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March 1, 2011

TO: INTERESTED PARTIES

Enclosed is a copy of Current Legal Digest (CLD) number 2011-1 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, April 1, 2011**. 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. Here is the mailing address:

Board of Equalization  
County-Assessed Properties Division  
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P. O Box 942879  
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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 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 our 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 916-274-3362.

Sincerely,

/s/ David J. Gau

David J. Gau  
Deputy Director  
Property and Special Taxes Department

DJG/grs  
Enclosure

# PROPERTY AND SPECIAL TAXES DEPARTMENT

## PROPERTY TAXES CURRENT LEGAL DIGEST NO. 2011-1

March 1, 2011

### 170.0000 ASSESSMENT

[170.0020](#) **Base Year Values—Correction.** A developer sold two parcels and inadvertently switched the parcel numbers on the grant deeds and the preliminary change of ownership reports, causing one parcel to be overassessed and the other to be underassessed. The property owners filed quitclaim deeds to correct the error. On one parcel, the assessor cancelled the incorrect assessment but failed to input the correct data. As a result, the computer system reverted back to the developer's factored base year value. The incorrect base year value remained on the property for five years until it was discovered. Since this was an error that did not involve an assessor's exercise of judgment as to value, the base year value can be corrected at any time the error is discovered pursuant to Revenue and Taxation Code section 51.5(a).

Section 4831 provides a separate four-year authorization for the assessor to correct any roll entries not resulting from an error in value judgment. The four-year statute of limitations for correcting roll errors is separate and distinct from that for base year value corrections and the issuance of escape assessments, and does not affect those limitation periods. Therefore, after correcting the base year value, four years of escape assessments were properly issued. C 12/1/2009. [POSTED]

[170.0041](#) **Floating Homes.** A floating structure that uses a pump-out boat to remove waste from the floating structure to the city sewer system does not meet the conditions of Revenue and Taxation Code section 229(c)(4), which requires a permanent continuous hookup to a shoreside sewage system. A floating structure that does not meet the definition of a floating home under section 229 is treated as personal property and subject to annual assessment. C 2/4/2010. [POSTED]

### 200.0300 BASE YEAR VALUE TRANSFER—GOVERNMENT ACQUISITION

[200.0367](#) **Replacement Property – New Construction.** Land that was purchased prior to the taking of real property under governmental action is not eligible for property tax relief under Revenue and Taxation Code section 68. Even though the land does not qualify for relief, any improvements built on the land to replace improvements taken could receive relief if they meet the tests of comparability, ownership and time for qualification. C 3/30/1989. [POSTED]

### 220.0000 CHANGE IN OWNERSHIP

[220.0375.035](#) **Limited Liability Company.** A California limited liability company (LLC) owns a multi-residential property. The sole member of the LLC is a family trust. The LLC desires to change from being member-managed to manager-managed and intends to appoint a California corporation as manager. The manager will have no ownership interest in the LLC. Revenue and Taxation Code section 64 specifies that there is a change in ownership of the real property owned by a legal entity when another legal entity or another person obtains direct or indirect control of the legal entity through ownership of more than 50 percent of the voting stock or a majority ownership interest. Since the California corporation assuming the

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role of manager will have no ownership interest in the LLC it is charged with managing, there will be no change in ownership as a result of the proposed change in management. C 2/23/2010. [POSTED]

220.0454.005 **Original Co-owner.** A limited liability company (LLC), owned by several individuals, owns a 48 percent interest in real property. A corporation, owned by an individual, is a cotenant with the LLC as to the other 52 percent of the real property. The corporation conveyed its 52 percent interest in the real property to the LLC in exchange for a 52 percent membership interest in the LLC.

When the corporation transferred its interest in the real property to the LLC in exchange for an ownership interest in that LLC, the ownership interests in the real property were the same before and after the transfer. Accordingly, the transfer was excluded from change in ownership under Revenue and Taxation Code section 62(a)(2) and Property Tax Rule 462.180(b)(2). As a result of the exclusion from change in ownership, the corporation became an original co-owner with respect to the interest it received in the LLC. In addition, the transfer of legal entity interests was excluded from change in ownership under Rule 462.180(d)(4).

