TAXABLE POSSESSORY INTERESTS
AUTHORITATIVE CITATIONS

The following provides the authoritative citations for the Taxable Possessory Interests (TPI) Survey Topic. In general, citations include Constitutional provisions, sections of the Revenue and Taxation Code, other applicable statutes, court cases, Property Tax Rules, *Assessors' Handbook Sections*, Letters To Assessors, and legal annotations pertaining to the topic.

CITATION	DESCRIPTION
California Constitution	
Article XIII, §1	Unless the Constitution or the laws of the United States provide otherwise, all property is taxable and shall be assessed at the same percentage of fair market value. All property is to be taxed in proportion to its full value.
Article XIII, §3(d)	Property used for libraries and museums that are free and open to the public and property used exclusively for public schools, community colleges, state colleges, and state universities are exempt from property taxation.
Article XIII, §11(f)	Provides that a TPI may exist in taxable government-owned property and sets forth the method of determining the taxable value.
Government Code	
§6254.3(a)	Home addresses and phone numbers of state employees, employees of a school district, or county office of education shall not be deemed to be public records and shall not be open to public inspections.
§6254.21(f)	Provides similar restricting language as 6254.3(a) for: (1) State constitutional officers, (2) Members of the Legislature, (3) Judges and court commissioners, (4) District attorneys, (5) Public defenders, (6) Members of a city council, (7) Members of a board of supervisors, (8) Appointees of the Governor, (9) Appointees of the Legislature, (10) Mayors, (11) City attorneys, (12) Police chiefs and sheriffs, (13) A public safety official, as defined in Section 6254.24, (14) State administrative law judges, (15) Federal judges and federal defenders, and (16) Members of the United States Congress and appointees of the President.
§7510	Addresses the assessment of TPIs with respect to investment real property owned by local and state public employee retirement systems. Section 7510(a) addresses local systems; §7510(b) addresses state systems.

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	PIs in real property owned by a state public retirement system shall be assessed at the greater of the PIs full cash value or the lessee's allocable share of the full cash value of the property that would have been enrolled had the property been subject to taxation upon acquisition by the retirement system.
Health and Safety Code	
§33673	Provides that real property in a redevelopment project that has been redeveloped and leased by the redevelopment agency or real property in a redevelopment project leased by the redevelopment agency for redevelopment shall be assessed in the same manner as privately owned property. The lease or contract shall provide that the lessee shall pay taxes upon the full (fee) value of the portion occupied, not merely the value of the leasehold interest.
§33673.1	Provides that a redevelopment agency shall notify the assessor within 30 days of leasing real property in a redevelopment project to any person for redevelopment. The notice shall include the date of the lease, a memorandum of the lease, and a map of the property.
Public Resources Code	
§6503.5	Requires the State Lands Commission to charge rent for a private recreational pier constructed on state lands. Rent applied to land underneath the pier.
Public Utilities Code	
§5860	Defines gross revenues received by the holder of a state franchise derived from the operation of a holder's network to provide cable or video service within the jurisdiction of a local entity. See also PUC Code §§5800-5977, "The Digital Infrastructure and Video Competition Act of 2006 (DIVCA), with respect to state franchise for cable or video service.
Revenue and Taxation Code	
§51(a)	Requires real property subject to article XIIIA be annually assessed at the lower of factored base year value, or current market value as defined in §110.

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§51(e)	Provides the assessor is not required to make an annual reappraisal of all property, however, once a property is in decline status it must be reviewed each year.
§61(b)	Provides the general definition for change in ownership of a PI. The creation, renewal, extension, or assignment of a PI is a change in ownership of that interest.
§61(b)(2)	Provides that a renewal or extension of a PI during the reasonably anticipated term of possession used to establish the base year value of the interest does not cause a change in ownership until the end of the reasonably anticipated term of possession.
§61(d)	Defines conditions involving the sublease of a PI that constitutes a change in ownership of the subleased portion.
§75.5	Provides that newly created TPIs based on month-to-month agreements and having a full cash value of $50,000 or less are not subject to supplemental assessment.
§107	A possessory interest is possession of, claim to, or right to possession of land or improvements without ownership. These rights must be: ➢ Independent – the ability to exert control and authority over the property. ➢ Durable – there is a determinable period of possession and claim. ➢ Exclusive – enjoyment of beneficial use and able to exclude others. Can be: • Sole use or occupancy • Co-tenant • Concurrent use or uses.
§107.1	Addresses the valuation of certain possessory interests in tax exempt property where the possessory interest was created prior to December 25, 1955 ("pre-De-Luz" PIs).
§107.2	Addresses the valuation of certain possessory interests in oil and gas where the possessory interest was created prior to December 25, 1955 ("pre-De-Luz" PIs involving oil and gas production).
§107.3	Extends the valuation of certain possessory interests in oil and gas under the pre-De-Luz method to PIs created prior to December 25, 1955 and extended or renewed prior to July 26, 1963.
§107.4	Provides that with respect to military housing, if a set of criteria in the

