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September 17, 2013

TO: INTERESTED PARTIES

Enclosed is a copy of Current Legal Digest (CLD) number 2013-2 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 **Thursday, October 17, 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/ Dean R. Kinnee 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. 2013-2

September 17, 2013

### 220.0000 CHANGE IN OWNERSHIP

[220.0003](#) **Affiliated Group Transfer.** Under Revenue and Taxation Code section 64(b), any transfer of real property among members of an affiliated group is not a change in ownership. An "affiliated group" is one or more chains of corporations connected through stock ownership with a common parent corporation if: (1) 100 percent of the voting stock (exclusive of that owned by directors) of each of the corporations, except the parent corporation, is owned by one or more of the other corporations; and (2) the common parent corporation owns, directly, 100 percent of the voting stock (exclusive of that owned by directors) of at least one of the other corporations. Thus, an affiliated group requires the common ownership to be among corporations. A transfer to a limited liability company is not a transfer among members of an affiliated group so the exclusion under section 64(b) is inapplicable. C 4/20/2012. [POSTED]

[220.0274.005](#) **Interspousal Transfer.** C and K inherited two pieces of property and took title as tenants in common. Their tenancy in common interests were taken as their separate property. Subsequently, they transferred the properties to an LLC that was owned 50 percent by C and C's spouse, J, trustees of the X Family Trust and 50 percent by K and K's spouse, E, trustees of the Y Living Trust. Because the LLC was created during the marriages, the membership interests in the LLC are presumed to be community property of C and K and their respective spouses. When entity interests are owned as community property, the spouses are treated as having equal interests in the entity as if they were joint tenants. Therefore, for property tax purposes, C, J, K and E are treated as each having 25 percent interests in LLC.

Prior to the transfer of the Properties to LLC, C and K each owned 50 percent of the Properties. After the transfer, the Properties were owned by LLC, which was owned 25 percent each by C, J, K and E. Therefore, the ownership interest did not remain the same. Moreover, the interspousal exclusion is not applicable since the transfer of the properties was made from C and K to LLC and not to their respective spouses. C 2/29/2012. [POSTED]

[220.0451.015](#) **Original Co-Owner Transfers.** When a transfer by an original co-owner to a third party is counted and cumulated for purposes of Revenue and Taxation Code section 64(d), the third party does not become an original co-owner with respect to those interests. Once an original co-owner interest is transferred and counted and cumulated, it is no longer an original co-owner interest because the third party did not receive those interests in a transfer excluded from change in ownership under section 62(a)(2). C 3/15/2012. [POSTED]

[220.0584](#) **Record Title.** Corporations Code section 16203 provides that property acquired by a partnership is property of the partnership and not of the partners individually. Evidence Code section 662 provides that "[t]he owner of the legal title to property is presumed to be the owner of the full beneficial title" and that, "this presumption may be rebutted only by clear and convincing proof." Because the Partnership took fee title to Property A in its own name upon purchase, the Partnership, and not any partner, is presumed to be the full beneficial owner of Property A. In order to show that the Partnership held legal title only as nominee for Taxpayer, the Evidence Code section 662 presumption must be rebutted by clear and convincing proof. However, here, a number of facts support the presumption that the partnership is the beneficial owner of Property A, including the fact that Taxpayer's "monetary contribution" was to the Partnership itself, not to the seller of Property A, and thus was a capital contribution to the Partnership and not a purchase of Property A by Taxpayer,

*and the existence of a written Option Agreement granting Taxpayer an option to purchase property A, entered into contemporaneously with the purchase of Property A by the Partnership. C 5/9/2012. [POSTED]*

## **515.0000 HOUSEHOLD FURNISHINGS**

**515.0010 Residential Care Facilities.** Revenue and Taxation Code section 224 provides that the personal effects exemption does not apply to property held or used in connection with a trade, profession, or business. Therefore, assessment of personal property owned by the licensee of a residential care facility *business* and used in connection with the facility is ~~an assessment to which other family dwellings are subject~~ *proper*. However, the fact that a licensee operates a residential care facility out of his or her own home should not preclude application of the exemption for personal effects and household furnishings held for the licensee's own personal use, such as personal bedroom furnishings. LTA 8/1/1989 (No. 89/58); C 12/4/2000; C 3/12/2012. [POSTED]

## **625.0000 PARENT-CHILD TRANSFER**

**625.0146 One Million Dollar Exclusion.** *If parent-child claims are filed for multiple properties for which the full cash values of the total properties cumulatively exceed the \$1 million limit, the transfer date determines which properties are to receive the exclusion. If the transfer date is the same for all properties, the transferees must decide which properties are to receive the exclusion. When competing claims are received and the combined adjusted base year values of the properties for which the claims are made exceed the available limit, the assessor's office should not grant any of the requested claims, but rather should notify the transferees that they must advise the assessor's office of the desired allocation between the claims. The transferees should agree upon an allocation of the available amount of the \$1 million exclusion before any of that amount is granted to any transferee. C 9/29/2011; C 11/26/2012. [POSTED]*

## **630.0000 PERSONAL PROPERTY**

**630.0001 Community Care Facility.** The prohibitions in the Health and Safety Code against local licenses, fees, or taxes for the privilege of operating a care facility serving six or fewer persons are not applicable to property taxes imposed upon either real or personal property pursuant to section 1 of article XIII of the California Constitution or the Revenue and Taxation Code. C 9/16/1987; LTA 8/1/1989 (No. 89/58); C 3/12/2012. [POSTED]

## **860.0000 VESSELS**

**860.0022.005 Exemption.** *Section 3(l) of article XIII of the California provides a property tax exemption for vessels over 50 tons burden used to transport freight and passengers. "Tons burden" means the net register tonnage, not the gross tonnage or the tonnage as measured under the International Convention on Tonnage Measurement of Ships of 1969. C 2/22/2012. [POSTED]*