Although the corporation obtained a controlling interest in the LLC and there was a change in control of the LLC, there was no change in ownership of the real property because the proportional ownership interests in the real property remained the same. C 1/14/2010. [COMMENT RECEIVED – NOT ANNOTATED]

## 285.0000 CORRECTIONS

285.0021 Clerical Errors. A developer sold two parcels and inadvertently switched the parcel numbers on the grant deeds and the preliminary change of ownership reports, causing one parcel to be overassessed and the other to be underassessed. The property owners filed quitclaim deeds to correct the error. On one parcel, the assessor cancelled the incorrect assessment but failed to input the correct data. As a result, the computer system reverted back to the developer's factored base year value. The incorrect base year value remained on the property for five years until it was discovered. Since this was an error that did not involve an assessor's exercise of judgment as to value, the base year value can be corrected at any time the error is discovered pursuant to Revenue and Taxation Code section 51.5(a).

Section 4831 provides a separate four-year authorization for the assessor to correct any roll entries not resulting from an error in value judgment. The four-year statute of limitations for correcting roll errors is separate and distinct from that for base year value corrections and the issuance of escape assessments, and does not affect those limitation periods. Therefore, after correcting the base year value, four years of escape assessments were properly issued. C 12/1/2009. [POSTED]

## 610.0000 NEWLY CONSTRUCTED PROPERTY

610.0055 Maintenance. A light industrial property recently sold. At the time of sale, its roof had a remaining service life of 3-4 years and did not comply with the current building code. After the sale, the new owner replaced the roof with a new roof with a designed life of 15 years. Routine maintenance that does not constitute a major rehabilitation or that does not convert the property to a different use is not considered new construction under Revenue and Taxation Code section 70(a) and Property Tax Rule 463(b)(4). Since the new owner

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uses the property for substantially the same purposes as the old owner, the replacement of the roof is not considered new construction. C 2/23/2010. [POSTED]

## **625.0000 PARENT-CHILD TRANSFER**

[625.0235.025](#) **Trusts—Share and Share Alike.** Parents' trust became irrevocable upon the death of the surviving parent. The trust document stipulates that, after certain specific bequests, the trust remainder is to be divided equally between their son and daughter. The trust document also gives son the option to include the property in his share of the trust remainder so long as he provides sufficient assets to his sister's share to equalize the distribution. Son has chosen to exercise this option. The trustee is given the authority to borrow funds, using the property as security, to equalize the distribution. Son will receive the property from the trust subject to the loan.

In the typical share and share alike trust, each beneficiary has a beneficial ownership interest in each of the trust's assets, including each piece of real property. In this case, since son exercised the option to equalize distribution, daughter does not have a beneficial ownership interest in the property. Instead, her interest is in receiving an equalizing payment, which is in the nature of a security interest created by an equitable charge. The nature of the daughter's relationship to the property created by son's exercise of the option would appear to be that of an equitable encumbrancer. The effect of the equitable charge is that son receives the entire legal and beneficial ownership of the property from his parents, subject to a security interest in his sister of his payment to the trust of the equalizing amount. Thus, it is immaterial whether son as an individual acts as co-borrower or guarantor on the loan. In either case, the entire property would be eligible for the parent-child exclusion. C 2/22/2010. [POSTED]

## **860.0000 VESSELS**

[860.0023](#) **Floating Structure.** A floating structure that uses a pump-out boat to remove waste from the floating structure to the city sewer system does not meet the conditions of Revenue and Taxation Code section 229(c)(4), which requires a permanent continuous hookup to a shoreside sewage system. A floating structure that does not meet the definition of a floating home under section 229 is treated as personal property, not necessarily as a vessel, and subject to annual assessment. C 2/4/2010. [POSTED]

## **880.0000 WELFARE EXEMPTION**

[880.0340](#) **Zoning.** The fact that local law may have a 10-acre minimum size for zoning purposes does not render an entire 10-acre property exempt because it is the minimum size required by local law. While that fact should be considered, the relevant standard under Revenue and Taxation Code section 214(a) is whether an organization's property is used exclusively for exempt activities, including uses that are incidental to and reasonably necessary for the accomplishment of those activities. We are not aware of any authority stating that local zoning affects whether a property does or does not exceed the amount of property reasonably necessary to the accomplishment of an exempt purpose under section 214(a)(3). C 1/15/2010. [POSTED]