

Issue Paper Number **18-001**



- Board Meeting
- Business Taxes Committee
- Customer Services and Administrative Efficiency Committee
- Legislative Committee
- Property Tax Committee
- Other

Assessment of Community Land Trust Housing

I. Issue

Should the State Board of Equalization (Board) adopt guidelines to provide county assessors' staff and others interested in the administration of property taxes in California with information regarding the assessment of community land trust housing?

II. Alternative 1 - Staff Recommendation

Staff recommends that the Board adopt the attached proposed LTA, *Assessment of Community Land Trust Housing* (Attachment A).

III. Other Alternative(s) Considered

The Board could adopt the modified attached proposed LTA that reflects revisions suggested by representatives of Community Land Trusts (CLTs) (Attachment B).

IV. Background

Revenue and Taxation Code section 402.1¹ generally requires assessors, in the valuation of land, to recognize the effect of government-imposed restrictions on use. Privately imposed use restrictions, by contrast, are disregarded by assessors unless the law specifies otherwise. Effective September 27, 2016, Assembly Bill 2818 (Stats. 2016, ch. 701) amended section 402.1 so that county assessors are required to recognize qualifying private use restrictions on owner-occupied homes controlled by CLTs.

CLTs are non-profit organizations that make home ownership available at affordable prices to persons of low and moderate income. Buyers acquire full ownership of their physical homes, and lease the underlying land parcels from the CLTs under renewable, heritable 99-year ground leases. This model allows CLTs to maintain permanent communities of affordable home ownership even as individual homeowners replace each other over time.

To make these arrangements affordable, lease payments are typically nominal in amount, effectively shielding the homeowners from the true cost of the underlying land parcels. The true land costs are typically offset by funding from public programs, including the federal HOME Investment Partnerships Program and Community Block Grant Program, as well as a variety of state and local affordable housing funding sources.

Government Code section 15606, subdivision (e), provides that the Board shall issue to assessors instructions designed to promote assessment uniformity throughout the state. One vehicle for issuing such instructions is the Letters To Assessors (LTAs) series, which presents Board staff's interpretation of rules, laws, and court decisions on property tax assessment matters.

V. Discussion

Since the passage of AB 2818, staff has met on several occasions with county assessors, CLT representatives, and other interested parties in a joint effort to develop uniform guidance on the application of the bill's amendments. Interested parties meetings were held on April 10 and July 12, 2018 to discuss language in the proposed LTA. The outstanding issues are described below.

Separate Assessment of Land and Improvements

The proposed LTA (Attachment A) would advise assessors to value a CLT property by separately determining values for improvements and land. Accordingly, the proposed LTA would advise that when a buyer and a CLT have entered into (1) a purchase agreement for the improvements and (2) a 99-year lease of the land, the resulting new base year value should be the sum of the purchase price for the improvements and the present value of the lease payments.² This advice is consistent with the factual scenarios staff has examined, which show that the purchase agreements for the improvements cover only the improvements, while the 99-year land leases are wholly separate agreements.

CLT representatives have consistently maintained that, despite the specific language in the purchase agreements, the purchase prices are intended to cover both the improvements and the land, while the lease payments are for administrative services that bear no relationship to the market value of the land. Under this view, the purchase price stated in the purchase agreement for the improvements alone would be

¹ All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

² Both the purchase of improvements from a CLT and the execution of a 99-year lease are changes in ownership, each triggering a fair market value reassessment of the respective interest conveyed.

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allocated between both the improvements and the land, and the assessor would have no need to separately account for the lease payments.

Time Limitations on Base Year Value Corrections and Declines in Value

The proposed LTA (Attachment A) would advise that corrections of both base year value errors and erroneous roll entries resulting from assessor's failure to recognize the use restrictions pursuant to section 402.1(a)(11) are authorized only after the September 27, 2016, effective date of AB 2818.

For declines in value, where an erroneous roll entry resulted from the assessor's failure to recognize the use restrictions pursuant to section 402.1(a)(11), staff's view is that no such correction may be made for any lien date prior to January 1, 2017, since that is the first lien date after the September 27, 2016, effective date of AB 2818. Additionally, staff's view is that such errors are, under established case law, properly characterized as errors involving the assessor's value judgment, which are governed by specific statutes of limitations.

