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February 23, 2016

TO: INTERESTED PARTIES

Enclosed is a copy of Current Legal Digest (CLD) number 2016-1 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, March 24, 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
ATTN: Annotation Coordinator
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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 AND SPECIAL TAXES DEPARTMENT

PROPERTY TAXES CURRENT LEGAL DIGEST NO. 2016-1

February 23, 2016

100.0000 AIRCRAFT

100.0040 **Statement Filing.** *If an aircraft has an aggregate cost of over \$100,000, Revenue and Taxation Code section 441(a) requires the owner to file a signed property statement with the assessor, regardless of whether the assessor makes a request for such a statement. In this situation, if the taxpayer fails to file a property statement, section 463 requires an assessor to add a 10 percent penalty to the assessed value. C 8/8/2013. [POSTED]*

220.0000 CHANGE IN OWNERSHIP

220.0243 **Foreclosure.** *Due to default by the property owner on a loan secured by deed of trust against the property, a non-judicial foreclosure proceeding took place on November 2, 2012, at which the existing owner was the successful bidder and paid \$650,000 to the trustee on the deed of trust.*

Pursuant to Revenue and Taxation Code section 62 and Rule 462.240, deeds of trust do not themselves transfer title to property, but upon default, authorize the holder of the trust deed to convey title to the property. Therefore, trustee on deed of trust was never the owner of the property for property tax purposes. In a typical foreclosure sale, the conveyance of title to a third-party purchaser would constitute a change in ownership as defined in section 60, as it would transfer the interest in real property, including the beneficial use thereof, to the third party. In this case, however, the buyer was both the existing holder and the purchaser of the interest and beneficial use of the property. Since there was never a transfer of the right to occupy or receive income from the property, no beneficial use was transferred. As such, the transaction on November 2, 2012 did not constitute a change in ownership. C 8/19/2013. [POSTED]

220.0554 **Possessory Interests.** *The valuation method prescribed in Government Code section 33673 for former redevelopment agency property is not valid when that property has been transferred to a successor agency. Because a taxable possessory interest was created when property was leased by the redevelopment agency, the transfer of the fee interest in that property to a successor agency does not result in a change in ownership of the taxable possessory interest under Revenue and Taxation Code section 61(b) and Property Tax Rule 21(a)(9). Therefore, the assessed value of the taxable possessory interest is the lesser of the base year value established when the property was first leased factored pursuant to Revenue and Taxation Code section 51 or the fair market value. C 6/11/2015. [POSTED]*

220.0584.005 **Record Title.** *The Military Warriors Support Foundation (Foundation) is a non-profit organization that provides services for military veterans. One of those services is to award mortgage-free homes to qualifying veterans (or their unmarried surviving spouses) who have injuries and severe or unique circumstances as a result of engaging in combat in Iraq or Afghanistan. An application for one of these homes must be submitted and when it is awarded, a purchase agreement is entered into through a Contract for Deed document,*

between the Foundation as "seller/landlord" and the veteran as "buyer/tenant." According to the Contract for Deed, close of escrow is scheduled to occur three years from the date of the agreement, and title to the property remains in the name of the Foundation until the three years has elapsed. Even though legal title remains in the name of the Foundation for three years, the Contract for Deed transfers the beneficial ownership of the property to the disabled veteran as of the date of execution. During the three-year period, the veteran appears to have indicia of ownership due to the veteran's rights and responsibilities regarding the property, making him/her the beneficial owner of the property during those three years. Thus, a veteran would qualify for the Disabled Veterans' Exemption upon execution of the Contract for Deed, because the veteran would be considered the owner of the property for tax purposes at that time. C 12/12/2012. [POSTED]

220.0601 Rescission – Legal Entity Interests. *Corporation X indirectly owned several parcels of California real property through wholly owned subsidiaries. Corporation X assigned its interests in each subsidiary to another indirectly held limited liability company, Limited Liability Company B (LLC B) such that LLC B obtained 100 percent ownership of all the subsidiaries. Because the proportional ownership interests in each and every piece of real property remained the same before and after the transfers, the transfers were excluded under Property Tax Rule 462.180(d)(4). As a result of this exclusion, LLC A, as the holder of the interests in LLC B, became an original co-owner in LLC B, for purposes of counting future transfers of LLC B interests under section 64(d). Corporation X and LLC B now desire to unwind the assignment of interests and have mutually agreed to rescind the assignments.*

