STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 324-6594

WILLIAM M. BENNETT
First District, Kentfield
CONWAY H. COLLIS
Second District, Los Angeles
ERNEST J. DRONENBURG, JR.
Third District, San Diego
PAUL CARPENTER
Fourth District, Los Angeles
GRAY DAVIS
Controller, Sacramento
CINDY RAMBO
Executive Director

March 9, 1990

Mr. Glen Barnes
Mono County Assessor's Office
Courthouse Annex I
P.O. Box 456
Bridgeport, CA 93517-0456

Dear Mr. Barnes:

This is in response to your recent request for our opinion concerning the applicability of Revenue and Taxation Code section 65(e) to a matter described in Verne Walton's letter of February 20, 1990 to the Honorable Daniel L. Bryant, as follows:

> A grant deed was recorded April 24, 1972 granting the property to and as joint tenants with rights of survivorship. died April 15, 1988.

A copy of the grant deed which you provided me shows that the grantors were a married man, and a married man.

Verne Walton's letter concluded essentially that the rebuttable presumption established by section 65(e) "that each joint tenant holding an interest in the property as of March 1, 1975, shall be an 'original transferor . . .'" was overcome by the grant deed referred to above. Accordingly, since the grant deed conclusively shows that Barnett and Gisclon were not original transferors as defined by section 65(b), Mr. Walton advised that a 50 percent change in ownership had occurred on Barnett's death pursuant to section 65(a).

You have told me that the representative of the taxpayer was presented with a copy of Mr. Walton's letter but that since it was not written by an attorney, he is not persuaded that the legal conclusion expressed therein is accurate.

Having reviewed the applicable law in this matter as you requested, I agree entirely with the conclusion expressed in Verne Walton's letter of February 20, 1990 and the reasoning employed in reaching that conclusion. I also am enclosing for your information a copy of a letter dated April 20, 1989 to

Mr. Dick Frank from James K. McManigal of our legal staff which reaches a conclusion consistent with that reached by Verne Walton in this case.

Although not addressed in Mr. Walton's letter, you mentioned that the taxpayer's representative was arguing that the de minimus rule of section 65.1 was applicable here. That rule essentially excludes from change in ownership a transfer of an interest in real property with a market value of less than 5 percent of the value of the total property and which has a market value of less than $10,000. That rule clearly does not apply in this case because the market value of the interest transferred is greater than 5 percent of the value of the total property and is greater than $10,000.

After drafting the foregoing response to the issues you raised when we met in my office on March 1, 1990, I received a letter from Mr. Norman T. Rockel who apparently is the taxpayer's representative referred to earlier in this letter. Mr. Rockel told us that there was a common law "marital" relationship between a female and a male, existing for 50 years. He also said that the property in question was purchased in 1972 with funds provided by a wage earner. Mr. Rockel asked whether there was a change in ownership when Barnett in 1988 and became the sole owner of the property by right of survivorship.

If and were legally married to each other, the transfer occurring at death would be excluded from change in ownership under Revenue and Taxation Code section 63 and Property Tax Rule 462(l).

While a common law marriage contracted in California is not valid in California, (Civ. Code § 4100), California does recognize a common law marriage if it was valid in the jurisdiction in which it was contracted (Civ. Code § 4104). Common law marriage in such jurisdictions requires, however, that not only must the parties agree to become husband and wife but they must also hold themselves out as husband and wife to the community around them (32 Cal.Jur.3d, Family Law, § 51, pp. 78-79).

There is no evidence here that the joint tenants ever agreed to become husband and wife. Nor is there any evidence that they held themselves out as husband and wife to the community around them. In fact, the only evidence we have is to the contrary in that Barnett was described as a widow and Gisclon as a single man in the deed creating the joint tenancy. Moreover, there is no evidence that and ever lived together in a

state in which common law marriages are valid. Accordingly, there is no apparent basis for application of the interspousal exclusion from change in ownership.

Further, as is clear from the language of the applicable statutory provisions set forth in Mr. Walton's letter, the fact that the funds used for the purchase of the joint tenancy property were provided by is not relevant.

Consequently, my opinion continues to be that a 50 percent change in ownership occurred at death requiring a 50 percent reappraisal.

If we can be of any further assistance to you in this matter, please let us know.

Very truly yours,

Eric F. Eisenlauer
Tax Counsel

EFE:cb
2365D

Enclosure

cc: Mr. John W. Hagerty
Mr. Verne Walton
Mr. Norman T. Rockel