



STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)

(916) 323-7713

WILLIAM M. BENNETT
First District, Kentfield

CONWAY H. COLLIF
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

January 4, 1991

Mr. Chief Appraiser
SAN FRANCISCO COUNTY ASSESSOR'S OFFICE
City Hall, Room 101
San Francisco, CA 94102

Re: Your letter dated 12/12/90;
Bill ; Change in Ownership Tax

Dear Mr. :

This is in response to your letter dated December 12, 1990 in which you posed the question of whether there has occurred a change in ownership in the seller's property, sold on a contract of sale, if in the early months of the contract the buyer defaulted thereby causing the seller to reclaim the property through foreclosure proceedings. As we will explain herein, we are of the opinion that there was a change in ownership of the property when the seller conveyed to the buyer by way of a contract of sale and there was a subsequent change in ownership of the property when the seller reclaimed the property through foreclosure.

You say the seller, who objects to the change in ownership assessment, gives you the following factual sequence:

1. The seller () sold through a contract of sale receiving in escrow a deposit from the buyer and the buyer's promise to formally assume an existing first deed of trust on the property or to pay such first deed of trust in full on or before July 1, 1990. The contract of sale was duly recorded on April 10, 1990.
2. The buyer () defaulted on his promise to pay in full or assume the existing first deed of trust by July 1, 1990.
3. The seller elected to institute foreclosure proceedings on November 6, 1990 to reclaim the property.

Mr.

January 4, 1991

4. The seller now asserts he was always the legal owner and that a legitimate sale had not been consummated, therefore, no change in ownership assessment is justified. He says his attorney has advised him that he is still the owner and that a legitimate sale had not been consummated.

I have studied the Contract of Sale, which you say the seller used to convey the property. I think the seller is basically confused as to definitions and has misinterpreted his attorney's advice. The seller sold on an Installment Land Sale Contract which is frequently referred to as a Contract of Sale or Land Contract. The Contract of Sale or Installment Land Sale Contract is a security instrument. It is used in situations where the seller does not wish to take back a deed of trust or mortgage. It is contemplated in the contract that at a specific time after execution and for the payment of installment payments or a future lump sum of money, a conveyance of title to the property will be made by the seller to the buyer. The seller retains title to the property as a security for performance of the buyer's promises. Usually, it is contemplated that a conveyance will be made at sometime in the future, but until that time, all or part of the principal owed to the seller will be amortized by monthly or by other periodic installment payments. While the seller retains legal title, equitable ownership is conveyed to the buyer. The buyer has all rights of possession and ownership while the seller retains only bare legal title for security of the debt and other promises owed by the buyer to the seller. These principles of conveyance of real estate by a land contract can be found in Volume 54 of Cal. Jur. 3d under "Real Estate Sales" or in any good textbook on "Principles of Real Estate Law." Also see the "Property Taxes Law Guide" "Change in Ownership" annotation C5/09/84 "Land Sale Contract" and the referenced opinion by our James K. McManigal, Jr. for a further discussion of land sale contracts (attached for your use).

Apparently the seller believed that since he retained legal title to the property that there was therefore no change in ownership. That belief simply is not the law.

In paragraph 9 of the seller's Contract of Sale, the sellers agree that the buyers "shall be entitled to possession of the real property at issue upon recordation" of the Contract of Sale. Section 654 of the Civil Code provides that the ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others. Section 60 provides that "a change in ownership means a transfer of a present interest in real property, including the beneficial use

Mr.

January 4, 1991

thereof, the value of which is substantially equivalent to the value of the fee interest." And, Board Rule No. 462(a)(2) also provides "a change in ownership in real property occurs when there is a transfer of a present interest in the property, and a transfer of the right to beneficial use thereof, the value of which is substantially equal to the value of the fee interest. Every transfer of property qualified as a change in ownership shall be so regarded whether the transfer is voluntary, involuntary, by operation of law, by grant, gift, devise, inheritance, trust, contract of sale, addition or deletion of an owner, property settlement (except as provided in (1), (3) or interspousal transfers), or any other means." (Underline added.) It can be seen then that the seller by conveying the right to possession has conveyed possession and thus ownership of the property within the meaning of section 60 of the Revenue and Taxation Code and Board Rule No. 462.

Paragraph 9 of the Contract of Sale by buyers and sellers also provides "Vendor retains a security interest in the property to secure payment of the balance owed vendor and for performance of all terms and conditions to be performed by vendee." You can see then that the only rights in the property retained by seller was title for security interest. All the rights of ownership were transferred to the buyer. That transfer under both Revenue and Taxation Code section 60 and Board Rule No. 462 constitutes a change in ownership for reassessment purposes. Retention of bare legal title by the seller, as the contract states, is only as a security interest in the property to secure payment of the balance owed by the buyer and for performance of all terms and conditions to be performed by the buyer. The taxpayer is therefore incorrect in his assertion that a legitimate sale of the property had not been consummated.

Board Rule No. 462 (g)(2) provides:

"Deed of trust foreclosed by trustee's sale shall cause a reappraisal as of the date the right of possession vests in the purchaser."

Paragraph 4 of the buyer/seller's Installment Sale Contract provides for a trustee's sale of the property in the event of foreclosure. We presume (because that is customarily the case) that the foreclosure action cited by the sellers was by way of the trustee's sale powers and not by a judicial foreclosure. This being true, under Board Rule No. 462(g) this foreclosure action would constitute a change in ownership for property taxation purposes, since the seller, when foreclosing, would be a "purchaser" within the meaning of Board Rule No. 462(g)(2)..

Mr.

January 4, 1991

Board Rule No. 462(g)(1) provides:

"(1) Mortgage or deed of trust foreclosed by judicial action is a sufficient change in ownership only:

(A) After the period of redemption has passed and property has not been redeemed, or

(B) Upon redemption when title vests in the original debtor's successor in interest."

If you find this foreclosure was by "judicial action" rather than by non-judicial "deed of trust foreclosure", then the occurrence of a change in ownership would hinge upon application of the facts to Board Rule No. 462(g)(1). Essentially, the change in ownership in that event occurs at the end of the "period of redemption" referred to in Board Rule No. 462(g)(1).

In summary, we conclude the subject property changed ownership when seller sold on a Contract of Sale and it again changed ownership when the seller recovered title to the property through a trustee sale foreclosure action.

Please be aware that our opinions stated herein are not binding upon your office or any other county assessor.

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,


Robert R. Keeling
Tax Counsel

RRK:ta
2887D

cc: Mr. John W. Hagerty
Mr. Verne Walton

Attachment: C5/9/84 Land Sale Contract ltr.