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	statute are met, such housing fails to meet the independence test for a PI.
§107.6	Provides that the state or local public entity must include a provision in any lease or other document involving the private use of publicly owned real property notifying the possessor that a PI may be created that is subject to taxation.
§107.7	Provides a preferred method of valuation for cable television PIs. If the assessor follows the preferred method, the assessment retains its presumption of correctness.
§107.8	Provides that a lease-leaseback of publicly owned real property is not independent, and therefore does not create a PI, if the transaction meets specified criteria in the statute.
§107.9	Provides a prescribed method of valuation for certain PIs (landing rights) at publicly owned airports. If the assessor follows the prescribed method, the assessment retains its presumption of correctness.
§110.1	Provides that TPIs are subject to the provisions of article XIII A like other real property. That is, the base year value of a PI is determined in the same manner as other real property.
§155.20	Provides that a board of supervisors may elect to exempt PIs with a factored base year value up to $50,000 that involve the temporary and transitory use of a fairground, convention, or cultural facility.
§201.5	Provides that PIs in property owned by the California Pollution Control Financing Authority may exist in either real or personal property. This statute provides the only authority for assessing a PI in personal property.
§201.7	A qualified nonprofit organization entering into an operating agreement with the Department of Park and Recreation with respect to a state park is acting as an agent of the state. As such, a TPI is not created and the qualified nonprofit organization will not incur any property tax liability. Effective January 1, 2013.
§254	Requires any person claiming the public schools exemption submit a claim form annually to the assessor.
§480.5	Requires public agencies to notify assessors within 60 days when a reappraisable change in ownership of a PI may have occurred.
§480.6	Provides state and local government entities must report annually to the

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	assessor by February 15 data with respect to private uses of publicly owned property.
§2190	Provides that the assessment of any PI to which a homeowners' exemption has been applied must be entered on the secured roll.
Streets and Highway Code	
§104	States that Caltrans may acquire real property needed for state highway purposes.
§104.6	States that Caltrans may acquire real property needed for future development and may lease such property to private possessors.
§104.13	States that Caltrans must provide the assessor a list of all such real property (i.e., the real property described in §104.6) in the county where the property is located and the county must provide the tax bills directly to Caltrans.
Property Tax Rules	
Rule 2	Provides that the rebuttable presumption that the consideration (valued in money) paid for real property is its full cash value does **NOT** apply to the transfer of any TPI.
Rule 20	Elaborates on §107. TPIs are possessory interests in publicly owned real property. The rights must be independent, durable, exclusive, and have private benefit. Possession requires more than incidental benefit from the public property. A right or a claim to a right means the right to physical occupation. Property in federal enclaves is exempt. Examples of TPIs are listed.
Rule 21	Addresses the valuation of TPIs. TPI interest definitions, value standards, term of possession, methods of valuation of PIs. There is no corresponding statute that addresses PI valuation.
Rule 22	Provides standards for determining the existence of a TPI based on the concept of continuity.
Rule 27	Addresses the valuation of PIs related to petroleum (oil & gas) properties.
Rule 28	Examples of TPIs.
Rule 29	Addresses the assessment of PIs in *taxable* publicly owned real property (i.e., Section 11 property). Sets a ceiling amount with respect to the

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	aggregate value of PI assessments in a unit of taxable government-owned property. The amount of the assessable PI in such property is limited to the sum of (1) the difference between fair market value of the land (taxable and nontaxable) on the lien date and the restricted Section 11 value of the land; (2) the difference between the fair market value of taxable replacement improvements and their restricted Section 11 value; and (3) the fair market value of government-owned non-taxable improvements.
Rule 462.080	Addresses the change in ownership of PIs. Mirrors §61.
Assessors' Handbook	
AH 501 (January 2002)	*Basic Appraisal.* Addresses the general concept of a PI (pages 23-25).
AH 510 (December 2002)	*Assessment of Taxable Possessory Interests.* An extensive discussion of the assessment of PIs.
Special Topic Survey	
	Assessment of Taxable Possessory Interests (April 2000), Chapter 2 – Overview of possessory interest definitions, applicability of article XIII A, and special types of public ownership. http://www.boe.ca.gov/proptaxes/pdf/pists.pdf
Letters To Assessors	
79/41	Lease-purchase agreements between private builders and the federal government (as lessee) do not give rise to TPIs on the part of the lessor in either land or improvements, because the developer does not retain an exclusive right to possession or beneficial use.
79/52	Local Board of Supervisors has the authority to place PIs without a homeowner's exemption on the secured roll.
79/151	In *City of Desert Hot Springs v. County of Riverside*, 92 Cal. App. 3d 441 (1979), the court held that a lease-leaseback from a city to a contractor and back again created a TPI in the contractor.
80/48	Questions and answers about specific types of TPIs.
80/74	Attorney General Opinion No. CV 78/125 concluded that a county official may have a TPI in a county-assigned parking space, but the low value of

