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April 11, 2017

TO: INTERESTED PARTIES

Enclosed is a copy of Current Legal Digest (CLD) number 2017-1 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 **Friday, May 12, 2017**. 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 fax number is 1-916-285-0134. 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 DivisionDY:gs
Enclosure

PROPERTY TAX DEPARTMENT

PROPERTY TAX CURRENT LEGAL DIGEST NO. 2017-1

April 11, 2017

180.0000 ASSESSMENT APPEALS

180.0006 **Agent.** *Property Tax Rule 305(a) allows an agent to file an application if written authorization to do so is also filed with the application. There is no requirement that an agent's written authorization be submitted on a Board-prescribed form. Thus, as long as the requirements listed in Rule 305(a)(1) are included in an attached authorization, the agent shall be deemed duly authorized to sign an application on behalf of an applicant. An original signed authorization is not required but must be made available if requested by the appeals board. C 3/11/2015. [POSTED]*

180.0063.005 **Burden of Proof.** *Pursuant to Revenue and Taxation Code section 167(a), there is a rebuttable presumption affecting the burden of proof in favor of the taxpayer who has supplied all information as required by law to the assessor in any administrative hearing involving the imposition of a tax on an "owner-occupied single-family dwelling." Section 167(c) defines an "owner-occupied single-family dwelling" as a dwelling that is the owner's principal place of residence and qualifies for a homeowners' property tax exemption. For a dwelling partially damaged in a misfortune or calamity and not occupied by the owner on the lien date, section 218(b)(2) deems it occupied by the owner as his principal place of residence and makes it eligible for the homeowners' exemption, provided that the owner was receiving the homeowners' exemption prior to the damage, the owner's absence from the dwelling is temporary, and the owner intends to return to the dwelling when possible to do so. A single-family dwelling meeting those requirements under section 218 is an "owner-occupied single-family dwelling" within the meaning of section 167(c) and, thus, the owner of such a dwelling who has been temporarily and involuntarily ousted from occupancy due to partial damage to the dwelling will have the benefit of the burden of proof in his favor. C 12/30/2014. [POSTED]*

180.0071.020 **Evidence.** *Revenue and Taxation Code section 441 permits an assessor to request information from the assessee in addition to the property statement, and section 1606 provides for the formal exchange of information prior to an assessment appeal hearing. The Court of Appeal in **State Bd. of Equalization v. Ceniceros** (1998) 63 Cal.App.4th 122 determined that the Legislature's inclusion of subdivision (h) of section 441, which grants continuances of AAB hearings for failure to respond to 441(d) requests, clearly shows that the Legislature anticipated assessors would use section 441(d) requests as a means of prehearing discovery. Thus, an assessor may request evidence of the assessee's opinion of value pursuant to section 441(d). Section 1606 is not the exclusive means by which assessors may request information in preparation for an appeals hearing. If an assessee does not comply with the section 441(d) request and introduces the requested information at the hearing, the assessor is entitled to a continuance. Granting a continuance to allow the assessor time in which to evaluate and attempt to rebut previously undisclosed evidence introduced at an appeals hearing by the taxpayer does not deprive assessee's of their due process rights. C 11/17/2016. [POSTED]*

180.0088 Ownership Determination. *The owner of the legal title to property is presumed to be the owner of the full beneficial title. This is called the deed presumption. An assessor, in fulfilling his duties to assess property, has authority and discretion to either apply the deed presumption to determine ownership of property, or to rebut it when he believes clear and convincing evidence exists to do so. A taxpayer may also present evidence to the assessor to apply or rebut the deed presumption, and may appeal an assessor's determination with which he disagrees. C 7/22/2015. [Comment Received – Not Posted]*

190.0000 ASSESSMENT APPEALS BOARD

190.0017 Application. *If an application is filed by an agent, the agent must have authority to sign the application and must include with the application a written authorization that complies with Property Tax Rule 305(a)(1). If these conditions are not met, the application is invalid. An application that is filed on behalf of an applicant without a valid authorization may be rejected by the clerk. As a result, an applicant or applicant's agent must be notified that an application is invalid and given an opportunity to correct any errors or omissions. Because Rule 305(a) specifically requires that the authorization be in writing, amendments and/or corrections required to satisfy Rule 305(a) must also be submitted in writing. However, an original signed authorization is only required if requested by the appeals board. If an agent does not have written authorization, retroactive authorizations are not permitted. Agent authorizations may not be used to authorize an agent to act on behalf of an applicant prior to the time the authorization became effective. C 3/11/2015. [POSTED]*