CLT representatives, by contrast, take the view that AB 2818 was merely declaratory of existing law, and that corrections for both declines in value and base year value errors can therefore be made for lien dates even prior to the effective date of the bill. Additionally, CLT representatives' view is that errors resulting from the assessor's failure to recognize the use restrictions pursuant to section 402.1(a)(11) are *not* value judgment errors, and that the statute of limitations governing such errors is therefore inapplicable.

"De Minimis" Lease Payments

In addition to the outstanding issues discussed above, we note that both CLT representatives and the Sacramento County Assessor's office suggested that staff provide more specific guidance about what would constitute "de minimis" lease payments that, according to staff's proposed LTA, would allow an assessor to conclude that the stated purchase price for the improvements alone could be inclusive of the land value. (See the final paragraph under the heading "Assessment of Underlying Land Parcels" in staff's proposed LTA.) Staff's position, however, is that such specific questions of judgment must be left to local assessors, and that providing specific techniques, even by way of example, might be seen as underground rulemaking. In any event, neither party provided suggested language on this issue.

VI. Alternative 1 - Staff Recommendation

Staff recommends that the attached proposed LTA be approved for publication (Attachment A).

A. Description of Alternative 1

The language in staff's proposed LTA (Attachment A) would advise, consistent the assessor's constitutional and statutory duty to assess all taxable property, that the value of land and improvements of a CLT property be determined separately.³ Specifically, the improvements would be valued by reference to the purchase price for the improvements as agreed to between the buyer and the CLT, while the land would be valued by reference to the present value of the lease payments.

The separate valuation of land and improvements is also consistent with what the Legislature ultimately intended in passing AB 2818. This is evidenced by language in early versions of the bill that would have expressly provided that the purchase price of the improvements was presumed to be the value of the land *and* improvements. Notably, that language was amended out of the bill prior to the bill's passage.⁴

³ Cal. Const. Art. XIII, section 1; Revenue and Taxation Code section 201.

⁴ See, for example, language in the May 16, 2016, version of the bill providing that "the value of the dwelling or unit and the land shall be presumed to be the purchase price of the dwelling or unit." This language was amended out of the bill in the May 31, 2016 version.

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Additionally, staff's proposed LTA would advise that corrections of base year value errors, or adjustments for declines in value, resulting from an assessor's failure to recognize the amendments under AB 2818, are limited to valuation dates occurring on or after the bill's effective date of September 27, 2016. This advice is consistent with the rule in California that statutes ordinarily are interpreted as operating prospectively absent a clear indication of a contrary legislative intent.⁵

Finally, staff's proposed LTA would advise that any corrections of erroneous roll entries or base year value errors are limited to the respective statutes of limitations for errors involving the assessor's value judgment. This advice is consistent with case law interpreting the difference between errors that do and do not involve the assessor's value judgment.⁶

B. Pros of Alternative 1

The language in staff's proposed LTA (Attachment A) would provide uniform guidance consistent with the legal substance of the transactions involving CLT properties. Specifically, staff's proposed LTA would provide advice to assessors that recognizes all of the following:

- the assessor's constitutional and statutory duty to assess all taxable property;
- evidence that the legislature did not ultimately intend for the value of land and improvements together to be presumed to be the purchase price of the improvements alone;
- the rule in California that statutes ordinarily are interpreted as operating prospectively in the absence of a clear indication of a contrary legislative intent; and
- case law that interprets the difference between errors that do and do not involve the assessor's value judgment.

C. Cons of Alternative 1

None

D. Statutory or Regulatory Change for Alternative 1

None

E. Operational Impact of Alternative 1

None

F. Administrative Impact of Alternative 1**1. Cost Impact**

No cost impact is anticipated. Electronic copies of the LTA will be distributed.

2. Revenue Impact

⁵ *Quarry v. Doe I* (2012) 53 Cal.4th 945.

⁶ See both *Little v. Los Angeles County Assessment Appeals Board* (2007) 155 Cal.App.4th 915 and *Kuperman v. San Diego County Assessment Appeals Board No. 1* (2006) 137 Cal.App.4th 918.

