELFARE EXEMPTION – IN GENERAL**

**880.0062 Construction in Progress.** The demolition of the building on the parcel with the intent to replace it with low-income housing, facilities to be used exclusively for charitable purposes, constitutes "facilities in the course of construction" for purposes of Revenue and Taxation Code section 214.2(a). Absent evidence to indicate that construction would not be ongoing as of a particular lien date, the parcel would be eligible for the welfare exemption for that fiscal year, assuming a complete and timely claim for the exemption was filed and was followed by commencement of a new building or improvement. Such commencement may be evidenced by trenching or definite onsite physical activity. While there is no statutory timeframe within which commencement of a new building or improvement must take place after demolition, we are of the opinion that, absent any other evidence to the contrary, commencement of a building or improvement on a parcel within a year of demolition meets the definition of "facilities in the course of construction." C 1/3/2012.

~~**880.0155 Low Income Housing.** A proposed Payment In Lieu of Tax (PILOT) Agreement between a county and an owner of a low income housing project that qualifies for the welfare exemption is invalid because it is not authorized by the California Constitution or any statute. The PILOT agreement specifies that the payment is a tax and, therefore, constitutes a waiver of the welfare exemption. The agreement would also disqualify the property for the exemption as the owner would not be able to satisfy the certification required by Revenue and Taxation Code section 214(g)(2)(B) because the payment would be made pursuant to the PILOT agreement. Thus, no funds would be used to maintain the affordability of, or reduce rents otherwise necessary for, the units occupied by lower-income households. C 9/29/2003. *Comments received – Deletion of annotation on hold.*~~

*Delete –This opinion is of a more general nature and implicitly assumed that, under the facts analyzed, local assessors could establish that developers had not made the required certifications in good faith (i.e., that the certifications could not, in fact, be verified). Thus, this opinion is being replaced with the opinion annotated as 880.0155.005.*

**880.0155.005 Low-Income Housing.** Revenue and Taxation Code section 214(g)(2)(B) requires a developer to certify that property tax savings be used to "maintain the affordability of" or "reduce rents otherwise necessary for" low-income housing units. A Payment In Lieu of Tax (PILOT) Agreement between a local government and an owner of a low-income housing project does not disqualify a developer from making the certification if rents have been maintained in accord with those required by section 214(g)(2)(A), and the developer has a reasonable belief that the PILOT payment will be used to support or benefit the low income housing development. C 3/20/2013. *Comments received – annotation on hold.*