220.0000 CHANGE IN OWNERSHIP

220.0032 Change in Control. *Under section 64(c)(1) and Property Tax Rule 462.180, subdivision (d)(1)(B), a change in ownership occurs when a new entity obtains control, whether **directly** or **indirectly**, of an entity that owns real property. When a new person or legal entity obtains direct control of an entity, a change in control occurs, even if a formerly direct owner maintains indirect control through its ownership of the new entity that obtained direct control. C 1/22/2015. [POSTED]*

220.0148.005 Deed Presumption. *The owner of the legal title to property is presumed to be the owner of the full beneficial title. This is called the deed presumption. An assessor, in fulfilling his duties to assess property, has authority and discretion to either apply the deed presumption to determine ownership of property, or to rebut it when he believes clear and convincing evidence exists to do so. A taxpayer may also present evidence to the assessor to apply or rebut the deed presumption, and may appeal an assessor's determination with which he disagrees. C 7/22/2015. [Held – Not Posted]*

220.0197 ~~Estate for Years.~~ ~~The creation of an estate for years giving Beneficiary X (who is not a spouse or a registered domestic partner, or otherwise eligible for an exclusion) the right to use and occupy the transferor's residence for a period of 34 years is not a change in ownership under Property Tax Rule 462.060(b) since the term is less than 35 years. The termination of the estate for years and the vesting of ownership in someone other than the transferor or the transferor's spouse is a change in ownership, absent an applicable exclusion. If the ownership vests in the children of the transferor, then the parent-child exclusion may be available if a claim is filed. C 3/15/2006. [DELETED]~~

Delete - There is a change in ownership when a transferor, upon his death, transfers both an estate for years and a remainder interest and retains no interest in the property. This is consistent with *Steinhart v. County of Los Angeles* (2010) 47 Cal.4th 1298 (*Steinhart*), which holds that when the entire equitable estate in the property is transferred upon the transferor's death, a "change in ownership" occurs. *Steinhart* emphasizes focusing not on the interest that the transferees receive, but rather the total extent of the interest the transferor transfers when a trust becomes irrevocable.

220.0197.005 Estate for Years. *A trust provides that upon Husband's death, the property remains in the trust for Wife's benefit for 18 months, after which the trust directs the trustee to sell the property and distribute the proceeds to remainder beneficiaries: Wife, two daughters, and three grandsons. Pursuant to Steinhart v. County of Los Angeles (2010) 47 Cal.4th 1298, the entirety of Husband's interest in the property was transferred at his death, even if the interest is divided between an estate for years to Wife and the remainder interest to the remainder beneficiaries. As such, the property underwent a change in ownership at Husband's death.*

Pursuant to Property Tax Rule 462.060(b), which provides that the creation or transfer of an estate for years for less than 35 years is not a change in ownership, Wife did not receive the fee equivalent interest upon Husband's death. Therefore, necessarily, it is the remainder beneficiaries who receive the fee equivalent interest. Thus, the remainder beneficiaries should be deemed partial owners in relation to their respective interests in the proceeds. Pursuant to Property Tax Rule 462.260(d)(1), the date of change in ownership is the date at which the trust becomes irrevocable (Husband's date of death). The percent interest transferred to Wife, as a remainder beneficiary, is excluded from change in ownership, pursuant to the interspousal exclusion. The parent-child exclusion is available for the percent interest transferred to each of Husband's daughters, assuming all other requirements are met. The percent interest transferred to Husband's grandchildren does not qualify for the grandparent-grandchild exclusion, as the parents of the grandchildren were not deceased on the date of Husband's death. C 12/5/2014. [POSTED]

220.0295 Joint Tenancy. *A joint tenancy creates undivided interests in property, with each joint tenant owning a fractional or percentage interest. The creation, termination, or transfer of such an interest is a change in ownership and results in a reappraisal only of that interest, except that (1) the creation or transfer of a joint tenancy interest is not a change in ownership where the transferor remains as a joint tenant after the transfer; (2) the termination of an "original transferor's interest" by operation of law (upon death) is not a change in ownership where the interest is transferred to the remaining original transferor(s); and (3) the termination of an interest of one other than an original transferor is not a change in ownership where the interest is transferred to an original transferor or to all remaining joint tenants. C 4/15/1987; C 2/20/2015. [Not Amended – Wrong Annotation Published]*

