



STATE BOARD OF EQUALIZATION

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Executive Secretary

March 26, 1987

Dear Mrs.

This letter is to confirm our telephone conversation of March 10, 1987, in which you requested our advice about the change in ownership implications of a conversion from a cooperative apartment corporation to condominium units. The facts as you explained them to us are as follows:

Twenty-three apartments units at _____, are members of a cooperative housing corporation. The cooperative housing corporation owns only the improvements; the land is owned by an unrelated party.

Title to the improvements is held by the corporation which is managed by the Board of Directors. The entire property is covered by a single mortgage or deed of trust. A single tax assessment is levied on the property owned by the corporation.

Shareholders in the corporation are entitled to lease and use units in the building. They contribute a pro rata monthly payment to cover their share of the financing cost, taxes, and expenses of maintenance and operation.

Although title to the individual apartment units is held by the corporation, the tenant-shareholders may freely transfer their shares, and thus the use of their apartment units, subject to the approval of the Board of Directors.

The Board of Directors has proposed a plan of conversion from a cooperative housing corporation to individually owned condominiums. The details of the plan are not known; however, the plan will result in the present shareholders in the corporation becoming direct owners of the units which they presently lease and use. Under the plan, such payments as mortgage and tax payments will be made directly by the owners of the condominium units.

Section 60 of the Revenue and Taxation Code (all section references contained herein are to the Revenue and Taxation Code) states that:

A "change in ownership" means a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest.

Section 61(h), as amended by Chapter 608 of the 1986 Statutes states that a change in ownership includes:

The transfer of stock of a cooperative housing corporation, vested with legal title to real property which conveys to the transferee the exclusive right to occupancy and possession of such property, or a portion thereof. A "cooperative housing corporation" is a real estate development in which membership in the corporation, by stock ownership, is coupled with the exclusive right to possess a portion of the real property.

However, section 62(a)(2) states that a change in ownership does not include:

Any transfer between an individual or individuals and a legal entity or between legal entities, such as a cotenancy to a partnership, a partnership to a corporation, or a trust to a cotenancy, which results solely in a change in the method of holding title to the real property and in which proportional ownership interests of the transferors and transferees, whether represented by stock, partnership interest, or otherwise, in each and every piece of real property transferred, remain the same after the transfer. The provisions of this paragraph shall not apply to transfers also excluded from change in ownership under the provisions of subdivision (b) of section 64.

Section 61(h) includes within the definition of a change in ownership the transfer of stock in a cooperative housing corporation which conveys the exclusive right to possess a portion of the real property. That section thereby establishes the principle that ownership of such stock can be equated with beneficial ownership substantially equivalent to the fee interest. Thus, shareholders in a cooperative housing corporation can be treated for change of ownership purposes as the owners of the property of which they have exclusive use.

Under the proposed plan of conversion, each apartment will be converted into a condominium. Instead of paying their pro rata share of taxes and mortgage for the whole building, they as

owners of the condominiums will make those payments directly. Thus the shareholders in the corporation will become direct owners of the same property they presently lease and use.

Section 62(a)(2) indicates that a transfer is not considered a change in ownership if it results in a mere change in the method of holding title with the proportional ownership interests in the property remaining the same. The proposed conversion will not result in any change in proportional ownership interests since the members of the cooperative housing corporation will directly own the units they previously owned through the entity of the corporation. Since there is no change in ownership of the units converted, such units will not be subject to reappraisal.

Although we do not have any facts regarding the common areas of facilities which are part of the cooperative housing corporation, we assume that such facilities as hallways, entrances, and stairways exist and are owned by the corporation. Section 65.1(b) deals with the transfer of units with common areas and facilities and states:

If a unit or lot within a cooperative housing corporation, community apartment project, condominium, planned unit development, shopping center, industrial park, or other residential, commercial, or industrial land subdivision complex with common areas or facilities is purchased or changes ownership, then only the unit or lot transferred and the share in the common area reserved as an appurtenance of such unit or lot shall be reappraised.

Notwithstanding any such other provision of law, the increase in property taxes resulting from such reappraisal shall be applied by the owner of such property to the tenant-shareholder, lessee, or occupant of such individual unit or lot only, and shall not be prorated among all other units or lots of such property.

This code section sets forth the premise that the transfer of the share in the common area reserved as an appurtenance of each unit is treated in the same manner as the transfer of the unit itself. Thus, since the transfer of the units will not constitute a change in ownership as described above, the transfer of the common area appurtenant to those units will also not constitute a change in ownership.

Mrs.

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March 26, 1987

The views expressed in this letter are, of course, only advisory in nature. They are not binding upon the assessor of any county. You may wish to consult the San Francisco assessor in order to confirm that the described property will be assessed in a manner consistent with the conclusion stated above.

Very truly yours,

Barbara G. Elbrecht

Barbara G. Elbrecht
Tax Counsel

BGE/rz

cc:

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