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No. 86/50

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TO COUNTY ASSESSORS:

CHANGES IN OWNERSHIP OF AIR RIGHTS

The question has arisen whether transfers of air rights can be changes in ownership under Revenue and Taxation Code Section 60.

The air rights under discussion here are those air rights located directly above the land surface which establishes their legal description. In utilizing land, two or more parties can have separate and distinct ownership or control of real property located in different horizontal planes yet resting on the same plot of land. Each owner can put his/her particular plane of ownership to separate and legally independent use.

Section 60 mandates three requirements for a transfer to qualify as a change in ownership:

1. A present interest in real property.
2. The right to beneficial use of the property.
3. The value of the property transferred must be substantially equivalent to the fee interest.

It is our opinion that transfers of the air rights described above can fulfill the above three requirements. They are considered real property by Property Tax Rule 124 which classifies them as land. Since these rights are real property and part of land, a transfer of a present fee interest in air rights separate from the surface rights is legally possible and, under Section 60, would constitute a change in ownership of "land." Therefore, there should be a reappraisal of that portion of the land that changes ownership.

If you have any questions, please contact our Technical Services Section at (916) 445-4982.

Sincerely,

Verne Walton, Chief
Assessment Standards Division

VW:wpc
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