220.0573 Real Estate Investment Trust Election. *A limited liability company (LLC), which owns real property and has as its members a pension fund (95 percent) and a corporation (5 percent), proposes to make an election with the Internal Revenue Service (IRS) to be treated as a "real estate investment trust" (REIT) for federal income tax purposes. A REIT is defined in Internal Revenue Code section 856 as an entity that would be taxable as a domestic corporation (but for its treatment as a REIT) for federal income tax purposes and that meets a number of organizational, operational, and distribution requirements. Since a REIT election with IRS is only a federal income tax treatment election, the LLC will continue to*

hold the real property after the REIT election, and the REIT election involves no formation of any new entity or any transfer of an entity interest or real property, thus, the REIT election will not result in a change in ownership of any real property owned by LLC. C 1/28/2015. [POSTED]

220.0664.500 **Statutory Merger.** *A statutory merger is a transaction pursuant to relevant sections of the Corporations Code whereby two or more entities combine into a single entity that was one of the pre-existing entities. When two entities merge in a statutory merger, the entity that ceases to exist is called the disappearing entity and the other is called the surviving entity. In a statutory merger, all of the assets of the disappearing entity transfer to the surviving entity by "operation of law." This means that the transfer happens automatically and without the disappearing entity having to deed the assets to the surviving entity. Since a statutory merger results in a transfer of the real property of the disappearing entity under state law, a statutory merger causes a change in ownership of the real property of the disappearing entity pursuant to Revenue and Taxation Code section 61(j). Additionally, any ownership interests in legal entities that the disappearing entity owns directly would also transfer to the surviving entity as a result of the merger, which could result in a change in control of such subsidiaries under section 64(c)(1), or a change in ownership under section 64(d). C 1/30/2012. [POSTED]*

~~220.0766~~ **Trusts.** ~~The transfer of real property to an irrevocable trust in February for 12 years and 5 months is a change in ownership because the term was in excess of 12 years, and "retroactive" amendment of the trust in December to reduce the term to 11 years and 11 months so as to bring the transfer within the exclusionary provisions of Revenue and Taxation Code section 62(d) is not a bar to the reappraisal made as of the prior March 1. C 2/23/1983. [DELETED]~~

Delete – Back-up correspondence is ambiguous. While the annotation states that the assessor reassessed real property transferred to an irrevocable trust for a term of 12 years and 5 months because the term was in excess of 12 years, pursuant to sections 62(d). However, the focus of the backup letter is on whether a "retroactive amendment" of a trust document would be valid. There is no discussion of the terms of the trust, including whether or not the trust qualified as a Clifford Trust.

220.0766.005 **Trusts.** *A transfer of property to a trust where the present beneficiary has an income interest for a term less than 35 years is not a change in ownership of that property unless the trust to which the property is transferred qualifies as a "Clifford Trust" and the property does not revert to the grantor within 12 years as required by Revenue and Taxation Code section 62(d). Clifford Trusts are irrevocable, but temporary, trusts created primarily for income tax planning purposes, whereby income from the trust property is paid to the beneficiary and taxed to the beneficiary, but the property itself reverts back to the settlor when the trust expires. However, where the transfer of an income interest is to a trust that is not a Clifford Trust, the transfer would be analyzed according to the estate for years rule as set forth in Property Tax Rule 462.060(b). Rule 462.060(b) provides that the creation or transfer of an estate for years for less than 35 years is not a change in ownership, while an estate for years for a term of 35 years or more in real property is a change in ownership at the time of transfer (unless the instrument creating the estate for years reserves such estate in the transferor or the transferor's spouse, or registered domestic partner). C 1/28/2015. [POSTED]*

290.0000 COUNTY ASSESSOR

290.0008 *Duty to Determine Ownership of Property.* The owner of the legal title to property is presumed to be the owner of the full beneficial title. This is called the deed presumption. An assessor, in fulfilling his duties to assess property, has authority and discretion to either apply the deed presumption to determine ownership of property, or to rebut it when he believes clear and convincing evidence exists to do so. A taxpayer may also present evidence to the assessor to apply or rebut the deed presumption, and may appeal an assessor's determination with which he disagrees. C 7/22/2015. *[Comment Received – Not Posted]*

