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PROPERTY AND SPECIAL TAXES DEPARTMENT
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June 12, 2014

TO: INTERESTED PARTIES

Enclosed is a copy of Current Legal Digest (CLD) number 2014-1 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, July 14, 2014**. 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
P O 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" (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/ Dean R. Kinnee

Dean R. Kinnee, Chief
County-Assessed Properties Division
Property and Special Taxes Department

DRK/grs
Enclosure

PROPERTY AND SPECIAL TAXES DEPARTMENT

PROPERTY TAXES CURRENT LEGAL DIGEST NO. 2014-1

June 12, 2014

105.0000 AIRCRAFT OF HISTORICAL SIGNIFICANCE

105.0090 **Replica.** *In order to meet the definition of "aircraft of historical significance" for purposes of the exemption in Revenue and Taxation Code section 220.5, an aircraft must be original, restored, or a replica of a "heavier than air powered aircraft." In addition, a qualifying aircraft must be 35 years or older. C 7/6/2012. [POSTED]*

220.0000 CHANGE IN OWNERSHIP

220.0067 **Corporate Merger.** *In a merger where the assets of the merged corporations are transferred to the surviving corporation by operation of law, the transfer of any California real property to the surviving corporation as a result of the merger results in a change in ownership of that property pursuant to sections 60 and 61(j) and Rule 462.180(a), absent any exclusion. Further, the transfer of voting stock in the surviving corporation to former shareholders of the merged corporations would result in a change in ownership of any California real property owned by the surviving corporation prior to the merger, if, as a result of the merger, one person or entity obtained more than 50 percent of the surviving corporation's stock. C 10/30/2009. [POSTED]*

220.0377 **Limited Liability Company – Dissolution.** *Husband and Wife formed a Trust and conveyed real property to the Trust. Upon Husband's death, Wife became the sole present beneficiary of the Trust. Later, Wife, as co-trustee of the Trust, transferred property to a California limited liability company (LLC) that was owned by the Trust. The Operating Agreement of the LLC required that upon the occurrence of the death of any Member or other specified events, the LLC was to dissolve unless all of the remaining Members consent to the continuation of the business of the Company. Subsequently, Wife died. Thereafter, the LLC was formally dissolved and title to the property was conveyed back to the Trust.*

Even though an event may have triggered dissolution of an LLC, the Corporations Code sets up a scheme where the dissolution is but the first step in a process that may or may not lead to the end of the company's separate legal existence. Corporations Code section 17354 states that the company continues in existence after dissolution for purposes of winding up and disposing of and conveying its property. Even if the LLC dissolved at Wife's death, the LLC continued to exist after the date of Wife's death and throughout its winding up period until the filing of a certificate of cancellation of the articles of organization with the Secretary of State upon the completion of the winding up of the affairs of the LLC. As such, the transfer on the date of Wife's death to the remainder beneficiaries that occurred for property tax purposes was of the LLC membership interests held by the Trust, and not the Property. The parent-child exclusion is unavailable as Revenue and Taxation Code section 63.1(c)(8) provides that the exclusion does not apply to transfers of legal entity interests. Therefore, at Wife's death, 100 percent of the original co-owner interests in the LLC transferred to the beneficiaries, resulting in a change in ownership of the property under section 64(d), because legal entity ownership interests representing cumulatively more than 50 percent of the total interests in the legal entity were transferred by the original co-owners. C 6/19/2012. [POSTED]

493.0000 GRANDPARENT-GRANDCHILD TRANSFER

493.0140 *Trusts—Sprinkle/Spray.* A Trust contains a sprinkle power that gives the Trustee total discretion to distribute trust property to a number of potential beneficiaries. The beneficiaries are the Settlor (H), the Settlor's spouse (W), and the granddaughter of W. In addition to the named beneficiaries, the Trustee is given authority to designate any members of a class of persons or any qualified charitable organization as beneficiaries. However, no additional beneficiaries had yet been named. Because a change in ownership requires a transfer of a present interest in real property and future interests in real property are not assessed, only the beneficiaries originally named by the Settlor are the present beneficiaries of the Trust. Therefore, the Trustee could potentially distribute all or a portion or none of the Property to H or to W or to Granddaughter.

When a trust contains a sprinkle power, all of the persons included as beneficiaries must be eligible for an exclusion. If even one person is not excludable, a change in ownership of all real property owned by the Trust will occur. Since there is no exclusion available if the Trustee distributes any portion of the Property to Granddaughter, a non-excludable beneficiary (since the granddaughter's parents were both living on the date the Property was transferred to the Trust), a change in ownership of the Property occurred at the time the Property was transferred to the Trust. C 6/12/2012. [POSTED]

610.0000 NEWLY CONSTRUCTED PROPERTY

610.0089 *Solar Energy System Exclusion.* Solar power plants may qualify for the new construction exclusion for active solar energy systems. Revenue and Taxation Code section 73(b)(3)(C) provides that "solar energy systems" that qualify for the exclusion include those used for the "production of electricity," with no limitations on either the amount of electricity produced, the size of the facility that produces the electricity, or the location of ultimate usage. There is also no indication in the legislative history that the Legislature intended to limit the exclusion to solar energy systems of a certain size or type. C 6/11/2012. [POSTED]

625.0000 PARENT-CHILD TRANSFER

625.0125 *Limited Liability Company – Dissolution.* Husband and Wife formed a Trust and conveyed real property to the Trust. Upon Husband's death, Wife became the sole present beneficiary of the Trust. Later, Wife, as co-trustee of the Trust, transferred property to a California limited liability company (LLC) that was owned by the Trust. The Operating Agreement of the LLC required that upon the occurrence of the death of any Member or other specified events, the LLC was to dissolve unless all of the remaining Members consent to the continuation of the business of the Company. Subsequently, Wife died. Thereafter, the LLC was formally dissolved and title to the property was conveyed back to the Trust.