None. The proposed LTA is consistent with legislation (AB 2818) effective September 27, 2016.

G. Taxpayer/Customer Impact of Alternative 1

Publication of the proposed LTA would help to ensure that county assessors have uniform guidance on the assessment of CLT properties.

H. Critical Time Frames of Alternative 1

None

VII. Other Alternatives

A. Description of Alternative 2

The language in the proposed LTA as shown in Attachment B reflects the views of CLT representatives on the issue of determining separately the values for land and improvements. Specifically, the language in Attachment B would advise assessors to value the land and improvements together by taking the stated purchase price for the improvements and allocating that value to both land and improvements. Additionally, CLT representatives maintain that AB 2818 was merely declaratory of existing law, and that corrections of errors resulting from the failure to recognize the restrictions on use under section 402.1(a)(11) may therefore be made for lien dates prior to the bill's effective date of September 27, 2016. Finally, CLT representatives contend that such errors do not involve the assessor's value judgment, and are therefore not subject to the statutes of limitations that apply to corrections involving value judgment errors.

B. Pros of Alternative 2

The language in the proposed LTA as shown in Attachment B describes a simpler method of valuation than that described in Attachment A. Specifically, assessors would not have to be concerned about how to separately value the land of a CLT property.

C. Cons of Alternative 2

The language in the proposed LTA as shown in Attachment B would:

- fail to recognize the assessor's constitutional and statutory duty to assess all taxable property;
- ignore evidence that the legislature did not ultimately intend for the value of land and improvements together to be presumed to be the purchase price of the improvements alone;
- advise that AB 2818 should be interpreted as operating retroactively, thus ignoring the rule in California that statutes ordinarily are interpreted as operating prospectively in the absence of a clear indication of a contrary legislative intent; and
- provide advice that is contrary to case law interpreting the difference between errors that do and do not involve the assessor's value judgment.

D. Statutory or Regulatory Change for Alternative 2

None

E. Operational Impact of Alternative 2

None

F. Administrative Impact of Alternative 2

1. Cost Impact

No cost impact is anticipated. Electronic copies of the LTA will be distributed.

2. Revenue Impact

If the proposed LTA as shown in Attachment B were followed by county assessors, an unknown but probably insignificant revenue loss could result from the failure to recognize an element of value of CLT properties. Similarly, an unknown but probably insignificant revenue loss could result from unlawful corrections of base year value errors and corrections for declines in value.

G. Taxpayer/Customer Impact of Alternative 2

Publication of the proposed LTA would help to ensure that county assessors have uniform guidance on the assessment of CLT properties.

H. Critical Time Frames of Alternative 2

None

Preparer/Reviewer Information

Prepared by: Property Tax Department, County-Assessed Properties Division

Current as of: September 20, 2018



STATE OF CALIFORNIA

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

SEN. GEORGE RUNNER (RET.)
First District, Lancaster

FIONA MA, CPA
Second District, San Francisco

JEROME E. HORTON
Third District, Los Angeles County

DIANE L. HARKEY
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Executive Director

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TO COUNTY ASSESSORS:

ASSESSMENT OF COMMUNITY LAND TRUST HOUSING

10 Letter to Assessors 2017/008, dated February 8, 2017, included a discussion of new legislation
11 concerning land use restrictions under community land trusts (CLTs). Specifically, we noted
12 that, effective September 27, 2016, Assembly Bill 2818¹ added paragraph (11) to
13 section 402.1(a) of the Revenue and Taxation Code,² requiring county assessors to recognize
14 qualifying restrictions on owner-occupied homes controlled by CLTs. This letter is intended to
15 provide guidance in light of the amendments made by AB 2818.

16
17 ***Community Land Trusts***

18 Under the amendments to section 402.1 made by AB 2818, a "community land trust" is a
19 nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that
20 satisfies all of the following:³

- 21 • Has as its primary purposes the creation and maintenance of permanently affordable
- 22 single-family or multifamily residences.
- 23 • All dwellings and units located on the land owned by the nonprofit corporation are sold
- 24 to a qualified owner to be occupied as the qualified owner's primary residence or rented
- 25 to persons and families of low or moderate income.
- 26 • The land owned by the nonprofit corporation, on which a dwelling or unit sold to a
- 27 qualified owner is situated, is leased by the nonprofit corporation to the qualified owner
- 28 for the convenient occupation and use of that dwelling or unit for a renewable term of 99
- 29 years.

