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 provides 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 publicly 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.

For more information, go to the Assessor's website at [www.sccassessor.org,](http://www.sccassessor.org) then go to the Property Information tab. Click on the **Businesses on Gov't Property** link, or scan the QR code to the left.

The Santa Clara County Assessor's Office

Need to contact us?

General Questions/Public Service
Phone (408) 299-5500 • Fax (408) 298-9446
www.sccassessor.org

Real Property Division/Possessory Interest
Phone (408) 299-5300 • pi@asr.sscgov.org

Business Division/Manufactured Homes
Phone (408) 299-5400 • Fax (408) 298-9441
busdiv@asr.sccgov.org

Request a Reduction (Prop 8)
Phone (408) 299-5300 • Fax (408) 299-3015
www.sccassessor.org/prop8
rp@asr.sccgov.org

Homeowners'/Other Exemptions
Phone (408) 299-6460 • Fax (408) 271-8812
exemptions@asr.sccgov.org

Need translation?

The Assessor's Office has employees who speak Vietnamese, Spanish and Chinese. Call us at (408) 299-5500.

Cần giúp thông dịch? Văn phòng Giám Định Nhà Đất có nhân viên nói được tiếng Việt. Vui lòng gọi cho chúng tôi ở số (408) 299-5500.

¿No habla inglés? En la oficina del Tasador hay empleados que hablan español. Llámenos al (408) 299-5500.

需要翻譯? 估值官辦公室裡有說中文的工作人員。請致電 (408) 299-5500.

Office of the Assessor, Santa Clara County
Lawrence E. Stone, Assessor
130 West Tasman Drive
San Jose, CA 95134
(408) 299-5500
www.sccassessor.org

Possessory Interest

Santa Clara County Assessor's Office Possessory Interest Questions and Answers

Property assessment for private possession of publicly owned property.

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San Jose, CA 95134
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Frequently Asked Questions

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, publicly owned real property with or without a rent or fee. These interests result from either actual possession of publicly owned real property or the right to possess publicly owned real property. The interests may also relate to taxable improvements that have been made to, or placed on, tax-exempt land.

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

- The possession must have independence. The possessor must have the right and ability to exercise significant authority and control over the management or operation of the real property.
- It must be durable. Examples include a signed lease or 2 or more years of a right to continuous or recurring use.
- There must be exclusivity – the right of possession to the exclusion of others. The limited issuance of permits, licenses, etc. confers exclusivity.
- There must be a private benefit. The benefit does not have to be financial.

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 publicly owned, tax-exempt real property:

- The right to graze and/or keep livestock.
- Employee or other private housing.
- Space leased for privately owned trailers/ manufactured homes.
- Lease of classroom/school space to private entities.
- Airport tie-downs, spaces, or hangers.
- Auto parking leases.
- Residences or manufactured home spaces provided as compensation for security/guard purposes.
- Any lease or use by an individual, corporation or business, such as a parklet or al fresco dining area.
- A booth at a convention center or a concession stand at a fairground.

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 assessed or reassessed?

A. Possessory interests are assessed or re-assessed 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 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 verbal agreement, 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. Major components for estimating the value include:

- Permitted use
- Term of possession
- Economic rent and/or estimated value of land and/or improvements

Each situation will be reviewed and valued using valuation principles mandated by the Revenue & Taxation Code and Assessors' Handbook:

- Market value for the use of the land.
- Cost approach for the improvements.
- Income approach related to fees, rents, or license amounts charged by a jurisdiction. Income value is based on market rates.