493.0000 GRANDPARENT-GRANDCHILD TRANSFER

493.0076 *Life Estate.* In 2001, Mother transfers real property to Daughter, but reserves a life estate for herself. Daughter transfers her remainder interest to her son (Mother's grandson) in 2006. Mother dies in 2014. When Mother transfers a remainder interest in property to daughter and reserves a life estate for herself, there is no transfer of a present beneficial interest in real property. By reserving a life estate, mother retains the present beneficial interest in the property. Daughter possesses a future interest in the property. Since the transfer does not meet the requirements of Revenue and Taxation Code section 60, the 2001 transfer does not result in a change in ownership. Similarly, Daughter's transfer of her remainder interest to her son in 2006 is a transfer of a future interest. Because Daughter did not transfer a present beneficial interest to her son, the 2006 transfer does not constitute a change in ownership. Upon Mother's death in 2014, the property is transferred from Mother to Mother's grandson, resulting in a change in ownership. Thus, because Mother (grandparent) is the transferor of her grandson's interest, the transfer does not qualify for the parent-child exclusion. C 4/7/2015. *[POSTED]*

535.0000 LAND USE RESTRICTIONS

~~535.0060 **Subsidy Payments.** Revenue and Taxation Code section 402.9 is applicable only to Federal section 236 housing for persons of low and moderate income, not to Federal section 221 subdivision (d)3, Federal section 231, or Farmers Home Administration section 515 housing. C 4/2/1982; C 4/7/1982. *[DELETED]*~~

Delete - Annotation 535.0060 is no longer valid since Revenue and Taxation Code section 402.9 was amended in 1999 to provide that the assessor shall not consider as income any interest subsidy payments on properties for persons of low and moderate income "financed under Section 236 or Section 515" of the federal National Housing Act. (See Stats. 1999, ch. 941, §10 (SB 1231).) Since the annotation and its backup material pre-date the 1999 amendment, and state that section 402.9 applies only to Section 236 housing, and does *not* apply to housing under sections 221(d)3, section 231, or section 515, the material is in error.

565.0000 LEGAL ENTITIES

565.0015 *Change in Control.* Under section 64(c)(1) and Property Tax Rule 462.180, subdivision (d)(1)(B), a change in ownership occurs when a new entity obtains control, whether **directly** or **indirectly**, of an entity that owns real property. When a new person or legal entity obtains direct control of an entity, a change in control occurs, even if a formerly

direct owner maintains indirect control through its ownership of the new entity that obtained direct control. C 1/22/2015. [POSTED]

565.0022 Change in Ownership Filing Requirements. *When legal entity ownership interests are transferred to a revocable trust, it is necessary to "look through" the trust to identify the beneficial owner of the legal entity interests. Since the owner of a revocable trust is the trustor, there is no transfer of beneficial ownership when a trustor transfers legal entity ownership interests into her revocable trust. Thus, neither Revenue and Taxation Code sections 64(c)(1) nor 64(d) can be triggered. Consequently, sections 480.1 and 480.2 do not require filing a Form BOE-100-B, **Statement of Change in Control and Ownership of Legal Entities**, for transfers of legal entity interests by a trustor to a trust in which the trustor is the sole present beneficiary. C 1/28/2015. [POSTED]*

610.0000 NEWLY CONSTRUCTED PROPERTY

610.0093 Solar Energy System Exclusion. *A renewable energy facility produces methane-rich biogas using dairy cow manure, which is pooled in an 8,000,000 gallon earthen pond, and then covered by a high-density poly-ethylene (HDPE) cover anchored into the ground around the pond to form a "covered lagoon digester." If the temperature in the covered lagoon is high enough, naturally-occurring bacteria in the manure metabolically digests calories in the manure and releases methane gas, which is captured under the cover and used as fuel for the onsite generator. The HDPE cover is made of black, solar-absorbent plastic to collect the sun's heat, transfers the heat to the manure under the cover, and holds the solar energy to catalyze the biological reaction that creates methane gas fuel for the facility. Because the heat generated by the HDPE cover is used directly over the site it covers, it is not thermally isolated from the space where the energy is used. Therefore, the HDPE cover does not meet the Revenue and Taxation Code section 73 definition of an "active solar energy system." In addition, the HDPE cover appears to be a passive system, as it is designed to collect solar energy for heating, but contains no active or mechanical components. Thus, the HDPE cover does not qualify for the active solar energy system new construction exclusion. C 5/6/2014. [POSTED]*

