POSSESSORYINTERESTS

1. What is a possessory interest?

A possessory interest is generally defined as the use of real property owned by a government agency. These interests result from either an actual possession of real property, or the right to possess real property. They may also relate to improvements that have been made to, or placed on, land owned by a government agency.

2. What is a taxable possessory interest?

A taxable possessory interest exists when a person or entity has the right to a beneficial use of tax exempt, government-owned real property with or without a rent or fee. These interests result from either an actual possession of government-owned real property, or the right to possess government-owned real property. The interests may also relate to taxable improvements that have been made to, or placed on, tax-exempt land.

3. Examples of taxable possessory interests.

In Solano County, a partial list of taxable possessory interests would include any of the following, which exist or occur on government-owned, tax-exempt real property:

a. The right to graze and/or keep livestock.
b. Employee or other private housing.
c. Space leased for privately owned trailers/manufactured homes.
d. Lease of classroom/school space to private entities.
e. Airport tie-downs, spaces, or hangers.
f. Auto parking leases.
g. Residences or mobile home spaces provided as compensation for security/guard purposes.
h. Any lease or use by an individual, corporation or business.
i. Lease of boat berth in public marinas.

4. What are the requirements for a taxable possessory interest?

The requirements for a taxable possessory interest include:

a. The interest must be in real property.
b. The real property must be publicly owned and tax-exempt.
c. The right to possession or use must be held by a taxable individual or entity.
d. The possession or use must be less than a fee simple interest.
e. The possession or use must be continuous or be on a recurring basis.

5. Must the individual or entity be physically using or occupying the property to qualify as a taxable possessory interest?

No. Possession may be either actual possession (physical use of the property), or constructive possession (right to use the property even if not actually using it). For example, the possessory interest starts with the date of commencement of the lease and not with the actual occupation by the tenant.

6. When is a possessory interest appraised or re-appraised?

Possessory interests are appraised or re-appraised whenever a possessory interest is created, renewed, extended, subleased, or assigned.

7. Is a lease, or other written document, necessary to establish a possessory interest?

No. The essential requirement for a possessory interest is that there is an "exclusive right to a beneficial use of tax-exempt publicly owned real property." The possession may be by a verbal agreement, a tacit approval, a written document or even an encroachment by a private entity. If written documents do exist, they may be in the form of a contract, permit, lease, agreement, letter of authorization, reservation, etc.

8. How are possessory interests valued?

The assessor is required, as with all locally assessed real property, to establish a base year value of all taxable possessory interest assessments under Proposition 13. The major components for estimating the value include permitted use, term of possession, and

economic rent and/or estimated value of land and/or improvements.
Traditional valuation methods are used where appropriate, including the Sales Comparison Approach, the Income Approach, and the Cost Approach.

NOTE: ALL TAXABLE POSSESSORY INTERESTS ARE ASSESSED YEARLY AS OF THE LIEN DATE (JANUARY 1). THE PERSON OR ENTITY IN POSSESSION OF THE PROPERTY ON THE LIEN DATE IS LIABLE FOR THE TAX FOR THE ENTIRE YEAR. THERE IS NO PROVISION FOR PRORATION OF THE TAXES. UPON TERMINATION OF THE TAXABLE POSSESSORY INTEREST, THE TAXPAYER IS STILL RESPONSIBLE FOR THE REMAINING PORTION OF THE TAX BILL

LEGAL AUTHORITY FOR TAXATION OF A POSSESSORY INTEREST.

Section 1 of Article **XIII** of the California State Constitution, Section 107 of the Revenue and Taxation Code, and Property Tax Rules 21-28 of Title 18, Public Revenue, California Code of Regulations provide the legal basis for taxable possessory interests in California. Under the California State Constitution and case law, there is clear legal authority for taxation of private possessory interests in government owned tax-exempt property.

Revised: 12/28/22

Requested Material

GLENN ZOOK
Solano County
Assessor/Recorder 675 Texas Street, Suite 2700

R & T Section 107

Property Tax Rules 21-28

Possessory Interests

Questions
and
Answers

GLENN ZOOK
Assessor/Recorder
County of Solano
675 Texas Street, Suite 2700
Fairfield, CA 94533-6338

Telephone (707) 784-6200