The assignments were "transfers" within the meaning of Civil Code section 1040 because they were intended to pass title to interests in the subsidiaries. Moreover, since the assignments were voluntary transfers, they were considered executed contracts under Civil Code section 1040, regardless of consideration. Thus, Civil Code section 1689 allows for their rescission. As with rescissions of real property transfers, the rescission of a contract for the transfer of legal entity interests voids the transactions ab initio as though the transfers had never been made, and restores the parties to the positions they held before the transfers being rescinded. The property tax consequence is that the former base year value of the property prior to the transfer is restored and the original co-owner status created under Rule 462.180(d)(4) is extinguished. C 11/21/2012. [POSTED]

220.0821 Trusts—Sprinkle/Spray Provisions. *A transfer of real property to an irrevocable trust results in a change in ownership when, under the terms of the trust, the trustee may exercise his or her discretion by distributing all of the trust income or principal to one or more unidentified beneficiaries for whom no change in ownership exclusion is available. Pursuant to Property Tax Rule 462.160(b)(1)(A), a transfer of real property to an irrevocable trust with a "sprinkle/spray" provision results in a change in ownership unless all of the persons included as beneficiaries under that provision qualify for an exclusion from change in ownership. C 7/22/2002; C 11/5/1999; C 8/13/2013. [AMENDED]*

350.0000 DISABLED VETERANS' EXEMPTION

350.0013 Military Warriors Support Foundation. *The Military Warriors Support Foundation (Foundation) is a non-profit organization that provides services for military veterans. One of those services is to award mortgage-free homes to qualifying veterans (or their unmarried surviving spouses) who have injuries and severe or unique circumstances as a result of*

engaging in combat in Iraq or Afghanistan. An application for one of these homes must be submitted and when it is awarded, a purchase agreement is entered into through a Contract for Deed document, between the Foundation as "seller/landlord" and the veteran as "buyer/tenant." According to the Contract for Deed, close of escrow is scheduled to occur three years from the date of the agreement, and title to the property remains in the name of the Foundation until the three years has elapsed. Even though legal title remains in the name of the Foundation for three years, the Contract for Deed transfers the beneficial ownership of the property to the disabled veteran as of the date of execution. During the three-year period, the veteran appears to have indicia of ownership due to the veteran's rights and responsibilities regarding the property, making him/her the beneficial owner of the property during those three years. Thus, a veteran would qualify for the Disabled Veterans' Exemption upon execution of the Contract for Deed, because the veteran would be considered the owner of the property for tax purposes at that time. C 12/12/2012. [POSTED]

460.0000 FULL CASH VALUE

460.0028 **Purchase Price Presumption.** *Revenue and Taxation Code section 110(b) establishes a rebuttable presumption that "full cash value" or "fair market value," as defined in section 110(a), is the actual purchase price of the property, if the terms were negotiated under specified conditions reflecting an "open market transaction." Accordingly, an assessor may value property at other than the purchase price if he/she can establish by a preponderance of evidence that the fair market value is otherwise. In Dennis v. County of Santa Clara (1989) 215 Cal.App.3d 1019, the court noted that the purchase price may play a significant role in the reassessment of property upon its sale but that the purchase price is only the beginning and not necessarily the end of the inquiry. The court concluded that an arm's length, open market sale for a price that is not influenced by an exigency of either buyer or seller permits the assessor to presume fair market value from the purchase price, but the presumption may nevertheless be rebutted by evidence that the fair market value of the property is otherwise. C 11/26/2012. [POSTED]*

565.0000 LEGAL ENTITIES

565.0090 **Rescission.** *Corporation X indirectly owned several parcels of California real property through wholly owned subsidiaries. Corporation X assigned its interests in each subsidiary to another indirectly held limited liability company, Limited Liability Company B (LLC B) such that LLC B obtained 100 percent ownership of all the subsidiaries. Because the proportional ownership interests in each and every piece of real property remained the same before and after the transfers, the transfers were excluded under Property Tax Rule 462.180(d)(4). As a result of this exclusion, LLC A, as the holder of the interests in LLC B, became an original co-owner in LLC B, for purposes of counting future transfers of LLC B interests under section 64(d). Corporation X and LLC B now desire to unwind the assignment of interests and have mutually agreed to rescind the assignments.*

The assignments were "transfers" within the meaning of Civil Code section 1040 because they were intended to pass title to interests in the subsidiaries. Moreover, since the assignments were voluntary transfers, they were considered executed contracts under Civil Code section 1040, regardless of consideration. Thus, Civil Code section 1689 allows for

their rescission. As with rescissions of real property transfers, the rescission of a contract for the transfer of legal entity interests voids the transactions ab initio as though the transfers had never been made, and restores the parties to the positions they held before the transfers being rescinded. The property tax consequence is that the former base year value of the property prior to the transfer is restored and the original co-owner status created under Rule 462.180(d)(4) is extinguished. C 11/21/2012. [POSTED]