30
31 CLTs are non-profit organizations that make home ownership available at affordable prices to
32 persons of low and moderate income. Buyers acquire full ownership of their physical homes, and

¹ Stats. 2016, ch. 701.

² All statutory references are to the Revenue and Taxation Code unless otherwise specified.

³ Section 402.1(a)(11)(B)(ii).

1 lease from the CLTs the underlying land parcels under renewable, heritable 99-year ground
 2 leases. Lease payments are typically nominal in amount, effectively shielding the homeowners
 3 from the true cost of the underlying land parcels.

4
 5 The true land costs are typically offset by funding from public programs, including the federal
 6 HOME Investment Partnerships Program and Community Block Grant Program, as well as a
 7 variety of state and local affordable housing funding sources.⁴

8 9 ***Enforceable Restrictions Under Section 402.1***

10 Section 402.1 enumerates a non-exhaustive list of enforceable restrictions on land that must be
 11 recognized by the assessor, and provides that there is a rebuttable presumption that those
 12 restrictions "will not be removed or substantially modified in the predictable future and that they
 13 will substantially equate the value of the land to the value attributable to the legally permissible
 14 use or uses."⁵

15
 16 In recognizing restrictions on use under section 402.1 the assessor "shall not consider sales of
 17 otherwise comparable land not similarly restricted as to use as indicative of value of land under
 18 restriction, unless the restrictions have a demonstrably minimal effect upon value."⁶ With CLT
 19 properties, the key restriction for valuation purposes is that, upon resale, the gain that might be
 20 realized by either the owner-occupant or the CLT (upon exercising its purchase option) is
 21 constrained by affordability restrictions.

22
 23 As amended by AB 2818, the list of enforceable restrictions under section 402.1 explicitly
 24 includes restrictions under CLTs, provided the following conditions are met:

- 25
 26
- The contract must be recorded and provided to the assessor.⁷
 - The contract is a renewable 99-year ground lease between a community land trust and a
 28 qualified owner of an owner-occupied single-family dwelling or an owner-occupied unit
 29 in a multi-family dwelling.⁸
 - *Qualified owner* means persons and families of low or moderate income, including
 31 persons and families of low or moderate income that own a dwelling or unit collectively
 32 as member occupants⁹ or resident shareholders of a limited equity housing cooperative as
 33 defined in Civil Code section 817.¹⁰
 - The initial sale and future resales of homes must be to persons and families of low or
 34 moderate income,¹¹ as defined.¹²
- 35

⁴ In rare instances, the funding comes from private grants or philanthropy (e.g., such as in a 'bargain sale' to the CLT, or an outright grant from a foundation).

⁵ Section 402.1(b).

⁶ Section 402.1(d).

⁷ Section 402.1(a)(11)(A)(iv).

⁸ Section 402.1(a)(11)(A)(i).

⁹ Section 402.1(a)(11)(B)(v).

¹⁰ Section 402.1(a)(11)(B)(iii).

¹¹ Section 402.1(a)(11)(B)(i)(I).

- 1 • The sale or resale price of the home must be determined by a formula that ensures the
2 home has a purchase price that is affordable to qualified owners.¹³
- 3 • The community land trust has the right to repurchase the home to preserve the home as
4 affordable to qualified owners.¹⁴

5 *Assessment Treatment*

6 **ASSESSMENT OF IMPROVEMENTS**

7 Section 110, subdivision (b), provides that the term *full value* means the "purchase price paid in
8 the transaction unless it is established by a preponderance of the evidence that the real property
9 would not have transferred for that price in an open market transaction." The *purchase price*
10 means "the total consideration provided by the purchaser or on the purchaser's behalf, valued in
11 money, whether paid in money or otherwise."
12

