



STATE BOARD OF EQUALIZATION
PROPERTY TAX DEPARTMENT
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0064
1-916 274-3350 • FAX 1-916 285-0134
www.boe.ca.gov

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October 1, 2020

TO: INTERESTED PARTIES

Enclosed is a copy of Current Legal Digest (CLD) number 2020-1 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 ~~and italics~~). After review, please submit any questions, comments, or suggestions for changes *in writing* by **Monday, November 2, 2020**. These may be sent by email using the "Comments Form" on the State 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
PO Box 942879, MIC: 64
Sacramento, CA 94279-0064

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/Advisory Opinions](#)." After all proposed changes have been resolved, the CLD will become obsolete. A final version of the CLD will be posted under the "Archives" heading on the CLD webpage.

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. If you have any questions, please contact Glenna Schultz at 1-916-274-3362.

Sincerely,

/s/ David Yeung

David Yeung
Deputy Director
Property Tax Department

DY:gs
Enclosure

PROPERTY TAX DEPARTMENT

PROPERTY TAX CURRENT LEGAL DIGEST NO. 2020-1

October 1, 2020

190.0000 ASSESSMENT APPEALS BOARD

190.0048.005 **Jurisdiction—Base Year Value Transfer.** *Taxpayers owned a property in County X until it was sold in November 2012 for \$1,200,000. The original property consisted of five acres of land, including three acres of grape vines. Taxpayers purchased another property in County Z for \$1,310,000. Believing that this purchase price was within the allowable value range for the purpose of the base year value transfer, taxpayers applied for a transfer of the base year value. The X County Assessor certified that three acres of vines and fixture real property at the value of \$49,650 (4.14 percent of total value of the property) were not incidental to the use of the original property as a residential site. Therefore, the Z County Assessor only allowed 95.86 percent of the \$1,200,000 sale price to count towards the value of the original property. This determination brought the value of the replacement property out of the allowable value range. Based on this, the base year value transfer claim was denied. Taxpayers filed an Application for Changed Assessment with the X County Assessment Appeals Board, copying the Z County Assessment Appeals Board. Taxpayers objected to the Z County Assessor's determination that the 3-acre vineyard was not for an incidental, personal use, i.e., was not a part of the residence for that portion to qualify as part of the original property. This is an appeal involving the classification of a portion of property as residential or non-residential for base year value transfer purposes. As such, this appeal falls under the X County Assessment Appeals Board's functions pursuant to Rule 302(a)(4), and the X County Assessment Appeals Board has jurisdiction to hear it. C 10/28/2015.*

200.0000 BASE YEAR VALUE TRANSFER – PRINCIPAL RESIDENCE

200.0008 **Appeal.** *Taxpayers owned a property in County X until it was sold in November 2012 for \$1,200,000. The original property consisted of five acres of land, including three acres of grape vines. Taxpayers purchased another property in County Z for \$1,310,000. Believing that this purchase price was within the allowable value range for the purpose of the base year value transfer, taxpayers applied for a transfer of the base year value. The X County Assessor certified that three acres of vines and fixture real property at the value of \$49,650 (4.14 percent of total value of the property) were not incidental to the use of the original property as a residential site. Therefore, the Z County Assessor only allowed 95.86 percent of the \$1,200,000 sale price to count towards the value of the original property. This determination brought the value of the replacement property out of the allowable value range. Based on this, the base year value transfer claim was denied. Taxpayers filed an Application for Changed Assessment with the X County Assessment Appeals Board, copying the Z County Assessment Appeals Board. Taxpayers objected to the Z County Assessor's determination that the 3-acre vineyard was not for an incidental, personal use, i.e., was not a part of the residence for that portion to qualify as part of the original property. This is an appeal involving the classification of a portion of property as residential or non-residential for base year value transfer purposes. As such, this appeal falls under the X County Assessment Appeals Board's functions pursuant to*

Rule 302(a)(4), and the X County Assessment Appeals Board has jurisdiction to hear it. C 10/28/2015.

220.0000 CHANGE IN OWNERSHIP

220.0044 Community Property. ~~The form of title presumption overrules the general community property presumption such that property that is acquired by a married person during the marriage in the name of one spouse is presumed to be the separate property of that spouse. The separate property presumption can be rebutted by clear and convincing evidence that there was an agreement or understanding between the spouses that the property was to be held as community property. C 10/27/2010.~~

DELETE ANNOTATION: This opinion was based on the court case *In re Marriage of Brooks & Robinson* (2008) 169 Cal.App.4th 176 (*Brooks*). However, the *Brooks* case was overruled in part by *In re Marriage of Valli* (2014) 58 Cal.4th 1396. The California Supreme Court stated clearly in *Valli*, in cases solely involving spouses' interests, the title presumption does not apply when it conflicts with the transmutation statutes.