625.0000 PARENT-CHILD TRANSFER

625.0120.005 Life Estate. *Upon the death of husband, Parcel C, a community property, is transferred from a joint revocable trust to a marital trust. Wife, as the surviving spouse, is the sole beneficiary of the marital trust for her lifetime, with remainder to the children. After being transferred to the marital trust, Parcel C is sold to an irrevocable trust whose sole lifetime beneficiaries are husband and wife's children. In this case, the sale of Parcel C is a sale by the life tenant wife of her life estate during her lifetime and thus wife would be the transferor since she is the holder of the present beneficial interest at the time of the sale. Children would be the transferees as they are the sole lifetime beneficiaries of the irrevocable trust when it bought Parcel C. Therefore, this transfer is a parent-child transfer and may be excluded from change in ownership, assuming a timely claim is filed and all other requirements are met. C 8/19/2013. [POSTED]*

625.0233 Trusts—Options. *With a right of first refusal, the trustee has no power or discretion to transfer the subject property to any of the trust beneficiaries without first offering the right to purchase the property as directed in the trust. If the optionee exercises his right to purchase the property for fair market value, the other beneficiaries never possessed a beneficial interest in the property. As such, the transfer of the property from mother to her son, the optionee, through the medium of a trust, qualifies for the parent-child exclusion for the full extent of the transfer, provided that all other requirements are met. C 8/19/2013. [POSTED]*

625.0236 Trusts—Sprinkle or Spray Power. *A "sprinkle or spray power" is a provision which gives the trustee total discretion to distribute trust income or property to a number of potential beneficiaries. When a trust contains a sprinkle or spray provision, to avoid a change in ownership and reassessment, all of the persons included as beneficiaries under that provision must have an exclusion. If even one person included as a beneficiary is not excludable, then 100 percent of the trust property is subject to change in ownership. C 7/18/2001; 8/13/2013. [AMENDED]*

660.0000 POSSESSORY INTERESTS

660.0239 Redevelopment Agencies. *The valuation method prescribed in Government Code section 33673 for former redevelopment agency property is not valid when that property has been transferred to a successor agency. Because a taxable possessory interest was created when property was leased by the redevelopment agency, the transfer of the fee interest in that property to a successor agency does not result in a change in ownership of the taxable possessory interest under Revenue and Taxation Code section 61(b) and Property Tax Rule 21(a)(9). Therefore, the assessed value of the taxable possessory interest is the lesser of the*

base year value established when the property was first leased factored pursuant to Revenue and Taxation Code section 51 or the fair market value. C 6/11/2015. [POSTED]

660.0240 Redevelopment Projects. ~~Where an office building in a redevelopment project has been redeveloped and a portion is leased by the redevelopment agency to a private person or entity, Health and Safety Code section 33673 requires that the leased portion be assessed and taxed in the same manner as privately owned property. The requirement means that the lessee shall pay taxes on the market value of the entire leasehold estate based on its highest and best use within the terms of the lease. C 4/14/1998. [DELETED]~~

Delete – This opinion is obsolete as a result of Assembly Bill No. 26 (Chapter 5 of the 2011-2012 1st Ex. Sess.), which dissolved redevelopment agencies and community development agencies effective June 29, 2011.

680.0000 PROPERTY STATEMENT

680.0005 Aircraft. *If an aircraft has an aggregate cost of over \$100,000, Revenue and Taxation Code section 441(a) requires the owner to file a signed property statement with the assessor, regardless of whether the assessor makes a request for such a statement. In this situation, if the taxpayer fails to file a property statement, section 463 requires an assessor to add a 10 percent penalty to the assessed value. C 8/8/2013. [POSTED]*

690.0000 PUBLIC SCHOOLS EXEMPTION

690.0003 Charter Schools. Property used exclusively for public school/charter school purposes by a charter school incorporated as a nonprofit public benefit corporation will be eligible for the exemption as of January 1, 1999, assuming that the agreement with the school district is valid and in effect. C 7/15/1998; ~~C 11/18/1999. [AMENDED]~~

Amend – remove backup correspondence C 11/18/1999. While this letter's conclusion that "section 214 is not applicable to public schools" is correct since a public school receiving the public schools exemption has no need to also apply for the welfare exemption on property it uses for public school purposes, it would not be incorrect, however, to infer that section 214 is not applicable to public schools under any circumstance. Charter schools may also be eligible for the welfare exemption on property owned and operated for an exempt purpose.