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	such an interest would not ordinarily result in a billing because the cost of collection would exceed the tax.
82/77	The filing of an annual proof of labor or assessment work for an unpatented mining claim does not constitute a change in ownership of that interest.
83/81	Discusses TPIs in state highway real property.
83/132, Q & A #8 and 9	While TPIs are subject to supplemental assessment, the termination of such an interest with reversion to the government does not require a negative supplemental assessment.
86/12	When a TPI terminates after the lien date and a new interest is created in the same property with a new lessee, the new interest should be assessed at its full cash value, with no reduction in value or negative supplemental assessment for the terminated interest
86/42	Permits issued to private concessionaires to operate certain US Forest Service campgrounds constitute TPIs.
86/75	An airline's TPI may involve landing rights and rights to use space jointly with other airlines.
87/27	In *Cox Cable San Diego, Inc., v. County of San Diego*, 185 Cal. App. 3d 368 (1986), the court held that the franchise held by a cable television company constituted a TPI.
88/41	The **exercise** of an option to renew a lease in tax-exempt public property is a change in ownership of that interest, but the **granting** of an option is not.
89/36	Section 107.7 of the Revenue and Taxation Code provides that if the assessor does not use the "preferred" method of capitalizing the annual franchise fee payments, his valuation of a cable television TPI will not be presumed correct. Where the assessor uses the comparable sales method and the sales are PIs in combination with intangible assets, or where the assessor uses an economic rent other than the franchise fee, for purposes of assessment appeal the assessor must prove that this value is correct.
92/38	In *Connolly et al. v. County of Orange* 1 Cal. 4th 1105, the court held that when a lessee of University of California property uses it as a site for a privately owned residence, such a use is not eligible for the public school exemption, but is subject to assessment as a TPI.
92/65	In *Stanislaus County v. Assessment Appeals Board* 213 Cal. App. 3d 1445,

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	the court held that in the case of a cable television TPI, to the extent that the intangible franchise value enhances a tangible property right, such enhancement may be considered in valuing that right.
2008/032	To value cable television and video service TPIs, the Board advises that county assessors apply the preferred income method using annual rent based solely upon the franchise fee specified in section 107.7. This approach conforms to the intent of the Legislature and promotes uniformity in assessment practices throughout the state.
2011/019	On May 25, 2011, the State Board of Equalization adopted a revised form BOE-502-P, *Possessory Interests Annual Usage Report.* Assessors are required to use this form beginning with the 2012 lien date. Also advises that *Usage Reports* are public records open to public inspection and the information a state or local governmental entity is required to report on a *Usage Report* to a county assessor is public information and need not be held in confidence by the county assessor. See LTA 2012/016
2012/016	In Letter To Assessors 2011/019, we released a revised form BOE-502-P, *Possessory Interests Annual Usage Report*, and advised that the *Usage Reports* are public records that are open to public inspection and that the information that a state or local governmental entity is required to report on a *Usage Report* to a county assessor is public information and need not be held in confidence by the county assessor. This is to provide further clarification regarding the confidentiality of information contained on a *Usage Report*.
2013/010	Effective January 1, 2013, section 201.7 added to provide that a qualified nonprofit organization entering into an operating agreement with the Department of Parks and Recreation does not create a TPI.
2014/023	Guidance approved by the State Board of Equalization regarding the term of possession for the valuation of taxable possessory interests.
Annotations	
260.0070	The *Possessory Interests Annual Usage Report* (form BOE-502-P), is a public record that is open to public inspection under the California Public Records Act (CPRA), and the information that a state or local governmental entity is required to report to a county assessor is public information.

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	County assessors may not refuse disclosure of the information required to be reported by section 480.6, subdivisions (a)(1) through (6), if provided in a substitute format other than the *Usage Report.*
550.0020	Section 11(f) of Article XII of the California Constitution insures that private leasehold interests in Section 11 lands does not escape taxation because the fee assessment to the public owner has an arbitrary ceiling imposed on it. To the extent that the value of the fee exceeds the Section 11 value, an exemption of this excess accrues to the owning local government. A private leasehold interest in such land should be assessed at the lower of the full cash value of the possessory and the difference between the fee value of the land and the Section 11 assessment assessed to local government.
660.0001 – 660.0370	Many annotated staff letters dealing with various aspects of TPI assessments.
735.0015	The purchase of real property by PERS does not in itself create TPIs, although it does require pre-existing leases to be separately enrolled as PIs. Such leasehold interests were neither created nor transferred by the purchase. When such pre-existing leasehold interests are renewed, extended, or assigned, a change in ownership does occur.
California Assessors' Association Standards Committee	
5/1/09	CAA Position Paper : Assessment of Cable Television TPIs. In reply to LTA 2008/032. Location: www.calassessor.org (Publications) – (Position Paper –Cable Television 5/1/09).