220.0267 Interspousal Transfer. ~~Husband and wife jointly formed a revocable trust. Husband and wife executed a deed conveying their interest in real property from "community property with right of survivorship" to themselves as the trustees of the trust. Later, husband and wife, as trustees, transferred the property to a corporation in which 51 percent of the voting stock was held in wife's name and 49 percent of the voting stock was held in husband's name.~~

~~The transfer of the property to the corporation was a change in ownership pursuant to Revenue and Taxation Code section 61(j), unless husband and wife can provide clear and convincing evidence to establish that their voting shares in the corporation are community property. If the presumption that husband and wife own 49 percent and 51 percent of the corporation, respectively, is not rebutted, the proportional transfer exclusion of section 62(a)(2) will not apply. Also, the interspousal transfer exclusion of section 63 does not apply because the transfer to the corporation was not a transfer between spouses. C 5/31/2007.~~

DELETE ANNOTATION: This opinion was based on the court case *In re Marriage of Brooks & Robinson* (2008) 169 Cal.App.4th 176 (*Brooks*). However, the *Brooks* case was overruled in part by *In re Marriage of Valli* (2014) 58 Cal.4th 1396. The California Supreme Court stated clearly in *Valli*, in cases solely involving spouses' interests, the title presumption does not apply when it conflicts with the transmutation statutes.

220.0278 Interspousal Transfers. ~~Revenue and Taxation Code section 63 does not apply to a transfer from a husband and a wife to a corporation, a legal entity, wholly owned by wife. The exclusion provided by Revenue and Taxation Code section 62(a)(2) is not applicable since after the transfer, wife held a 100 percent interest in the property through the corporation. For corporate change in ownership purposes, a husband and a wife are treated as separate individuals, and the ownership interest of one spouse in a corporation is not attributed to the other. C 5/14/1993; C 2/22/2007.~~

DELETE ANNOTATION: This opinion was based on the court case *In re Marriage of Brooks & Robinson* (2008) 169 Cal.App.4th 176 (*Brooks*). However, the *Brooks* case was overruled in part by *In re Marriage of Valli* (2014) 58 Cal.4th 1396. The California

Supreme Court stated clearly in *Valli*, in cases solely involving spouses' interests, the title presumption does not apply when it conflicts with the transmutation statutes.

220.0394.005 **Limited Partnership.** *Partnership is a Delaware limited partnership consisting of eight series. Partnership's eight series each have a 100 percent interest in one separate parcel of real property. Pursuant to Delaware law, the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a particular series are enforceable only against the assets of such series and not against the assets of the partnership generally, and the converse is true with respect to the partnership's liabilities and obligations. The law also provides that each separate series has the power and capacity to, in its own name, contract, hold title to assets (including real, personal and intangible property), grant liens and security interests, and sue and be sued. Additionally, the partnership agreement itself provides that each series has its own dba, maintains separate and distinct records of its assets and liabilities and profits and losses, and further title to the property shall be held in the names of the series to which it belongs. Thus, each series is treated as a separate legal entity for California property tax purposes and subject to the provisions of Revenue and Taxation Code section 64(c)(1) and Property Tax Rule 462.180(d)(1). As such, when anyone obtains more than 50 percent interest in any series, this would result in a change in control of that series and reassessment of the real property owned by that particular series. C 12/8/2015.*

220.0453.005 **Original Co-owners.** *A historical property is owned by a limited liability company (LLC), which is owned by a corporation, which in turn is wholly owned by a charitable trust. The trustees of the trust organized a new California nonprofit public benefit corporation having as its sole purpose and function the preservation and maintenance of the historical property. Since its formation, the same three trustees of the trust have served and continue to serve as the three directors of the public benefit corporation. The trustees of the Trust then caused corporation to transfer all of its LLC interests to the public benefit corporation for no consideration.*

A charitable trust is a gift in trust for the benefit of the public or for the establishment or support of an institution dedicated to the welfare of the public or to a class or part thereof. Therefore, charitable trusts do not have ascertainable beneficiaries. Since the subject trust is a charitable trust, the beneficial owners of the property in the trust are, by definition, not ascertainable. Similarly, nonprofit public benefit corporations are organized in such a way that beneficial "owners" of property held by such corporations technically do not exist. In the case of nonprofit public benefit corporations, members, or if there are no members, then directors, of such organizations will be considered owners of the entity's property for property tax purposes, such that property transferred between public benefit corporations is excluded under Revenue and Taxation Code section 62(a)(2) if the members/directors of the transferor corporation were identical to the members/directors of the transferee corporation before and after the transfer. It follows, then, that if proportional ownership interest is measured by members or by the board of directors for purposes of the section 62(a)(2) exclusion, the members or board of directors must then become "original co-owners" in the nonprofit public benefit corporation pursuant to section 64(d), such that if a voting interest change in the members or board of directors of more than 50 percent occurs, there would be a change in ownership of the property previously excluded under section 62(a)(2). Until an original co-owner interest is transferred and counted and cumulated for purposes of section 64(d), the interest as held by the transferee is an original co-owner interest. Therefore, if an original co-

owner interest is transferred and excluded from counting and cumulating under Rule 462.180(d)(2), the transferee takes the interest as an original co-owner. C 9/4/2015.