13 The purpose of AB 2818 was to require county assessors to recognize the effect of specified
14 affordability restrictions on a property's use. Accordingly, upon a sale of a home subject to a
15 CLT ground lease to a qualifying purchaser, the assessor should recognize such restrictions, if
16 possible by reference to the purchase price presumption under section 110(b).¹⁵
17

18 For purposes of the purchase price presumption, the "total consideration provided by the
19 purchaser" of a home subject to a CLT ground lease will generally be the agreed-upon purchase
20 price. Therefore, the valuation of the improvements sold subject to CLT restrictions should be
21 based upon the purchase price unless it can be shown through sales of similarly restricted
22 properties that the purchase price is not full value.
23

24 **ASSESSMENT OF UNDERLYING LAND PARCELS**

25 Since CLTs retain ownership of the land indefinitely and the land is always leased to the owner
26 of the improvements, any transfer of the land to a new lessee constitutes a change in ownership
27 under section 61(c)(1).
28

29 CLT land leases may be structured in a variety of ways. In some cases, the total lease payment
30 may be described as the sum of several components, such as a replacement reserve fee or an
31 administrative charge. In all cases, however, the valuation of the land upon a change in
32 ownership depends on the lease terms.
33
34

¹² See Health and Safety Code [section 50093 as required by section 402.1\(a\)\(11\)\(B\)\(iv\)](#). The Board issues an annual letter to assessors listing these income limits for purposes of applying the Welfare Exemption. Most recently, see [Letter To Assessors 2017/054](#).

¹³ Section 402.1(a)(11)(B)(i)(II).

¹⁴ Section 402.1(a)(11)(B)(i)(III).

¹⁵ Both the purchase of improvements from a CLT and the execution of a 99-year lease are changes in ownership, each triggering a fair market value reassessment of the respective interest conveyed.

1 Absent the sale of similarly restricted properties for use in the comparable sales approach, the
2 value of the land upon a change in ownership should be determined by converting the lease
3 payments to their present value using income capitalization.¹⁶
4

5 Where the lease explicitly restricts the amount of the payment attributable to a land use fee or a
6 charge for the value of the land, the assessor should recognize those restrictions pursuant to
7 section 402.1(a)(11). Where such payments or charges are de minimis, the stated purchase price
8 for the improvements may be considered to be inclusive of the value of the land.¹⁷
9

10 *Capitalization Rate*

11 If there is a lack of meaningful data on sales of similarly restricted properties brought about by
12 the affordability restrictions on homeowner resales, of the two authorized methods for computing
13 a capitalization rate, only one—the band of investment technique—is of practical import for
14 purposes of capitalizing the lease payments for lands leased from CLTs. Accordingly, as
15 provided in Property Tax Rule 8(g)(2), assessors should look to the California money markets to
16 derive weighted averages of capitalization rates for debt and for equity capital, and, under the
17 legal doctrine that the absence of an "actual market" for property does not mean that it has no
18 value,¹⁸ should weight those rates in a such a way as to reflect the rates that might be employed
19 by hypothetical prospective purchasers.
20

21 **BASE YEAR VALUE CORRECTIONS AND DECLINES IN VALUE**

22 The amendments made by AB 2818 are prospective from their effective date of September 27,
23 2016. CLT properties purchased after that date, where an assessor did not recognize the
24 restrictions listed in section 402.1(a)(11) for purposes of establishing base year values, may now
25 need to be reviewed. Provided all aspects of section 402.1(a)(11) are met, such errors may now
26 need to be corrected within the four-year statute of limitations for correcting base year value
27 errors that involve the assessor's value judgment.¹⁹ Similarly, for purposes of recognizing a
28 decline in value under Proposition 8, an assessor may need to correct an erroneous entry on the
29 assessment roll within the one-year statute of limitations for correcting value judgment errors
30 under section 4831(b). Note here that both base year value corrections and roll corrections for
31 declines in value are limited to lien dates on or after the September 27, 2016, effective date of
32 AB 2818.
33

34 If you have any questions about the guidance in this letter, please contact the County-Assessed
35 Properties Division at 1-916-274-3350.
36

37 Sincerely,
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¹⁶ For a detailed discussion of the techniques used in income capitalization, see [Assessors' Handbook Section 502, Advanced Appraisal](#).