Even though an event may have triggered dissolution of an LLC, the Corporations Code sets up a scheme where the dissolution is but the first step in a process that may or may not lead to the end of the company's separate legal existence. Corporations Code section 17354 states that the company continues in existence after dissolution for purposes of winding up and disposing of and conveying its property. Even if the LLC dissolved at Wife's death, the LLC continued to exist after the date of Wife's death and throughout its winding up period until the filing of a certificate of cancellation of the articles of organization with the Secretary of State upon the completion of the winding up of the affairs of the LLC. As such, the transfer on the date of Wife's death to the remainder beneficiaries that occurred for property tax purposes was of the LLC membership interests held by the Trust, and not the Property. The parent-child exclusion is unavailable as Revenue and Taxation Code section 63.1(c)(8) provides that the exclusion does not apply to transfers of legal entity interests. Therefore, at Wife's death, 100 percent of the original co-owner interests in the LLC transferred to the

beneficiaries, resulting in a change in ownership of the property under section 64(d), because legal entity ownership interests representing cumulatively more than 50 percent of the total interests in the legal entity were transferred by the original co-owners. C 6/19/2012. [POSTED]

625.0146 One Million Dollar Exclusion. If parent-child claims are filed for multiple properties for which the ~~full-cash~~ adjusted base year 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. **[AMENDED]**

~~625.0156 **Partnership Dissolution.**— Husband (H) and Wife (W) owned a principal residence as community property. H and W transferred the property to a general partnership in which the partnership interests were held by H and W as partners. The partnership agreement did not provide for a continuation of the partnership on the death of a partner. Subsequently, H and W created a revocable living trust. H and W then transferred their respective partnership interests to the trust. Later, W died. Following W's death, the revocable trust became irrevocable (irrevocable trust). H became the sole present beneficiary of the irrevocable trust during his lifetime, and the children of H and W (children) became the remainder beneficiaries. H died. The trust corpus was then distributed to the children.~~

~~When W died, the partnership dissolved 90 days after the date of death by operation of law because there was no agreement between H and W that provided for the continuation of the partnership. At that time, H held the real property in the trust indirectly as an individual, not as an interest in a legal entity. Thus, any transfers from the trust that occurred 90 days after W's death were transfers of real property, not partnership interests. When H died, the children became the present beneficial owners of the property held by the irrevocable trust. Since the children were the remainder beneficiaries of the irrevocable trust, the transfers should be treated as coming from H and W (as trustors of the trust). The transfer of the property from the irrevocable trust to the children will qualify for the parent-child exclusion under section 63.1, if all the filing requirements have been met, since it was a transfer of a principal residence from H and W to their children. C 5/16/2007. **[DELETED]**~~

~~Delete – To the extent that the backup letter can be read to state that the partnership dissolves and winds up by operation of law on the same day – thereby distributing its property automatically to the trust estate before distribution to the beneficiaries – it is incorrect. Instead, at the 90-day mark after the dissociation by death of one of the partners, under Corporations Code section 16801, subdivision (2)(A), the partnership dissolved and the winding up process began. The BOE's analysis in the backup letter misstated when the winding up would be completed in that case.~~

735.0000 RETIREMENT SYSTEMS (PUBLIC) PROPERTY

~~735.0040 **State Retirement System.**— Government Code section 7510(b)(1) requires that language in lease documents inform lessees that the possessory interest tax will be based on a pro rata square footage allocation of the acquisition full cash value, and section 7510(b)(5) mandates that the subdivision apply to the assessment, computation and collection of taxes for the 1992-93 and subsequent fiscal years. C 4/18/1997. **[DELETED]**~~

~~Delete – Incorrect as a result of California State Teachers' Retirement System v. County of Los Angeles (2013) 216 Cal.App.4th 41.~~

~~735.0050 **Valuation/In-Lieu Fee.** Government Code section 7510 allows public retirement systems to purchase properties for investment purposes but also provides for the payments of in-lieu fees by the systems to reimburse local entities for the losses of tax revenues caused by purchases subsequent to the enactment of section 7510 in 1982.~~

~~The fee is payable if the purchased property is located within the boundary of the public retirement system, and it is calculated based on the article XIII A of the California Constitution market value of the property at the time of purchase less the value of the possessory interest assessed to the tenant.~~

~~If the purchased property is located outside the public retirement system's boundary, section 7510 is inapplicable. Such property is assessed pursuant to article XIII, section 11 of the California Constitution. C 9/23/1988. **[DELETED]**~~

~~Delete – Incorrect as a result of California State Teachers' Retirement System v. County of Los Angeles (2013) 216 Cal.App.4th 41.~~