690.0043 Possessory Interests. *Corporation is a California public benefit non-profit corporation, an official auxiliary organization of The California State University formed for purposes supportive of the University, and a corporation separate from, independent of, and not under the control of the University Trustees. Corporation leased property from University Trustees to construct and manage faculty and staff housing.*

Corporation is eligible for the public schools exemption if on the lien date the unit is rented to a faculty member, staff member, or student, and the exemption requirements are met. If the unit is vacant or rented to someone other than a faculty member, staff member, or student, Corporation's possessory interest in the land and its unit are not eligible for exemption. If the renter changes mid-year, the assessor must determine whether or not the creation of the possessory interest in the land was a change in ownership of a taxable possessory interest, and whether or not the lease of the unit was a change in ownership of the

unit. In the event of a change or changes in ownership, the assessor must make appropriate supplemental assessments. C 12/4/2012. [POSTED]

830.0000 TIMBERLAND

830.0103 Tax Recoupment Fee. Pursuant to the provisions of the California Timberland Productivity Act of 1982, it is the county board of supervisors or the city council, not the county assessor, that zones property as timberland production (TPZ) and makes decisions on immediate rezoning requests made by a landowner. The tax recoupment fee is imposed when land set aside as TPZ is rezoned for immediate, non-timberland production use. Calculation of the tax recoupment fee requires the county assessor to reassess the rezoned parcels on the basis of the value of the property in its rezoned use. Pursuant to Government Code section 51142(a), an assessor may undertake such reassessment only following rezoning of land in the timberland production zone. No other authorization to reassess TPZ property is given in the statute. Therefore, the county assessor is required to reassess property previously set aside as TPZ to determine the tax recoupment fee only if that property is immediately rezoned by approval of the county board of supervisors or the city council. C 11/21/2012. **[POSTED]**

850.0000 VALUE

850.0061 Purchase Price Presumption. Revenue and Taxation Code section 110(b) establishes a rebuttable presumption that "full cash value" or "fair market value," as defined in section 110(a), is the actual purchase price of the property, if the terms were negotiated under specified conditions reflecting an "open market transaction." Accordingly, an assessor may value property at other than the purchase price if he/she can establish by a preponderance of evidence that the fair market value is otherwise. In *Dennis v. County of Santa Clara* (1989) 215 Cal.App.3d 1019, the court noted that the purchase price may play a significant role in the reassessment of property upon its sale but that the purchase price is only the beginning and not necessarily the end of the inquiry. The court concluded that an arm's length, open market sale for a price that is not influenced by an exigency of either buyer or seller permits the assessor to presume fair market value from the purchase price, but the presumption may nevertheless be rebutted by evidence that the fair market value of the property is otherwise. C 11/26/2012. **[POSTED]**

880.0001(a) WELFARE EXEMPTION – IN GENERAL

880.0109 Incidental Use. Revenue and Taxation Code section 214(g) requires that the property be used exclusively for low-income housing and related facilities. The Supreme Court has held that "used exclusively" for exempt purposes includes uses that are incidental to and reasonably necessary for the accomplishment of the exempt purpose. Certain services, such as case management and referrals, counseling, legal services, and life skills training, will be provided at a low-income housing development. These services are incidental to and reasonably necessary for the purpose of providing the low-income housing. C 12/11/2012. **[POSTED]**

880.0149 Limited Partnership. A qualifying organization includes limited partnerships in which the managing general partner is an eligible nonprofit organization that has obtained

an organizational clearance certificate from the Board of Equalization. The managing general partner must be organized and operated for a qualifying purpose under Revenue and Taxation Code section 214(a), and the property must be used by the limited partnership exclusively for low-income housing purposes. To evidence such use, a limited partnership must apply separately for a supplemental clearance certificate (SCC) for each low-income housing property on which it seeks exemption. Only the property owned by the limited partnership that is specifically used for low-income housing and for which the limited partnership holds an SCC is eligible for the exemption. Pursuant to Property Tax Rule 140(b)(1), such a limited partnership may qualify for the exemption provided: (A) the claimant receives low-income housing tax credits or government financing for the particular property, and (B) the property is subject to a recorded deed restriction or a regulatory agreement which is recorded in the county in which the property is located. C 12/11/2012.

[POSTED]