

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.

107.6. NOTIFICATION OF TAXABILITY OF POSSESSORY INTEREST. (A) THE STATE OR ANY LOCAL PUBLIC ENTITY OF GOVERNMENT, WHEN ENTERING INTO A WRITTEN CONTRACT WITH A PRIVATE PARTY WHEREBY A POSSESSORY INTEREST SUBJECT TO PROPERTY TAXATION MAY BE CREATED, SHALL INCLUDE, OR CAUSE TO BE INCLUDED, IN THAT CONTRACT, A STATEMENT THAT THE PROPERTY INTEREST MAY BE SUBJECT TO PROPERTY TAXATION IF CREATED, AND THAT THE PARTY IN WHOM THE POSSESSORY INTEREST IS VESTED MAY BE SUBJECT TO THE PAYMENT OF PROPERTY TAXES LEVIED ON THE INTEREST.

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Possessory Interests Questions and Answers

Property Assessment for Private Possession of Government Owned Property

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We have bilingual staff to assist you. Call our office at (408) 299-5500.

Necesita ayuda? La Oficina del Assessor tiene empleados fluyentes en Español. Llámenos al (408)299- 5500.

POSSESSORY INTERESTS
PROPERTY TAX RULES 21-28
R & T SECTION 107

**Frequently
Asked
Questions**

Q. What is a possessory interest?

A. 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.

Q. What is a taxable possessory interest?

A. 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.

Q. Examples of taxable possessory interests.

A. In Santa Clara 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. A booth at a convention center or a concession stand at a fairground.

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

A. 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.

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

A. 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.

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

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

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

A. 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.

Q. How are possessory interests valued?

A. 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.