¹⁷ In this regard, since there is no threshold specified in statute for what might constitute a de minimis amount, assessors must use their judgment.

¹⁸ *Kaiser Co. v. Reid* (1947) 30 Cal.2d. 610.

¹⁹ Section 51.5(b).

David Yeung, Chief
County-Assessed Properties Division
Property Tax Department

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STATE OF CALIFORNIA

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

SEN. GEORGE RUNNER (RET.)
First District, Lancaster

FIONA MA, CPA
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5 *Assessment Treatment*

7 **ASSESSMENT OF IMPROVEMENTS AND UNDERLYING LAND PARCELS**

8 Section 110, subdivision (b), provides that the term *full value* means the "purchase price paid in
9 the transaction unless it is established by a preponderance of the evidence that the real property
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14 The purpose of AB 2818 was to require county assessors to recognize the effect of specified
15 affordability restrictions on a property's use. Accordingly, upon a sale of a home subject to a
16 CLT ground lease to a qualifying purchaser, the assessor should recognize such restrictions, if
17 possible by reference to the purchase price presumption under section 110(b).¹⁵

18
19 For purposes of the purchase price presumption, the "total consideration provided by the
20 purchaser" of a home subject to a CLT ground lease will generally be the agreed-upon purchase
21 price. Therefore, the valuation of the improvements and leasehold estate sold subject to CLT
22 restrictions should be based upon the purchase price and should be allocated between
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24 that the purchase price is not full value.

26 ~~ASSESSMENT OF UNDERLYING LAND PARCELS~~

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13 a capitalization rate, only one—the band of investment technique—is of practical import for
14 purposes of capitalizing the lease payments for lands leased from CLTs. Accordingly, as
15 provided in Property Tax Rule 8(g)(2), assessors should look to the California money markets to
16 derive weighted averages of capitalization rates for debt and for equity capital, and, under the
17 legal doctrine that the absence of an "actual market" for property does not mean that it has no
18 value,¹⁸ should weight those rates in a such a way as to reflect the rates that might be employed
19 by hypothetical prospective purchasers.
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21 **BASE YEAR VALUE CORRECTIONS AND DECLINES IN VALUE**

22 The amendments made by AB 2818 are prospective from their effective date of September 27,
23 2016. CLT properties purchased after that date, wCLT properties where an assessor did not
24 recognize the restrictions listed in section 402.1(a)(11) for purposes of establishing base year
25 values, may now need to be reviewed. Provided all aspects of section 402.1(a)(11) are met, such
26 errors may now need to be corrected within the four year statute of limitations for correcting
27 base year value errors that did not involve the assessor's value judgment.¹⁹ Similarly, for
28 purposes of recognizing a decline in value under Proposition 8, an assessor may need to correct
29 an erroneous entry on the assessment roll within the onefour-year statute of limitations for
30 correcting value judgment errors not involving value judgment, under section 4831(ba). This is
31 because the resale restrictions on a CLT homeowner could have been recognized before AB
32 2818 went into effect, as the list of restrictions which section 402.1 requires an assessor to
33 consider is not exclusive, and, unlike the case of *Carlson v. Assessment Appeals Board No. 1*
34 (167 Cal.App.3d 1004), affordability restrictions imposed by a non-profit CLT have a clear
35 public purpose. Note here that both base year value corrections and roll corrections for declines
36 in value are limited to lien dates on or after the September 27, 2016, effective date of AB 2818.
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39 If you have any questions about the guidance in this letter, please contact the County-Assessed
40 Properties Division at 1-916-274-3350.

¹⁶ For a detailed discussion of the techniques used in income capitalization, see Assessors' Handbook Section 502, Advanced Appraisal.

¹⁷ In this regard, since there is no threshold specified in statute for what might constitute a de minimis amount, assessors must use their judgment.

¹⁸ *Kaiser Co. v. Reid* (1947) 30 Cal.2d. 610.

¹⁹ Section 51.5(ba)

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Sincerely,

David Yeung, Chief
County-Assessed Properties Division
Property Tax Department

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