220.0602 Rescission—Motive. *Civil Code section 1688 provides that a contract is extinguished by its rescission. A contract may be rescinded mutually if all the parties consent, or unilaterally based on a variety of grounds, for example, fraud, mistake or duress (Civil Code section 1689). Civil Code section 1691 explicitly requires the restoration of the parties to the status quo for unilateral rescission. Although the Civil Code contains no similar explicit requirement for mutual rescission, case law is supportive of a requirement to return the parties to the status quo for mutual rescission. The Civil Code does not require a court order to validate a rescission. Because the elements of a valid rescission are clearly specified in the Civil Code, if the parties to a contract to transfer real property satisfy the statutory requirements, the assessor must accept such rescission for property tax purposes. If, for example, all parties to a transfer of property wish to undo the transfer and have restored to each other all consideration received, the assessor must accept the rescission of the property transfer. The motive for rescinding a contract is inconsequential to its validity. However, if the parties to a contract to transfer real property fail to meet a requirement for rescission provided in the Civil Code, the assessor has the discretion to deny the rescission for property tax purposes. C 12/10/2015.*

625.0000 PARENT-CHILD TRANSFER

625.0235.030 Trusts – Share and Share Alike. *In order to equalize the dollar value of distributed interests to Child A and Child B, it is proposed that Child A, as the trustee, obtain a loan from Child B. In exchange for the loan, Child B will receive a promissory note that is secured by a deed of trust and payable by the trustee. The trustee will then distribute the real property, which is encumbered by the loan, to Child A and make a cash distribution to Child B in an amount equal to the value of the equity in the Subject Property distributed to Child A.*

The trust instrument provides for equal distribution of the Subject Property to Child A and Child B and the trust instrument explicitly permits non-pro rata distribution. Also, the proposed non-pro rata distribution will accomplish the trust's instructions of equal distribution between the two children in that Child B will receive cash in the same amount as the equity in the real property that will be transferred to Child A. Finally, Child A, the beneficiary receiving the real property, is not making the loan to the trust to equalize the distribution. As such, the proposed transfer of the real property to Child A would qualify for the parent-child transfer exclusion, assuming all other requirements are met. C 8/10/2015.

880.0001 WELFARE EXEMPTION – (a) IN GENERAL

880.0160 Management Contract. *When a corporate owner of a senior housing development hires a separate corporation to manage its facility, the agreement between the two corporations must be examined to determine if the hired corporation is an ~~independent operator~~ operator, or is a manager that is, in fact, the agent of the owner. If the ~~separate corporation manager~~ is the owner's agent, then only the owner need qualify under Revenue and Taxation Code section 214 ~~and file for exemption~~. C 11/12/1987.*

Note: See Jewish Community Center Development Corporation v. County of Los Angeles (2016) 243 Cal.App.4th 700.

880.0267.005 Recorded Regulatory Agreement. *The subject property is a 698-unit apartment house, owned by a limited partnership in which the managing general partner is an eligible nonprofit corporation. The property is subject to a regulatory agreement which requires that at least 20 percent of the units be occupied by tenants who are "Low or Moderate Income Tenants." Since the welfare exemption requires an enforceable agreement with a public agency, a property owner must be in compliance with that agreement in order to receive the welfare exemption. In this case, although the regulatory agreement requires that 20 percent of the units be made available to low-income tenants, it also provides that the property owner may still be considered to be in compliance with the regulatory agreement if a household eventually exceeds the income eligibility, provided that the owner makes other units available or takes other actions to satisfy the 20 percent requirement. Therefore, if the property owner is in compliance with the terms of the regulatory agreement by any of the means described therein, it remains eligible for the welfare exemption. If the enforcing agency determines that the terms of the regulatory agreement have not been met, the owner will not be eligible for the welfare exemption. C 10/19/2015.*

880.0600 (c) WELFARE EXEMPTION – HOSPITAL PURPOSES

880.0641 Leased Property. ~~While specific statutory and regulatory provisions may allow a single member limited liability company (LLC) to disregard its separate existence for purposes of income tax filing, there is no authority for disregarding an LLC's separate entity status for purposes of ownership, operation, or use of property in determining eligibility for the welfare exemption under Revenue and Taxation Code section 214.~~

~~Accordingly, machinery and equipment purchased and owned by an LLC whose single member is a qualifying medical center and leased to the medical center will not be eligible for the exemption. However, machinery and equipment purchased and owned by a qualifying entity and leased to the medical center for use consistent with the "needs of hospital" provision of section 214.11 could be eligible for the exemption. C 3/1/1999.~~

DELETE ANNOTATION: The backup correspondence was written prior to, and now conflicts with, Revenue and Taxation Code section 214.8(c). Section 214.8(c), which became effective in 2007, states that an LLC without a tax exempt letter may still be deemed a qualifying organization, and the tax exemption requirement may be met if each of the LLC's members file its tax exempt letter with the BOE.