625.0000 PARENT-CHILD TRANSFER

625.0123 Life Estate. *Mother transfers real property equally to daughter and son, and reserves a life estate in 2001. Daughter dies in 2006, and she leaves her remainder interest to her brother. Mother dies in 2014. The 2001 transfer is not a change in ownership, because Mother retains present beneficial ownership of the property by reserving a life estate for herself. At daughter's death in 2006, the transfer of her remainder interest to her brother is a transfer of a future interest. Because daughter does not transfer a present beneficial interest to her brother, the 2006 transfer does not constitute a change in ownership. However, upon mother's death in 2014, the future interest vests and becomes a present beneficial interest, resulting in a transfer of 100 percent of the property from mother to son. Because son is mother's child, the parent-child exclusion would be available for the entire property, assuming a timely claim is filed. C 4/7/2015. [POSTED]*

630.0000 PERSONAL PROPERTY

630.0044 *Trailers – Permanently Mounted Equipment.* Revenue and Taxation Code section 225 grants a personal property tax exemption to trailers registered under the Permanent Trailer Identification Program. Section 225 does not specify, however, whether it extends to permanently mounted equipment attached to a trailer registered under the Permanent Trailer Identification Program. Therefore, in the absence of any indication that the Legislature intended to exempt such equipment, permanently mounted equipment is subject to local property tax assessment. C 10/30/2014. [POSTED]

660.0000 POSSESSORY INTEREST

660.0321 *Termination.* A hangar was leased from the airport for the 2013-14 fiscal year. The lessee terminated the lease on March 24, 2014, and the hangar was leased to another lessee. A taxable possessory interest assessment is not made against the government-owned property, but rather against the right to possess publicly owned property held by the private citizen, and it is the private citizen's right to the use or enjoyment of the property interest (usufructuary interest) alone that is being taxed. In such cases, each respective taxpayer's possessory rights are subject to separate assessment and taxation as real property. Thus, since both the first and second lessees held a right to possess the property (even though the first lessee's right to possession terminated early), both real property interests were subject to taxation. This does not constitute double taxation, since double taxation occurs only when two taxes of the same character are imposed on the same property, for the same purpose, by the same taxing authority within the same jurisdiction during the same taxing period. The same property was not being taxed since the tax is against the property rights held by the private citizen, and the separate rights of each were being assessed. C 2/24/2015. [POSTED]

880.0001 WELFARE EXEMPTION – (a) IN GENERAL

880.0099.005 *Exclusive Use.* If property is used primarily for exempt purposes, the term "used exclusively" does not preclude activity which is merely incidental to the charitable purpose and not in competition with commercial enterprise. The issue of whether a revenue generating activity is a disqualifying commercial activity, as opposed to an activity that is incidental to and reasonably necessary for its exempt purpose, must be decided on a case by case basis, taking into account all the facts of the situation. A number of factors an assessor may consider to determine whether an art institution's activities are in competition with commercial enterprises may include whether there are future plans for growth in sales for the purpose of increasing profits, whether the prices/fees are fixed with the intention of yielding a surplus over and above operating expenses, whether expenses, including salaries, are not excessive, and the reasonableness of the organization's financial reserves. The assessor may also note the extent to which the organization solicits and receives charitable donations as well as volunteer work, especially in comparison to the amount of fees it earns and the number of paid staff members. Additionally, the assessor may consider whether advertising is performed in a commercial manner, such as whether it focuses on purchasing art or on educating the general public. Another factor to consider is the extent and degree of below cost services provided, including the educational programs, competitions, and special events, as well as consideration of the amount of time the art is available for sale, as opposed

to being simply viewed. Furthermore, the assessor may consider whether the artwork on display is selected based on its ability to be sold, or on its educational value, such as its representation of modern or historical trends. C 4/3/2015. [POSTED]